

EBA/CP/2022/11

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9 August 2022

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# Consultation Paper

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Draft Regulatory Technical Standards

Specifying the determination by originator institutions of the exposure value of synthetic excess spread pursuant to Article 248(4) of Regulation (EU) No 575/2013

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# 1. Responding to this consultation

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The European Banking Authority (the EBA) invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in section 5.3.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

## Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 14/10/2022. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

## Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

## Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) No 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

## 2. Executive Summary

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Regulation (EU) No 575/2013 (the CRR), as amended by Regulation (EU) 2021/558, which was published in the Official Journal of the European Union on the 6th of April 2021, sets out that synthetic excess spread (SES) shall be considered a securitisation position by the originator institution with regard to a synthetic securitisation, and requires the EBA to submit draft RTS specifying the determination of the exposure value to the Commission.

### Main features of these RTS

These draft RTS specify the calculation of the exposure value of the elements that should be included in the exposure value of SES, taking into account the relevant losses expected to be covered by SES.

These elements include (i) any income from the securitised exposures recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as SES that is still available to absorb losses, (ii) any SES contractually designated by the originator institution in any previous periods that is still available to absorb losses (iii) or for the current period that is still available to absorb losses, (iv) and any SES contractually designated by the originator institution for future periods.

The stakeholders are invited to comment on the entire proposal set out in this consultation paper and in particular on the targeted questions set out by EBA.

### Next steps

These final draft RTS will be submitted to the Commission for adoption. Following the submission, these RTS will be subject to scrutiny by the European Parliament and the Council before being published in the Official Journal of the European Union.

## 3. Background and rationale

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1. These draft regulatory technical standards (draft RTS) have been developed in accordance with Article 248(4) of Regulation (EU) No 575/2013 (the Capital Requirements Regulation - CRR) as amended by the Regulation (EU) 2021/558 of 31 March 2021<sup>1</sup> (as part of the Capital Markets Recovery Package - CMRP), which mandates the EBA to develop draft regulatory technical standards to specify how originator institutions are to determine the exposure value referred to in Article 248(1)(e) of CRR, taking into account the relevant losses expected to be covered by the synthetic excess spread (the SES). The EBA is requested to submit the draft RTS to the Commission.
2. The CMRP amends Regulation (EU) 2017/2402 (the Securitisation Regulation) and the CRR in several aspects, including creating a specific framework for simple, transparent and standardised (STS) on-balance-sheet securitisations and a preferential capital treatment for the senior tranches retained by the originator institutions, to ensure that the Union securitisation framework provides for an additional tool to foster economic recovery in the aftermath of the COVID-19 crisis, while at the same time addressing prudential concerns regarding the use of SES in securitisations.
3. In accordance with Article 2 point (29) of the Securitisation Regulation, as amended, SES ‘means the amount that, according to the documentation of a synthetic securitisation, is contractually designated by the originator to absorb losses of the securitised exposures that might occur before the maturity date of the transaction’.
4. SES is considered a securitisation position subject to capital requirements under the CRR, because of concerns regarding the regulatory arbitrage that SES may imply. Recital 11 of Regulation (EU) 2021/558 explains that the regulatory arbitrage *‘occurs when an originator institution provides credit enhancement to the securitisation positions held by protection providers by contractually designating certain amounts to cover losses of the securitised exposures during the life of the transaction, and such amounts, which encumber the originator institution’s income statement in a manner similar to an unfunded guarantee, are not risk-weighted’*.
5. As a result, the CMRP has introduced several amendments to the CRR that set out that SES shall be considered a securitisation position by originator institutions and describe which elements should be included in the exposure value of the SES. These elements include (i) any income from the securitised exposures recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as SES and that is still available to absorb losses, (ii) any SES contractually designated by the originator institution in any previous periods and that is still available to absorb losses (iii) or for the current period that is still available to absorb losses, (iv) and any SES contractually designated by the originator institution for future periods.

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<sup>1</sup> [Regulation \(EU\) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation \(EU\) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis](#)

