MAYER | BROWN

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Legal Update

Amendments to the EU Securitisation Regulation – the new synthetic STS framework and adjustments in relation to non-performing exposures

Overview

Two regulations amending the EU Securitisation Regulation[1] and the Capital Requirements Regulation[2] (the "**CRR**") respectively have now come into force. Regulation (EU) 2021/557 of the European Parliament and of the Council[3] (the **"SR Amendment Regulation"**) and Regulation (EU) 2021/558 of the European Parliament and of the Council[4] (the **"CRR Amendment Regulation"**, and together, the **"Amendment Regulations"**), were published on 6 April 2021 in the Official Journal and came into force on 9 April 2021.

The Amendment Regulations, among other things, implement an STS (simple, transparent and standardised) framework for balance sheet synthetic securitisations and make certain amendments with respect to securitisations of non-performing exposures ("**NPEs**"), both of which are changes which market participants have been keenly awaiting. They also make certain other changes, including amendments to the restrictions on the jurisdictions in which a securitisation special purpose entity ("**SSPE**") may be established and setting out a mandate for the European Banking Authority (the "**EBA**") to produce a report on sustainable securitisation.

The Amendment Regulations are part of the so-called "Capital Markets Recovery Package", which is intended to "support the recovery from the severe economic shock caused by the COVID-19 pandemic" on Member States through targeted amendments to key pieces of financial legislation, including the EU Securitisation Regulation and the CRR. The Amendment Regulations recognise that "[s]ecuritisation is an important element of well-functioning financial markets" which helps to diversify the sources of funds for institutions and to release regulatory capital for further lending. Given the urgent need to address the impact of the pandemic, the Amendment Regulations came into force in an accelerated 3-day timeframe rather than at the end of the usual 20-day period following publication in the Official Journal.

In this Legal Update, we summarise and consider the Amendment Regulations. We note, of course, that the Amendment Regulations are EU regulations and so will not be applicable in the UK, which is now subject to a separate securitisation regime which is similar but not identical.[5] We are not currently aware of any plans by the UK regulators to make corresponding changes to the EU Securitisation

[1] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

[2] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, as amended.

[3] Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0557&qid=1618105225504&from=en.

[4] Regulation (EU) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0558&from=EN.

[5] For more information on the UK securitisation regime, please see our Legal Update – "The Revised Securitisation Regulation Regime in the UK".

Regulation as it now applies in the UK[6], or the CRR as it forms part of "retained EU law" in the UK, and so the Amendment Regulations (for now) represent a divergence between the UK and EU regimes.

STS framework for synthetic securitisations

The introduction of an STS framework for balance sheet synthetic securitisations[7] has been eagerly anticipated. The framework closely follows the proposals set out in the EBA report published on 6 May 2020,[8] and we set out in the Annex to this Legal Update a comparison between the new STS criteria for balance sheet synthetic securitisations and the established STS criteria for non-ABCP "traditional" securitisations on which the new framework is based. Key differences between the new framework and the established STS criteria for non-ABCP "traditional" securitisations include:

- *Simplicity*: criteria relating to true sale are not relevant for synthetic securitisations and so have not been included in the new framework. Instead, the underlying exposures need to have been originated as part of the core business activity of the originator and must be held on its balance sheet, the originator must not hedge its exposure beyond the protection obtained through the credit protection agreement, and additional representations and warranties are required from the originator in relation to the exposures and their origination.
- *Standardisation*: criteria relating to the disclosure of hedging and currency risks have been expanded, amortisation requirements have been adapted and the originator is required to maintain a reference register with respect to the underlying exposures.
- *New requirements*: specific criteria have been added on credit events, credit protection payments, the verification agent's role and synthetic excess spread.

Helpfully, the new STS criterion for credit events, which is likely to be a particular area of focus for market participants, simply requires compliance with the requirements of Articles 215(1)(a) and 216(1)(a) of the CRR for a guarantee or credit derivative (as applicable) – rather than anything new or unfamiliar to the market. The new STS criteria also include a list of items which a verification agent, who must be independent from the originator and the investors, needs to verify in relation to underlying exposures for which a credit event notice is given "as a minimum" (see new Article 26e(4), as set out in the Annex) – such as the compliance of the underlying exposure with the eligibility criteria at the time of its inclusion in the reference portfolio and the consistency of the final loss amount with losses recorded by the originator in its profit and loss statement. This verification can be done on a sample basis – but investors may seek verification in relation to individual underlying exposures where they are not satisfied with the sample-basis verification.

As with the existing STS framework for traditional securitisations, certain market participants can benefit from preferential regulatory capital treatment as a result of structuring a synthetic securitisation so that it falls within the synthetic STS framework. However, this treatment will only be available for the senior position held by the originator institution and not to other positions which are held by investors.

On 9 April 2021, ESMA[9] published the interim STS templates on which synthetic securitisations may be notified to ESMA as being STS-compliant[10] – although it should be noted that use of these templates is voluntary (the only requirement at this time being that originators must make the necessary information available to ESMA in writing). As was the case for traditional securitisations, ESMA is required to develop final templates and once the regulatory technical standards come into force which specify these final templates, they will be required to be used to notify ESMA of synthetic securitisations which are STS-compliant. It may be helpful for market participants to use the interim templates for consistency across STS notifications, and to ensure all the required information is provided.

[6] The EU Securitisation Regulation as it forms part of "retained EU law" by virtue of the European Union (Withdrawal) Act 2018, as amended, and as amended by the Securitisation (Amendment) (EU Exit) Regulations 2019.

[7] As expected, the framework cannot be applied to "arbitrage" synthetic securitisations (i.e. securitisations where the relevant portfolio has been acquired solely for the purpose of securitising it to generate income from an arbitrage between the interest payable on the underlying assets and the interest payable to Noteholders) – see also Recital 14 of the SR Amendment Regulation.

