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The European Banking Authority Publishes Draft Guidelines on STS Criteria for On-Balance-Sheet Securitisations



By **Alix Prentice**
Partner | Financial Regulation

The European Banking Authority (“EBA”) has published a [Consultation Paper on draft Guidelines on the STS criteria for on-balance-sheet securitisations](#) (“Draft Guidelines”), comments on which are due by 7 July. Developed in accordance with a mandate set out at Article 26 of the Securitisation Regulation (Regulation (EU) 2017/2402), the Draft Guidelines are intended to provide “a single point of consistent interpretation” of the criteria on simplicity, standardisation and transparency (“STS”) as well as on the credit protection agreement, third-party verification agent and synthetic excess spread applicable to STS on-balance-sheet securitisation (“OBS”). Compliance with these criteria allows preferential risk-weighting under the amended Capital Requirements Regulation for originators retaining senior tranches in STS OBS.

The Draft Guidelines take into account guidance given in 2018 on the STS criteria for traditional non-ABCP securitisation, and aim to cover the STS criteria for OBS that require additional clarification. For a limited subset of requirements, experience of practical implementation of the guidelines in place for non-OBS securitisations has meant that this existing guidance requires updating, and those updates are included in this consultation.

At the conclusion of the consultation process, the EBA will issue three separate guidelines for OBS, non-ABCP and ABCP securitisation (both of the latter on a consolidated basis with previous iterations).

Draft Guidelines on OBS STS Criteria

Simplicity

Guidance proposed here covers a number of aspects, including:

- excluding arbitrage securitisations whereby protection buyers take positions outside their core activities for the sole purpose of writing tranching credit protection on them and arbitraging the yields from the STS label;
- clarifying credit risk mitigation requirements for significant risk transfer through synthetic securitisation;
- enhancing legal certainty around the ownership of legal title to the underlying exposures and enforceability under the credit protection agreement through guidance on specific representations and warranties from the protection buyer;
- ensuring clear and consistent selection of underlying exposures, prohibiting active portfolio management and ensuring that exposures added after closing are subject to no less strict eligibility criteria;
- requirements for homogeneity of underlying pools of exposures, along with contractually binding and enforceable obligations with full recourse, defined payment streams and excluding transferable securities (other than certain) corporate bonds;
- prohibiting resecuritisation being classified STS OBS;
- preventing cherry-picking and ensuring that exposures are not outside the ordinary business of the originator;
- ensuring underlying assets do not include exposures to credit-impaired debtors or guarantors with an adverse credit history;
- requiring at least one ordinary payment specified in the contract and related to the economic substance of the exposure to be made by each underlying borrower at the time the exposure is selected.

Standardisation

Guidance on standardisation includes:

- compliance with risk retention requirements;
- appropriate mitigation of interest rate and currency risks;
- excluding reference to atypical or complex rates or variables that investors use to model credit risk and cash flow;
- clarifications on enforceability for an investor when there is an enforcement event in respect of the originator;
- allocation of losses to investors and the application of different types of amortisation applied to tranches;
- safeguards for investors when there is a revolving period and the inclusion of early amortisation provisions when an SSPE is used;
- clarification on transaction documentation covering servicing standards and procedures and requirements for the third-party verification agent;

- identification of reference obligations on which protection is purchased via a reference register;
- facilitation of the timely resolution of conflicts between different classes of investors.

Transparency

Guidance on requirements relating to transparency covers:

- sufficiency of data on historical default and loss performance to allow appropriate due diligence;
- enabling investors to model cashflows;
- disclosure of the energy efficiency of assets when that information is available to the originator, sponsor or SSPE;
- compliance with investor disclosures required under Article 7 of the Securitisation Regulation.

Requirements specific to OBS that have no equivalent in the requirements for non-ABCP securitisation

These guidelines have no existing equivalent and cover:

- which credit events should trigger payments under the credit protection agreement;
- ensuring that the credit protection agreement covers originators' losses in a timely manner, how to determine the losses and the amounts and timing for the interim and final credit protection payments;
- clarification on legal certainty for investors on the maximum extension period for debt workout and on contingent credit protection premiums;
- the requirement for the appointment of a third-party verification agent;
- the conditions under which the originator is able to exercise early termination rights;
- synthetic excess spreads committed by the originator as credit enhancement for investors;
- eligible forms of credit protection agreement;
- acceptable types of high-quality collateral that originators and investors should have recourse to.

While in the main the Draft Guidelines are a continuation of the status quo, they will form an important part of the EU securitisation framework in place since 2019.
