

SECURITISATION REGULATION

Regulation 2017/2402 (the “**Securitisation Regulation**”) came into force on 17th January 2018. It introduces an EU-wide set of measures to regulate the securitisation market by laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation.

It applies to securitisations, the securities of which are issued on or after 1st January 2019 and impacts both UCITS and AIFs. There are transitional provisions for positions issued prior to 1st January 2019.

The Securitisation Regulation retains the requirement that the lender maintains an economic interest of not less than 5% in the securitisation.

For the first time, both UCITS management companies and internally managed UCITS will be brought into the framework.

AIFMs’ due diligence, transparency and risk retention requirements that existed under AIFMD will be replaced by the Securitisation Regulation.

Click [here](#) to access the full regulation.

Are there implementing measures and when will they be published?

Draft technical standards were published by ESMA on 16th July 2018, implementing the Securitisation Regulation, specifically in relation to standardized securitisation status notification and third-party application requirements.

The following was published by ESMA:

- Draft regulatory technical standards (“**RTS**”) on simple, transparent and standardised (“**STS**”) securitisation verification services which specify the information to be provided to the competent authorities in application for the authorization of a third party assessing the compliance of a securitisation with STS criteria. Click [here](#) for ESMA’s final report on the RTS.
- Draft RTS and implementing technical standards (“**ITS**”) on STS notification specifying information and format that lenders are required to notify ESMA should a securitisation meet the STS requirements containing the detail as to why the transaction satisfies each of the criteria. Click [here](#) for ESMA’s final report on the RTS and ITS.

By the end of 2018, reporting requirements and operational standards will follow.

What is securitisation?

According to the Securitisation Regulation, securitisation involves transactions that enable a lender or a creditor – typically a credit institution or a corporation – to refinance a set of loans, exposures or receivables, such as residential loans, auto loans or leases, consumer loans, credit cards or trade receivables, by transforming them into tradable securities. The lender pools and repackages a portfolio of its loans, and organizes them

into different risk categories for different investors, thus giving investors access to investments in loans and other exposures to which they normally would not have direct access. Returns to investors are generated from the cash flows of the underlying loans.

What is the aim of the Securitisation Regulation?

The aim is to address the risks inherent in highly complex, opaque and risky securitisations which was a feature of securitisation markets prior to the financial crisis.

What are the key features of the Securitisation Regulation?

Key features include:

- Lenders (also referred to as “originators” or “sponsors”) are directly obliged to meet the requirements of the Securitisation Regulation rather than requiring the AIFM, as the investor, to ensure the lender has complied.
- More closely aligns US and EU risk retention requirements for securitisations as both regimes look to regulate the lender, rather than the investor.
- If AIFMs are exposed to securitisation positions not meeting the requirements of the Securitisation Regulation, amendment of AIFMD Article 17 requires the AIFM to take corrective action.
- Article 50a of UCITS Directive has a new provision if a UCITS is exposed to a securitisation position, not meeting Securitisation Regulation requirements, UCITS must take corrective action. For UCITS, no due diligence rules will apply initially but the EC may in the future adopt due diligence rules under the UCITS regulations.
- The requirement for the lender to retain an interest of not less than 5% in the securitisation remains.