[8] For more information on the EBA report and the background to the STS framework for synthetic securitisations, please see our previous Legal Updates "EBA publishes its report on the creation of an STS framework for synthetic securitisations", June 2020 and "EBA consults on the creation of an STS framework for synthetic securitisations", October 2019.

[9] The European Securities and Markets Authority.

[10] Available at: https://www.esma.europa.eu/sites/default/files/esma82-402-33_interim_sts_templates_synthetic_securitisations.xlsx

SYNTHETIC EXCESS SPREAD

The Amendment Regulations introduce a new definition of "synthetic excess spread", as follows:

""synthetic excess spread" means the amount that… is contractually designated by the originator to absorb losses of the securitised exposures that might occur before the maturity date of the transaction."

One slightly controversial element of the Amendment Regulations is a change to the CRR[11] which will mean that synthetic excess spread will have an "exposure value" and have to be risk weighted as another "tranche" of the securitisation. This change is not limited to synthetic excess spread in STS synthetic securitisations, but will affect synthetic excess spread across all synthetic securitisations. The "exposure value" calculation will have to take into account synthetic excess spread from the current period, from previous periods (that is still available to be applied), and that which is contractually designated for future periods. The intention of this change is to prevent synthetic excess spread being used for regulatory arbitrage purposes, as further explained in Recital 11 of the CRR Amendment Regulation.

This change to the CRR does not come into force until April 2022, giving the EBA time to put technical standards[12] in place setting out methodologies for how the "exposure" of a position in synthetic excess spread should be calculated for risk weighting purposes.

It should be noted that in the UK the PRA already applies a capital charge to synthetic excess spread, requiring it to be treated like a guarantee for risk weighting purposes.

Amendments relating to NPEs

As acknowledged by regulators in all jurisdictions, the COVID-19 pandemic is likely to lead to an increase in the prevalence of NPEs (in particular following the expiry of forbearance measures currently in place for underlying obligors in most jurisdictions) – and securitisation is one of the most efficient ways for market participants to manage any portfolios of NPEs which they hold. The Amendment Regulations seek to remove certain regulatory obstacles to the securitisation of NPEs by changing the existing regulatory framework as it applies to "NPE securitisations".[13] The main changes are summarised below:

- *Servicer as risk retainer*: recognising that the servicer in a NPE securitisation generally has a more substantial interest in the management, collection and recovery process for the exposures than the originator or original lender (since the latter is, in most cases, seeking to offload those exposures from its balance sheet), the Amendment Regulations permit the servicer of a NPE securitisation to act as the risk retainer, provided that the servicer is able to demonstrate that it has the relevant expertise and policies, procedures and controls in place.
- *Risk retention sizing*: recognising that the nominal value of a NPE is often not representative of its market value, the Amendment Regulations permit the risk retention in a NPE securitisation to be sized based on the net value of the NPEs[14] - being their nominal value less any non-refundable purchase price discount agreed at the time of the securitisation. This is to be clarified further in the risk retention regulatory technical standards, which are now required to be submitted by the EBA to the European Commission (the **"Commission"**) by 10 October 2021.
- *Verification of standards*: recognising that, where an originator has purchased NPEs from a third party before securitising them, the standards applied to the pricing and selection of those NPEs by the originator are of more importance than the credit-granting standards applied at the time of origination (and that such credit-granting standards can also be very difficult to verify), Article 9 of the EU Securitisation Regulation has been amended to focus on the soundness of pricing and selection standards for NPE securitisations where an originator has purchased NPEs from a third party (this change will not impact other types of NPE securitisation).

Given that these changes are intended to fix some of the issues caused for NPE securitisations under the existing regulatory framework, they will likely be welcomed by market participants.

[11] Changes to Article 248 and 256 in Article 1 of the CRR Amendment Regulation.

[12] The EBA is required to provide draft regulatory technical standards to the European Commission by 10 October 2021.

[13] NPE securitisations" are defined by the SR Amendment Regulation as securitisations backed by a pool of NPEs the nominal value of which makes up not less than 90% of the entire pool's nominal value at the time of origination, and at any later time when assets are added to or removed from the pool.

[14] The nominal value should be used with respect to any exposures in the pool which are not NPEs, for the purposes of calculating the risk retention.

Other changes

THIRD COUNTRY SSPE RESTRICTIONS

The SR Amendment Regulation amends Article 4 of the EU Securitisation Regulation to widen the list of jurisdictions in which a SSPE may not be located to include the jurisdictions listed in Annex I of the EU list of non-cooperative jurisdictions for tax purposes.[15] This amendment was originally going to widen Article 4 to also prohibit location of a SSPE in jurisdictions listed in Annex II of the EU list of non-cooperative jurisdictions for tax purposes – causing some consternation in the market as Annex II currently includes Australia. However, following representations from market participants, the final text of the SR Amendment Regulation does not prohibit SSPEs from being established in Annex II jurisdictions – but market participants should note that the SR Amendment Regulation does require that investors notify their competent tax authorities of their investment when investing (from the date of the SR Amendment Regulation) in an SSPE which has been established in an Annex II jurisdiction such as Australia.

FEES

A new provision has been added to Article 6 of the EU Securitisation Regulation, requiring risk retainers to take fees which "may in practice be used to reduce the effective material net economic interest" into account when sizing the risk retention for their transactions. The EBA is mandated to flesh out this requirement in the aforementioned upcoming risk retention technical standards – it is hoped that these technical standards will clarify exactly how this additional requirement works and exactly which fees it seeks to capture.