6. The draft RTS mandate specifically mentions that the exposure value of SES should be determined taking into account the relevant losses expected to be covered by the SES.
7. These draft RTS specify that, for the purpose of the calculation of the exposure value of SES based on any income from the securitised exposures already recognised by the originator institution in its income statement and for the SES contractually designated in “previous” and “current” periods”, as provided for in Article 248(1)(e) point (i) to (iii) of CRR, the amount designated by the originator institution to absorb losses and that is still available for this purpose should be considered in full for the determination of the exposure value of SES.
8. Regarding the exposure value of SES of future periods according to Article 248(1)(e) point (iv) of CRR, these RTS specify the following
  - (i) Basis for the calculation of the exposure value. These draft RTS specify that the calculation of the exposure value of SES should be based on the losses expected to be covered by the SES in those future periods.
  - (ii) Treatment of ex-post SES. SES committed in each of the future periods is calculated ex-post when the amount designated by the originator institution to absorb losses depends on the performance of the pool of securitised exposures in each period, which is ultimately recognised by the originator institution in its income statement. Although ex-post SES mirrors the calculation of excess spread in a traditional securitisation, which is not subject to capital requirements under the CRR, the EBA does not support excluding this type of SES from the calculation of the exposure value of SES under these draft RTS. The reason is that, by contrast to a traditional securitisation, the securitised exposures in case of a synthetic securitisation remain on the balance sheet of the originator and their future proceeds will continue to be recorded in the income statement of the originator. Therefore, these draft RTS specify that the amount that is expected to be committed via the ex-post SES in future periods should be estimated, and the part that is expected to cover for the expected losses should be considered in the calculation of the exposure value.
  - (iii) Trapped mechanisms. In trapped mechanisms, the amount designated by the originator institution to absorb losses is periodically offset with the amount of losses realised at each period; the amount not used for loss absorption in that period cumulates in a separate account and is still available for loss absorption in future periods. Because of that, these draft RTS specify that its exposure value should be the total losses expected to be covered during the entire life of the transaction. To calculate those losses two methodologies would be possible: a full model approach, similar to the approach recommended in the EBA Report on SRT for the SRT assessment<sup>2</sup>, or a simplified model approach, which would only model

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<sup>2</sup> [EBA report on significant risk transfer in securitisation under Articles 244\(6\) and 245\(6\) of the Capital Requirements Regulation](#)

the remaining weighted average life (WAL) of the underlying portfolio and would multiply it by the SES designated for the next period.

- (iv) Use-It-Or-Lose-It (UIOLI) mechanisms. UIOLI mechanisms imply that the amount designated to absorb losses is periodically offset with the amount of losses realised at each period, and that the amount that is not used for loss absorption in a particular period is no longer available for loss compensation in future periods. Because of the lower loss absorbing capacity of UIOLI mechanisms in comparison with trapped mechanisms, and the circumstance that this lower loss absorbing capacity also depends on the distribution of the losses throughout the life of the transaction<sup>3</sup>, these RTS specify an adjustment to the calculation applicable to trapped mechanisms in case of the application of the simplified model approach. This adjustment is not needed in the case of the full model approach because it already accounts for the lower loss absorbing capacity of UIOLI SES within the differentiated modelling of periodical cash flows and loss amounts for all periods throughout the maturity of a transaction.

9. Finally, this consultation paper includes a question on an alternative approach to determine the exposure value of SES, which builds on the current supervisory practices implemented by a competent authority before the CMRP amended the CRR but includes some adjustments to that current supervisory practice. Under this alternative approach the exposure value against which a capital charge is calculated takes into account the relevant losses and how they are allocated against excess spread.
10. On the one hand, trapped SES cumulates in a separate account and is available to cover losses over the life of the transaction and, therefore, the capital charge covers the entire life of the transaction. On the other hand, the UIOLI SES is not trapped in a specific ledger to cover future losses but is returned-back to the originator after covering credit losses materialising in pre-specified periodic intervals (payment periods) during the entire life of the transaction. To reflect this loss allocation mechanism under the UIOLI SES, the alternative approach requires the originator to capitalise during the life of the transaction against the 1-year SES net of realised losses and specific credit risk adjustments, in 1-year rolling windows until maturity.
11. The question set out in the consultation paper on the aspect related to the alternative approach is focused on whether this alternative approach could be adapted, while at the same time keeping it aligned with the amended CRR regulation requiring a consideration of all future periods when determining the exposure value of the SES, and the relative impact the alternative approach would imply in comparison with the approaches included in these draft RTS. One way to try to further adapt the alternative approach on UIOLI SES to the provisions of the amended CRR could be by taking into account the part that is expected to cover for losses in the next period instead of the part that it is not, including at issuance of the transaction, keeping the rolling-window approach.

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<sup>3</sup> Although in a front-loaded loss scenario the absorption of losses would be similar in both the trapped and the UIOLI mechanisms, in a back-loaded loss scenario the part of the UIOLI SES designated in previous periods will not be available to cover the losses concentrated in the last periods; in an evenly-loss scenario, the excess spread not used is minimised throughout the life of the deal and, therefore, the UIOLI SES loss absorbing capacity is maximised.

12. The stakeholders are invited to comment on the entire text of the present draft RTS and on the targeted questions put forward.



