

EBA FINAL

Draft Regulatory Technical Standards

On the retention of net economic interest and other requirements relating to exposures to transferred credit risk (Articles 405, 406, 408 and 409) of Regulation (EU) No 575/2013

and Draft Implementing Technical Standards

Relating to the convergence of supervisory practices with regard to the implementation of additional risk weights (Article 407) of Regulation (EU) No 575/2013



EBA Final Draft Regulatory Technical Standards on the retention of net economic interest and other requirements related to exposures to transferred credit risk under Articles 405, 406, 408 and 409) of Regulation (EU) No 575/2013

and

Final Draft Implementing Technical Standards relating to the convergence of supervisory practices with regard to the implementation of additional risk weights Article 407) of Regulation (EU) No 575/2013

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1. Executive Summary

The Capital Requirements Regulation (CRR) sets out requirements concerning the retention of net economic interest and other requirements related to exposures to transferred credit risk and mandates the EBA to prepare draft regulatory technical standards (RTS) in this area. The CRR also sets out requirements concerning the convergence of supervisory practices with regard to the implementation of additional risk weights and mandates the EBA to prepare draft implementing technical standards (ITS) in this area. The CRR mandates the EBA to submit both the RTS and the ITS to the Commission by 1 January 2014.

Main features of the RTS

The draft RTS, in accordance with Article 410(2) CRR regarding the securitisation retention rules and related requirements, requires the EBA to further specify:

- i) the requirements in Articles 405-406 applying to institutions becoming exposed to the credit risk of a securitisation position;
- ii) the retention requirement, including the qualifying criteria for retaining a material net economic interest as referred to in Article 405 and the level of retention;
- iii) the due diligence requirements in Article 406 for institutions becoming exposed to a securitisation position;
- iv) the requirements in Article 408 applying to sponsor and originator institutions and the requirements in Article 409 applying to sponsor, originator and original lender institutions.

Main features of the ITS

The draft ITS in accordance with Article 410(3) CRR relating to the convergence of supervisory practices with regard to the implementation of Article 407 CRR. In particular, Article 410(3) requires the EBA to further specify the measures to be taken in case of breach of the obligations in Articles 405, 406 or 409 CRR.

The draft ITS provide the assessment criteria for infringements, the implementation conditions of the additional risk weights and the calculation of the additional risk weight to be used by the competent authorities.

The RTS has been drafted in such a way to ensure i) the alignment of interest (risks) and information between the securitisation sponsors, originators and original lenders and the investors buying the securitisation positions and ii) to facilitate the implementation of the 5% retention requirements and disclosure requirements by the sponsor, originator or original lender and the due diligence requirements before investing in securitisation positions by the investors. The draft ITS has been drafted so as to harmonise the supervision of the compliance with the retention requirements, due diligence requirements and disclosure requirements and the additional risk weights (penalties) in case of non-compliance in the EU.

2. Background and rationale

Background and rationale for retention rules and other related requirements in securitisation

Securitisation markets before the crisis were affected by what are termed 'misaligned incentives' or 'conflicts of interest'. These refer to situations where certain participants in the securitisation chain have incentives to engage in behaviour which, while furthering their own interests, is not in the interests of - and may be detrimental to - others in the securitisation chain or the broader efficient functioning of the market. These misalignments and conflicts are generally thought to have contributed to the loss of investor confidence in securitisation products. They are also seen as a barrier to recovery of the market.

The G20 Leaders' statement from the Pittsburgh Summit in September 2009 recommended that securitisation sponsors or originators retain part of the credit risk of the underlying assets in order to induce a stronger alignment of the interests of the issuers of securitisations and the final investors. Furthermore, IOSCO, in its September 2009 report, 'Unregulated Financial Markets and Products', also recommended that consideration be given to requiring originators and/or sponsors to retain a long-term economic exposure to securitisations in order to align interests appropriately in the securitisation value chain. IOSCO recommended specifically that the introduction of any retention requirement needed to be tailored carefully to align interests appropriately and suggested a number of principles to assist regulators in considering retention requirement approaches for their jurisdictions.

In addition, IOSCO also recommended in its report, 'Global Developments in Securitization Regulation', of November 2012, that 'all jurisdictions should evaluate and formulate approaches to aligning incentives of investors and securitisers in the securitisation value chain, including where appropriate, through mandating retention of risk in securitisation products'.

While some degree of risk retention has already occurred in practice, formalising the requirement for alignment of interests has the potential to incentivise originators, issuers and investors to conduct quality screenings properly, improve underwriting standards and monitor for credit risk adequately.

In response to the concerns raised by the crisis, governments, regulators and industry standard-setters have implemented, and are considering, a number of initiatives intended to re-establish securitisation on a sustainable basis.

To date, regulatory initiatives have focused on measures to remove incentive misalignments and conflicts which distorted markets before the crisis and measures intended to support accurate pricing of credit risk. They have included, amongst others, the following:

- i) measures that address directly the conflicts of interest created by misaligned incentives within the securitisation chain;
- ii) measures that address information asymmetry within the securitisation process by increasing transparency of the securitisation structure;
- iii) measures that address inappropriate incentives created by accounting revenue recognition principles and compensation systems for securitisers or originators; and

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- iv) reforms designed to enhance oversight of credit rating agencies' governance and reduce regulatory reliance on ratings.

The nature of RTS and ITS under EU law

The draft RTS are produced in accordance with Article 10 of the EBA Regulation¹. Article 10(4) of the EBA Regulation provides that they 'shall be adopted by means of regulations or decisions'.

The draft ITS are produced in accordance with Article 15 of the EBA Regulation². Article 15(4) of the EBA regulation provides that they 'shall be adopted by means of regulations or decisions'.

Under EU law, regulations are binding in their entirety and are directly applicable in all Member States. This means that, on the date of their entry into force, they become part of the national law of the Member States automatically without need for further transposition into national law.

Presenting these rules in the form of a draft Commission regulation should ensure a level-playing field by preventing divergent national interpretations in transposition and thereby facilitating the cross-border provision of EU financial services.

Background to these draft RTS and ITS

Article 122a of the Capital Requirements Directive (CRD II), 2006/48/EC, allows investor institutions to assume exposure to a securitisation only if the originator, sponsor, or original lender has explicitly disclosed to the institution that it will retain, on an on-going basis, a material net economic interest of no less than 5% and imposes due diligence requirements on investors. It also contains disclosure requirements for sponsor and originator institutions towards investors and obligations for sponsors and originators to ensure the application of the same sound and well defined criteria for credit-granting with respect to exposures to be securitised and exposures to be kept in the institution's books.

The Committee of European Banking Supervisors (CEBS) issued guidelines on Article 122a of the CRDII with the objective of achieving a common understanding amongst EU competent authorities on the implementation and application of Article 122a. The guidelines were also aimed at increasing transparency for market participants in order to promote compliance with the applicable requirements. Additionally, common guidance on the implementation of Article 122a was regarded as an important tool in restoring confidence in the securitisation market and, in turn, in helping the recovery of an additional source of funding to the real economy.

The RTS/ITS will replace the current guidance on Article 122a CRD II (CEBS guidelines and corresponding Q&A document). With the coming into force of the CRR on 1 January 2014, the

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

² Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

guidance on Article 122a CRD II as implemented by competent authorities will remain relevant to competent authority's decision only when assessing: i) whether an additional risk weight should be applied in cases where there is a material breach of Articles 405, 406, or 409 CRR by reason of the negligence or omission of an institution and where the respective securitisation position is part of a transaction issued on or after 1 January 2011 and before 1 January 2014, and, ii) how to interpret substitution of exposures for transactions before 1 January 2011 as referred in Article 404 CRR.

3. Final draft RTS and ITS on the securitisation retention rules

Contents

- 3.1 Final draft RTS on the retention of net economic interest and other requirements related to exposures to transferred credit risk (Articles 405,406, 408 and 409) of Regulation (EU) No 575/2013
- 3.2 Final draft ITS Relating to the convergence of supervisory practices with regard to the implementation of additional risk weights (Article 407 of Regulation (EU) No 575/2013

COMMISSION DELEGATED REGULATION (EU) No .../...

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 648/2012³, and in particular Article 410(2) thereof,

Whereas:

1. Experience to date of the application of the retention, due diligence and related requirements for securitisation positions imposed by Union legislation has demonstrated that further specification is needed to ensure a uniform application in all Member States.
2. Institutions should satisfy the applicable obligations in relation to each of the roles that they assume.
3. Institutions should only be required to fulfil the requirements related to the retained interest and due diligence requirements in relation to transactions, or levels of transactions, where they are exposed to the credit risk of the securitisation position. So, in the context of a re-securitisation, where an institution has only assumed exposure to the second, “repackaged” level of the transaction, the institution only needs to ensure at that level of the re-securitisation that the originator, sponsor or original lender has explicitly disclosed that it will retain the economic interest. If the institution assumes exposure not only to the level of the re-securitisation but also to the level of the securitisation that constitutes the first, “underlying” layer of the re-securitisation, then it should ensure that the originator, sponsor or original lender in relation to both levels of the transaction has fulfilled the requirements.
4. In order to ensure a uniform approach, this Regulation sets forth common provisions on the application of the retention commitment including compliance when there are multiple originators, sponsors or original lenders, details regarding the different retention options, how to measure the retention requirement at origination and on an on-going basis, and how to apply the exemptions.
5. The term original lender should be understood to refer to an entity which, either itself or through related entities, directly or indirectly, originally created the obligations or

³ OJ L 176, 27.6.2013, p. 1

potential obligations of the debtor or potential debtor giving rise to the exposure being securitised and which is not the originator.

6. Article 405(1), lett. a), b), c), d), e), Regulation (EU) No 575/2013, lays down various options pursuant to which the required retention of interest may be fulfilled. This Regulation builds on those options, clarifying different ways of complying with each of those options, without prejudice of other ways which may be proved to be equivalent to any of these.
7. The retention of an interest could be achieved also on a synthetic or contingent basis, including through the use of derivatives, provided that such methods fully comply with one of the options laid down in Article 405(1), lett. a), b), c), d), e) Regulation (EU) No 575/2013, to which the synthetic or contingent form of retention can be equated, and provided that compliance with the disclosure requirements is ensured.
8. Hedging of or selling the retained interest are prohibited in as much as such techniques undermine the purpose of the retention requirement, implying that they can be permitted so long that they do not hedge the retainer against the credit risk of either the retained securitisation positions or the retained exposures.
9. In order to ensure the ongoing maintenance of the net economic interest, institutions should ensure that there is not any embedded mechanism in the securitisation structure by which the minimum retention requirement at origination would necessarily decline faster than the interest transferred. Similarly, the retained interest should not be prioritised in terms of cash flows to preferentially benefit from being repaid or amortised such that it would fall below 5% of the ongoing nominal value of the tranches sold or exposures securitised. Moreover, the credit support provided to the institution assuming exposure to a securitisation position should not decline disproportionately relative to the rate of repayment on the underlying exposures.
10. The retention of an economic interest aims at aligning interests between the parties respectively transferring and assuming the credit risk of the securitised exposures. Where an entity securitises its own liabilities, and the originator is the final debtor in first recourse to the investor, such alignment of interests is established automatically, regardless of whether the final debtor collateralises its debt (for example when the liabilities take the form of covered bonds). In such cases it is clear that the credit risk remains with the originator throughout, so the retention of interest by the originator is unnecessary and would not improve on the pre-existing position.
11. Institutions should be able to make use of financial models developed by third parties, other than ECAIs. Institutions should only use third party financial models where they have taken due care, prior to investing, to validate the relevant assumptions in, and structuring of, the models and to understand the methodology, assumptions and results of such models.
12. In order to ensure a consistent application of the due diligence obligations it is essential to specify how frequently institutions should review their compliance with such due diligence requirements, how financial models developed by third parties may be used, how to assess whether the use of different policies and procedures for the trading book and non-trading book is appropriate, how to assess compliance when the positions pertain to the correlation trading portfolio and to clarify certain terms under Article 406, Regulation (EU) No 575/2013, such as “risk characteristics” and “structural features”.

