

1. Guidelines on the STS criteria for ABCP securitisation

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Guidelines

on the STS criteria for ABCP securitisation

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and the other addressees of these guidelines referred to in paragraph 8 must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/GL/201x/xx'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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, (OJ L 331, 15.12.2010, p. 12).

2. Subject matter, scope and definitions

Subject matter

5. These guidelines specify the criteria relating to simplicity, standardisation and transparency for asset-backed commercial paper (ABCP) securitisations in accordance with Articles 24 and 26 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017².

Scope of application

6. These guidelines apply in relation to the transaction- and programme-level requirements of ABCP securitisations.
7. Competent authorities should apply these guidelines in accordance with the scope of application of Regulation (EU) 2017/2402 as set out in its Article 1.

Addressees

8. These guidelines are addressed to the competent authorities referred to in Article 29(1) and (5) of Regulation (EU) No 2017/2402 and to the other addressees under the scope of that Regulation.

² Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L,347, 28.12.2017, p. 35).

3. Implementation

Date of application

9. These guidelines apply from 15.05.2019.

4. General

10. For the purposes of the requirements specified in Article 24 and Article 26 of Regulation (EU) 2017/2402, all the transaction- and programme-level requirements that refer to the underlying exposures should be applied only to underlying exposures that are compliant with the eligibility criteria as referred to in Article 24(7) of that Regulation and are funded by commercial paper, liquidity facility or other means.
11. For the purposes of the transaction-level requirements specified in Article 24 of Regulation (EU) 2017/2402, where the information is required to be made available or disclosed to investors or potential investors, unless otherwise specifically provided, it should be understood as to be made available or disclosed to the investors or potential investors at ABCP transaction level and other parties directly exposed to the credit risk of an ABCP transaction.
12. Where the information is nevertheless made available or disclosed to investors or potential investors at ABCP programme level, it may be made available or disclosed in aggregate and anonymised form.
13. For the purposes of Article 26, ABCP programmes issuing two different types of asset-backed commercial papers, some being STS compliant and some not being STS compliant, should not be considered STS securitisations.

5. Transaction-level criteria

True sale, assignment or transfer with the same legal effect, representations and warranties (Article 24(1) - 24(6))

True sale, assignment or transfer with the same legal effect

14. For the purposes of Article 24(1) of Regulation (EU) 2017/2402 and in order to substantiate the confidence of third parties, including third parties verifying STS compliance in accordance with Article 28 of that Regulation and competent authorities, in meeting the requirements specified therein, all of the following should be provided:
 - (a) confirmation of the true sale or confirmation that, under the applicable national framework, the assignment or transfer segregate the underlying exposures from the seller, its creditors and its liquidators, including in the event of the seller's insolvency, with the same legal effect as that achieved by means of true sale;
 - (b) confirmation of the enforceability of the true sale, assignment or transfer with the same legal effect referred to in point (a) against the seller or any other third party, under the applicable national legal framework;
 - (c) assessment of clawback risks and re-characterisation risks.
15. The confirmation of the aspects referred to in paragraph 14 should be achieved by the provision of a legal opinion provided by qualified legal counsel for only the first ABCP transaction in an ABCP programme and which has been issued by the same seller, which uses the same legal mechanism for the transfer and to which the same legal framework applies.
16. The legal opinion referred to in paragraph 15 should be accessible and made available to any relevant third party verifying the STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402 and any relevant competent authority from among those referred to in Article 29 of that Regulation.

Severe deterioration in the seller credit quality standing

17. For the purposes of Article 24(5) of Regulation (EU) 2017/2402, the documentation of the ABCP transaction should identify, with regard to the trigger of 'severe deterioration in the seller credit quality standing' credit quality thresholds that are objectively observable and related to the financial health of the seller.

Insolvency of the seller

18. For the purposes of Article 24(5)(b) of Regulation (EU) 2017/2402, the trigger of 'insolvency of the seller' should refer at least to the events of legal insolvency as defined in national legal frameworks.

Eligibility criteria for the underlying exposures, active portfolio management (Article 24(7))

Active portfolio management

19. For the purposes of Article 24(7) of Regulation (EU) 2017/2402, active portfolio management should be understood as portfolio management to which either of the following applies:
- (a) the portfolio management makes the performance of the ABCP transaction dependent both on the performance of the underlying exposures and on the performance of the portfolio management of the ABCP transaction, thereby preventing the investor from modelling the credit risk of the underlying exposures without considering the portfolio management strategy of the portfolio manager;
 - (b) the portfolio management is performed for speculative purposes aiming to achieve better performance, increased yield, overall financial returns or other purely financial or economic benefit.
20. The techniques of portfolio management that should not be considered active portfolio management include:
- (a) substitution or repurchase of underlying exposures due to the breach of representations or warranties;
 - (b) substitution or repurchase of the underlying exposures that are subject to regulatory dispute or investigation to facilitate the resolution of the dispute or the end of the investigation;
 - (c) replenishment of underlying exposures by adding underlying exposures as a substitute for amortised or defaulted exposures during the revolving period;
 - (d) acquisition of new underlying exposures during the 'ramp up' period to line up the value of the underlying exposures with the value of the securitisation obligations;
 - (e) repurchase of underlying exposures in the context of the exercise of clean-up call options, in accordance with Article 244(3)(g) of Regulation (EU) 2017/2401;
 - (f) repurchase of defaulted exposures in order to facilitate the recovery and liquidation process with respect to those exposures;
 - (g) repurchase of underlying exposures under the repurchase obligation in accordance with Article 24(11) of Regulation (EU) 2017/2402.