## 4. Draft regulatory technical standards/

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### COMMISSION DELEGATED REGULATION (EU) .../...

of XXX

**on supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the determination by originator institutions of the exposure value of synthetic excess spread pursuant to Article 248(4) of that Regulation**

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 648/2012<sup>4</sup>, and in particular of Article 248(4) third subparagraph thereof,

Whereas:

- (1) Article 248(1) points (a) to (d) of Regulation (EU) No 575/2013, as amended by Regulation (EU) 2021/558 sets out how the exposure value of a securitisation position shall be calculated, and point (e) lays down the elements that the exposure value of a synthetic excess spread shall include. Among those, points (i), (ii) and (iii) refer to situations where either an amount calculated on the income from the securitised exposures and recognised by the originator institution in its income statement, or any other amount, has been contractually designated by the originator institution in any previous period or for the current period to cover for the losses of the securitised exposures, and those amounts are still available to absorb losses that might occur before the maturity date of the transaction. Those amounts, which are providing credit enhancement to the actual tranches of the securitisation, are known and certain at the moment of the calculation of the exposure value of synthetic excess spread and, for this reason, they should count in full in the calculation of the exposure value of synthetic excess spread without the need of further specification.
- (2) However, it is necessary to specify how originator institutions are to determine the exposure value of the synthetic excess spread contractually designated by the originator institution for future periods, in accordance with Article 248(1)(e) point(iv) of Regulation (EU) No 575/2013, taking into account the relevant losses expected to be covered by it. In order to specify this, it is necessary to firstly specify how to calculate

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<sup>4</sup> OJ L 176 27.6.2013, p. 1.

the synthetic excess spread contractually designated by the originator institution for future periods; secondly specify how to calculate the relevant losses of the future periods; and, thirdly specify which part of the relevant losses is expected to be covered by the synthetic excess spread in the future periods.

- (3) The synthetic excess spread contractually designated by the originator institution for future periods can take different modalities: it can be a fixed amount or a variable amount, depending, in the latter case, either on the income of the securitised exposures or on the outstanding amount of them, in each of the future periods. Therefore, in order to ensure a uniform approach with regard to the calculation of the exposure value of a synthetic excess spread it is necessary to specify how originator institutions should determine the expected maturity of the transaction and thereby the future periods relevant for such calculation, and to set out a full model approach for calculating either the income of the securitised exposures or the outstanding amount of them, in each of the future periods until the end of the expected maturity of the transaction. The originator institution should then apply the methodology for the calculation of the variable synthetic excess spread to determine its amount in each of the future periods.
- (4) Regarding the relevant losses of future periods, it is necessary to specify that the full model approach should also estimate the expected losses of each of the future periods but not the unexpected losses, as the synthetic excess spread is expected to cover the former and not the latter. For that purpose, the originator institution should use: (i) in the case of securitised exposures to which the originator institution applies the IRB Approach in accordance with Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, the expected loss amounts resulting from the use of the IRB Approach risk parameters; and (ii) in the case of securitised exposures to which the originator institution applies the Standardised Approach in accordance with Part Three, Title II, Chapter 2 of that Regulation, specific credit risk adjustments that would result from the application of the relevant accounting standards, including the expected credit loss provisioning. Where an originator institution cannot demonstrate to the competent authority that the use of specific credit risk adjustments that would result from the application of the relevant accounting standards leads to a loss coverage sufficiently representative of the portfolio's future expected losses, the originator institution should model expected loss amounts based on other internal risk parameters, such as those used in the internal capital adequacy assessment process of the originator institution, justifying its prudence. For these purposes, the originator's loss coverage should be considered sufficiently representative of the portfolio's future expected losses where it comprises indicators of forward-looking default probabilities that are relevant to adequately reflect the expected deterioration in the quality of the securitised exposures.
- (5) It is further necessary to specify how the synthetic excess spread calculated for each of the future periods should be compared with the expected losses of each period in order to determine the relevant losses expected to be covered by the synthetic excess spread for each period.
- (6) While in 'use-it-or-lose-it' mechanisms any amount of the synthetic excess spread designated by the originator institution for a particular period that is not used for loss absorption in that period is no longer available for loss compensation in future periods, this does not hold for 'trapped' mechanisms where amounts not used for loss absorption in a particular period instead accumulate in a separate ledger and are still available for loss absorption in future periods. In both 'trapped' and 'use-it-or-lose-

it' mechanisms, the loss absorbing capacity depends on the distribution of the losses throughout the life of the transaction. In the case of the 'trapped' mechanism, its loss absorbing capacity is lower in a front-loaded loss distribution scenario than in an evenly-loaded or a back-loaded distribution scenario, because a major part of the synthetic excess spread amounts that are cumulating in the ledger over the maturity of the transaction are not yet available at the beginning of the maturity of the transaction, where most of the losses occur under this scenario. By contrast, in a 'use-it-or-lose-it' mechanism the loss absorbing capacity is lower both in a front-loaded and a back-loaded loss distribution scenario, because the part not used in the periods of lower losses is lost, in comparison to an evenly-loaded scenario, where the 'use-it-or-lose-it' loss absorbing capacity is maximised. Accordingly, originator institutions should calculate the exposure value of synthetic excess spread of future periods under a front-loaded, an evenly-loaded and a back-loaded loss distribution scenario, which should be the sum of the losses expected to be covered by the synthetic excess spread in these future periods. As a result, the exposure value of either the 'trapped' or the 'use-it-or-lose-it' synthetic excess spread of future periods at the calculation date should be the arithmetic average of the exposure value of the synthetic excess spread calculated under each of the three scenarios.