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13. Pursuant to Article 14(2), Regulation (EU) No 575/2013, entities established in third countries which are included in the consolidation in accordance with Article 18, Regulation (EU) No 575/2013, but are not directly falling within the scope of application of the additional risk weights, should, in limited circumstances such as for exposures held in the trading book for the purpose of market-making activities, not be deemed to be in breach of Article 405, Regulation (EU) No 575/2013, where any such exposures or positions in the trading book are not material and do not form a disproportionate share of trading activities, provided that there is a thorough understanding of the exposures or positions, and that formal policies and procedures have been implemented which are appropriate and commensurate with that entity's and the group's overall risk profile.
 14. Initial and ongoing disclosure to investors on the level of the retention commitment and of all materially relevant data, including on the credit quality and performance of the underlying exposure, is necessary for effective due diligence on the securitisation positions. Disclosed data should include details of the identity of the retainer, the retention option chosen and the original and ongoing commitment to retain an economic interest. Where applicable, there should be explicit disclosure of securitised transactions where the retention requirement does not apply and the reason for disapplication should be specified.
 15. This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the Commission.
 16. The European Supervisory Authority (European Banking Authority) has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093x/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS

Article 1 - Subject matter

1. This Regulation specifies:
 - a. the requirements in Articles 405-406 of Regulation (EU) No 575/2013 applying to institutions becoming exposed to the credit risk of a securitisation position;
 - b. the retention requirement, including the qualifying criteria for retaining a material net economic interest as referred to in Article 405 of Regulation (EU) No 575/2013 and the level of retention;
 - c. the due diligence requirements in Article 406 of Regulation (EU) No 575/2013 for institutions becoming exposed to a securitisation position;
 - d. the requirements in Articles 408-409 of Regulation (EU) No 575/2013 applying to sponsor and originator institutions.

Article 2 - Definitions

1. For the purposes of this Regulation the following definitions apply:
 - (1) ‘*retainer*’ means the entity acting as originator, sponsor or original lender which retains a net economic interest in the securitisation in accordance with Article 405(1) of Regulation (EU) No 575/2013.
 - (2) ‘*ABCP programme*’ means a programme of securitisations, the securities issued by which predominantly take the form of commercial paper with an original maturity of one year or less, as defined in Article 242(9) of Regulation (EU) No 575/2013.
 - (3) ‘*Liquidity facility*’ means a securitisation position arising from a contractual agreement to provide funding to ensure timeliness of cash flows to investors as defined in Article 242(3) of Regulation (EU) No 575/2013.

CHAPTER II

EXPOSURE TO THE CREDIT RISK OF A SECURITISATION POSITION

Article 3 - Particular cases of exposure to the credit risk of a securitisation position

1. Where an institution acts as a derivative or hedge counterparty or a liquidity facility provider to a securitisation transaction, it shall be deemed to become exposed to the credit risk of a securitisation position when the hedge or the liquidity facility assumes the credit risk of the securitised exposures or the securitisation positions.
2. For the purposes of Article 405 and 406 of Regulation (EU) No 575/2013, where a liquidity facility meets the conditions specified in paragraph 2 of Article 255 of Regulation (EU) No 575/2013, the liquidity provider shall not be deemed to become exposed to the credit risk of a securitisation position.
3. Where an institution assumes exposure to a securitisation position, in the context of a re-securitisation with more than one level or a securitisation with multiple discrete underlying transactions, it shall be deemed to become exposed to the credit risk of only the individual securitisation position or transaction to which it is assuming exposure.
4. In accordance with Article 14(2) of Regulation (EU) No 575/2013 institutions shall not be deemed to be in breach of Article 405 of Regulation (EU) No 575/2013 on a consolidated basis provided that all the following conditions are met:
 - a. The entity which holds the securitisation positions is established in a third country and is included in the consolidated group in accordance with Article 18 of Regulation (EU) No 575/2013;
 - b. The securitisation positions are held in the trading book of that entity for the purposes of market making activities;
 - c. The securitisation positions are not material with respect to the overall risk profile of the trading book of the group and do not form a disproportionate share of the trading activities of the group.

CHAPTER III

RETENTION OF NET ECONOMIC INTEREST

Article 4 - Retainers of net economic interest

1. The retained economic interest shall not be split amongst different types of retainer. The retention shall be fulfilled in full by (i) the originator or multiple originators, or (ii) the sponsor or multiple sponsors, or (iii) the original lender or multiple original lenders.
2. When the securitised exposures were created by multiple originators or original lenders, the retention shall be fulfilled:
 - a. by each originator, in relation to the proportion of the total securitised exposures for which it is the originator; or
 - b. by each original lender, in relation to the proportion of the total securitised exposure for which it is the original lender.

Notwithstanding (a) and (b) above, the retention may be fulfilled in full by a single originator or original lender provided that:

- i. the originator or original lender has established and is managing the programme or securitisation scheme; or
 - ii. the originator or original lender has established the programme or securitisation scheme and has contributed over 50% of the total securitised exposures.
3. Where the securitised exposures have been sponsored by multiple sponsors, the retention shall be fulfilled either by the sponsor whose economic interest is most appropriately aligned with investors or by each sponsor pro rata in relation to the number of sponsors.

Article 5 - Fulfilment of the retention requirement on a synthetic or contingent basis

1. The retained interest may be met in a manner equivalent to one of the options set out in Article 405(1) of Regulation (EU) No 575/2013 on a synthetic or contingent basis, including through the use of derivatives, so long as the following conditions are met:
 - a. the amount retained is at least equal to the requirement under the option to which the synthetic or contingent form of retention can be equated; and
 - b. the retainer has explicitly disclosed that it will retain, on an ongoing basis, a material net economic interest in this manner, including details of the form of retention, the methodology used in its determination and its equivalence to one of the relevant options.
2. Where an entity other than a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 acts as a retainer on a synthetic or contingent basis, the interest retained on a synthetic or contingent basis shall be fully cash collateralised and held on a segregated basis as ‘clients’ funds as referred in Article 13(8) of Directive 2004/39/EC, of the European Parliament and Council on market on financial instruments⁴.

Article 6 - Retention option (a): pro rata retention in each of the tranches sold or transferred to investors

1. A retention of no less than 5% of the nominal value of each of the tranches sold or transferred as referred to in option (a) of Article 405(1) of the Regulation (EU) No 575/2013 may also be achieved by the following:
 - a. retaining at least 5% of the nominal value of each of the securitised exposures, provided that the credit risk of such exposures ranks *pari passu* with or is subordinated to the credit risk securitised for the same exposures. In the case of a revolving securitisation, as defined in Article 242(13) of Regulation (EU) No 575/2013, this would occur through retention of the originator’s interest assuming the originator’s interest was for at least 5% of the nominal value of each of the securitised exposures and ranked *pari passu* with or subordinated to the credit risk that has been securitised with respect to those same exposures;

⁴ OJ L 145, 30.4.2004, p. 1.

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- b. the provision, in the context of an ABCP programme, of a liquidity facility which may be senior in the securitisation waterfall, where the following conditions are fulfilled:
 - i. the liquidity facility covers 100% of the credit risk (on a contingent or drawn basis) of the securitised exposures;
 - ii. the liquidity facility covers the credit risk for as long as the retainer has to retain the economic interest by means of such liquidity facility for the relevant securitisation position;
 - iii. the liquidity facility is provided by the originator, sponsor or original lender in the securitisation transaction; and
 - iv. the institution assuming exposure to such securitisation has been given access to appropriate information to enable it to verify the above.
 - c. Retention of a vertically tranching note which has a nominal value of no less than 5% of the total nominal value of all the issued tranches of notes and which exposes the retainer to a pro-rata exposure of the credit risk of the securitised exposures.

Article 7 - Retention option (b): retention of the originator's interest for revolving exposures

1. A retention as referred to in option (b) of Article 405(1) of Regulation (EU) No 575/2013 may be achieved by retaining at least 5% of the nominal value of each of the securitised exposures, provided that the retained credit risk of such exposures ranks *pari passu* with or is subordinated to the credit risk securitised for the same exposures.

Article 8 - Retention option (c): retention of randomly selected exposures

1. The pool of at least 100 potentially securitised exposures from which retained and securitised exposures are randomly selected shall be sufficiently granular to avoid an overly concentrated selection result. When considering the selection process, the retainer shall take appropriate quantitative and qualitative factors into account in order to ensure, insofar as possible, that the distinction between retained and securitised exposures is genuinely random. The retainer of randomly selected exposures shall take into consideration, where appropriate, factors including, the stratifications of variables such as vintage, product, geography, origination date, maturity date, loan to value, property type, industry sector, and outstanding loan balance when selecting exposures.

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2. The retainer shall not designate different individual exposures as retained exposures at different points in time, unless this is necessary to fulfil the retention commitment in relation to a securitisation in which the exposures securitised fluctuate over time, either due to new exposures being added to the securitisation or to changes in the level of the individual securitised exposures.

Article 9 - Retention option (d): retention of the first loss tranche

1. The retention of the first loss tranche under option (d) of Article 405(1) of Regulation (EU) No 575/2013 shall be fulfilled by either on-balance sheet or off-balance sheet positions and may also be fulfilled by using the following:
 - a. Provision of a letter of credit, guarantee or similar form of credit support, provided that the following criteria are met:
 - i. the retention covers at least 5% of the nominal value of the securitised exposures;
 - ii. it constitutes a first loss position in relation to the securitisation;
 - iii. it covers the credit risk for the entire duration of the retention commitment;
 - iv. it is provided by the originator, sponsor or original lender in the securitisation;
 - v. the institution assuming exposure to such securitisation has been given access to appropriate information to enable it to verify the above.
 - b. This retention option may also be fulfilled through overcollateralisation if the originator, sponsor or original lender chooses to overcollateralise the tranches of a securitisation and such overcollateralisation acts as a 'first loss' retention of no less than 5% of the nominal value of the tranches issued by the securitisation.
 - c. The provision of a liquidity facility, in the context of ABCP Programmes, which fulfils the conditions of Article 9 (1) (a) of this Regulation.

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2. Where the first loss tranche exceeds 5% of the nominal value of the securitised exposures, the retainer needs only to retain a vertical slice of such first loss tranche, so long as this slice is equivalent to at least 5% of the nominal value of the securitised exposures.
 3. The designation of a first loss tranche at a securitisation programme-wide level for the purposes of risk retention shall not be affected by the existence of underlying transactions in which the originators or original lenders retain a first loss exposure at the transaction-specific level.

Article 10 - Retention option (e): retention of a first loss in every securitised exposure

1. The retention of a first loss exposure at the level of every securitised exposure under option (e) of Regulation (EU) No 575/2013 shall be applied in so that the credit risk retained is always subordinated to the credit risk that has been securitised in relation to those same exposures.
2. This retention may also be fulfilled by a discount in the sale of exposures by the originator or original lender, where this discount is not less than 5% of each exposure and is only refundable insofar as it is not absorbed by credit risk-related losses incurred on the securitised exposures.

Article 11 - Measurement of the level of retention

1. In measuring the level of retention of net economic interest, the following criteria shall be applied:
 - a. origination shall mean the time at which the exposures were first securitised, rather than when they were first created;
 - b. the calculation of the level of retention shall be based on nominal values and shall not be affected by the acquisition price of assets;
 - c. 'excess spread' as defined in Article 242(1) of Regulation (EU) No 575/2013 shall not count towards the retainer's net economic interest;
 - d. the retention option and the methodology used to calculate the net economic interest shall not be changed during the life of a securitisation transaction,

unless such change is required due to exceptional circumstances and is not used as a means to reduce the amount of retained interest; and

- e. Provided there is not an embedded mechanism by which the retained interest at origination would decline faster than the interest transferred, the fulfillment of the retention requirement shall not be deemed to have been affected by the amortisation of the retention via cash flow allocation or through the allocation of losses, which, in effect, reduce the level of retention over time. A retainer shall not be required to constantly replenish or readjust its retained interest to at least 5% as losses are realised on its exposures or allocated to its retained position.