Clear eligibility criteria

21. For the purposes of Article 24(7) of Regulation (EU) 2017/2402, the criteria should be understood to be 'clear' where compliance with them is possible to be determined by a court or tribunal, as a matter of law or fact or both.

Eligibility criteria to be met for exposures transferred to the SSPE after the closing of the transaction

22. For the purposes of Article 24(7) of Regulation (EU) 2017/2402, 'meeting the eligibility criteria applied to the initial underlying exposures' should be understood to mean eligibility criteria that comply with either of the following:
- (a) with regard to ABCP transactions that do not issue multiple series of securities, they are no less strict than the eligibility criteria applied to the initial underlying exposures at the closing of the transaction;
 - (b) with regard to ABCP transactions that issue multiple series of securities including master trusts, they are no less strict than the eligibility criteria applied to the initial underlying exposures at the most recent issuance, with the results that the eligibility criteria may vary from closing to closing, with the agreement of securitisation parties and in accordance with the documentation of the ABCP transaction.
23. Eligibility criteria to be applied to the underlying exposures in accordance with paragraph 22 should be specified in the documentation of the ABCP transaction and should refer to eligibility criteria applied at exposure level.

No resecuritisation at ABCP transaction level (Article 24(8))

24. For the purposes of Article 24(8) of Regulation (EU) 2017/2402, the tranching within an ABCP transaction may be achieved by the issuance of senior and junior notes by an SSPE where a single senior note is transferred to a purchasing entity of an ABCP programme.
25. For the purposes of Article 24(8) of Regulation (EU) 2017/2402, the underlying exposures of an ABCP transaction where both junior and senior notes have been issued and a single senior note has been purchased by the purchasing entity of the ABCP programme should be understood as the underlying exposures of the single senior note that are subject to the securitisation within the ABCP programme, and not as the single senior note itself.
26. For the purposes of Article 24(8) of Regulation (EU) 2017/2402, where senior notes issued by an SSPE are split into two or more *pari passu* (pro-rata) notes within such a co-funding structure, they should be deemed not to establish an additional tranching and therefore the underlying exposures of such a securitisation should be deemed not to include any securitisation positions.

No exposures in default and to credit-impaired debtors/guarantors (Article 24(9))

Exposures in default

27. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the exposures in default should be interpreted in the meaning of Article 178(1) of Regulation (EU) 575/2013, as further specified by the Delegated Regulation on the materiality threshold for credit obligations past due developed in accordance with Article 178 of that Regulation, and by the EBA Guidelines on the

application of the definition of default developed in accordance with Article 178(7) of that Regulation.

28. Where a seller is not an institution and is therefore not subject to Regulation (EU) 575/2013, the seller should comply with the guidance provided in the previous paragraph to the extent that such application is not deemed unduly burdensome. In that case, the seller should apply the established processes and the information obtained from debtors on origination of the exposures, information obtained from the originator in the course of its servicing of the exposures or in the course of its risk-management procedure or information notified to the seller by a third party.

Exposures to a credit impaired debtor or guarantor

29. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the circumstances specified in points (a) to (c) of that paragraph should be understood as definitions of credit-impairedness. Other possible circumstances of credit-impairedness of debtor or guarantor that are not captured in points (a) to (c) should be considered to be excluded from this requirement.
30. The prohibition of the selection and transfer to SSPE of underlying exposures ‘to a credit-impaired debtor or guarantor’ as referred to in Article 24(9) of Regulation (EU) 2017/2402 should be understood as the requirement that, at the time of selection, there should be recourse for the full securitised exposure amount to at least one non-credit impaired party, irrespective of whether that party is a debtor or a guarantor. Therefore, the underlying exposures should not include either of the following:
- (a) exposures to a credit-impaired debtor, when there is no guarantor for the full securitised exposure amount;
 - (b) exposures to a credit-impaired debtor who has a credit-impaired guarantor.