SUSTAINABLE SECURITISATION FRAMEWORK

The SR Amendment Regulation includes a new provision which mandates the EBA (in close co-operation with ESMA and EIOPA[16]) to produce a report by 1 November 2021 on developing a sustainable securitisation framework, for the purpose of integrating sustainability-related transparency requirements into the EU Securitisation Regulation. The Commission is then mandated to report to the European Parliament and the Council on the creation of a sustainable securitisation framework, with an accompanying legislative proposal (if appropriate). This aligns with wider market trends towards sustainability-focused financing.

Conclusion

In line with their stated aims, the Amendment Regulations will generally make it easier and more attractive for market participants to enter into balance sheet synthetic securitisation transactions and to securitise NPE portfolios. This should help with capital flow in the European market and assist with economic recovery. However, there are also some more nuanced changes (such as the risk weighting of synthetic excess spread and the requirement to take certain fees into account when sizing risk retention) which market participants should be aware of. We await the publication of the various technical standards and reports mandated in the Amendment Regulations for further clarity and progress on some of these points.

[15] Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes (2021/C 66/10), available at: https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv:OJ.C_.2021.066.01.0040.01.ENG

[16] The European Insurance and Occupational Pensions Authority.

ANNEX

The STS criteria for synthetic securitisations and comparison with the STS criteria for non-ABCP traditional securitisations