Article 12 - Measurement of retention for the undrawn amounts in exposures in the form of credit facilities

1. The calculation of the net economic interest to be retained for credit facilities, including credit cards, shall be based only on amounts already drawn, realised or received and shall dynamically adjust with changes to those amounts.

Article 13 - Prohibition of hedging or selling the retained interest

1. The prohibition in Article 405(1) of Regulation (EU) No 575/2013 on subjecting the retained net economic interest to any credit risk mitigation, short positions, other hedge or sale shall be applied in the light of the purpose of the retention requirement and taking account of the economic substance of the transaction as a whole. Hedges of the net economic interest may accordingly be permitted only where they do not hedge the retainer against the credit risk of either the retained securitisation positions or the retained exposures.
2. The retainer may use any retained exposures or securitisation positions as collateral for secured funding purposes, as long as such use does not transfer the credit risk of these retained exposures or securitisation positions to a third party.

Article 14 - Exemptions to Article 405(1) of Regulation (EU) No 575/2013

1. The exemption in Article 405(4) of Regulation (EU) No 575/2013 shall include securitisation positions in the correlation trading portfolio containing only reference instruments satisfying the criterion in Article 338(1)(b) of Regulation (EU) No 575/2013. The exemption shall also apply to any securitisation position which is eligible for inclusion in such part of the correlation trading portfolio but has not been assigned thereto for risk management or similar reasons.

Article 15 - Retention on a consolidated basis

1. An institution satisfying the retention requirement on a consolidated basis in accordance with Article 405(2) of Regulation (EU) No 575/2013 shall, in the case of the retainer becoming divested from the group, ensure that one or more of the remaining entities within the group assumes exposure to the securitisation so as to ensure ongoing fulfilment of the requirement.

CHAPTER IV

DUE DILIGENCE REQUIREMENTS FOR INSTITUTIONS BECOMING EXPOSED TO A SECURITISATION POSITION

Article 16 - Outsourcing and other general considerations

1. In the absence of information on the specific exposures to be securitised, such as where exposures accumulate before their securitisation or may be substituted into an existing revolving securitisation, an institution is deemed to fulfil its due diligence obligations for each of its individual securitisation positions on the basis of appropriate consideration of the relevant eligibility criteria for such exposures.
2. The outsourcing of certain operational aspects of the obligations set out in Article 406 of Regulation (EU) No 575/2013 shall be permitted only if the process remains within the full responsibility and control of the institution becoming exposed to the risks of the securitisation. Outsourcing shall not relieve institutions of their obligations to understand and assess the risk of the securitisation positions under that Article.

Article 17 - Frequency

1. After becoming exposed to a securitisation position, institutions shall review their compliance with Article 406 of Regulation (EU) No 575/2013 at least annually and more frequently, as soon as institutions become aware that the performance of the securitisation position, or the risk characteristics of the securitisation position, or the underlying exposures have materially changed or a breach of transaction documentation occurs.

Article 18 - Specification of risk characteristics and structural features

1. The risk characteristics of the individual securitisation position referred to in Article 406(1)(b) of Regulation (EU) No 575/2013 shall include the most appropriate and material characteristics, such as:
 - a. tranche seniority level;
 - b. cash flow profile;

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- c. any existing rating;
 - d. historical performance of similar tranches;
 - e. bond covenants;
 - f. credit enhancement.
2. The risk characteristics of the exposures underlying the securitisation position referred to in Article 406(1)(c) of Regulation (EU) No 575/2013 shall include the most appropriate and material characteristics, such as the performance information referred to in Article 406(2) of Regulation (EU) No 575/2013 in relation to residential mortgage exposures. Institutions shall identify appropriate and comparable metrics for analysing the risk characteristics of other asset classes.
 3. The structural features of the securitisation referred to in Article 406(1)(g) of Regulation (EU) No 575/2013 shall, in addition include swaps, guarantees and sponsor support mechanisms.

Article 19 - Stress Tests

1. The stress tests that institutions must undertake, in accordance with Article 406(1) of Regulation (EU) No 575/2013, shall include all relevant securitisation positions. The stress tests shall be incorporated into broader stress testing that the institutions undertake, in accordance with the Internal Capital Adequacy Process specified in Article 73 of Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC⁵.
2. In order to fulfil the broader stress testing requirements of paragraph 1, institutions may make use of comparable financial models developed by third parties, in addition to those developed by ECAIs, provided that they take due care, prior to investing to validate the relevant assumptions in, and structuring of, the models and to understand the methodology, assumptions and results of such models.
3. In the context of an ABCP programme, which is supported by a liquidity facility which covers 100% of the credit risk (on a contingent or drawn basis) of the

⁵ OJ L 176, 27.6.2013, p. 338.

securitised exposures, institutions may stress test the creditworthiness of the liquidity facility provider rather than the securitised exposures when conducting the broader stress testing.

Article 20 - Exposures in the trading book and non-trading book

1. The holding of a securitisation position in the trading or non-trading book respectively shall not represent a sufficient justification in itself for the application of different policies and procedures or a different intensity of review to fulfil the due diligence obligations in Article 406 of Regulation (EU) No 575/2013. In determining whether different policies and procedures or a different intensity of review shall be applied, all relevant factors materially impacting the risk profile of each of the books and of the relevant securitisation positions shall be considered, such as the size of the positions, the impact on the institution's capital base during a period of stress, and the concentration of risk in one specific transaction, issuer, or asset class.
2. Institutions shall ensure that any material change to the risk profile of their trading book is appropriately reflected with a commensurate change in their due diligence procedures as regards the securitisation positions in their trading book. In this regard, institutions shall identify in their formal trading book policies and procedures the circumstances which would trigger a review of the due diligence obligations.

Article 21 - Positions in the correlation trading portfolio

1. Where securitisation positions are held in the correlation trading portfolio and are reference instruments as referred to in Article 338(1)(b) of the Regulation (EU) No 575/2013 or are eligible for inclusion in the correlation trading portfolio but have not been assigned thereto for risk management or similar reasons, the requirements under Article 406 of Regulation (EU) No 575/2013 shall be deemed to be met if an institution fulfils the relevant requirements under Section 5 Chapter 5 of Title IV of Part Three of the Regulation (EU) No 575/2013 for calculating the own funds requirements of these securitisation positions provided that an institution's approach to calculating the own funds requirements of its correlation trading portfolio results in a comprehensive and thorough understanding of the risk profile of its investment in the securitisation positions. An institution shall take appropriate additional measures to ensure the relevant obligations under Article 406 of Regulation (EU) No 575/2013 are satisfied if this institution does not achieve a comprehensive and thorough

understanding of the risk profile of the investment in the securitisation positions by fulfilling the own funds requirements for the correlation trading portfolio.

CHAPTER V

REQUIREMENTS FOR ORIGINATORS, SPONSORS AND ORIGINAL LENDERS

Article 22 - Uniform policies for credit granting

1. The obligation in Article 408 of Regulation (EU) No 575/2013 to apply the same sound and well-defined criteria for credit-granting to exposures to be securitised as to exposures to be held in institutions' own books shall not imply that the actual borrower types or loan products must be the same for securitised and non-securitised exposures or prohibit modification of aspects of the underwriting process for specific loan types in order to meet the conditions for sale of such loans to the securitisation.
2. Where they have not undertaken the original credit-granting of the exposures to be securitised themselves, or are not active in credit-granting the specific types of exposures that are being securitised, sponsors and originators shall ensure that they obtain all the necessary information to assess whether the criteria applied in the credit-granting for such exposures are as sound and well-defined as the criteria applied to non-securitised exposures.

Article 23 - Disclosure of the level of the commitment to maintain a net economic interest

1. The retainer shall, pursuant to Article 409 of Regulation (EU) No 575/2013, disclose to investors at least the following information on the level of its retention commitment:
 - a. confirmation of the retainer's identity and of whether it retains as originator, sponsor or original lender;
 - b. the option from (a) to (e) under Article 405 of Regulation (EU) No 575/2013 that has been applied to retain a net economic interest;

-
- c. any change to such retention option in accordance with Article 11(1)(d) of this Regulation;
 - d. confirmation of the level of retention at origination and of the commitment to retain on an on-going basis, which shall relate only to the continuation of fulfilment of the original obligation and shall not require data on the current nominal or market value, or on any impairments or write-downs on the retained interest;

In the case of transactions falling within the scope of the exemptions set out in paragraphs 3 and 4 of Article 405 of Regulation (EU) No 575/2013 institutions acting as originator, sponsor or original lender shall disclose confirmation of the exemption applied.

2. The disclosure shall be:
 - a. appropriately documented and made publicly available, except in bilateral or private transactions where private disclosure is considered by the parties to be sufficient. The inclusion of a statement on the retention commitment in the prospectus for the securities issued under the securitisation programme shall be considered an appropriate means of fulfilling the requirement;
 - b. confirmed after origination with the same regularity as the reporting frequency of the transaction, at least annually and in any event when a breach of the retention commitment under Article 405(1) of Regulation (EU) No 575/2013 occurs or when the performance of the securitisation position, risk characteristics of the securitisation or underlying exposures materially change or following a breach of transaction documentation.

Article 24 - Disclosure of materially relevant data

1. Originators, sponsors and original lenders shall ensure that materially relevant data under Article 409 of Regulation (EU) No 575/2013 is readily accessible to investors, so that it is not overly burdensome, in terms of search, cost and other factors to fulfil their due diligence requirements. Materially relevant data shall be determined and disclosed at the date of the securitisation and on at least an annual basis thereafter, and more frequently, where appropriate, taking into account any material change to the performance of the securitisation position, risk characteristics of the securitisation position, underlying exposures or breach of transaction documentation.
2. Materially relevant data on the individual underlying exposures shall, in general, require data to be provided on a loan-by-loan basis, however there are instances where

the data may be provided on an aggregate basis. In assessing whether aggregate information is sufficient, factors to be taken into account shall include the granularity of the underlying pool and whether the management of the exposures in such pool is based on the pool itself or on a loan-by-loan basis.

3. The disclosure requirement of the retainer does not extend to the provision of the information that would result in a breach of other legal or regulatory requirements applicable to the retainer.

CHAPTER VI

FINAL PROVISIONS

Article 25 - Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President*

*[For the Commission
On behalf of the President*

[Position]

COMMISSION IMPLEMENTING REGULATION (EU) No .../2013

laying down implementing technical standards for facilitating the convergence of supervisory practices with regard to the implementation of additional risk weights according to Regulation (EU) No 575/2013 of the European Parliament and of the Council

of dd mmmm 2013

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 648/2012⁶, and in particular 410(3) thereof,

Whereas:

1. Experience to date of the application of the retention, due diligence and disclosure requirements for securitisation positions imposed by Union law has demonstrated that uniform conditions for the implementation of these requirements are needed to ensure a common and consistent application in all Member States. In this context, the development of implementing technical standards on additional risk weights in the case of non-compliance with the requirements should facilitate the convergence of supervisory practices.
2. This Regulation lays down implementing technical standards to facilitate the convergence of supervisory practices with regards to the implementation of a uniform approach to assess institutions' material non-compliance with the requirements by reason of negligence or omission and to the application of the additional risk weights.
3. In order to facilitate the convergence of supervisory practices when applying additional risk weights an appropriate formula should be defined. The formula should impose a proportionate additional risk weight of no less than 250% which progressively increases with subsequent infringements. An appropriate factor should be introduced in the formula to allow for a lower additional risk weight to apply in the cases of exposures exempted under Article 405(3) of Regulation (EU) No 575/2013.
4. This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the Commission.
5. The European Supervisory Authority (European Banking Authority) has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the

⁶ OJ L. 27.06.2012, p. 1

opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010.