To the best of the originator’s or original lender’s knowledge

31. For the purposes of Article 24(9) of Regulation (EU) 2017/2402, the ‘best knowledge’ standard should be considered to be fulfilled on the basis of information obtained only from any of the following combinations of sources and circumstances:
- (a) debtors on origination of the exposures;
 - (b) the originator in the course of its servicing of the exposures or in the course of its risk-management procedures;
 - (c) notifications to the originator by a third party;
 - (d) publicly available information or information on any entries in one or more credit registries of persons with adverse credit history at the time of origination of an underlying exposure, only to the extent that this information had already been taken into account in the context of (a), (b) and (c), and in accordance with the applicable regulatory and supervisory requirements, including with respect to sound credit

granting criteria as specified in Article 9 of Regulation (EU) 2017/2402. This is with the exception of trade receivables that are not originated in the form of a loan, with respect to which credit granting criteria do not need to be met.

Exposures to credit-impaired debtors or guarantors that have undergone a debt-restructuring process

32. For the purposes of Article 24(9)(a) of Regulation (EU) 2017/2402, the requirement to exclude exposures to credit-impaired debtors or guarantors who have undergone a debt-restructuring process with regard to their non-performing exposures should be understood to refer to both the restructured exposures of the respective debtor or guarantor and those of its exposures that were not themselves subject to restructuring. For the purposes of this Article, restructured exposures which meet the conditions of points (i) and (ii) of that Article should not result in a debtor or guarantor becoming designated as credit-impaired.

Credit registry

33. The requirement referred to in Article 24(9)(b) of Regulation (EU) 2017/2402 should be limited to exposures to debtors or guarantors for to which both of the following requirements apply at the time of origination of the underlying exposure:
- (a) the debtor or guarantor is explicitly flagged in a credit registry as an entity with adverse credit history due to negative status or negative information stored in the credit registry;
 - (b) the debtor or guarantor is on the credit registry for reasons that are relevant for the purposes of the credit risk assessment.

Risk of contractually agreed payments not being made being significantly higher than for comparable exposures

34. For the purposes of Article 24(9)(c) of Regulation (EU) 2017/2402, the exposures should not be considered to have a 'credit assessment of a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised' when the following conditions apply:
- (a) the most relevant factors determining the expected performance of the underlying exposures are similar;
 - (b) as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the life of the transaction or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly different.
35. The requirement in the previous paragraph should be considered to have been met including where either of the following applies:

- (a) the underlying exposures do not include exposures that are classified as doubtful, impaired, non-performing or classified to the similar effect under the relevant accounting principles;
- (b) the underlying exposures do not include exposures whose credit quality, based on credit ratings or other credit quality thresholds, significantly differs from the credit quality of comparable exposures that the originator originates in the course of its standard lending operations and credit risk strategy.

At least one payment made (Article 24(10))

Scope of the criterion

36. For the purposes of Article 24(10) of Regulation (EU) 2017/2402, further advances in terms of an exposure to a certain borrower should not be deemed to trigger a new 'at least one payment' requirement with respect to such an exposure.

At least one payment

37. For the purposes of Article 24(10) of Regulation (EU) 2017/2402, the payment referred to in the requirement according to which at 'at least one payment' should have been made at the time of transfer should be a rental, principal or interest payment or any other kind of payments.

Relevant maturity

38. The requirement of Article 24(10) of Regulation (EU) 2017/2402 that the maturity be of less than one year should be understood as referring to the initial legal maturity of an exposure and not to the residual maturity of an exposure.

No predominant dependence on the sale of assets (Article 24(11))

Predominant dependence on the sale of assets

39. For the purposes of Article 24(11) of Regulation (EU) 2017/2402, transactions where all of the following conditions apply, at the time of origination of the transaction in cases of amortising securitisation or during the revolving period in cases of revolving securitisation, should be considered not predominantly dependent on the sale of assets securing the underlying exposures, and therefore being allowed:
- (a) the contractually agreed outstanding principal balance at contract maturity, of the underlying exposures that depend on the sale of the assets securing those underlying exposures to repay the principal balance, corresponds to no more than 50 % of the total initial exposure value of all securitisation positions of the securitisation;
 - (b) the maturities of the underlying exposures referred to in point (a) are not subject to material concentrations and are sufficiently distributed across the life of the transaction;

- (c) the aggregate exposure value of all the underlying exposures referred to in point (a) to a single obligor does not exceed 2% of the aggregate exposure value of all underlying exposures in the securitisation.

- 40. Where there are no underlying exposures in the securitisation that depend on the sale of assets to repay their outstanding principal balance at contract maturity, the requirements in paragraph 33 should not apply.

Exemption provided in the second subparagraph of Article 24(11) of Regulation (EU) 2017/2402

- 41. For the purpose of the exemption referred to in the second subparagraph of Article 24(11) of Regulation (EU) 2017/2402 with regard to the repayment of holders of securitisation positions whose underlying exposures are secured by assets the value of which is guaranteed or fully mitigated by a repurchase obligation of either the assets securing the underlying exposures or of the underlying exposures themselves by another third party or parties, the seller or the third parties should meet both of the following conditions:

- (a) they are not insolvent;
- (b) there is no reason to believe that the entity would not be able to meet their obligations under the guarantee or the repurchase obligation.