- (7) Due to the significant degree of complexity inherent to the application of the full model approach, originator institutions should be allowed to use a simplified model approach to calculate the exposure value of synthetic excess spread of future periods instead of the full model approach, based on the synthetic excess spread committed for the subsequent period measured from the calculation date of the exposure value of the synthetic excess spread, the weighted average life of the securitised exposures at the calculation date, and a scalar. However, to avoid arbitrage, where originator institutions apply this option, they should be required to apply it consistently to all of their securitisations featuring synthetic excess spread.
- (8) Under the simplified model approach, the synthetic excess spread committed for the subsequent period to which the calculation of the exposure value relates should be calculated in the same manner as specified for the full model approach. The weighted average life of the pool of underlying exposures should be calculated by time-weighting the repayments of principal amounts only, 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, for consistency with the calculation of the weighted average life referred to in Article 24(15) of Regulation (EU) no 2017/2402 and the EBA guidelines on the STS criteria for ABCP securitisation (EBA/GL/2018/08) further specifying that Article. It is also necessary to specify a scalar under the simplified model approach that reduces the exposure value of 'use-it-or-lose-it' synthetic excess spread in comparison with the exposure value of 'trapped' synthetic excess spread in order to cater for their different loss absorption capacity. In order to achieve conservative results, the scalar should be calibrated to produce a higher exposure value in most cases compared to that calculated under the full model approach using the average of the front-loaded, the evenly-loaded and the back-loaded scenarios.
- (9) In order for the competent authorities to ensure compliance with this Regulation, it is necessary to establish a notification process for the communication of the option between the full and the simplified model approach, and a review of the approach chosen by an independent auditor on a yearly basis.

- (10) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (11) The 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 1093/2010 of the European Parliament and of the Council<sup>5</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*  
*Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘Use-it-or-lose-it (UIOLI) mechanism’ means a mechanism whereby after periodically offsetting the amount designated as synthetic excess spread by the originator institution to absorb losses for each period within the maturity of a transaction with the amount of losses realised in that period, the synthetic excess spread amount that is not used for loss absorption in that period is no longer available for loss compensation in future periods until the expected maturity of the transaction.
- (2) ‘Trapped mechanism’ means a mechanism whereby after periodically offsetting the amount designated as synthetic excess spread by the originator institution to absorb losses for each period with the amount of losses realised at that period the synthetic excess spread amount that is not used for loss absorption in that period cumulates in a separate ledger and is still available for loss absorption in future periods until the expected maturity of the transaction.
- (3) ‘Expected maturity of the transaction’ means the contractual maturity of the credit protection agreement or, where, in accordance with the credit protection agreement, the originator institution has an option to terminate the protection, or where there is a clean-up call compliant with Article 245(4) point (f) of Regulation (EU) No 575/2013 that allows early termination of the protection agreement before its contractual maturity, the earliest expected date at which those options may be exercised in accordance with Article 3. The expected maturity of the transaction shall be subject to a maximum of 5 years.
- (4) ‘Front-loaded loss distribution scenario’ means a scenario in which two thirds of the absolute amount of losses expected to occur during the expected maturity of the transaction, in accordance with the evenly-loaded loss distribution scenario, take place equally distributed in the first third part of such expected maturity of the transaction.

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<sup>5</sup> 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).

- (5) ‘Evenly-loaded loss distribution scenario’ means a scenario in which defaults and losses occur throughout the expected maturity of the transaction, in accordance with the applicable risk parameters.
- (6) ‘Back-loaded loss distribution scenario’ means a scenario in which two thirds of the absolute amount of losses expected to occur during the expected maturity of the transaction in accordance with the evenly-loaded loss distribution scenario, take place equally distributed in the last third part of such expected maturity of the transaction.

