

TO : **Regulated Entities**

- i. **Cyprus Investment Firms (CIFs)**
- ii. **Alternative Investment Fund Managers (AIFMs)**
- iii. **UCITS and UCITS management companies**
- iv. **Third party certification service providers**
- v. **Securitisation Special Purpose Entities (SSPEs)<sup>1</sup>**

FROM : **Cyprus Securities and Exchange Commission**

DATE : **2 December 2020**

CIRCULAR No : **C419**

SUBJECT : **Regulation (EU) No 2017/2402 on creating a single framework for simple, transparent and standarised securitisation**

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The Cyprus Securities and Exchange Commission (the ‘CySEC’), wishes, herein to remind the Regulated Entities the main provisions of the Securitisation Regulation (EU) No. 2017/2402 (the ‘Regulation’).

#### A. Regulatory Framework

1. The regulatory framework relating to STS Securitisation is covered in the following documents:
  - i. [Securitisation Regulation \(EU\) No. 2017/2402](#)
  - ii. [Commission Delegated Regulation \(EU\) 2020/447](#) supplementing Regulation (EU) No 648/2012 on the specification of criteria for establishing the arrangements to adequately mitigate counterparty credit risk associated with covered bonds and securitisations, and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178
  - iii. [Commission Delegated Regulation \(EU\) 2020/448](#) amending Delegated Regulation (EU) 2016/2251 as regards the specification of the treatment of OTC derivatives in connection with certain simple, transparent and standardised securitisations for hedging purposes
  - iv. [Commission Delegated Regulation \(EU\) 2019/885](#) specifying information to be provided to a competent authority in an application for authorisation of a third party assessing STS compliance

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<sup>1</sup> ‘SSPE’ means a corporation, trust or other entity, other than an originator or sponsor, established for the purpose of carrying out one or more securitisations, the activities of which are limited to those appropriate to accomplishing that objective, the structure of which is intended to isolate the obligations of the SSPE from those of the originator;

- v. [Commission Delegated Regulation \(EU\) 2019/1851](#) on the homogeneity of the underlying exposures in securitisation
  - vi. [Commission Delegated Regulation \(EU\) 2020/1224](#) specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE
  - vii. [Commission Implementing Regulation \(EU\) 2020/1225](#) with regard to the format and standardised templates for making available the information and details of a securitisation by the originator, sponsor and SSPE
  - viii. [Commission Delegated Regulation \(EU\) 2020/1226](#) specifying the information to be provided in accordance with the STS notification requirements
  - ix. [Commission Implementing Regulation \(EU\) 2020/1227](#) with regard to templates for the provision of information in accordance with the STS notification requirements
  - x. [Commission Implementing Regulation \(EU\) 2020/1228](#) with regard to the format of applications for registration as a securitisation repository or for extension of a registration of a trade repository pursuant to Regulation (EU) 2017/2402 of the European Parliament and of the Council
  - xi. [Commission Delegated Regulation \(EU\) 2020/1229](#) on securitisation repository operational standards for data collection, aggregation, comparison, access and verification of completeness and consistency
  - xii. [Commission Delegated Regulation \(EU\) 2020/1230](#) specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of a trade repository
  - xiii. [EBA Guidelines \(EBA/GL/2018/09\)](#) on the STS criteria for non-ABCP securitisation (Articles 20-22).
  - xiv. [EBA Guidelines \(EBA/GL/2018/08\)](#) on the STS criteria for ABCP securitisation (Articles 24 and 26)
  - xv. [EBA Guidelines \(EBA/GL/2016/08\)](#) on implicit support for securitisation transactions (Article 250(4))
  - xvi. [ESMA Q&A \(ESMA33-128-563\)](#) on the Securitisation Regulation
  - xvii. [ESMA Reporting Instructions Document \(ESMA65-8-6469\)](#)
  - xviii. [ESMA Final Report on Guidelines \(ESMA 33-128-1217\)](#) on securitisation repository data completeness and consistency thresholds
  - xix. The disclosure technical standards include 15 reporting templates which are available at ESMA website, on the [link](#).
2. For more information on any pending [Implementing and Delegated Acts on Regulation \(EU\) 2017/2402](#) please visit the Official website of the European Union.
3. While the timetable for the adoption of the outstanding Level 2 Regulations and Level 3 Guidelines may be delayed further as a result of the COVID-19 pandemic, regulated entities are advised to familiarise themselves with the current draft versions (where these are available) and to monitor further developments closely.