Appropriate mitigation of interest-rate and currency risks at ABCP transaction level (Article 24(12))

Appropriate mitigation of interest rate and currency risks

- 42. For the purposes of Article 24(12) of Regulation (EU) 2017/2402 in order for the interest-rate and currency risks arising from the securitisation to be considered 'appropriately mitigated', it should be sufficient that a hedge or mitigation is in place, on condition that it is not unusually limited with the effect that it covers a major share of the interest-rate or currency risks under relevant scenarios, understood from an economic perspective. Such a mitigation may also be in the form of derivatives or other mitigating measures including reserve funds, overcollateralisation, excess spread or other measures.
- 43. Where the appropriate mitigation of interest-rate and currency risks is carried out through derivatives, all of the following requirements should apply:
 - (a) the derivatives should be used only for genuine hedging of asset and liability mismatches of interest rates and currencies, and should not be used for speculative purposes;
 - (b) the derivatives should be based on commonly accepted documentation including International Swaps and Derivatives Association (ISDA) or similar established national documentation standards;

- (c) the derivative documentation should provide, in the event of the loss of sufficient creditworthiness of the counterparty below a certain level, measured either on the basis of the credit rating or otherwise, that the counterparty is subject to collateralisation requirements or makes a reasonable effort for its replacement or guarantee by another counterparty.
44. Where the mitigation of interest rate and currency risks referred to in Article 24(12) of Regulation (EU) 2017/2402 is carried out not through derivatives but by other risk-mitigating measures, those measures should be designed to be sufficiently robust. When such risk-mitigating measures are used to mitigate multiple risks at the same time, the disclosure required by Article 24(12) of Regulation (EU) 2017/2402 should include an explanation of how the measures hedge the interest rate risks and currency risks on one hand, and other risks on the other hand.
45. The measures referred to in paragraphs 43 and 44, as well as the reasoning supporting the appropriateness of the mitigation of the interest rate and currency risks through the life of the transaction, should be disclosed.

Derivatives

46. For the purpose of Article 24(12) of Regulation (EU) 2017/2402, exposures in the pool of underlying exposures that merely contain a derivative component exclusively serving the purpose of directly hedging the interest-rate or currency risk of the respective underlying exposure itself, which are not themselves derivatives, should not be understood to be prohibited.

Common standards in international finance

47. For the purposes of Article 24(12) of Regulation (EU) 2017/2402, common standards in international finance should include ISDA or similar established national documentation standards.

Remedies and actions related to delinquency and default of debtor (Article 24(13))

Clear and consistent terms

48. For the purposes of Article 24(13) of Regulation (EU) 2017/2402, to 'set out clear and consistent terms' and to 'clearly specify' should be understood as requiring that the same precise terms are used throughout the documentation of the ABCP transaction in order to facilitate the work of the sponsor and other parties directly exposed to the credit risk of the ABCP transaction.

Reporting of changes in the priorities of payments

49. The requirement pursuant to Article 24(13) of Regulation (EU) 2017/2402 to report to investors without undue delay all changes in the priorities of payments which will materially adversely affect the repayment of the securitisation position should apply with regard to all parties directly exposed to credit risk of the ABCP transaction as well as with regard to investors at ABCP programme level.

Data on historical default and loss performance (Article 24(14))

External data

50. For the purposes of Article 24(14) of Regulation (EU) 2017/2402, where the seller cannot provide data in line with the data requirements contained therein, external data which are publicly available, or data provided by a third party such as a rating agency or another market participant, may be used, provided that all of the other requirements of that Article are met.

Substantially similar exposures

51. For the purposes of Article 24(14) of Regulation (EU) 2017/2402, the term ‘substantially similar exposures’ should be understood as referring to exposures for which both of the following conditions are met:
- (a) the most relevant factors determining the expected performance of the underlying exposures are similar;
 - (b) as a result of the similarity referred to in point (a) it could reasonably have been expected, on the basis of indications such as past performance or applicable models, that, over the life of the transaction, or over a maximum of four years, where the life of the transaction is longer than four years, their performance would not be significantly different.
52. The substantially similar exposures should not be limited to exposures held on the balance sheet of the originator.

Homogeneity, obligations of the underlying exposures, periodic payment streams, no transferable securities (Article 24(15))

Calculation of the weighted average life of the pool of underlying exposures

53. For the purposes of Article 24(15), the weighted average life (WAL) of the pool of underlying exposures should be calculated by time-weighting only the repayments of principal amounts and should not take into account any prepayment assumptions or any payments relating to fees or interest to be paid by the obligors of the underlying exposures.
54. When determining the remaining WAL of the pool of underlying exposures of an ABCP transaction, sellers and sponsors may use the maximum maturity or the maximum WAL of the underlying exposures in the pool as defined in the documentation of the ABCP transaction instead of the actual residual maturity of individual underlying exposures.