HAS ADOPTED THIS REGULATION:

CHAPTER I

Additional risk weight

Article 1 - General considerations

1. Competent authorities shall ensure that any additional risk weight imposed under Article 407 of Regulation (EU) No 575/2013 shall be applied to all relevant securitisation positions held by an institution which are affected by the material infringement.
2. If a securitisation position to which an additional risk weight has been imposed matures or is sold, the risk weight shall cease to apply.
3. Where an institution rectifies its infringement of the requirements, the additional risk weight shall cease to apply.
4. When assessing whether to impose an additional risk weight, competent authorities shall consider both the materiality of the breach and its relevance to the risk analysis of the securitisation position. Materiality shall be considered in both quantitative and qualitative terms and, where applicable, at both entity and consolidated level. In assessing materiality, competent authorities should consider, among other factors, the duration of the breach, the size of the affected positions and whether the institution has attempted to proactively rectify the breach.
5. In considering whether an institution has failed, by reason of negligence or omission, to meet the retention requirement preventing institutions from assuming exposure to a securitisation position unless the originator, sponsor or original lender explicitly discloses the retention of an economic interest as specified in Article 405 of Regulation (EU) No 575/2013, competent authorities shall not be influenced by breaches by the retainer of its commitment to retain, so long as the institution can demonstrate that it has taken appropriate account of prior failures of the retainer to

satisfy its retention commitment in respect of earlier securitisations of the same retainer.

6. In case of material infringement of the disclosure requirement laid down in Article 409 of Regulation (EU) No 575/2013 by reason of negligence or omission of the institution, competent authorities shall impose an additional risk weight to the originator's, sponsor's or original lender's retained positions in, or other exposure to the relevant securitisation.
7. For securitisation positions issued on or after 1 January 2011 and before 1 January 2014, when assessing whether institutions have failed to meet the requirements in Article 405, 406 or 409 of Regulation (EU) No 575/2013, in any material respect for reasons of negligence or of omission, competent authorities may consider whether compliance with the requirements specified in Article 122a of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions, as amended by Directive 2009/111/EC of the European Parliament and of the Council amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management⁷, and the associated guidance was and is continuously met.

Article 2 - Calculation of additional risk weight

1. Competent authorities shall apply the following formula to determine the total risk weight ('Total RW') in accordance with the approach specified in Articles 245(6) and 337(3) of Regulation (EU) No 575/2013 to be applied where an institution does not meet the relevant requirements in any material respect:

$$\text{Total RW} = \text{Min}[12.5 ; \text{Original RW} * (1 + (2.5 + 2.5 * \text{InfringementDuration}_{\text{years}}) * (1 - \text{Article405Exemption}_{\text{Pct}}))]$$

Where:

12.5 is a factor representing the maximum value that the total risk weight can reach;

Original RW is the risk weight that would apply to the securitisation positions if no additional risk weight was imposed;

2.5 is the minimum factor applying to the original risk weight in order to calculate the additional risk weight;

⁷ OJ L 302, 17.11.2009, p. 97.

InfringementDuration_{years} is the duration of the infringement, expressed in years, rounded down to the nearest 12-month period. This variable is equal to “0” for an infringement of less than 12 months, equal to “1” for an infringement of more than 12 months but less than 24 months, equal to “2” for an infringement of more than 24 months but less than 36 months, etc. The duration shall generally be measured from the start of the infringement for the securitisation, although competent authorities, taking account of the specificities of the securitisation, may impose other starting points. ‘Infringement’ shall mean the breach of one or more of the requirements capable of triggering an additional risk weight. The infringement shall turn into a ‘subsequent infringement’ when time passes without rectifying the infringement, leading to a progressive increase of the additional risk weight.

Article405Exemption_{Pct} is a variable equal to 0.5 if Article 405(3) of Regulation (EU) No 575/2013 applies to the securitisation positions to which the additional risk weight is calculated, and equal to 0 if such exemption does not apply.

CHAPTER II

FINAL PROVISIONS

Article 3 - Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President*

*[For the Commission
On behalf of the President*

[Position]

4. Accompanying documents

4.1 Examples regarding the application of additional risk weights

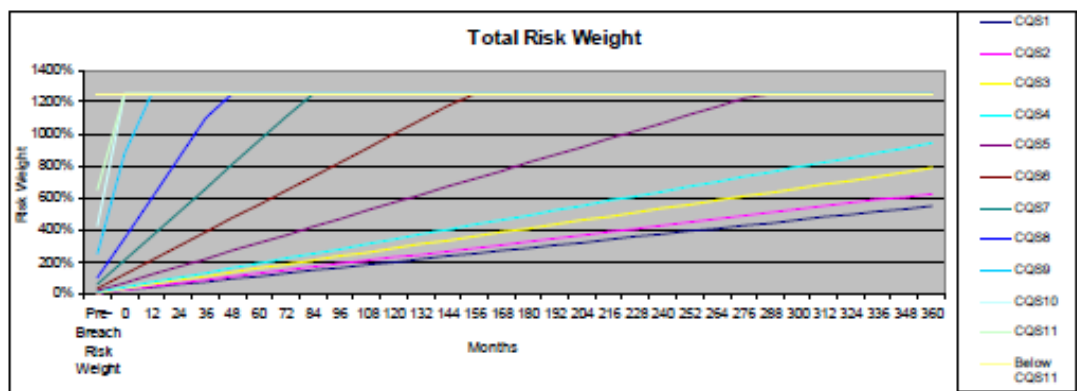
Example 1: a 6-year infringement on a securitisation position with an original risk weight of 60% and not subject to any of the exemptions in Article 405 of Regulation (EU) No 575/2013.

Total RW = $\text{Min} [12.5; 0.60 * (1 + (2.5 + 2.5 * 6) * (1 - 0))] = 1.110\%$

The following table shows the total risk weights that would apply to securitisation positions not subject to any of the exemptions in Article 405 of Regulation (EU) No 575/2013, depending on the respective original risk weight for any of the credit quality steps (CQS) and on the duration of the infringement, up to 8 years of infringement and assuming that the infringement is not rectified.

CQS	RW	Years in Breach									
		0	1	2	3	4	5	6	7	8	
CQS1	7%	25%	42%	60%	77%	95%	112%	130%	147%	165%	
CQS2	8%	28%	48%	68%	88%	108%	128%	148%	168%	188%	
CQS3	10%	35%	60%	85%	110%	135%	160%	185%	210%	235%	
CQS4	12%	42%	72%	102%	132%	162%	192%	222%	252%	282%	
CQS5	20%	70%	120%	170%	220%	270%	320%	370%	420%	470%	
CQS6	35%	123%	210%	298%	385%	473%	560%	648%	735%	823%	
CQS7	60%	210%	360%	510%	660%	810%	960%	1110%	1250%	1250%	
CQS8	100%	350%	600%	850%	1100%	1250%	1250%	1250%	1250%	1250%	
CQS9	250%	875%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	
CQS10	425%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	
CQS11	650%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	
Below CQS11	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	

The following graph illustrates the same, but up to 30 years.



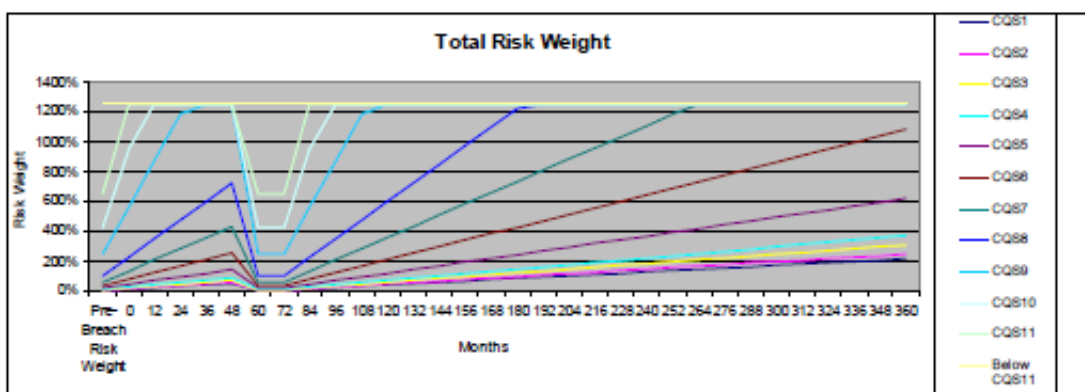
Example 2: a 4-year infringement on a securitisation position with an original risk weight of 250% and subject to an exemption in Article 405(3) of Regulation (EU) No 575/2013. The infringement is remediated during years 5 and 6, but starts again in year 7.

$$\text{Total RW} = \text{Min} [12.5 ; 2.5 * (1 + (2.5 + 2.5*4) * (1 - 0.5))] = 1,250\%$$

The following table shows the total risk weights that would apply to securitisation positions subject to the exemption in Article 405(3) of Regulation (EU) No 575/2013, depending on the respective original risk weight for any of the credit quality steps (CQS) and on the duration of the infringement, up to 8 years of infringement and assuming that the infringement is remediated during years 5 and 6, but that it starts again in year 7.

CQS	RW	Years in Breach									
		0	1	2	3	4	5	6	7	8	
CQS1	7%	16%	25%	33%	42%	51%	7%	7%	16%	25%	
CQS2	8%	18%	28%	38%	48%	58%	8%	8%	18%	28%	
CQS3	10%	23%	35%	48%	60%	73%	10%	10%	23%	35%	
CQS4	12%	27%	42%	57%	72%	87%	12%	12%	27%	42%	
CQS5	20%	45%	70%	95%	120%	145%	20%	20%	45%	70%	
CQS6	35%	79%	123%	166%	210%	254%	35%	35%	79%	123%	
CQS7	60%	135%	210%	285%	360%	435%	60%	60%	135%	210%	
CQS8	100%	225%	350%	475%	600%	725%	100%	100%	225%	350%	
CQS9	250%	563%	875%	1188%	1250%	1250%	250%	250%	563%	875%	
CQS10	425%	956%	1250%	1250%	1250%	1250%	425%	425%	956%	1250%	
CQS11	650%	1250%	1250%	1250%	1250%	1250%	650%	650%	1250%	1250%	
Below CQS11	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	1250%	

The following graph illustrates the same, up to 30 years.



All numbers in the tables and graphs should be treated only as illustrative of potential outcomes of the calculations. These tables and graphs should not be read as a fixed scale of total risk weights that result from various infringement scenarios, nor should the relationship between credit quality steps and risk weights provided in such tables and graphs be interpreted in isolation from the sources of the definitive relationship between credit quality steps and risk weights provided elsewhere in Regulation (EU) No 575/2013.

4.2 Draft cost-benefit analysis/impact assessment

Problem identification (Market failure and/or Regulatory failure)

1. Articles 405-409 CRR establish requirements on both investor institutions and sponsor or originator institutions engaging in securitisation transactions. An institution becoming exposed to the credit risk of a securitisation will ensure that the originator, sponsor or original lender retains a material net economic interest in the securitisation transaction, according to specific criteria, and should apply due diligence before entering the transaction and thereafter. Sponsor and originator institutions will apply the same sound credit-granting criteria to the loans they intend to securitise as they do to loans not to be securitised and will disclose to investors all relevant information on the retention of net economic interest in the transaction as well as on the risk characteristics of the securitised exposures. Additional risk-weights are established for those institutions assuming exposure to a securitisation that do not comply with the mentioned requirements and for originators, sponsors or original lenders that do not comply with their disclosure requirements.
2. The provisions address the fundamental problem of the possible misalignment of interests and incentives in securitisation transactions between the investors, on the one hand, and the originator, sponsor or original lender, on the other. Diverging interests among the parties of a financial contract can lead to moral hazard behaviour when certain information on relevant features of the contract is only available and accessible to one party but not to other parties (i.e. the contract is characterised by an asymmetry of information). Moral hazard behaviour occurs when the party that has more or better information takes on excessive risk knowing that the other party in the transaction will bear the costs of those risks without being equally informed about those risks.
3. The recent financial crisis has shown that in securitisation transactions the following problems can materialise:
 - a. Originators, sponsors or original lenders may have little incentive to adequately screen the credit risk characteristics of the exposures they intend to securitise, given that the credit risk of the securitised exposures is transferred to securitisation investors and credit enhancement providers.
 - b. Some securitisation transactions proved to be particularly opaque concerning the information on the credit risk features of the securitised exposures. Such information was not sufficiently available and accessible to investors.
4. Misaligned incentives and the lack of information and transparency in some securitisation transactions contributed to excessive risk-taking in parts of the securitisation industry and to a broad lack of confidence in securitisation transactions. These outcomes not only led to losses and to the drying up of liquidity and funding in the securitisation markets, but also contributed to the overall freezing of the interbank markets.