## **B. Subject matter and scope**

4. The Regulation applies to all securitisations, the securities of which are issued, or securitisation positions created, after 1 January 2019.
5. The Regulation lays down a general framework for the regulation of in-scope securitisation activity. In doing so, it sets out certain requirements that apply to all forms of in-scope securitisation issuance, such as risk-retention, investor transparency, a ban on re-securitisation and criteria for credit granting. It also creates a specific framework for simple, transparent and standardised ('STS') securitisation. Due diligence requirements also apply to 'institutional investors' in securitisation.
6. For the purpose of the abovementioned, a uniform definition of securitisation was also laid down, in Article 2 of the Regulation. Accordingly, securitisation is defined as "a transaction where the credit risk associated with an exposure or a pool of exposures is trashed and which has all of the following characteristics:
  - i. payments in the transaction are dependent upon the performance of the exposure or of the pool of exposures;
  - ii. the subordination of tranches determines the distribution of losses during the ongoing life of the transaction or scheme;
  - iii. the transaction or scheme does not create specialized lending exposures (i.e. those possessing all of the characteristics listed in art. 147(8) of Regulation (EU) 575/2013)."
7. The Regulation applies to institutional investors; originators; sponsors; original lenders and SSPEs.
8. The Regulation lays down which entities fall under the definition of an 'institutional investor', which is one of the following:
  - i. An insurance undertaking or reinsurance undertaking;
  - ii. An institution for occupational retirement provision;
  - iii. An alternative investment fund manager (AIFM);
  - iv. An undertaking for the collective investment in transferable securities (UCITS), if internally managed or otherwise its management company;
  - v. A credit institution or an investment firm.

## **C. Selling of securitisations to retail clients**

9. Article 3 of the Regulation restricts the sale of securitisation positions to MiFID II retail clients unless a suitability test has been carried out by the seller on the client, in accordance with the MiFID II suitability requirements, and a number of other specific conditions which will have to be met.

#### **D. Key elements of the Regulation which apply to all securitisations**

##### **a. Due Diligence (Art. 5)**

10. Institutional investors must undertake due diligence processes before becoming exposed to a securitisation and on an ongoing basis if they remain exposed to a securitisation.
11. The Regulation requires institutional investors, for example, to verify specific elements to a securitisation transaction:
  - i. The credit-granting process of the originator (with the exemption of EU credit institutions/ investment firms);
  - ii. The compliance of the originator, sponsor, original lender's with the risk retention requirements;
  - iii. The regular provision of required information by originator, sponsor, SSPE under article 7 of the Regulation;
  - iv. On an ongoing basis to establish written procedures proportionate to the risk profile of the securitization position and the institutional investor's trading position to monitor the performance of the securitization and its underlying exposures.

##### **b. Risk retention (Art. 6)**

12. Institutional investors must ensure that the originator, sponsor or original lender of a securitisation retains at least a 5% net economic interest in the securitisation which is based on the notional value at origination. The material net economic interest shall not be split amongst different types of retainers and be subject to any credit-risk mitigation or hedging.

##### **c. Transparency Requirements and Notification (Art. 7)**

13. Under the Regulation, originators, sponsors and securitisation special purpose entities (SSPEs) will be required to report specified information regarding all securitisations that fall within CySEC's scope. The same information will be required by investors and, upon request, to be disclosed to potential investors.
14. The required information will include details on underlying exposures, investor reports and underlying documentation. Furthermore, where it involves a private securitisation<sup>2</sup>, a transaction summary or overview of the key features of the securitisation is also required.
15. Where it involves non-private securitisations, in which a prospectus has been drawn up in compliance with Directive (EU) 2003/71/EC (the 'Prospectus

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<sup>2</sup> Private securitisations means: securitisations where the relevant securities are not listed on an EU regulated market.

Directive'), information on a securitisation shall be made available by means of a securitisation repository, in accordance with par. 4 of article 7(2) of the Securitisation Regulation. More specifically, the originator, sponsor and SPE of a securitisation shall designate amongst themselves which entity will fulfil the notification requirements by a means of a securitisation repository.