Contractually binding and enforceable obligations

55. For the purposes of Article 24(15) of Regulation (EU) 2017/2402, ‘obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors’ should be understood to refer to all obligations contained in the contractual specification of the underlying exposures that are relevant to investors because they affect any

obligations by the debtor and, where applicable, the guarantor to make payments or provide security.

Exposures with periodic payment streams

56. For the purposes of Article 24(15) of Regulation (EU) 2017/2402, exposures with defined periodic payment streams should include:
- (a) exposures payable in a single instalment in the case of revolving securitisation, as referred to in Article 24(10) of Regulation (EU) 2017/2402;
 - (b) exposures related to credit cards facilities;
 - (c) exposures with instalments consisting of interest and where the principal is repaid at the maturity, including interest-only mortgages;
 - (d) exposures with instalments consisting of interest and repayment of a portion of the principal, where either of the following conditions is met:
 - (i) the remaining principal is repaid at the maturity;
 - (ii) the repayment of the principal is dependent on the sale of assets securing the exposure, in accordance with Article 24(11) of Regulation (EU) 2017/2402 and paragraphs 39 to 40;
 - (e) exposures with temporary payment holidays as contractually agreed between the debtor and the lender.

Referenced interest payments (Article 24(16))

Referenced rates

57. For the purposes of Article 24(16) of Regulation (EU) 2017/2402, interest rates that should be considered to be an adequate reference basis for referenced interest payments should include all of the following:
- (a) interbank rates including Libor, Euribor, their successors and other recognised benchmarks;
 - (b) rates set by monetary policy authorities, including FED funds rates, and central bank's discount rates;
 - (c) sectoral rates reflective of a lender's cost of funds including standard variable rates and internal interest rates that directly reflect the market costs of funding of a bank or a sub-set of institutions, to the extent that sufficient data are provided to investors to allow them to assess the relation of the sectoral rates to other market rates;
 - (d) with respect to referenced interest payments under the ABCP transaction's liabilities, interest rates reflective of an ABCP programme's cost of funds.

Complex formulae or derivatives

58. For the purposes of Article 24(16) of Regulation (EU) 2017/2402, a formula should be considered to be complex when it meets the definition of an exotic instrument by the Global Association of Risk Professionals (GARP), which is a financial asset or instrument with features that make it more complex than simpler, plain vanilla, products. A complex formula or derivative should not be deemed to exist in the case of the mere use of interest-rate caps or floors.

Requirements in the event of the seller's default or an acceleration event (Article 24(17))

Exceptional circumstances

59. For the purposes of Article 24(17)(a) of Regulation (EU) 2017/2402, a list of 'exceptional circumstances' should, to the extent possible, be included in the documentation of the ABCP transaction.

Given the nature of the 'exceptional circumstances' and in order to allow some flexibility with respect to potential unusual circumstances requiring that cash be trapped in the SSPE in the best interests of investors, where a list of 'exceptional circumstances' is included in the documentation of the ABCP transaction in accordance with paragraph 59, such a list should be non-exhaustive.

Amount trapped in the SSPE in the best interests of investors

60. For the purposes of Article 24(17)(a) of Regulation (EU) 2017/2402, the amount of cash to be considered trapped in the SSPE should be that agreed by the trustee or other representative of the investors who is legally required to act in the best interests of the investors, or by the investors in accordance with the voting provisions set out in the documentation of the ABCP transaction.
61. For the purposes of Article 24(17)(a) of Regulation (EU) 2017/2402, it should be permissible to trap the cash in the SSPE in the form of a reserve fund for future use, as long as the use of the reserve fund is exclusively limited to the purposes set out in Article 24(17)(a) of Regulation (EU) 2017/2402 or to orderly repayment to the investors.

Repayment

62. The requirements in Article 24(17)(b) of Regulation (EU) 2017/2402 should be understood as covering only the repayment of the principal, without covering the repayment of interests.
63. For the purposes of Article 24(17)(b) of Regulation (EU) 2017/2402, non-sequential payments of principal in a situation where an enforcement or an acceleration notice has been delivered should be prohibited. Where there is no enforcement or acceleration event, principal receipts could be allowed for replenishment purposes pursuant to Article 24(10)) of that Regulation.

Liquidation of the underlying exposures at market value

64. For the purposes of Article 24(17)(c) of Regulation (EU) 2017/2402, the decision of the investors at ABCP transaction level or at ABCP programme level to liquidate the underlying exposures at market value should not be considered to constitute an automatic liquidation of the underlying exposures at market value.