	New criterion
	Amended criterion
	Same/substantially similar criterion

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
Simplicity	
Article 20	Article 26b
1. The title to the underlying exposures shall be acquired by the SSPE by means of a true sale or assignment or transfer with the same legal effect in a manner that is enforceable against the seller or any other third party. The transfer of the title to the SSPE shall not be subject to severe clawback provisions in the event of the seller's insolvency. 2. For the purpose of paragraph 1, any of the following shall constitute severe clawback provisions: (a) provisions which allow the liquidator of the seller to invalidate the sale of the underlying exposures solely on the basis that it was concluded within a certain period before the declaration of the seller's insolvency; (b) provisions where the SSPE can only prevent the invalidation referred to in point (a) if it can prove that it was not aware of the insolvency of the seller at the time of sale. 3. For the purpose of paragraph 1, clawback provisions in national insolvency laws that allow the liquidator or a court to invalidate the sale of underlying exposures in the case of fraudulent transfers, unfair prejudice to creditors or transfers intended to improperly favour particular creditors over others shall not constitute severe clawback provisions. 4. Where the seller is not the original lender, the true sale or assignment or transfer with the same legal effect of the underlying exposures to that seller, whether that true sale or assignment or transfer with the same legal effect is direct or through one or more intermediate steps, shall meet the requirements set out in paragraphs 1 to 3. 5. Where the transfer of the underlying exposures is performed by means of an assignment and perfected at a later stage than at the closing of the transaction, the triggers to effect such perfection shall include at least the following events: (a) severe deterioration in the seller credit quality standing; (b) insolvency of the seller; and (c) unremedied breaches of contractual obligations by the seller, including the seller's default.	1. An originator shall be an entity that is authorised or licenced in the Union. An originator that purchases a third party's exposures on its own account and then securitises them shall apply policies with regard to credit, collection, debt workout and servicing applied to those exposures that are no less stringent than those that the originator applies to comparable exposures that have not been purchased.
N/A	2. Underlying exposures shall be originated as part of the core business activity of the originator.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
N/A	3. At the closing of a transaction, the underlying exposures shall be held on the balance sheet of the originator or of an entity that belongs to the same group as the originator. For the purposes of this paragraph, a group shall be either of the following: (a) a group of legal entities that is subject to prudential consolidation in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013; (b) a group as defined in point (c) of Article 212(1) of Directive 2009/138/EC.
N/A	4. The originator shall not hedge its exposure to the credit risk of the underlying exposures of the securitisation beyond the protection obtained through the credit protection agreement.
N/A	5. The credit protection agreement shall comply with the credit risk mitigation rules laid down in Article 249 of Regulation (EU) No 575/2013, or where that Article is not applicable, with requirements that are no less stringent than the requirements set out in that Article.
6. The seller shall provide representations and warranties that, to the best of its knowledge, the underlying exposures included in the securitisation are not encumbered or otherwise in a condition that can be foreseen to adversely affect the enforceability of the true sale or assignment or transfer with the same legal effect.	6. The originator shall provide representations and warranties that the following requirements have been met: (a) the originator or an entity of the group to which the originator belongs has full legal and valid title to the underlying exposures and their associated ancillary rights; (b) where the originator is a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, or an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC, the originator or an entity which is included in the scope of supervision on a consolidated basis keeps the credit risk of the underlying exposures on its balance sheet; (c) each underlying exposure complies, at the date it is included in the securitised portfolio, with the eligibility criteria and with all conditions, other than the occurrence of a credit event as referred to in Article 26e(1), for a credit protection payment in accordance with the credit protection agreement contained within the securitisation documentation; (d) to the best of the originator's knowledge, the contract for each underlying exposure contains a legal, valid, binding and enforceable obligation on the obligor to pay the sums of money specified in that contract; (e) the underlying exposures comply with underwriting criteria that are no less stringent than the standard underwriting criteria that the originator applies to similar exposures that are not securitised; (f) to the best of the originator's knowledge, none of the obligors are in material breach or default of any of their obligations in respect of an underlying exposure on the date on which that underlying exposure is included in the securitised portfolio; (g) to the best of the originator's knowledge, the transaction documentation does not contain any false information on the details of the underlying exposures; (h) at the closing of the transaction or when an underlying exposure is included in the securitised portfolio, the contract between the obligor and the original lender in relation to that underlying exposure has not been amended in such a way that the enforceability or collectability of that underlying exposure has been affected.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
7. The underlying exposures transferred from, or assigned by, the seller to the SSPE shall meet predetermined, clear and documented eligibility criteria which do not allow for active portfolio management of those exposures on a discretionary basis. For the purpose of this paragraph, substitution of exposures that are in breach of representations and warranties shall not be considered active portfolio management. Exposures transferred to the SSPE after the closing of the transaction shall meet the eligibility criteria applied to the initial underlying exposures.	7. Underlying exposures shall meet predetermined, clear and documented eligibility criteria that do not allow for active portfolio management of those exposures on a discretionary basis. For the purposes of this paragraph, the substitution of exposures that are in breach of representations or warranties or, where the securitisation includes a replenishment period, the addition of exposures that meet the defined replenishment conditions, shall not be considered active portfolio management. Any exposure added after the closing date of the transaction shall meet eligibility criteria that are no less stringent than those applied in the initial selection of the underlying exposures. An underlying exposure may be removed from the transaction where that underlying exposure: (a) has been fully repaid or matured otherwise; (b) has been disposed of during the ordinary course of the business of the originator, provided that such disposal does not constitute implicit support as referred to in Article 250 of Regulation (EU) No 575/2013; (c) is subject to an amendment that is not credit driven, such as refinancing or restructuring of debt, and which occurs during the ordinary course of servicing of that underlying exposure; or (d) did not meet the eligibility criteria at the time it was included in the transaction.
8. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type. The underlying exposures shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors. The underlying exposures shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal, or interest payments, or to any other right to receive income from assets supporting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets. The underlying exposures shall not include transferable securities, as defined in point (44) of Article 4(1) of Directive 2014/65/EU, other than corporate bonds that are not listed on a trading venue.	8. The securitisation shall be backed by a pool of underlying exposures that are homogeneous in terms of asset type, taking into account the specific characteristics relating to the cash flows of the asset type including their contractual, credit-risk and prepayment characteristics. A pool of underlying exposures shall comprise only one asset type. The underlying exposures referred to in the first subparagraph shall contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors. The underlying exposures referred to in the first subparagraph shall have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal or interest payments, or to any other right to receive income from assets supporting such payments. The underlying exposures may also generate proceeds from the sale of any financed or leased assets. The underlying exposures referred to in the first subparagraph of this paragraph shall not include transferable securities as defined in point (44) of Article 4(1) of Directive 2014/65/EU, other than corporate bonds that are not listed on a trading venue.
9. The underlying exposures shall not include any securitisation position.	9. Underlying exposures shall not include any securitisation positions.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