#### **E. Specific key elements for simple, transparent and standardised ('STS') securitisation under Chapter 4 of the Regulation**

16. The Regulation establishes a general set of rules on STS rather than focusing on an asset-class basis. However there is a separate set of rules for STS term transaction and for short term STS asset-backed commercial paper transactions (ABCP).
17. In order to be classified as an STS, a securitisation must fulfil numerous simplicity, transparency and standardization (STS) criteria.
18. In addition to the above said STS criteria:
  - i. The Originator, Sponsor and SSPE must be established in the EU<sup>3</sup>;
  - ii. all STS must be published in a list on ESMA's website;
  - iii. Originators and Sponsors are required to jointly notify ESMA<sup>4</sup> of the new STS securitisation as well as verify the level of compliance of the STS criteria.
19. The Regulation also provides the ability to the Originator, Sponsor and SSPE to use the service of an authorised third party to assess whether a securitisation complies with the STS criteria. However, the use of such a certification service provider will not affect the liability of the Originator, Sponsor or SSPE in respect of their legal obligations under the Securitisation Regulation, as well as the due-diligence verification imposed on Institutional Investors.
20. In addition to the ESMA notification obligation, originators and sponsors must also inform their competent authorities of the STS notification and designate amongst themselves the point of contact for both investors and competent authorities. They must also notify ESMA and their competent authorities when a securitisation no longer meets the STS criteria (Article 27(4)). The STS notification to ESMA is also one of the items that must be disclosed by the originator, sponsor and SSPE as part of their transparency disclosure requirements (Article 7(1)(d)).

#### **F. Supervision**

21. CySEC has been designated as the competent authority for the purpose of ensuring compliance with the Regulation in respect of the following regulated entities:
  - i. institutional investors, if they are authorised as AIFMs, an internally managed UCITS, UCITS management companies and investment firms;

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<sup>3</sup> Securitisations from non-EU originators, sponsors or SSPEs will not be able to qualify as STS.

<sup>4</sup> In the case of term securitisations. For ABCP securitisations, only the sponsor must notify ESMA (Article 27(1)).

- ii. originators<sup>5</sup>, if they are authorised as AIFMs, UCITS, UCITS management companies or investment firms;
  - iii. sponsors<sup>6</sup>, if they are authorised as investment firms;
  - iv. original lenders<sup>7</sup>, if they are authorised as AIFMs, UCITS, UCITS management companies or investment firms and
  - v. securitisation special purpose entities (SPPEs)<sup>8</sup>
  - vi. third party certification service providers (authorised under Art. 28 to assess whether a securitisation complies with the STS criteria).
22. The administrative sanctions that can be imposed by CySEC are those set out in Article 32(2) of the Regulation.

#### **G. Entry into force**

23. The Regulation entered into force on 17 January 2018 and became effective from 1 January 2019, subject to some specific transitional provisions in Article 43 of the Regulation.
24. It also repeals and replaces specific securitisation provisions in the UCITS Directive, Solvency II, AIFMD, the Credit Rating Agencies Regulation and EMIR (Articles 38-42).

#### **H. Expected Outcomes**

25. CySEC expects that regulated entities will review their total pool of investments to determine whether they gain exposure to positions which constitute a securitization within the meaning of the Regulation. Regulated entities must make the necessary adjustments to their investment processes and policies/procedures, to ensure that the required due diligence checks and risk assessments have been complied with in accordance with the Regulation.
26. In addition, Regulated entities must be prepared to demonstrate any such changes to their arrangements with any third parties (if applicable), investment processes and written policies and procedures, in order to be able to ensure compliance with the requirements of the Regulation.

Sincerely,

Demetra Kalogerou  
Chairman  
Cyprus Securities and Exchange Commission

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<sup>5</sup> In order to ensure compliance with their obligations set out in Articles 6-9 and 18-27 of the Securitisation Regulation.

<sup>6</sup> In order to ensure compliance with the obligations set out in articles 6, 7, 8 and 9 of the Securitisation Regulation. CySEC will also be responsible for the supervision of sponsors for their obligations under Articles 18-27 of the Regulation.

<sup>7</sup> In order to ensure compliance with their obligations set out in articles 6-9 and for those set out in article 18-27 of the Regulation.

<sup>8</sup> Same as the comment above, but with reference to the SPPEs.