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5. By ensuring more aligned interests (through the retention requirements, the criteria for credit granting) and by increasing transparency and availability of information (disclosure and due diligence requirements) Articles 405-409 CRR aim at restoring confidence in securitisation markets and contribute to the realisation of the general regulatory objective of enhanced financial stability.

Problem definition and objectives of the RTS and ITS

6. The proposed RTS and ITS aim at clarifying aspects concerning the requirements imposed on institutions becoming exposed to the (credit) risk of a securitisation or acting as an originator, sponsor or original lender by Articles 405-409 CRR, as well as establishing elements of convergence in supervisory practices within the Single Market concerning those requirements.
7. The harmonisation of requirements and supervisory practices related to Articles 405-409 CRR, carried out at the level of technical standards, contributes to achieving the following specific regulatory objectives:
 - a. Preventing regulatory arbitrage opportunities within and across EU jurisdictions
 - b. Enhancing legal clarity
 - c. Achieving a level playing field within the Single Market
 - d. Enhancing supervisory cooperation within the Single Market
 - e. Reducing the inefficient compliance burden that can result from conflicting implementations of the requirements on institutions operating cross-border within the Single Market.
8. Objectives (a) to (d) above, in turn, contribute to the realisation of the general objective of financial stability, underlying the CRR provisions on securitisation (see section 'Problem identification: Market Failure/Regulatory Failure').
9. Enhanced legal clarity and arbitrage prevention are particularly relevant given the drawbacks of the existing framework on incentive and risk retention in the area of securitisation. Article 122a, being part of an EU Directive, had been transposed into national legislation and hence had been subject to national legislators' discretion. The guidelines, as a non-binding 'comply or explain' legal instrument, had found different levels of legally binding implementation in the different EU Member States. An additional layer of non-binding but clarifying provisions had been provided by the EBA Questions and Answers (Q & A) process.
10. Against the background of this diversified regulatory process, regarding in particular the topic of retention of net economic interest in securitisation transactions, the proposed standards have to ensure that:

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- a. The extent of legal clarity reached with the combined text of the CRD, the guidelines and the EBA Q&A, allowing market participants to structure current transactions in compliance with the requirements, are, as far as possible, transposed into directly binding legal regulations.
 - b. Potential instances of incomplete legal clarity, affecting securitisation transactions within a few specific segments of securitisation business, can be solved within the flexibility which is appropriate for directly applicable technical standards (see section 'Proposed approaches and impacts on markets and institutions' for a more detailed exposition).

11. Conditions (a) and (b) have to be achieved, while taking into account the elements of novelty that the CRR introduces with respect to the CRD, particularly with regard to the definition of 'sponsor' and allowed options and forms of retention of net economic interest.

Baseline: current market and regulatory practices

12. Article 122a of the Capital Requirements Directive (CRD, 2006/48/EC) had to be brought into force by 30 October 2010, for its application from 30 December 2010. The CEBS guidelines to Article 122a of the CRD were to be applied by Member States by 1 January 2011.

13. The provisions in the draft RTS and ITS will replace the content of the guidelines and the related Q&A report published by the EBA in September 2011.

14. The EBA assessed Member States' compliance with the guidelines through a questionnaire addressed to National Supervisory Authorities (NSAs).

15. Based on 27 responses it was assessed that, by 30 June 2012:

- a. 19 respondents⁸ had already implemented the guidelines. Among these, 15 jurisdictions had implemented the guidelines in a binding way⁹, at least in part, while 4 jurisdictions had implemented them by means of national guidelines. The jurisdictions implementing the guidelines through legally binding provisions supervise, according to data available for 2010, approximately 90% of EU banking assets. Among these jurisdictions, IT, NL, ES and UK account for 86% of new securitisation issuance in the EU for 2011.¹⁰
- b. 13 respondents¹¹ stated that they have conducted training sessions to inform supervisors about the content of the guidelines, and/or included the topic in on-site examination handbooks and/or supervisory work programmes.

⁸ AT, BE, CY, CZ, DE, ES, FR, HU, IE, IT, LT, LU, MT, NL, PL, PT, SE, SL, UK.

⁹ A binding implementation is mostly associated with circulars, national laws or ordinances.

¹⁰ See IOSCO November 2012 Report *Global Developments in Securitisation Regulation*.

¹¹ AT, BE, CY, CZ, DE, ES, FR, IE, IT, LU, NL, SL, UK.

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- c. 8 respondents (representing approximately 5% of EU banking assets) had postponed the implementation of the guidelines owing to the lack of securitisation activities, at all or after 2010, within the markets they supervise.
16. The EBA also consulted representatives of market participants in order to assess the extent to which the provisions of Article 122a of the CRD and the associated guidelines have been incorporated in current market practices.
17. The vast majority of market participants believe that Article 122a of the CRD and the associated guidelines have been well received and are now well established in current market practices. The Q & A published by the EBA in September 2011, in relation to the guidelines, contributed to clarifying several outstanding issues.

Proposed approaches and impacts on markets and institutions

18. The securitisation market in the EU is currently depressed. Available data show that, in 2011, EUR 228 billion of new securitisation products were issued, amounting to only 1/3 of new issuances in 2008 (i.e. pre-crisis levels). Approximately 86% of new issuances in 2011 were concentrated in four jurisdictions and more than half of them occurred within the Residential Mortgage Backed Securities (RMBS) segment. In addition, almost 80% of new issuances seem to be self-owned (i.e. retained).¹²
19. The transposition of provisions on credit risk transfer from the non-legally binding format of the CEBS guidelines to Article 122a to the EU-wide legally binding and directly applicable format of the RTS and ITS is expected to result in higher levels of both harmonisation and compliance. Harmonised provisions are going to be in force even in those jurisdictions that had implemented the CEBS guidelines by means of national guidelines, or postponed their application altogether due to the lack of an active securitisation market.
20. Higher levels of harmonisation and compliance, in turn, are expected to impact the market by ensuring that benefits (a) to (e) listed above (see section 'Problem definition and objectives of the RTS and ITS') materialise. Those objectives should contribute to restoring investors' confidence in securitisation transactions.
21. The recovery of securitisation in the Single Market is expected to benefit the real economy by improving overall risk-sharing opportunities and increasing the availability of funding for both households and firms.
22. The proposed RTS and ITS are not expected to involve any material costs for supervisors and institutions, nor to have a material impact on transactions that are currently being structured/carried out within the most relevant segments of active securitisation markets, given the following considerations:

¹² See IOSCO November 2012 Report *Global Developments in Securitisation Regulation*.

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- a. Most of the provisions proposed in the draft RTS and ITS have already been implemented (at least in part) as legally binding rules in all the EU jurisdictions where the securitisation market is currently active.
 - b. The vast majority of market participants have welcomed the provisions included in Article 122a of the CRD, the associated CEBS guidelines and the Q & A process. Market participants do not identify any relevant difference between Articles 393-410 CRR and Article 122a of the CRD.
23. However, consultation with market participants already at the stage of publication of the CEBS guidelines had highlighted that, while being well accepted and integrated into the vast majority of market securitisation practices, the retention requirements may represent a material challenge to the functioning of specific segments (classes) of securitisation transactions. As a consequence, the approach taken to transpose the provisions of the CEBS guidelines on retention requirements into the draft RTS is likely to impact materially on the functioning of specific securitisation classes and on the compliance features of the (subdued) number of transactions currently being structured/carried out within those market segments.
24. The specific problems at stake, the approaches considered in the drafting of the RTS, and the potential related impacts are described in the sections below.

Impact on specific classes of securitisations: Managed Collateralised Debt Obligation (Managed CLOs)

25. The implementation of risk retention rules for Managed CLOs has raised a legal issue in relation to the identification of the retainer within this specific class of securitisation transactions. The terms 'originator' or 'sponsor' as used in Article 122a of the CRD do not match the roles played by any of the parties involved in a Managed CLO transaction. As the entity structuring the CLO is not a credit institution in most cases, but rather an investment firm subject to MIFID provisions, it is not possible to legally identify the party that should retain the net economic interest within Managed CLOs, as the definition of 'sponsor' given in the CRD is limited to credit institutions. The assets of a CLO are usually multiple syndicated loans purchased by a manager on the secondary market and not originated by any of the parties involved in the CLO. An individual credit institution may in some circumstances play the role of structuring agent only and does therefore not fall under the definition of 'sponsor'.
26. Legal uncertainty over the identification of the retainer, according to market participants, materially affects investors' appetite for engaging in CLO transactions, thus reducing the investor base available to EU CLOs and US CLOs looking for investors within the Single Market. Available data on the volumes of Managed CLO business in the EU shows that, with the recent financial crisis, the supply of such securitisation products decreased materially. Between 2009 and 2011 only EUR 3 billion of CLO products were issued in Europe, while in September 2007 (pre-crisis levels) outstanding CLO products amounted to EUR 130 billion. In 2012, US new issuances of CLOs amounted to approximately USD 22.5 billion. The EU CLO market is also becoming increasingly 'static', as CLO vintages expire and managers are unable to refinance existing loans or buy new loans. Standard and Poor's estimate that the

outstanding capacity of EU CLOs could fall from over EUR 50 billion in 2011 to below EUR 10 billion by the end of 2014. The resulting funding gap could be material given that, during pre-crisis times, CLOs dealt with 40% to 60% of the leverage loans funding demand.

27. The CEBS guidelines had introduced elements of flexibility related to the identification of the retaining entity as the party in the transaction that best guarantees alignment of interest with investors, where neither the sponsor nor the originator can be identified, or where an originator or sponsor could be identified but the interests of an alternative entity were most optimally aligned with the interests of investors.
28. The wider definition of 'sponsor' proposed by the CRR, now including not only credit institutions but also investment firms, addresses the legal problem by clearly including CLO asset managers that are investment firms into the scope of retention requirements.
29. It must be acknowledged that, taking into account the existing structure of the market, the identification of the retainer with the CLO asset manager may lead to a number of CLO managers facing capital constraints in fulfilling the 5% retention requirement. Feedback received from preliminary consultation of European market participants, as well as available evidence from consultation of US CLO managers regarding similar retention requirements, indicates that most managers of CLOs are structured so as to operate with relatively small balance sheets and, therefore, are likely to struggle to provide the resources necessary to fulfil retention requirements.¹³ This could potentially translate in the long term into a modification of the currently existing managed CLO model.

Impact on specific classes of securitisation - Commercial Mortgage Backed Securities (CMBS) class of securitisations

30. Available data shows that the CMBS class of securitisations in Europe represents only a very minor share of current new securitisation issuance in Europe, with only EUR 2.3 billion in 2011, amounting to 0.6% of total issuance, and EUR 3.1 billion in the first two quarters of 2012, amounting to 2.5% of total issuance during the period. The CMBS segment has been in a depressed state since 2008, with new issuance values always comprised between EUR 1 billion and EUR 3 billion during the period 2008-2011.
31. Consultation of market participants operating in the CMBS segment highlighted concerns regarding legal uncertainty over the identification of a retaining entity, in cases where the sponsor, originator or original lender cannot be legally identified, or where a party exists that better aligns interests with investors, as well as regarding the admitted forms of retaining economic interest.