**Question for consultation**

**Q1.** Do respondents find the provisions clear enough or would any additional clarification be needed on any aspect?

*Article 2*

*Exposure value of the synthetic excess spread*

1. Originator institutions shall determine the exposure value referred to in Article 248 (1) point (e) of Regulation (EU) No 575/2013 as the sum of the exposure values resulting from points (i) to (iv) of that point (e). For that purpose, the exposure values of the synthetic excess spread referred to in points (i) to (iii) of Article 248(1) point (e) of Regulation (EU) No 575/2013 shall be equal to the entire amount of the synthetic excess spread referred to in these points.
2. In order to determine the sum of the synthetic excess spread contractually designated by the originator institution for all future periods within the expected maturity of the transaction as referred to in point (iv) of Article 248(1) point (e) of Regulation (EU) No 575/2013 at a calculation date, originator institutions shall apply either of the following approaches:
  - (a) a full model approach whereby they apply all of the following steps in sequence:
    - (i) determining the payments of the securitised exposures in accordance with Article 3;
    - (ii) determining the synthetic excess spread amounts that have been contractually designated for future periods in accordance with Article 4;
    - (iii) determining the relevant losses of future periods in accordance with Article 5;
    - (iv) assigning, for each of those future periods within the expected maturity of the transaction, the relevant losses determined for a particular future period to the synthetic excess spread amount contractually designated by the originator institution for that period and calculating the total exposure value of synthetic excess spread

contractually designated by the originator institution for future periods in accordance with Article 6;

(b) the simplified model approach referred to in Article 7.

3. Originator institutions shall decide to apply either of the approaches referred to in paragraph 2 consistently to all their securitisations featuring synthetic excess spread. The decision for either of those approaches shall be notified by the originator institution to the competent authority before 15 October immediately following that decision. The decision notified by the institution shall take effect from 1 January of the following year and shall be valid until a subsequently notified decision comes into effect. An institution shall not use different approaches in the course of the same year.
4. The approach originator institutions apply pursuant to paragraph 2 shall be subject to an independent review on a yearly basis. That review shall be carried out by an independent auditor, either internal or external, with a demonstrable expertise and a thorough understanding of securitisation.
5. The outcome of each annual review by the independent auditor referred to in paragraph 4 shall be notified to the competent authority without undue delay.

**Question for consultation**

**Q2.** Do you agree with the possibility of choosing between the full and the simplified model approaches in a consistent manner?

**Q3.** Instead, would you favour that the RTS consider only one method (i.e. the full model approach or the simplified model approach) for the calculation of the exposure value of the synthetic excess spread of the future periods?

SECTION 1  
FULL MODEL APPROACH

Article 3

*Determining payments on the securitised exposures*

1. Originator institutions shall determine the principal and interest payments for all securitised exposures occurring in any of the future periods within the expected maturity of a transaction on a loan-by-loan basis. In case of pools of underlying exposures with high granularity, originator institutions may instead determine the principal and interest payments for the securitised exposures on the basis of homogeneous sub-pools of the securitised exposures.
2. Where principal and interest payments are calculated on a loan-by-loan basis, originator institutions shall take into account the terms and conditions agreed with the borrower, or between the original lender and the borrower, in order to accurately

- reflect the contractual schedule of the payments, the expected amount of principal repayment and the related interest charges that shall be collected for each period.
3. Originator institutions shall assume that the amortisation method and the interest rates applicable on the calculation date remain constant until the maturity of the loan where the contract sets out options not yet realised or triggered. Where the contract already envisages that the amortisation method or the interest rates applicable for future periods change in a completely predetermined manner, so that the exact value of the amortisation or interest rate applicable in a future period can already be determined on the calculation date, originator institutions shall take those future changes into account.
  4. In the case of revolving securitised exposures, originator institutions shall assume a drawing of the committed amount in the coming revolving periods equal to the amount drawn at the calculation date until the scheduled maturity of the securitised exposure.
  5. For the purposes of determining principal and interest payments in the case of revolving securitisations, originator institutions shall apply the following steps:
    - (a) they shall determine the scheduled maturity of each securitised exposure as of the calculation date;
    - (b) for each securitised exposure maturing before the end of the replenishment or the revolving period, they shall adjust the scheduled maturity to equal the sum of its current maturity and of the longest permitted maturity of an exposure that is eligible to be added to the securitised portfolio during the replenishment or revolving period. The adjustments shall be made as many times as necessary for that purpose as long as the term of the adjusted maturity is still shorter than the term of the replenishment period or the term of the revolving period;
    - (c) Where securitised exposures are scheduled to mature after the end of the replenishment or revolving period, the final maturity of the securitised exposures shall not be adjusted.
  6. Originator institutions shall not take into account prepayments for the securitised exposures.
  7. Originator institutions shall assume future defaults that are coherent with the method used for the calculation of the relevant losses of future periods under Article 5. These relevant losses shall be assumed to happen in the same period within the expected maturity of the transaction where the defaults are expected to take place.

**Question for consultation**

**Q4.** Do you agree with the specifications for determining payments on the securitised exposures made in Article 3?

#### *Article 4*

##### *Synthetic excess spread amounts contractually designated by the originator institution for future periods*

Originator institutions shall determine the amounts of synthetic excess spread that they contractually designated for each of the future periods within the expected maturity of the transaction in accordance with the following:

- (a) where the synthetic excess spread is contractually designated as a fixed amount, as the fixed amount being available for the absorption of losses in the respective future period for which the synthetic excess spread amount is being determined;
- (b) where the synthetic excess spread is contractually designated as a variable amount, either based on the expected income of the securitised exposures or on the outstanding amount of those securitised exposures, or on another reference related to the securitised exposures, as the amounts that originator institutions estimate to be available for the absorption of losses in the respective future period for which the synthetic excess spread amount is being determined in accordance with Article 3.