10. The underlying exposures shall be originated in the ordinary course of the originator's or original lender's business pursuant to underwriting standards that are no less stringent than those that the originator or original lender applied at the time of origination to similar exposures that are not securitised. The underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay. In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender. The assessment of the borrower's creditworthiness shall meet the requirements set out in Article 8 of Directive 2008/48/EC or paragraphs 1 to 4, point (a) of paragraph 5, and paragraph 6 of Article 18 of Directive 2014/17/EU or, where applicable, equivalent requirements in third countries. The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.	10. The underwriting standards pursuant to which underlying exposures are originated and any material changes from prior underwriting standards shall be fully disclosed to potential investors without undue delay. The underlying exposures shall be underwritten with full recourse to an obligor that is not an SSPE. No third parties shall be involved in the credit or underwriting decisions concerning the underlying exposures. In the case of securitisations where the underlying exposures are residential loans, the pool of loans shall not include any loan that was marketed and underwritten on the premise that the loan applicant or, where applicable, intermediaries were made aware that the information provided might not be verified by the lender. The assessment of the borrower's creditworthiness shall meet the requirements set out in Article 8 of Directive 2008/48/EC or Article 18(1) to (4), point (a) of Article 18(5) and Article 18(6), of Directive 2014/17/EU, or where applicable, equivalent requirements in third countries. The originator or original lender shall have expertise in originating exposures of a similar nature to those securitised.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
11. The underlying exposures shall be transferred to the SSPE after selection without undue delay and shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013 or exposures to a credit-impaired debtor or guarantor, who, to the best of the originator's or original lender's knowledge: (a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of origination or has undergone a debt restructuring process with regard to his non-performing exposures within three years prior to the date of transfer or assignment of the underlying exposures to the SSPE, except if: (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of transfer or assignment of the underlying exposures to the SSPE; and (ii) the information provided by the originator, sponsor and SSPE in accordance with points (a) and (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring as well as their performance since the date of the restructuring; (b) was, at the time of origination, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or original lender; or (c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.	11. Underlying exposures shall not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, or exposures to a credit-impaired debtor or guarantor who to the best of the originator's or original lender's knowledge: (a) has been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within three years prior to the date of the origination or has undergone a debt-restructuring process with regard to his non-performing exposures within three years prior to the date of the selection of the underlying exposures, except where: (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least one year prior to the date of the selection of the underlying exposures; and (ii) the information provided by the originator in accordance with point (a) and point (e)(i) of the first subparagraph of Article 7(1) explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring and their performance since the date of the restructuring; (b) was at the time of origination of the underlying exposure, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or the original lender; or (c) has a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.
12. The debtors shall, at the time of transfer of the exposures, have made at least one payment, except in the case of revolving securitisations backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits.	12 Debtors shall, at the time of the inclusion of the underlying exposures, have made at least one payment, except where: (a) the securitisation is a revolving securitisation, backed by exposures payable in a single instalment or having a maturity of less than one year, including without limitation monthly payments on revolving credits; or (b) the exposure represents the refinancing of an exposure that is already included in the transaction.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
13. The repayment of the holders of the securitisation positions shall not have been structured to depend predominantly on the sale of assets securing the underlying exposures. This shall not prevent such assets from being subsequently rolled-over or refinanced. The repayment of the holders of the securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation by the seller of the assets securing the underlying exposures or by another third party shall not be considered to depend on the sale of assets securing those underlying exposures.	N/A
Standardisation	
Article 21	Article 26c
1. The originator, sponsor or original lender shall satisfy the risk-retention requirement in accordance with Article 6.	1. The originator or original lender shall satisfy the risk-retention requirement in accordance with Article 6.
2. The interest-rate and currency risks arising from the securitisation shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Except for the purpose of hedging interest-rate or currency risk, the SSPE shall not enter into derivative contracts and shall ensure that the pool of underlying exposures does not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance	2. The interest rate and currency risks arising from a securitisation and their possible effects on the payments to the originator and the investors shall be described in the transaction documentation. Those risks shall be appropriately mitigated and any measures taken to that effect shall be disclosed. Any collateral securing the obligations of the investor under the credit protection agreement shall be denominated in the same currency in which the credit protection payment is denominated. In the case of a securitisation using a SSPE, the amount of liabilities of the SSPE concerning the interest payments to the investors shall, at each payment date, be equal to or be less than the amount of the SSPE's income from the originator and any collateral arrangements. Except for the purpose of hedging interest rate or currency risks of the underlying exposures, the pool of underlying exposures shall not include derivatives. Those derivatives shall be underwritten and documented according to common standards in international finance.
3. Any referenced interest payments under the securitisation assets and liabilities shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, and shall not reference complex formulae or derivatives.	3. Any referenced interest rate payments in relation to the transaction shall be based on either of the following: (a) generally used market interest rates, or generally used sectoral rates that are reflective of the costs of funds, and do not reference complex formulae or derivatives; (b) income generated by the collateral securing the obligations of the investor under the protection agreement Any referenced interest payments due under the underlying exposures shall be based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds, and shall not reference complex formulae or derivatives.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
4. Where an enforcement or an acceleration notice has been delivered: (a) no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of the SSPE or the orderly repayment of investors in accordance with the contractual terms of the securitisation, unless exceptional circumstances require that an amount be trapped to be used, in the best interests of investors, for expenses in order to avoid the deterioration in the credit quality of the underlying exposures; (b) principal receipts from the underlying exposures shall be passed to investors via sequential amortisation of the securitisation positions, as determined by the seniority of the securitisation position; (c) repayment of the securitisation positions shall not be reversed with regard to their seniority; and (d) no provisions shall require automatic liquidation of the underlying exposures at market value.	4. Following the occurrence of an enforcement event in respect of the originator, the investor shall be permitted to take enforcement action. In the case of a securitisation using a SSPE, where an enforcement or termination notice of the credit protection agreement is delivered, no amount of cash shall be trapped in the SSPE beyond what is necessary to ensure the operational functioning of that SSPE, the payment of the protection payments for defaulted underlying exposures that are still being worked out at the time of the termination, or the orderly repayment of investors in accordance with the contractual terms of the securitisation.