¹³ The Loan Syndications and Trading Association (LSTA) polled US CLO managers about evidence of their expected capacity to retain interest in securitisation transactions, in view of the introduction of retention requirements in the Dodd-Frank Act that are similar to the ones considered in the draft RTS under consideration. Only 13% of consulted CLO managers report to be able to retain 5% risk in a vertical pro rata strip. 87% of consulted CLO managers could retain some form of equity/first loss position, but consider 5% too conservative a requirement. Only 22% could retain 4-5%, while 87% could retain 1% equity. The LSTA estimated that US CLO managers currently retain, on average, 1.7% - 2.7% equity.

32. Discussion has focused, in particular, on:

- a. single loan/single borrower CMBS transactions, the possibility that the borrower company, owner of the properties backing the CMBS bonds, might retain net economic interest via the real estate equity that they hold as underlying exposure to the securitisation transactions.
- b. the possibility that B-pieces, within A/B type of loans entering CMBS securitisations with their A component, be accepted as a form of retention of net economic interest.

33. The possibility for an entity that best aligns interests with investors of retaining economic interest via retention of B-pieces in an A/B structure entering the CMBS issuance is expected to result in compliance with retention requirements, independently from the provisions proposed in the RTS, as a result of option (e) in Article 405 CRR, proposing retention of a first loss exposure not less than 5% of every securitised exposure in the securitisation.

4.3 Views of the Banking Stakeholder Group (BSG)

The EBA did not receive feedback from the BSG on these RTS/ITS.

4.4 Feedback on public consultation

The EBA consulted publicly on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 22 August 2013. 24 responses were received, of which 19 were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments, and the actions taken to address them if deemed necessary.

In many cases, several industry bodies made similar comments, or the same body repeated its comments in the response to different questions. In such cases, the comments and the EBA analysis are included in the section of this paper where EBA considers them most appropriate.

Changes to the draft RTS and ITS have been incorporated as a result of the responses received during the public consultation.

In addition, following the consultation period, a new article (new Article 7) has been introduced in the final RTS in order to clarify how the retention in the case of securitisations of revolving exposures (retention option (b) in Article 405 CRR) may be achieved.

Summary of key issues and the EBA's response

The main points raised by the industry as with regard to these draft RTS and ITS are the following.

- (1) Grandfathering of transactions issued between 2011 and 2013 and that might become non-compliant with the introduction of the CRR and this RTS
- (2) Definition of sponsor and its applicability
- (3) Compliance with rules in the event of market-making activities in third countries
- (4) Compliance with the retention rules on a consolidated basis
- (5) Alignment of EU regulations on the retention rules with the current US proposals on this topic

These and the other issues are addressed in detail in the feedback table 'Summary of responses to the consultation and the EBA's analysis' below. Given the introduction, in the final RTS, of a new Article 7, all articles referred to in the feedback table reflect the numbering of the RTS as in the consultation paper and are followed, in brackets where necessary, by the numbering that corresponded to the final RTS included in this document.

Summary of responses to the consultation and the EBA's analysis

RTS/ITS

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments (RTS)			
Replacement of current guidance	The EBA should clearly indicate to what extent the CEBS guidelines will remain applicable after Article 122a CRD is replaced by the corresponding CRR provisions.	The RTS/ITS will replace the current guidance on Article 122a CRD (CEBS guidelines and corresponding Q&A document). With the coming into force of the CRR on 1 January 2014, the guidance on Article 122a CRD as implemented by competent authorities will remain relevant to competent authority's decision only when assessing: i) whether an additional risk weight should be applied in cases where there is a material breach of Articles 405, 406, or 409 CRR by reason of the negligence or omission of an institution and where the respective securitisation position is part of a transaction issued on or after 1 January 2011 and before 1 January 2014, and, ii) how to interpret substitution of exposures for transactions before 1 January 2011 as referred in Article 404 CRR.	No change
Definition of sponsor	The definition of sponsor should be extended by also including (i) firms which are regulated under the AIFM Directive without any obligation to provide custodian services or safekeeping, in order to take into account the European regulatory environment; and (ii) 'recognised third country investment firms' in order to align the scope	Through reference to institutions the definition of sponsor is limited to credit institutions and to investment firms falling under the definition of point (1) of Article 4(1) of Directive 2004/39/EC and matching the other criteria of to Article 4(2) CRR and thereby excludes firms regulated under the AIFM Directive. From a legal point	No change

	of eligible asset managers to the definition of credit institutions which is not limited to EU-regulated credit institutions.	of view, without a general provision on equivalence, a wider definition exceeds the notion of sponsor enshrined in the CRR, which does not make any reference to recognised third country institutions and applies only to institutions covered by the CRR.	
Grandfathering	<p>Grandfathering should be provided explicitly for those transactions conducted in good faith between 2011 and 2013 that are in line with the requirements of the CEBS guidelines and the corresponding Q&A.</p> <p>It should also be clarified whether transactions which were issued before January 2011 and which include reinvestment capabilities after December 2014 will remain out of the scope of the retention requirements.</p>	Excluding the securitisation transactions issued between 1 January 2011 and 1 January 2014 from the reach of the CRR, the RTS would result in a derogation of the objective scope of application of the new CRR securitisation regime, which is an essential element of the Level 1 legislation. This would be inconsistent with Article 290 TFEU on delegated acts (like RTS), which allows Level 2 legislation only to 'supplement or to amend non-essential elements' of Level 1 legislative acts.	No Change
Market-making in third countries	It should be made explicitly clear that the market-making exemption included in the CEBS guidelines is retained for immaterial portfolios also with regard to the retention requirements. Otherwise, issues of competitiveness of EU institutions in foreign markets would arise.	<p>Article 14(2) CRR excludes the existence of a breach of Articles 405 and 406 CRR in relation to an entity established in a third country and included in the consolidation in accordance with Article 18 CRR, provided that the breach of Articles 405 and 406 is not material in relation to the 'overall risk profile of the group'.</p> <p>This RTS has clarified, that if an entity established in a third country is included in the consolidated group and such entity is only becoming exposed to non-compliant securitisation positions in the context of the</p>	Inclusion of Article 3(4)

		market-making activities, the non-compliance will not be deemed to be in breach of Article 405 CRR if these criteria have been met.	
Compliance on a consolidated basis	It is important to make it explicitly clear that the requirement referred to in Article 405(1) CRR may also be satisfied on the basis of the consolidated situation (i) where an EU parent credit institution, an EU financial holding company, an EU mixed financial holding company or one of its subsidiaries, as an originator or a sponsor, securitises exposures from one, not several, credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis and (ii) where consolidation has been achieved according to the applicable accounting framework but is not included in the scope of supervision on a consolidated basis.	Article 405(2) refers to the cases where the parent entity is a CRR-regulated EU parent credit institution, EU financial holding company, or EU mixed financial holding company and allows for retention on a consolidated basis where either of these entities or one of their subsidiaries, as an originator or a sponsor, securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis. In order to achieve an alignment of interest of originators, sponsors and investors it is important that the entity retaining the net economic interest is within the scope of consolidation and is not divested from the group during the maturity of the securitisation transaction. Although the EBA recognised that, in order to achieve alignment of interest, it is not essential that consolidation be accomplished in accordance with the applicable accounting framework or with regard to the scope of supervision on a consolidated basis, or that exposures from one or several credit institutions, investment firms or other financial institutions be securitised, allowing retention on a consolidated basis in accordance with the applicable accounting framework would not be in line with the level 1 text.	No Change

Harmonisation of EU-US securitisation retention rules	Regulators should strive for an internationally harmonised approach to credit risk retention and for mutual recognition of available retention options. The RTS should clarify expressly that a retainer may change the form of risk retention in order to comply also with new risk retention rules of third countries.	The EBA supports efforts to harmonise the approaches to risk retention taken by different jurisdictions. However, these RTS/ITS are not an appropriate means of achieving this objective because international harmonisation of securitisation retention rules is beyond the RTS/ITS mandate and because, currently, there is also no other jurisdiction which has published any final rules on risk retention. If a change to the retention option is required in order to also comply with the new risk retention rules of a third country, exceptional circumstances in accordance with Article 10(1)(d) of the RTS (11(1)(d) in the final RTS) are deemed to exist.	No Change
Eligibility of macro hedges	Originators may have a legitimate interest to protect against resulting losses by taking out an insurance or other hedge in respect of their entire portfolio or particular types of loans on their balance sheet, irrespective of whether the loans are securitised or not at that time. As the current guidance in the CEBS guidelines relating to this topic has not been included in the draft RTS, clarification is requested as to whether Article 405(1) CRR prohibits the inclusion of a securitised loan in such a prudent risk mitigation measure?	In order to ensure that macro hedges do not have an impact on the alignment of interest, hedges of the net economic interest may be permitted (i) where these hedges do not hedge the retainer against the credit risk of either the retained securitisation positions or the retained exposures, (ii) where these hedges are conducted in accordance with the risk management policies and procedures of the retainer and (iii) where they do not create a specific differentiation between the retained credit risk and the credit risk sold or transferred to investors.	No Change
Pre-2011 transactions with substitute exposures	CLO managers and investors have expressed their concern at the status of CLOs that were issued prior to 1 January 2011. A significant number of these transactions permit some extent of asset substitution until their final maturity, which will be after	Article 404 CRR refers to the scope of application and is not part of the RTS mandate and, as such, is not included in the Consultation Paper or final draft RTS. See feedback provided on ' <i>Replacement of current</i>	No Change

	<p>December 2014.</p> <p>The current framework clarified that some asset substitution (provided it is 'pre-defined in the contractual terms of the transaction') would not constitute a relevant asset substitution and would thus continue to benefit from the exemption provided to pre-1 January 2011 transactions. The current consultation paper does not include such guidance and, as such, many historical CLOs will fall within the scope of the risk retentions.</p>	<p><i>guidance.'</i></p>	
<p>Responses to questions in Consultation Paper EBA/CP/2013/14 (RTS)</p>			
<p>Question 1.</p>	<p>All responses to these questions stated that there were transactions which relied upon paragraphs 25-26 of the CEBS guidelines, and also that there would be new transactions which would probably not be able to meet the retention requirements as set out in the CRR and draft RTS.</p> <p>Regarding paragraphs 25-26, the following types of transaction were generally cited as having relied on those paragraphs of the guidelines: i) managed CLOs (the most frequently mentioned example), ii) transactions where a bank is securitising a portfolio with a view to exiting that type of business, and so therefore does not want to retain any exposure, iii) commercial real estate transactions where the underlying borrower retains 5% of the issued notes and iv) transactions where there is no involved originator or sponsor.</p>	<p>New transactions structured after 31 December 2013 will have to comply fully with the new requirements. This means that a particular securitisation transaction is only considered compliant with the requirements of Article 405(1) CRR if the originator, the original lender or the sponsor is retaining the net economic interest. Securitisation transactions where an eligible retainer cannot be identified or where the eligible retainer cannot retain for economic reasons or does not want to retain will have to be modified accordingly if compliance with the new rules is sought for these transactions.</p>	<p>No Change</p>