#### *Article 5*

##### *Relevant losses of future periods*

1. Originator institutions shall determine the relevant losses for each of the future periods within the expected maturity of the transaction in accordance with the following:
  - (a) where the originator institution estimates the expected loss amounts for the securitised exposures in accordance with the requirements of Part Three, Title II, Chapter 3 of Regulation (EU) No 575/2013, as the sum of the expected loss amounts determined for the respective individual securitised exposures for the corresponding future period;
  - (b) in all other cases as one of the following:
    - (i) the sum of the new specific credit risk adjustments on the securitised exposures that would be recorded by the originator institution in its financial statements in accordance with the applicable accounting framework;
    - (ii) where the approach referred to in point (i) results in a loss coverage that is not sufficiently representative of the expected future losses on the securitised exposures, the originator institution shall model expected loss amounts based on other internal risk parameters, such as those considered in the internal capital adequacy assessment process of the originator institution, and shall provide an adequate justification of the prudence of the method used as an alternative to that referred to in point (i).
2. Where different methods for the calculation of the relevant losses expected in each of the future periods, from among those referred to in paragraph 1, are applied to different parts of the pool of underlying exposures of a securitisation, the relevant



losses for each of the future periods shall be determined as the sum of the relevant losses for each of the future periods calculated in accordance with each of the corresponding methods referred to in that paragraph.

**Question for consultation**

**Q5.** Do you agree with the specifications for the determination of the relevant losses made in Article 5?

*Article 6*

*Calculation of the total exposure value of synthetic excess spread contractually designated by the originator institution for future periods*

Originator institutions shall assign the relevant expected losses under a front-loaded, a back-loaded and an evenly-loaded loss distribution scenario to the synthetic excess spread amounts for each of the future periods within the expected maturity of the transaction and the amount referred to in Article 248(1)(e) point (iv) of Regulation (EU) No 575/2013 shall be the arithmetic average of the sums of the relevant losses expected to be covered by the synthetic excess spread amounts for all future periods within the expected maturity of the transaction under each of the three scenarios. For that calculation, in the case of trapped mechanisms, the part of the synthetic excess spread not used in one period shall be assumed to accumulate and to be available for the coverage of the relevant losses in future periods.

**Question for consultation**

**Q6.** Do you agree with the calculation of the exposure value of synthetic excess spread for future periods made in Article 6?

**Q7.** Shall the average of the scenarios be made in a different way for UIOLI and trapped mechanisms (e.g. back-loaded and evenly-loaded only for UIOLI mechanisms, and front-loaded and evenly-loaded for trapped mechanisms)?

## SECTION 2 SIMPLIFIED MODEL APPROACH

### *Article 7*

#### *Simplified model approach to calculate the exposure value of synthetic excess spread for future periods*

Where originator institutions choose to apply the simplified model approach to calculate the exposure value of synthetic excess spread for future periods in accordance with Article 2(2), point (b), the exposure value of the synthetic excess spread for future periods shall be the contractual amount of the synthetic excess spread designated for the next period, in accordance with Article 4, multiplied by the remaining weighted average life of the reference portfolio and by a scalar, in accordance with the following formula:

$$\text{Exposure value of SES for future periods} = (SES_{t+1} * WAL_t) * \text{Scalar}$$

Where:

- $t$  is the current period
- $SES_{t+1}$  is the contractual amount of synthetic excess spread designated for the next period, in accordance with Article 4.
- $WAL_t$  is the remaining weighted average life of the reference portfolio measured at the current calculation date, and in the period unit in which the synthetic excess spread is committed in accordance with the transaction documentation.  $WAL_t$  shall be calculated following the specifications of the asset model under Article 3 by time-weighting the repayments of principal amounts from the securitised exposures until the expected maturity of the transaction only, and shall not take into account any prepayment assumptions or any payments relating to fees or interest to be paid by the obligors of the securitised exposures. In case of a transaction with a replenishment period,  $WAL_t$  shall be the sum of the remaining replenishment period at the current calculation date plus the remaining weighted average life of the reference portfolio measured at the end of that replenishment period.  $WAL_t$  shall be no greater than a number of periods equivalent to 5 years.
- Scalar is equal to 0.8 for UIOLI mechanisms and equal to 1 for any other mechanism.

#### **Question for consultation**

**Q8.** Do you agree with the specification of the simplified model approach made in Article 7?

**Q9.** Do you consider that the formula can be further simplified (e.g. by using the maturity of the credit protection multiplied by a conservative scalar instead of  $WAL$ )?