5. Transactions which feature non-sequential priority of payments shall include triggers relating to the performance of the underlying exposures resulting in the priority of payments reverting to sequential payments in order of seniority. Such performance-related triggers shall include at least the deterioration in the credit quality of the underlying exposures below a predetermined threshold.	5. Losses shall be allocated to the holders of a securitisation position in the order of seniority of the tranches, starting with the most junior tranche. Sequential amortisation shall be applied to all tranches to determine the outstanding amount of the tranches at each payment date, starting from the most senior tranche. By way of derogation from the second subparagraph, transactions which feature non-sequential priority of payments shall include triggers related to the performance of the underlying exposures resulting in the priority of payments reverting the amortisation to sequential payments in order of seniority. Such performance-related triggers shall include as a minimum: (a) either the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses greater than a given percentage of the outstanding amount of the underlying portfolio; (b) one additional backward-looking trigger; and (c) one forward-looking trigger. EBA shall develop draft regulatory technical standards on the specification, and where relevant, on the calibration of the performance-related triggers. EBA shall submit those draft regulatory technical standards to the Commission by 30 June 2021. The Commission is empowered to supplement this Regulation by adopting the regulatory technical standards referred to in the fourth subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. As tranches amortise, the amount of the collateral equal to the amount of the amortisation of those tranches shall be returned to the investors, provided the investors have collateralised those tranches. Where a credit event, as referred to in Article 26e, has occurred in relation to underlying exposures and the debt workout for those exposures has not been completed, the amount of credit protection remaining at any payment date shall be at least equivalent to the outstanding nominal amount of those underlying exposures, minus the amount of any interim payment made in relation to those underlying exposures.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
6. The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period where the securitisation is a revolving securitisation, including at least the following: (a) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; (b) the occurrence of an insolvency-related event with regard to the originator or the servicer; (c) the value of the underlying exposures held by the SSPE falls below a predetermined threshold (early amortisation event); and (d) a failure to generate sufficient new underlying exposures that meet the predetermined credit quality (trigger for termination of the revolving period).	6. The transaction documentation shall include appropriate early amortisation provisions or triggers for termination of the revolving period, where a securitisation is a revolving securitisation, including at least the following: (a) a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold; (b) a rise in losses above a predetermined threshold; (c) a failure to generate sufficient new underlying exposures that meet the predetermined credit quality during a specified period.
7. The transaction documentation shall clearly specify: (a) the contractual obligations, duties and responsibilities of the servicer and the trustee, if any, and other ancillary service providers; (b) the processes and responsibilities necessary to ensure that a default by or an insolvency of the servicer does not result in a termination of servicing, such as a contractual provision which enables the replacement of the servicer in such cases; and (c) provisions that ensure the replacement of derivative counterparties, liquidity providers and the account bank in the case of their default, insolvency, and other specified events, where applicable.	7. The transaction documentation shall clearly specify: (a) the contractual obligations, duties and responsibilities of the servicer, the trustee and other ancillary service providers, as applicable, and the third-party verification agent referred to in Article 26e(4); (b) the provisions that ensure the replacement of the servicer, trustee, other ancillary service providers or the third-party verification agent referred to in Article 26e(4) in the event of default or insolvency of either of those service providers, where those service providers differ from the originator, in a manner that does not result in the termination of the provision of those services; (c) the servicing procedures that apply to the underlying exposures at the closing date of the transaction and thereafter and the circumstances under which those procedures may be modified; (d) the servicing standards that the servicer is obliged to adhere to in servicing the underlying exposures during the entire life of the securitisation.
8. The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures.	8. The servicer shall have expertise in servicing exposures of a similar nature to those securitised and shall have well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures. The servicer shall apply servicing procedures to the underlying exposures that are at least as stringent as the ones applied by the originator to similar exposures that are not securitised.
9. The transaction documentation shall set out in clear and consistent terms definitions, remedies and actions relating to delinquency and default of debtors, debt restructuring, debt forgiveness, forbearance, payment holidays, losses, charge offs, recoveries and other asset performance remedies. The transaction documentation shall clearly specify the priorities of payment, events which trigger changes in such priorities of payment as well as the obligation to report such events. Any change in the priorities of payments which will materially adversely affect the repayment of the securitisation position shall be reported to investors without undue delay.	9. The originator shall maintain an up-to-date reference register to identify the underlying exposures at all times. That register shall identify the reference obligors, the reference obligations from which the underlying exposures arise, and, for each underlying exposure, the nominal amount that is protected and that is outstanding.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
10. The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors, voting rights shall be clearly defined and allocated to bondholders and the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified.	10. The transaction documentation shall include clear provisions that facilitate the timely resolution of conflicts between different classes of investors. In the case of a securitisation using a SSPE, voting rights shall be clearly defined and allocated to bondholders and the responsibilities of the trustee and other entities with fiduciary duties to investors shall be clearly identified.
Transparency	
Article 22	Article 26d
1. The originator and the sponsor shall make available data on static and dynamic historical default and loss performance, such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years.	1. The originator shall make available data on static and dynamic historical default and loss performance such as delinquency and default data, for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity, to potential investors before pricing. Those data shall cover a period of at least five years.
2. A sample of the underlying exposures shall be subject to external verification prior to issuance of the securities resulting from the securitisation by an appropriate and independent party, including verification that the data disclosed in respect of the underlying exposures is accurate.	2. A sample of the underlying exposures shall be subject to external verification prior to the closing of the transaction by an appropriate and independent party, including verification that the underlying exposures are eligible for credit protection under the credit protection agreement.
3. The originator or the sponsor shall, before the pricing of the securitisation, make available to potential investors a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, sponsor, investors, other third parties and the SSPE, and shall, after pricing, make that model available to investors on an ongoing basis and to potential investors upon request.	3. The originator shall, before the pricing of the securitisation, make available to potential investors a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator, investors, other third parties and, where applicable, the SSPE, and shall, after pricing, make that model available to investors on an ongoing basis and to potential investors upon request.
4. In the case of a securitisation where the underlying exposures are residential loans or auto loans or leases, the originator and sponsor shall publish the available information related to the environmental performance of the assets financed by such residential loans or auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1).	4. In the case of a securitisation where the underlying exposures are residential loans or auto loans or leases, the originator shall publish the available information related to the environmental performance of the assets financed by such residential loans, auto loans or leases, as part of the information disclosed pursuant to point (a) of the first subparagraph of Article 7(1). By way of derogation from the first subparagraph, originators may, from 1 June 2021, decide to publish the available information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors. *[Regulatory technical standards are to be developed by the Joint Committee of the European Supervisory Authorities by 10 July 2021 on the content, methodologies and presentation of the information referred to in the second subparagraph above, in respect of the sustainability indicates in relation to adverse impacts on the climate and other environmental, social and governance-related adverse impacts.]*