	<p>Most respondents did not think these transactions would be able to meet the requirements under the CRR and draft RTS without modification.</p>		
Question 2.	<p>With regard to new transactions which might not meet the requirements, many of the examples cited in question 1 were referred to again. In addition, a number of other transaction types mentioned were:</p> <p>i) transactions where the sponsor would not meet the CRR definition, either by virtue of not having the required permissions to meet the investment firm definition in the CRR, or because the sponsor was a non-EU entity, ii) revolving securitisations which had previously relied on option (b), iii) securitisations with multiple originators or sponsors, given that retention would need to be split between each originator based on the percentage of assets they contributed (in relation to multiple sponsors, clarification was sought as to what this meant for retention), iv) transactions where the retention was carried out by another entity in the originator's group, if there was reduced scope for retention on a consolidated basis (i.e. if accounting consolidation were not permitted), and v) securitisations invested in as part of EU banks' US market-making businesses if the materiality exemption provided for in the guidelines no longer applied</p> <p>ABCP transactions where there are multiple sponsors/originators might struggle to meet the</p>	<p>Broadening the sponsor definition is a Level 1 issue. The term 'revolving securitisation', which remained undefined in the CRD, is now defined explicitly in Article 242(13) CRR. Therefore, the previous guidance provided in paragraph 48 of the CEBS guidelines according to which securitisations of revolving exposures also included revolving securitisations of non-revolving exposures cannot be continued. But under Article 6(1)(a) of the RTS retention option, (a) may now also be applied to revolving securitisations through retention of the originator's interest assuming the originator's interest was for at least 5% of the nominal value of each of the securitised exposures and ranked pari passu with, or subordinated to, the credit risk that has been securitised with respect to those same exposures.</p> <p>Under Article 4(14) only those institutions which are not an originator institution with regard to the respective transaction can fulfil the role of a sponsor in case of multiple sponsors. Where an originator institution is also establishing and managing an ABCP programme or other securitisation scheme and is thereby fulfilling the tasks of a sponsor, but can, as an originator institution, not qualify as a sponsor, such originator institution should be permitted to fulfil the complete retention</p>	<p>Change in Article 4(2) and inclusion of Article 4(3)</p>

	<p>requirements if the scope of retention on a consolidated basis was restricted and paragraphs 25-26 were removed.</p>	<p>requirement for the respective transaction. Likewise, where an originator or original lender has also established the programme or securitisation scheme and has contributed over 50% of the total securitised exposures this originator or original lender should be permitted to fulfil the complete retention requirement.</p> <p>Therefore, a new rule has been added to the RTS in response to the comments on the consultation document regarding transactions with multiple originators, permitting one originator or original lender to fulfil the complete retention required provided that (i) this originator or original lender has been responsible for establishing and managing the programme or securitisation scheme or (ii) this originator or original lender has established the programme or securitisation scheme and has contributed over 50% of the total securitised exposures.</p> <p>With regard to the case of multiple sponsors the required clarification has been added according to which retention will be fulfilled either completely by the sponsor whose economic interest is most appropriately aligned with investors or by each sponsor pro rata in relation to the number of sponsors.</p>	
<p>Question 3.</p>	<p>All respondents to this question thought there would be a material impact of removing the paragraph 48 text, which allows all revolving securitisations to meet retention through originator's interest.</p> <p>Most respondents thought this impact would be felt due to the uncertainty around the compliance of certain</p>	<p>Article 6(1)(a) of the RTS refers to retaining at least 5% of the nominal value of each of the securitised exposures, provided that the credit risk of such exposures ranks pari passu with, or is subordinated to, the credit risk securitised for the same exposures. This has been clarified in the text of Article 6(1)(a) of the RTS</p>	<p>Change in Article 6(1)(a)</p>

	<p>revolving securitisation structures, rather than specifically around having to utilise option (a) instead. In keeping with this, a number of respondents asked for clarification on some aspects of the text under option (a), specifically: i) clarification of the definition of ‘the credit risk of each of the securitised exposures’, i.e. whether this referred to the nominal value of the exposures, and ii) clarification of ‘ranks at least pari passu’; most respondents assumed this text to mean that the originator’s interest could be pari passu or subordinated to the investors’ interest.</p>	<p>in order to remove the uncertainty regarding the interpretation of this part of the RTS.</p>	
<p>Question 4.</p>	<p>This way to comply with the retention requirement under option (a) should be mentioned explicitly in the RTS, as it is considered a useful additional option by market participants in some jurisdictions; the absence of a confirmation would give rise to uncertainty with compliance. By adding ‘also’ in the first sentence of paragraph 1 (‘may also be achieved by’) it should be clarified that this is only one of several options to comply with the retention requirement for ABCP programmes. In general, all forms of retention mentioned in the CEBS guidelines should also be mentioned in the RTS, as mentioning only some of these options gives rise to uncertainty as to whether these forms of retention are still available. As the term of the paper issued does not change the alignment of interest, the scope of application of the rule should be extended to other non-ABCP securitisation programmes, including a fully-supporting LF. The importance of this provision will</p>	<p>To remove the existing uncertainty with regard to retention options available in the context of ABCP programmes ‘also’ has been added in the first sentence of paragraph 1 in order to clarify that this is only one of several options to comply with the retention requirement for ABCP programmes.</p>	<p>Change in Article 6(1)</p>

	increase after 2014 when the grandfathering period ends.		
Question 5.	<p>The conditions are generally considered correct and sufficient. The reading of ‘underlying exposures’ in this context is unclear for some market participants, as from an investor’s point of view the underlying exposures would usually be the senior tranches of the underlying receivable pools, while the first-loss pieces would often be retained by the sellers of the receivables and would therefore not be part of the ABCP programme. Only the senior parts of the receivables are refinanced through the issuance of CP and would typically be covered by LFs. If the term ‘underlying exposures’ did not refer to the senior parts of the exposures this interpretation would be very unusual and not in line with market practice. This meaning of ‘underlying exposures’ should be clarified. Article 6(1)(b) should not constitute a new securitisation exposure and it should be clear that this way to fulfil the retention requirement is not necessary if the retention is performed by the originator/original lender. If a liquidity facility is drawn in the way that securitisation positions are held directly on the balance sheet of the sponsor bank, the retention should still be considered as achieved and the bank should be regarded as a sponsor rather than an investor in this case. The requirement that the retainer has to be the liquidity provider and the fact that the liquidity provider will usually be the sponsor has to be regarded as a de</p>	<p>In response to the comments received on condition (i.) of Article 6(1)(b) of the RTS the term ‘underlying exposures’ has been replaced by the term ‘securitised exposures’ to clarify that only those parts of the exposures have to be fully covered by a liquidity facility.</p> <p>The meaning of the request that Article 6(1)(b) should not constitute a new securitisation exposure is unclear. The word ‘also’ has been added in the first sentence of paragraph 1 in order to clarify that this is only one of several options to comply with the retention requirement for ABCP programmes.</p> <p>Provided that the liquidity facility covers 100% of the securitised exposures, the fact that this liquidity facility is partially drawn to allow the sponsor bank to temporarily hold certain securitisation positions directly on its balance sheet has no impact on compliance with retention rules.</p> <p>As clarified in the revised text of Article 6(1)(b) of the RTS, the liquidity facility may be senior in the waterfall but the liquidity facility provider has to provide 100% coverage for the credit risk of the securitised exposures in order to consider the liquidity facility as pro rata retention in each of the tranches sold or transferred to investors. Since the net economic interest shall not be subject to any credit risk mitigation, any short positions,</p>	<p>Change in Article 6(1)(b)</p>

	<p>facto syndication ban on LFs. Here, it should be clarified that no less than 5% will have to be retained by the sponsor, provided that credit risk is fully assumed, which would be in line with the Article 405(1)(a) of retaining 5% of the tranches transferred or sold to investors. Condition (iv) could be deleted as this is already covered by Article 406 and Chapter IV of the RTS.</p>	<p>or any other hedge, and shall not be sold, the liquidity facility may not be syndicated if the retention requirement is fulfilled in accordance with Article 6(1)(b) of the RTS.</p> <p>Condition (iv) is not considered redundant, as the information needed for verifying the fulfilment of conditions (i) to (iii) of Article 6(1)(b) of the RTS goes beyond the information covered by Article 406 CRR and Chapter IV of the RTS.</p>	
Question 6.	<p>This way to comply with the retention requirement under option (d) should be mentioned explicitly in the RTS, as it is considered a useful additional option especially when transactions come into scope after 31 December 2014, and as the explicit guidance is considered helpful even if it is currently rather unusual for LF to be non-senior. In general, all forms of retention mentioned in the CEBS guidelines should also be mentioned in the RTS, as mentioning only some of these options gives rise to uncertainty as to whether these forms of retention are still available. It should be clarified that this is only one of several options to retain using option (d) in the context of an ABCP programme. The application of in Article 6(1)(b) does not constitute a new securitisation exposure and this form of retention is not necessary if retention is performed by the originator/original lender of the securitisation structure. Article 8(3) (9(3) in final RTS) is intended to clarify that retention in accordance with Article 8(1)(a) or 8(1)(b)</p>	<p>The word 'also' has been added in the first sentence of paragraph 1 in order to clarify that this is only one way of complying with retention option (d), and that other forms of retaining through retention option (d) or any of the other retention options are also available to comply with the retention requirement for ABCP programmes (including retention by the originator/original lender of the exposures to be securitised via the ABCP programme).</p> <p>In response to the comments, all examples included in the CEBS guidelines should, in principle, remain available, although not all options have been explicitly mentioned in the draft RTS.</p> <p>The meaning behind the request that Article 8(1)(b) (9(1)(b) in final RTS) should not constitute a new securitisation exposure is unclear.</p> <p>The scope of application of Article 8(3) (9(3) in final RTS) of the RTS is not limited to cases where the net economic interest is retained in accordance with</p>	<p>Change in Article 8(1) (9(1) in final RTS)</p>

	(9(1)(a) or 9(1)(b) in final RTS) will satisfy the requirements of first-loss retention option (d) even if such forms of retention may, technically, constitute a second-loss exposure on the programme-wide level.	Article 8(1)(a) or 8(1)(b) of the RTS (9(1)(a) or 9(1)(b) in final RTS) but comprises all forms of retention according to option (d) of Article 405(1) CRR which are applied on a securitisation programme-wide level and which technically constitute a second-loss exposure because a first-loss exposure at the transaction-specific level underlying this programme-wide level has already been assumed by the originators or original lenders of the underlying exposures.	
Question 7.	The conditions were generally considered to be correct and adequate.	No analysis required	No change
Question 8.	Most respondents focussed on two broad issues: i) Requests for clarification as to whether methods of retention previously mentioned in the CEBS guidance but not included in the RTS would be considered compliant or not. Specifically cited were the examples of other ways to meet the first-loss retention option, for example through holding subordinated notes or a reserve account. Respondents believed these were valid methods of first-loss retention and that the RTS should be clear that they were acceptable and ii) whether the B-piece of an A/B loan would be considered a compliant method of first-loss retention. Respondents who mentioned this point generally believed that a B-piece should be considered to meet the requirements.	In response to the comments, all examples included in the CEBS guidelines will remain available, although not all options have been mentioned explicitly in the draft RTS. The explanatory box to Question 8 of the consultation document clarifies that retention of B loans in the case of securitisations of the A parts of A/B loans is an eligible means of applying retention option (e).	No change
Question 9.	The wording of Article 405(4), i.e. 'where the underlying reference entities are identical to those that make up an index of entities that is widely traded', relates to bespoke	As a reasonable explanation has been provided as to why the exemption in Article 405(4) CRR should also include securitisation positions in the correlation trading	Change in Article 13(1) (14(1) in final