**Q10.** Do you agree with the scalar assigned for UIOLI mechanisms? If not, please provide empirical evidence that justifies a different scalar based on the different loss absorbing capacity of UIOLI vs trapped mechanisms.

**Q11.** Regarding the current supervisory practices on synthetic excess spread (SES), described in paragraphs 9 to 11 of the background section, the question is whether these practices could be adapted while keeping them aligned with the amended regulation, and the relative impact they would imply in comparison with the approaches included in these draft RTS. One way to try to further adapt the current supervisory practices on UIOLI SES to the provisions of the amended regulation could be by taking into account the part that is expected to cover for losses in the next period instead of the part that it is not, including at issuance of the transaction, keeping the rolling-window approach.

Would you favour that approach? If so, how do you think that this rolling-window approach for calculating UIOLI SES will affect the efficiency and viability of synthetic transactions in comparison with the current supervisory practices? Please justify your response with specific illustrative examples or data.

**Q12.** Do you agree with the treatment of the ex-post SES of future periods in the RTS? If not, please provide rationale and data supporting your views

**Q13.** Do you have any other comments on these draft RTS?

### SECTION 3 FINAL PROVISION

#### *Article 8*

#### *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

## 5. Accompanying documents

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### 5.1 Draft cost-benefit analysis / impact assessment

#### A. Problem identification

The EBA in the 2020 Report on Significant Risk Transfer (SRT)<sup>6</sup> first, and the co-legislators afterwards, raised concerns regarding the regulatory arbitrage that synthetic excess spread (SES) may imply. Recital 11 of Regulation (EU) 2021/558 explains that the regulatory arbitrage ‘occurs when an originator institution provides credit enhancement to the securitisation positions held by protection providers by contractually designating certain amounts to cover losses of the securitised exposures during the life of the transaction, and such amounts, which encumber the originator institution’s income statement in a manner similar to an unfunded guarantee, are not risk-weighted’.

As a result, Regulation (EU) 2021/558 introduced several amendments to the CRR that set out that SES shall be considered a securitisation position by originator institutions and describe which elements should be included in the exposure value of the SES. These elements include (i) any income from the securitised exposures recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as SES and that is still available to absorb losses, (ii) any SES contractually designated by the originator institution in any previous periods and that is still available to absorb losses (iii) or for the current period that is still available to absorb losses, (iv) and any SES contractually designated by the originator institution for future periods.

#### B. Objectives of the RTS

These draft RTS have been developed in accordance with Article 248(4) of the CRR as amended by Regulation (EU) 2021/558 (as part of the Capital Markets Recovery Package), which mandates the EBA to develop draft regulatory technical standards to specify how originator institutions are to determine the exposure value of SES, taking into account the relevant losses expected to be covered by the SES.

#### C. Cost-benefit analysis

Taking into account the foregoing, the proposed technical standards are expected to provide clarity on the determination of the exposure value of SES, thus helping to address the prudential concern that the potential regulatory arbitrage raises, and a common implementation among institutions and competent authorities, as only one competent authority had implemented a specific supervisory

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<sup>6</sup> Paragraph 216 Section 6 on Recommended amendments to the CRR [EBA/Rep/2020/32](#)

practice to determine an exposure value for SES to cater for this arbitrage prior to the applicability of the new requirements introduced by Regulation (EU) 2021/558.

An additional benefit is that the capital charge for the SES can be considered in the calculation of the commensurateness of the transfer of risk in the SRT assessment to be made at inception, making that assessment more realistic, as the capital charge on the exposure value of SES can be considered in the calculation of the capital relief achieved by the originator after the synthetic securitisation, and the exposure value of SES could also be considered as a retained position in the calculation of the transfer of risk to third parties.

#### D. Impact assessment

As the calculation of an exposure value of SES implies a reduction in the capital relief achieved by the originator in a synthetic securitisation, this impact assessment shows what the exposure value of SES and that reduction would be in accordance with the approaches proposed in the draft RTS, making a comparison with: (i) the supervisory practice adopted by one competent authority prior to the applicability of the amended regulation, and the possibility of adapting it to the current regulation, as mentioned in paragraph 9 of the background section; and (ii) the situation where no exposure value of SES is considered.

For that purpose, the EBA has worked with a sample of 15 SME transactions featuring UIOLI SES for which only the simplified model approach could be implemented, as information on WAL was available but not the information to calculate the cash flows of the securitised exposures, and several transactions for which full information was available and the calculation of both the full and the simplified model approach for both UIOLI and trapped mechanisms was feasible.