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
5. The originator and the sponsor shall be responsible for compliance with Article 7. The information required by point (a) of the first subparagraph of Article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first subparagraph of Article 7(1) shall be made available before pricing at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after closing of the transaction.	5. The originator shall be responsible for compliance with Article 7. The information required by point (a) of the first subparagraph of Article 7(1) shall be made available to potential investors before pricing upon request. The information required by points (b) to (d) of the first subparagraph of Article 7(1) shall be made available before pricing, at least in draft or initial form. The final documentation shall be made available to investors at the latest 15 days after the closing of the transaction.
Requirements concerning the credit protection agreement, the third-party verification agent and the synthetic excess spread	
	Article 26e
N/A	1. The credit protection agreement shall at least cover the following credit events: (a) where the transfer of risk is achieved by the use of guarantees, the credit events referred to in point (a) of Article 215(1) of Regulation (EU) No 575/2013; (b) where the transfer of risk is achieved by the use of credit derivatives, the credit events referred to in point (a) of Article 216(1) of Regulation (EU) No 575/2013. All credit events shall be documented. Forbearance measures within the meaning of Article 47b of Regulation (EU) No 575/2013 that are applied to the underlying exposures shall not preclude the triggering of eligible credit events.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
N/A	2. The credit protection payment following the occurrence of a credit event shall be calculated based on the actual realised loss suffered by the originator or the original lender, as worked out in accordance with their standard recovery policies and procedures for the relevant exposure types and recorded in their financial statements at the time the payment is made. The final credit protection payment shall be payable within a specified period of time after the debt workout for the relevant underlying exposure where the debt workout has been completed before the scheduled legal maturity or early termination of the credit protection agreement. An interim credit protection payment shall be made at the latest six months after the occurrence of a credit event as referred to in paragraph 1 in cases where the debt workout of the losses for the relevant underlying exposure has not been completed by the end of that six-month period. The interim credit protection payment shall be at least the higher of the following: (a) the expected loss amount that is equivalent to the impairment recorded by the originator in its financial statements in accordance with the applicable accounting framework at the time the interim payment is made on the assumption that the credit protection agreement does not exist and does not cover any losses; (b) where applicable, the expected loss amount as determined in accordance with Chapter 3 of Title II of Part Three of Regulation (EU) No 575/2013. Where an interim credit protection payment is made, the final credit protection payment referred to in the first subparagraph shall be made in order to adjust the interim settlement of losses to the actual realised loss. The method for the calculation of interim and final credit protection payments shall be specified in the credit protection agreement. The credit protection payment shall be proportional to the share of the outstanding nominal amount of the corresponding underlying exposure that is covered by the credit protection agreement. The right of the originator to receive the credit protection payment shall be enforceable. The amounts payable by investors under the credit protection agreement shall be clearly set out in the credit protection agreement and limited. It shall be possible to calculate those amounts in all circumstances. The credit protection agreement shall clearly set out the circumstances under which investors shall be required to make payments. The third-party verification agent referred to in paragraph 4 shall assess whether such circumstances have occurred. The amount of the credit protection payment shall be calculated at the level of the individual underlying exposure for which a credit event has occurred.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
N/A	3. The credit protection agreement shall specify the maximum extension period that shall apply for the debt workout for the underlying exposures in relation to which a credit event as referred to in paragraph 1 has occurred, but where the debt workout has not been completed upon the scheduled legal maturity or early termination of the credit protection agreement. Such an extension period shall not be longer than two years. The credit protection agreement shall provide that, by the end of that extension period, a final credit protection payment shall be made on the basis of the originator's final loss estimate that would have to be recorded by the originator in its financial statements at that time on the assumption that the credit protection agreement does not exist and does not cover any losses. In the event that the credit protection agreement is terminated, the debt workout shall continue in respect of any outstanding credit events that occurred prior to that termination in the same way as that described in the first subparagraph. The credit protection premiums to be paid under the credit protection agreement shall be structured as contingent on the outstanding nominal amount of the performing securitised exposures at the time of the payment and reflect the risk of the protected tranche. For those purposes, the credit protection agreement shall not stipulate guaranteed premiums, upfront premium payments, rebate mechanisms or other mechanisms that may avoid or reduce the actual allocation of losses to the investors or return part of the paid premiums to the originator after the maturity of the transaction. By way of derogation from the third subparagraph of this paragraph, upfront premium payments shall be allowed, provided State aid rules are complied with, where the guarantee scheme is specifically provided for in the national law of a Member State and benefits from a counter-guarantee of any of the entities listed in points (a) to (d) of Article 214(2) of Regulation (EU) No 575/2013. The transaction documentation shall describe how the credit protection premium and any note coupons, if any, are calculated in respect of each payment date over the entire life of the securitisation. The rights of the investors to receive credit protection premiums shall be enforceable.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
N/A	4. The originator shall appoint a third-party verification agent before the closing date of the transaction. For each of the underlying exposures for which a credit event notice is given, the third party verification agent shall verify, as a minimum, all of the following: (a) that the credit event referred to in the credit event notice is a credit event as specified in the terms of the credit protection agreement; (b) that the underlying exposure was included in the reference portfolio at the time of the occurrence of the credit event concerned; (c) that the underlying exposure met the eligibility criteria at the time of its inclusion in the reference portfolio; (d) where an underlying exposure has been added to the securitisation as a result of a replenishment, that such a replenishment complied with the replenishment conditions; (e) that the final loss amount is consistent with the losses recorded by the originator in its profit and loss statement; (f) that, at the time the final credit protection payment is made, the losses in relation to the underlying exposures have correctly been allocated to the investors. The third-party verification agent shall be independent from the originator and investors, and, where applicable, from the SSPE and shall have accepted the appointment as third-party verification agent by the closing date of the transaction. The third-party verification agent may perform the verification on a sample basis instead of on the basis of each individual underlying exposure for which credit protection payment is sought. Investors may, however, request the verification of the eligibility of any particular underlying exposure where they are not satisfied with the sample-basis verification. The originator shall include a commitment in the transaction documentation to provide the third-party verification agent with all the information necessary to verify the requirements set out in the first subparagraph.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