	<p>baskets. Since a corporate CDS references public indebtedness, the information about the corporate reference obligation and related credit exposure is 'clear, transparent and accessible', and there is no misalignment of information between the correlation trading desk and the client bank. The correlation dealer is effectively on the public side of the deal, in the same way as his client bank, with no additional access to information. Therefore, the exemption should be confirmed to include explicitly all correlation trading portfolio activities, including activities based on bespoke baskets.</p>	<p>portfolio containing reference instruments satisfying the criterion in Article 338(1)(b)(i) CRR, Article 13 (14 in final RTS) of the RTS should only refer to Article 338(1)(b) CRR (not Article 338(1)(b)(ii) CRR).</p>	<p>RTS)</p>
<p>Question 10.</p>	<p>The inclusion of cases that are eligible to be included in that part of the correlation trading portfolio but that do not pertain to it, is considered adequate and should be maintained to preserve the scope of the current guidance on this point.</p>	<p>Although maintaining the current guidance was the only reason provided by market participants for also applying the exemption in Article 405(4) CRR to securitisation positions which are eligible for inclusion in such part of the correlation trading portfolio but which have not been assigned to it, this exemption should be included in the RTS. This is because the reasoning that the information on the underlying exposures is 'clear, transparent and accessible' and that there is, therefore, no misalignment of information between the entities involved in such transactions applies irrespective of whether securitisation positions have actually been assigned or are only eligible to be assigned to the correlation trading portfolio.</p>	<p>No change</p>
<p>Question 11.</p>	<p>There is overall support for incorporating the stress-testing requirement under the broader ICAAP process. Some concerns were raised concerning i) the</p>	<p>Irrespective of whether institutions rely on their own models or on the models developed by ECAs or other third parties when conducting their stress tests in</p>	<p>Change in Article 18(2) (19(2) in final</p>

	scope of stress-testing requirement when third party models were used, and ii) stress-testing requirements in connection with ABCP programmes.	accordance with Article 406(1) CRR these stress tests shall be incorporated into the institutions' broader stress testing and shall be undertaken by the institutions in the context of their internal capital adequacy assessment process as specified in Article 73 of Directive 2013/36/EU. As there was some uncertainty from market participants as regards the required scope of stress-testing activities where an institution is applying models developed by ECAs or other third parties for its stress testing, this should be clarified in the RTS. In an ABCP programme which is supported by a liquidity facility that covers 100% of the credit risk (on a contingent or drawn basis) of the securitised exposures, CP investors are effectively assuming the credit risk of the liquidity facility provider. Therefore, institutions may stress test the creditworthiness of the liquidity facility provider rather than the securitised exposures when conducting their broader stress testing with regard to their securitisation positions, which are fully covered by such a liquidity facility. This should be clarified in the RTS.	RTS) and additional Article 18(3) (19(3) in final RTS)
Question 12.	The wording of Article 405(4), i.e. 'where the underlying reference entities are identical to those that make up an index of entities that is widely traded', relates to bespoke baskets. Since a corporate CDS references public indebtedness, the information about the corporate reference obligation and related credit exposure is 'clear, transparent and accessible', and there is no misalignment of information between the correlation	As a reasonable explanation has been provided as to why the exemption in Article 405(4) CRR should also include securitisation positions in the correlation trading portfolio containing reference instruments satisfying the criterion in Article 338(1)(b)(i) CRR, Article 21 (20 in the consultation paper) of the RTS should refer only to Article 338(1)(b) CRR (not Article 338 (1)(b)(ii) CRR).	Change in Article 20(1) (21(1) in final RTS)

	trading desk and the client bank. The correlation dealer is effectively on the public side of the deal, in the same way as his client bank, with no additional access to information. Therefore, the exemption should be confirmed to include explicitly all correlation trading portfolio activities, including activities based on bespoke baskets.		
Question 13.	The inclusion of cases that are eligible to be included in that part of the correlation trading portfolio but that do not pertain to it, is considered acceptable and should be maintained to preserve the scope of the current guidance on this point.	Although maintaining the current guidance was the only reason provided by market participants for also applying the exemption in Article 405(4) CRR to securitisation positions which are eligible for inclusion in such part of the correlation trading portfolio, but which have not been assigned to it, this exemption should be included in the RTS. This is because the reasoning that the information on the underlying exposures is 'clear, transparent and accessible' and that there is no misalignment of information between the entities involved in such transactions applies irrespective of whether securitisation positions have actually been assigned or are only eligible to be assigned to the correlation trading portfolio.	No change
Question 14.	All of the industry respondents agreed with the principals-based nature of Article 23 (24 in final RTS) and urge EBA to keep it as it is. A request was made to clarify further that information can be disclosed/provided only if it is not in breach with regulatory requirements or confidentiality requirements between firm and customer, irrespective of where these confidentiality requirements arise from.	As the materiality of certain information and the level on which this information is required depend on the structural features of a securitisation transaction and have to be assessed by the investors in a particular securitisation transaction, the principles-based approach referred to in Article 23(2) (24(2) in final RTS) of this RTS should be maintained. The responses also indicated some uncertainty from	Additional Article 23(3) (24(3) in final RTS)

		market participants as to whether the scope delimitation regarding the fulfilment of disclosure requirements under paragraph 129 of the CEBS guidelines, which had not been included in the draft RTS, would be maintained. In order to clarify that the disclosure requirement of the retainer continues to not extend to the provision of information that would breach other legal or regulatory requirements of the retainer, a respective clarification should be added to Article 23 (24 in final RTS).	
Question 15.	<p>Most respondents thought that the ECB and Bank of England templates met the relevant requirements; only one respondent explicitly stated that they thought the Central Bank templates were too detailed to be considered standard disclosure templates. A number of respondents noted that the ECB required loan-by-loan data on a quarterly basis, rather than annually as per the CRR disclosure requirement. Other respondents said they thought the Central Bank templates did not work very well for synthetic securitisations (as they had been designed for cash transactions), and that it was important that the EBA did not require firms to use the Central Bank templates only.</p> <p>Two respondents suggested that the CREFC's disclosure template for commercial real estate transactions (the E-IRP) could be considered an appropriate form of disclosure for those types of transactions.</p>	<p>The responses to the consultation do not indicate a need for changing any of the provisions of Article 23 (24 in final RTS) of the RTS and showed that the principles-based approach is the best way forward, as well as the direct reference to the ECB and Bank of England templates.</p> <p>Following internal consultation, on the legal text has led to the deletion of Article 23(3) included in the consultation paper, since it was noted that it did not actually introduce any additional requirement nor did it clarify a level 1 provision, apart from indicating the eligibility of templates generally accepted by market participants. For synthetic transactions or other transactions that are not structured for Central Bank funding purposes it does not seem suitable to require institutions to apply available Central Bank templates to disclose materially relevant data to investors. The principles-based approach should therefore be maintained.</p>	Deletion of Article 23(3)

		<p>Aligning the disclosure frequency to the ECB requirement (disclosure on a quarterly basis) does not seem appropriate with regard to all types of securitisation transactions. For example, in the context of a CMBS transaction where a new valuation of the commercial property is conducted once a year, the disclosure of materially relevant data on a quarterly basis is most unlikely to be considered useful by CMBS investors. Therefore, the minimum frequency of disclosure should not be changed.</p> <p>Explicitly mentioning disclosure templates developed by market participants is not considered necessary, as these templates generally cover only limited segments of the markets.</p> <p>In combination with the deletion of Article 23(3), following internal legal consultation, EBA also decided to delete recital 12 in the consultation paper, directly referring to both the ECB and BoE templates as two of the various eligible ways of fulfilling the disclosure requirements. While such a reference is not deemed to be appropriate in a recital, the EBA still considers the ECB and BoE templates to be two of the various eligible ways of fulfilling the disclosure requirements.</p>	
Question 16.	No respondents raised any concerns regarding the accessibility conditions of data provided in existing templates.	Respondents did not raise any concerns regarding the accessibility conditions of data provided in the existing templates developed by the ECB and the Bank of England and these templates can generally be considered to contain the necessary information. .	No Change

ITS

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
General comments (ITS)			
Replacement of current guidance	EBA should clearly indicate to what extent the CEBS guidelines will remain applicable after Article 122a CRD is replaced by the corresponding CRR provisions.	See feedback provided on ' <i>Replacement of current guidance</i> ' in feedback section of the RTS.	Inclusion of Article 1(7)
Responses to questions in Consultation Paper EBA/CP/2013/14			
Question 1.	The passage of time factor which is automatically applied under the formula gives rise to additional risk weights which are arguably not proportionate as required by the Level 1 provisions. In this context, 'subsequent' should be interpreted to mean each 'repeated' infringement, rather than the passage of time in all cases. In particular, the provisions should be interpreted such that a static additional risk weight would apply to a failure to meet the due diligence requirements where the relevant entity can demonstrate to its authority that it has inadvertently invested in the relevant position and that it is not possible for the entity to rectify the breach on its own and/or to sell the position on reasonable terms. The proposed application of the formula in the context of infringements by institutions of the disclosure requirement is questioned because additional risk weights may not necessarily be	The passage of time factor leads to an increase in the additional risk weight whenever an additional 12 month-period has passed where the respective infringement has not been rectified by the institution. In order to take account of the specificities of a securitisation, competent authorities may impose a starting point other than the start of the first infringement when measuring the duration of a breach. This allows competent authorities sufficient flexibility. It is considered that the interpretation of subsequent infringements included in the draft ITS ensures for all relevant cases that a proportionate additional risk weight can be applied and should therefore be maintained. According to Article 407 CRR an additional risk weight shall also be imposed where an institution does not meet the disclosure requirements in accordance with	No change

	<p>appropriate in this context owing to the nature of the obligation and also because the relevant entity may not hold a position in respect of which the increased risk weight may be applied. Therefore, flexibility for adjustment should also be expressly provided for in RTS. A reduction variable (e.g. the former value 0.25) for considering cases falling under the Article 405(4) exemption should also be included in the formula. There is some confusion with respect to the intended interaction of the guidance on the compliance standard which may be applied under the due diligence requirements in the context of trading book activities (set out in Article 19 of the RTS) and the materiality assessment to be applied under the additional risk weight provisions (referred to in Article 1.4 of the ITS). It is therefore considered useful to have a clarification with regard to the level of flexibility that is appropriate for firms and supervisors to take when assessing compliance for trading book positions under the due diligence requirements. The dramatic increases in risk weights under the newly proposed securitisation rules should be translated into a more benign calibration of this formula.</p>	<p>Article 409 CRR in any material respect by reason of the negligence or omission of that institution. The question of whether an additional risk weight is an appropriate means of penalising infringements of the disclosure requirements is therefore a Level 1 issue.</p> <p>Article 407 CRR allows for a reduction of the additional risk weight otherwise imposed under that Article only where securitisation positions are falling under the exemptions according to Article 405(3) CRR. The proposal to extend this rule to exemptions under Article 405(4) CRR is therefore also a Level 1 issue.</p> <p>A competent authority's decision as to whether the intensity of an institution's review of information to fulfil the due diligence requirements is sufficient, as well as the competent authority's decision regarding the materiality of a breach of the due diligence requirements, is highly dependent on the risk profile of an institution's trading book and non-trading book. The factors to be taken into account are specified in Article 19 of the RTS (20 in final RTS) (sufficient intensity of the due diligence) and in Article 1 of the ITS (materiality of breaches). This guidance is regarded as sufficient to decide whether an institution is breaching the due diligence requirements in any material respect by reason of the negligence or omission of the institution.</p> <p>Article 407 CRR refers to the total risk weights specified in accordance with the current CRR rules under</p>	
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		Articles 245(6) and 337(3). Considering potential future changes of the securitisation rules is a Level 1 issue.	
Questions 2. & 3.	<p>One market participant proposes a simpler framework using uniform additional risk weights starting at 250% and increasing in increments. Another market participant regards the possibility to sell and buy back a position in order to reset the additional risk weight to zero allowed by the current formula as not a good incentive. The exemption percentage for Article 405(4) should be identical to the CEBS guidelines (i.e. equal to 0.25). The automatic increase in additional risk weights as a result of the passage of time can result in increases which are not proportionate, particularly when the investor is not in a position to cure the breach. It would be more reasonable to interpret the CRR reference to 'each subsequent infringement' as relating to additional positions subsequently purchased from the same originator which suffer from the same infringement. It would also seem reasonable to apply the reduction variable also to transactions exempt in Article 405(4). The dramatic increases in risk weights under the newly proposed securitisation rules should be translated into a more benign calibration of this formula. One market participant comments that it should be the banks' responsibility to self-apply the additional risk weights upon control of the criteria rather than to depend on a supervisory authority to identify an issue and impose an additional risk weight.</p>	See feedback provided in Q1 above.	No change

	Therefore, the ITS should require an ex-ante calculation of the additional risk weight.		
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