Underwriting standards, seller's expertise (Article 24(18))

Similar exposures

65. For the purposes of Article 24(18) of Regulation (EU) 2017/2402, exposures should be considered to be similar where one of the following conditions is met:

- (a) the exposures belong to one of the following asset categories referred to in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous for the purposes of Articles 20(8) and 24(15) of Regulation (EU) 2017/2402:
 - (i) residential loans secured with one or several mortgages on residential immovable property, or residential loans fully guaranteed by an eligible protection provider among those referred to in Article 201(1) of Regulation (EU) No 575/2013 qualifying for credit quality step 2 or above as set out in Part Three, Title II, Chapter 2 of that Regulation;
 - (ii) commercial loans secured with one or several mortgages on commercial immovable property or other commercial premises;
 - (iii) credit facilities provided to individuals for personal, family or household consumption purposes;
 - (iv) auto loans and leases;
 - (v) credit card receivables;
 - (vi) trade receivables.
- (b) the exposures fall under the asset category of credit facilities provided to micro-, small-, medium-sized and other types of enterprises and corporates including loans and leases, as referred to in Article 2(d) of the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, as underlying exposures of a certain type of obligor;
- (c) where they do not belong to any of the asset categories referred to in points (a) and (b) of this paragraph and as referred to in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402, the underlying exposures share similar characteristics with respect to the type of obligor, ranking of security rights, type of immovable property and/or jurisdiction.

No less stringent underwriting standards

66. For the purpose of Article 24(18) of Regulation (EU) 2017/2402, the underwriting standards applied to securitised exposures should be compared to the underwriting standards applied to similar exposures at the time of origination of the securitised exposures.
67. Compliance with this requirement should not require either the originator or the original lender to hold similar or any other exposures on its balance sheet at the time of the selection of the securitised exposures or at the exact time of their securitisation, nor should it require that similar or any exposures were actually originated at the time of origination of the securitised exposures.

Disclosure of material changes from prior underwriting standards

68. For the purposes of Article 24(18) of Regulation (EU) 2017/2402, material changes to the underwriting standards that are required to be fully disclosed should be understood to be those material changes to the underwriting standards that are applied to the exposures that are transferred to, or assigned by, the SSPE after the closing of the transaction in the context of portfolio management as referred to in paragraphs 19 and 20.
69. Changes to such underwriting standards should be deemed material where they refer to either of the following types of changes to the underwriting standards:
 - (a) changes which affect the requirement of the similarity of the underwriting standards further specified in the Delegated Regulation further specifying which underlying exposures are deemed to be homogeneous in accordance with Articles 20(8) and 24(15) of Regulation (EU) 2017/2402;
 - (b) changes which materially affect the overall credit risk or expected average performance of the portfolio of underlying exposures without resulting in substantially different approaches to the assessment of the credit risk associated with the underlying exposures.
70. The disclosure of all changes to underwriting standards should include an explanation of the purpose of such changes.
71. With regard to trade receivables that are not originated in the form of a loan, reference to underwriting standards in Article 24(18) should be understood to refer to credit standards applied by the seller to the short-term credit generally of the type giving rise to the securitised exposures and proposed to its customers in relation to the sales of its products and services.

Criteria for determining the expertise of the seller

72. For the purposes of determining whether the seller has expertise in originating exposures of a similar nature to those securitised in accordance with Article 24(18) of Regulation (EU) 2017/2402, both of the following should apply:

- (a) the members of the management body of the seller and the senior staff, other than the members of the management body, responsible for managing the originating exposures of a similar nature should have adequate knowledge and skills in the origination of exposures of a similar nature to those securitised;
- (b) any of the following principles on the quality of the expertise should be taken into account:
 - (i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;
 - (ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;
 - (iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of originating the exposures should be appropriate;
 - (iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to origination of exposures of a similar nature to those securitised.

73. A seller should be deemed to have the required expertise where either of the following applies:

- (a) the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the originating of exposures similar to those securitised, for at least five years;
- (b) where the requirement referred to in point (a) is not met, the seller should be deemed to have the required expertise where they comply with both of the following:
 - (i) at least two of the members of the management body have relevant professional experience in the origination of exposures similar to those securitised at a personal level, of at least five years;
 - (ii) senior staff, other than members of the management body, who are responsible for managing the entity's originating of exposures similar to those securitised, have relevant professional experience in the origination of exposures of a similar nature to those securitised, at a personal level, of at least five years.

74. For the purposes of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Triggers for termination of the revolving period in case of a revolving ABCP transaction (Article 24(19))

Insolvency-related event with regard to the servicer

75. For the purposes of Article 24(19)(b) of Regulation (EU) 2017/2402, an insolvency-related event with respect to the servicer should do both of the following:
- (a) enable the replacement of the servicer in order to ensure continuation of the servicing;
 - (b) trigger the termination of the revolving period.

Transaction documentation (Article 24(20))

Disclosure of how the sponsor meets the requirements of Article 25(3)

76. For the purposes of Article 24(20)(d) of Regulation (EU) 2017/2402, clarification that the sponsor has met the requirements of Article 25(3) and that the competent authority did not object to the credit institution acting as a sponsor of an ABCP programme should suffice to deem that this disclosure requirement is complied with.