N/A	5. The originator may not terminate a transaction prior to its scheduled maturity for any other reason than any of the following events: (a) the insolvency of the investor; (b) the investor's failures to pay any amounts due under the credit protection agreement or a breach by the investor of any material obligation laid down in the transaction documents; (c) relevant regulatory events, including: (i) relevant changes in Union or national law, relevant changes by competent authorities to officially published interpretations of such laws, where applicable, or relevant changes in the taxation or accounting treatment of the transaction that have a material adverse effect on the economic efficiency of a transaction, in each case compared with that anticipated at the time of entering into the transaction and which could not reasonably be expected at that time; (ii) a determination by a competent authority that the originator or any affiliate of the originator is not or is no longer permitted to recognise significant credit risk transfer in accordance with Article 245(2) or (3) of Regulation (EU) No 575/2013 in respect of the securitisation; (d) the exercise of an option to call the transaction at a given point in time (time call), when the time period measured from the closing date of the transaction is equal to or greater than the weighted average life of the initial reference portfolio at the closing date of the transaction; (e) the exercise of a clean-up call option as defined in point (1) of Article 242 of Regulation (EU) No 575/2013; (f) in the case of unfunded credit protection, the investor no longer qualifies as an eligible protection provider in accordance with the requirements set out in paragraph 8. The transaction documentation shall specify whether any of the call rights referred to in points (d) and (e) are included in the transaction concerned and how such call rights are structured. For the purposes of point (d), the time call shall not be structured to avoid allocating losses to credit enhancement positions or other positions held by investors and shall not be otherwise structured to provide credit enhancement. Where the time call is exercised, originators shall notify competent authorities how the requirements referred to in the second and third subparagraphs are fulfilled, including with a justification of the use of the time call and a plausible account showing that the reason to exercise the call is not a deterioration in the quality of the underlying assets. In the case of funded credit protection, upon termination of the credit protection agreement, collateral shall be returned to investors in order of the seniority of the tranches subject to the provisions of the relevant insolvency law, as applicable to the originator.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
N/A	6. Investors may not terminate a transaction prior to its scheduled maturity for any other reason than a failure to pay the credit protection premium or any other material breach of contractual obligations by the originator.
N/A	7. The originator may commit synthetic excess spread, which shall be available as credit enhancement for the investors, where all of the following conditions are met: (a) the amount of the synthetic excess spread that the originator commits to using as credit enhancement at each payment period is specified in the transaction documentation and expressed as a fixed percentage of the total outstanding portfolio balance at the start of the relevant payment period (fixed synthetic excess spread); (b) the synthetic excess spread which is not used to cover credit losses that materialise during each payment period shall be returned to the originator; (c) for originators using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the total committed amount per year shall not be higher than the one-year regulatory expected loss amounts on all underlying exposures for that year, calculated in accordance with Article 158 of that Regulation; (d) for originators not using the IRB Approach referred to in Article 143 of Regulation (EU) No 575/2013, the calculation of the one-year expected loss of the underlying portfolio shall be clearly determined in the transaction documentation; (e) the transaction documentation specifies the conditions laid down in this paragraph.
N/A	8. A credit protection agreement shall take the form of: (a) a guarantee meeting the requirements set out in Chapter 4 of Title II of Part Three of Regulation (EU) No 575/2013, by which the credit risk is transferred to any of the entities listed in points (a) to (d) of Article 214(2) of Regulation (EU) No 575/2013, provided that the exposures to the investor qualify for a 0 % risk weight under Chapter 2 of Title II of Part Three of that Regulation; (b) a guarantee meeting the requirements set out in Chapter 4 of Title II of Part Three of Regulation (EU) No 575/2013, which benefits from a counter-guarantee of any of the entities referred to in point (a) of this paragraph; or (c) another credit protection not referred to in points (a) and (b) of this paragraph in the form of a guarantee, a credit derivative or a credit linked note that meets the requirements set out in Article 249 of Regulation (EU) No 575/2013, provided that the obligations of the investor are secured by collateral meeting the requirements laid down in paragraphs 9 and 10 of this Article.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
N/A	9. Another credit protection referred to in point (c) of paragraph 8 shall meet the following requirements: (a) the right of the originator to use the collateral to meet protection payment obligations of the investors is enforceable and the enforceability of that right is ensured through appropriate collateral arrangements; (b) the right of the investors, when the securitisation is unwound or as the tranches amortise, to return any collateral that has not been used to meet protection payments is enforceable; (c) where the collateral is invested in securities, the transaction documentation sets out the eligibility criteria and custody arrangement for such securities. The transaction documentation shall specify whether investors remain exposed to the credit risk of the originator. The originator shall obtain an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.
N/A	10. Where another credit protection is provided in accordance with point (c) of paragraph 8 of this Article, the originator and the investor shall have recourse to high-quality collateral, which shall be either of the following: (a) collateral in the form of 0 % risk-weighted debt securities referred to in Chapter 2 of Title II of Part Three of Regulation (EU) No 575/2013 that meet all of the following conditions: (i) those debt securities have a remaining maximum maturity of three months which shall be no longer than the remaining period up to the next payment date; (ii) those debt securities can be redeemed into cash in an amount equal to the outstanding balance of the protected tranche; (iii) those debt securities are held by a custodian independent of the originator and the investors; (b) collateral in the form of cash held with a third-party credit institution with credit quality step 3 or above in line with the mapping set out in Article 136 of Regulation (EU) No 575/2013. By way of derogation from the first subparagraph of this paragraph, subject to the explicit consent in the final transaction documentation by the investor after having conducted its due diligence according to Article 5 of this Regulation, including an assessment of any relevant counterparty credit risk exposure, only the originator may have recourse to high quality collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies as a minim um for credit quality step 2 in line with the mapping set out in Article 136 of Regulation (EU) No 575/2013.

NON-ABCP TRADITIONAL SECURITISATIONS	BALANCE SHEET SYNTHETIC SECURITISATIONS
	The competent authorities designated pursuant to Article 29(5) may, after consulting EBA, allow collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies for credit quality step 3 provided that market difficulties, objective impediments related to the credit quality step assigned to the Member State of the institution or significant potential concentration problems in the Member State concerned due to the application of the minimum credit quality step 2 requirement referred to in the second subparagraph can be documented. Where the third-party credit institution or the originator or one of its affiliates no longer qualifies for the minimum credit quality step, the collateral shall be transferred within nine months to a third-party credit institution with credit quality step 3 or above or the collateral shall be invested in securities meeting the criteria laid down in point (a) of the first subparagraph. The requirements set out in this paragraph shall be deemed satisfied in the case of investments in credit linked notes issued by the originator, in accordance with Article 218 of Regulation (EU) No 575/2013.

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