6. Programme-level criteria

Limited temporary non-compliance with certain STS transaction-level criteria (Article 26(1))

Method of calculating the percentage of the aggregate exposure amount of non-compliant exposures

77. For the purposes of the second subparagraph of Article 26(1) of Regulation (EU) 2017/2402, the percentage of the aggregate exposure amount of non-compliant exposures should be determined as the ratio of a to b where:

- *a*= aggregate amount of the exposures underlying the ABCP transactions net any purchase price discounts which are funded by commercial paper, liquidity facility or other means, and are in breach of paragraph 9 or 10 or 11 of Article 24 of Regulation (EU) 2017/2402;
- *b*= the aggregate amount of the exposures underlying the ABCP transactions net any purchase price discounts which are funded by commercial paper, liquidity facility or other means.

Temporary non-compliance

78. For the purposes of the second subparagraph of Article 26(1) of Regulation (EU) 2017/2402, ‘temporarily’ should be understood to refer to a period of no more than six months from the date on which the sponsor became aware of the non-compliance.

When at least one underlying exposure is in breach of paragraph 9 or 10 or 11 of Article 24 of Regulation (EU) 2017/2402 for longer than six months, or when the percentage of the aggregate exposure amount of non-compliant exposures calculated in accordance with paragraph 77 surpasses 5% at any time, the requirement of the second subparagraph of Article 26(1) of Regulation (EU) 2017/2402 should be considered not met.

Sample of the underlying exposures subject to external verification

79. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, the sample of underlying exposures subject to the external verification should be representative of the portfolio of exposures belonging to all transactions funded by the ABCP programme.

Scope and regularity of the external verification

80. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, the external verification should cover only the transaction-level requirements referred to in paragraphs 9, 10 and 11 of Article 24 of that Regulation.

81. The external verification should be carried out at least annually.

Parties eligible to execute the external verification

82. For the purposes of the third subparagraph of Article 26(1) of Regulation (EU) 2017/2402, an appropriate and independent party should be deemed to be a party that meets both of the following conditions:

- (a) it has the experience and capability to carry out the verification;
- (b) it is none of the following:
 - (i) a credit rating agency;
 - (ii) a third party verifying STS compliance in accordance with Article 28 of Regulation (EU) 2017/2402;
 - (iii) an entity affiliated to the sponsor.

Method for increasing the accuracy of the verification

83. For the purposes of Article 26(1) of Regulation (EU) 2017/2402, the sponsor should:

- (a) take appropriate steps to ensure that the percentage of the aggregate exposure amount of non-compliant exposures as determined in paragraph 77 does not surpass 5%, including by substituting the underlying exposures that are non-compliant;
- (b) instruct the party carrying out the external verification in accordance with the third subparagraph of Article 26(1) of that Regulation that, where the initial result of the verification referred to in paragraph 82 is that the share of non-compliant exposures in the initial sample is above 5%, that external verifying party should apply one of the following:
 - (i) increase the sample size in order to materially improve the confidence level and then repeat the verification;
 - (ii) perform a verification of all of the exposures within the ABCP programme net any purchase price discounts, that are funded by commercial paper, liquidity facility or other means.

84. Where the conditions referred to in points (a) and (b) are not met, the sponsor should immediately notify ESMA and inform its competent authority in accordance with Article 27(4) of Regulation (EU) 2017/2402 that the requirements of Article 26(1) of that Regulation are no longer met, and the ABCP programme should no longer be considered STS.

Remaining weighted average life (Article 26(2))

85. For the purposes of Article 26(2) of Regulation (EU) 2017/2402, the WAL of the underlying exposures of an ABCP programme should be calculated as the exposure-weighted average of

the WALs of the pool of underlying exposures at ABCP transaction level, calculated in accordance with paragraphs 53 and 54. The dates of calculations of the WALs of the pool of underlying exposures at ABCP transaction level may differ provided that the difference between the calculation dates is less than one month.

No resecuritisation (Article 26(4))

Second layer of tranching established by the credit enhancement

86. For the purposes of Article 26(4) of Regulation (EU) 2017/2402, a credit enhancement should not be considered to establish a second layer of tranching if the cash flows to and from the ABCP programme can be replicated in all circumstances and conditions by an exposure to a securitisation of a pool of exposures that contains no securitisation positions.

Appropriate mitigation of interest-rate and currency risks at ABCP programme level (Article 26(6))

87. The requirement should be applied in the manner specified in paragraphs 42 to 47 adapted to refer to any interest rate and currency risks at ABCP programme level.

Documentation of the ABCP programme (Article 26(7))

Expertise of the sponsor in credit underwriting

88. For the purposes of determining whether a sponsor has expertise in credit underwriting in accordance with Article 26(7)(b) of Regulation (EU) 2017/2402, both of the following should apply:

- (a) the members of the management body of the sponsor and the senior staff, other than members of the management body, responsible for managing the credit underwriting should have adequate knowledge and skills in credit underwriting;
- (b) any of the following principles on the quality of the expertise should be taken into account:
 - (i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;
 - (ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;
 - (iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of credit underwriting should be appropriate;
 - (iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to credit underwriting.

89. A sponsor should be deemed to have the required expertise where either of the following applies:
- (a) the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the credit underwriting for at least five years;
 - (b) where the requirement referred to in point (a) is not met, the sponsor should be deemed to have the required expertise where they comply with both of the following:
 - (i) at least two of the members of the management body have relevant professional experience in credit underwriting, at a personal level, of at least five years;
 - (ii) senior staff, other than members of the management body, who are responsible for managing the entity's credit underwriting have relevant professional experience in the credit underwriting, at a personal level, of at least five years.
90. For the purposes of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable confidentiality requirements to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Liquidity facility

91. The requirement in point (f) of Article 26(7) of Regulation (EU) 2017/2402 that the ABCP programme documentation must provide for the drawing down of the liquidity facility and the repayment of the maturing securities in the event that the sponsor does not renew the funding commitment of the liquidity facility before its expiry, should be understood to apply only to cases where the sponsor of an ABCP programme supports all securitisation positions on an ABCP programme level by a single liquidity facility. Where, instead, this support is provided by distinct liquidity facilities for each ABCP transaction and the non-renewal of the funding commitment relates to just one specific liquidity facility for a particular ABCP transaction before its expiry, there should be no requirement for the documentation to provide for the drawing down of the other liquidity facilities provided for the other ABCP transactions within the ABCP programme.

Expertise of the servicer (Article 26(8))

92. For the purposes of determining whether a servicer has expertise in servicing exposures of a similar nature to those securitised in accordance with Article 26(8) of Regulation (EU) 2017/2402, both of the following should apply:
- (a) the members of the management body of the servicer and the senior staff, other than members of the management body, responsible for administering the ABCP programme, should have adequate knowledge and skills in the administration of ABCP programmes which finance exposures of a similar nature to those securitised,

including knowledge and skills in reviewing the quality of the underwriting, origination and servicing of the exposures of a similar nature to those securitised;

(b) any of the following principles on the quality of the expertise should be taken into account in the determination of the expertise:

- (i) the role and duties of the members of the management body and the senior staff and the required capabilities should be adequate;
- (ii) the experience of the members of the management body and the senior staff gained in previous positions, education and training should be sufficient;
- (iii) the involvement of the members of the management body and the senior staff within the governance structure of the function of the administration of the ABCP programmes which finance exposures of a similar nature to those securitised should be appropriate;
- (iv) in the case of a prudentially regulated entity, the regulatory authorisations or permissions held by the entity should be deemed relevant to the administration of the ABCP programmes which finance exposures of a similar nature to those securitised.

93. A servicer should be deemed to have the required expertise where either of the following applies:

- (a) the business of the entity, or of the consolidated group to which the entity belongs for accounting or prudential purposes, has included the administration of the ABCP programmes which finance exposures of a similar nature to those securitised, for at least five years;
- (b) where the requirement referred to in point (a) is not met, the servicer should be deemed to have the required expertise where they comply with both of the following:
 - (i) at least two of the members of its management body have relevant professional experience in the administration of the ABCP programmes which finance exposures of a similar nature to those securitised, at personal level, of at least five years;
 - (ii) senior staff, other than members of the management body, who are responsible for managing the entity's servicing of exposures of a similar nature to those securitised, have relevant professional experience in the administration of the ABCP programmes which finance exposures of a similar nature to those securitised, at a personal level, of at least five years;

94. For the purpose of demonstrating the number of years of professional experience, the relevant expertise should be disclosed in sufficient detail and in accordance with the applicable

confidentiality requirements to permit investors to carry out their obligations under Article 5(3)(c) of Regulation (EU) 2017/2402.

Well documented policies, procedures and risk management controls

95. For the purposes of Article 26(8) of Regulation (EU) 2017/2402, the servicer should be considered to have ‘well documented and adequate policies, procedures and risk management controls relating to servicing of exposures’ where either of the following conditions is met:
- (a) the servicer is an entity that is subject to prudential and capital regulation and supervision in the Union and such regulatory authorisations or permissions are deemed relevant to the administration of ABCP programmes which finance exposures of a similar nature to those securitised, including knowledge and skills in reviewing the quality of the underwriting, origination and servicing of exposures of a similar nature to those securitised;
 - (b) the servicer is an entity that is not subject to prudential and capital regulation and supervision in the Union, and a proof of existence of well documented and adequate policies and risk management controls is provided that also includes a proof of adherence to good market practices and reporting capabilities. The proof should be substantiated by a third party review, such as by a credit rating agency or external auditor.