As mentioned in paragraph 9 of the background section, the supervisory practice adopted by one competent authority prior to the applicability of the amended regulation focuses on the UIOLI SES, which was the prevalent SES mechanism they observed, and requires the originator to capitalise during the life of the transaction against the periodic SES net of realised losses and specific credit risk adjustments (SCRAs) observed in the previous period. This supervisory practice is simple, as it avoids modelling, but has the drawback, in EBA's views, that it implies that there is no exposure value of UIOLI SES at inception, which is the one that should be used for the SRT assessment. Additionally, the exposure value refers to the part that is not covering for the losses of the period, while according to the amended regulation the exposure value of SES shall be calculated 'taking into account the relevant losses expected to be covered by the SES'.

Because of that, the competent authority suggested to adapt this supervisory practice, which has the merit of having been implemented covering a loophole in the existing regulation at that time, to the new provisions of the amended CRR by taking into account the part that is expected to cover for losses in the next period instead of the part that it is not, including at issuance of the transaction, keeping the rolling-window approach and fixing it to a period of 1 year (from now on the 'rolling window approach').

With regard to the sample of 15 transactions featuring UIOLI SES, in which the originator obtained credit protection on the mezzanine tranche, the exposure value of UIOLI SES at inception has been calculated for each of these securitisations under the rolling window approach (1-year SES committed) and the simplified model approach using scalars from 0.4 to 0.8. It is relevant to mention that originators were committing the 1-year UIOLI SES at the level of the 1-year expected loss (EL) of the portfolio, and that it is expected that the specific credit risk adjustments (SCRAs) are also at the level of the 1-year EL.

The analysis not only focused on the calculation of the exposure value of UIOLI SES, but also on the impact on the capital relief achieved in the transactions reported. In this regard, it is important to highlight the effect of the exposure value of SES which shall be treated by the originator institution as an additional tranche, subordinated to the first loss tranche and that is 1250% risk-weighted. In particular, it is this additional tranche that should be, in most cases in the sample, offset with the SCRAs in accordance with Article 248(1)(d) of the CRR and not the actual first loss tranche retained by the originator as it has been the case prior to the CRR amendment. This implies that the first loss tranche retained by the originator, which was not subject 'de facto' to capital requirements prior to the CRR amendment, will start to be subject to them after the consideration of SES in accordance with the CRR amendment, thus reducing the capital relief achieved.

As mentioned above under the supervisory practice adopted by one competent authority prior to the applicability of the amended regulation there is no exposure value of SES at inception, while the exposure value of SES under the rolling window approach is 0.5% as a percentage of the outstanding amount of the securitised exposures at inception on average, and goes close to 0% after offsetting SCRAs in most cases. In the case of the simplified model approach, it spans from 0.5% to 1.0%, depending on the scalar applied, and goes from close to 0% to 0.4% after offsetting SCRAs.

**Table 1: Exposure value of UIOLI SES**

	Average of the 15 transactions As a % of the securitised exposures					
	Rolling window approach	Simplified model approach: Scalar				
		0.4	0.5	0.6	0.7	0.8
<b>Exposure value</b>	0.49%	0.50%	0.62%	0.75%	0.87%	1.00%
<b>Exposure value after offsetting SCRAs</b>	0.01%	0.07%	0.14%	0.23%	0.33%	0.43%

Regarding the corresponding capital relief, the average 61% capital relief achieved by the originators in these transactions, before the CRR amendment, goes down to 53% under the rolling window approach and to a range between 43% and 52% under the simplified model approach, depending on the scalar used.

**Table 2: Capital relief (average of the 15 transactions)**

Scalar	Capital relief			Relative decrease	
	Pre CMRP (1)	Rolling window approach (2)	Simplified model approach (3)	Rolling window approach (2-1)/(1)	Simplified model approach (3-1)/(1)
0.8	61.21%	52.85%	43.06%	-13.66%	-29.66%
0.7	61.21%	52.85%	45.42%	-13.66%	-25.80%
0.6	61.21%	52.85%	47.78%	-13.66%	-21.95%
0.5	61.21%	52.85%	50.13%	-13.66%	-18.10%
0.4	61.21%	52.85%	52.49%	-13.66%	-14.25%

In the case of the simplified model approach, the reduction of the capital relief is not only due to the allocation of SCRAs to the SES now instead of to the actual first loss tranche, as explained above, but also due to the higher exposure value of SES after the offsetting of SCRAs resulting from the multiplication of SES for the next period with WAL, the effect of which is reduced depending on the value of the scalar.

It is important to note that this different allocation of the SCRAs, may incentivise originators to structure transactions differently and to purchase protection for a thick first loss tranche, instead of a thick mezzanine tranche, in order to maximize the capital relief after the legislative change. The table below shows the average capital relief at inception in case the transactions had a two-tranche structure, merging the thin first loss and the thick mezzanine tranche and protecting the resulting thick first loss tranche.

**Table 3: Capital relief in case of a thick first loss tranche protected (average of the 15 transactions)**

Scalar	Capital relief			Relative decrease	
	Pre CMRP (1)	Rolling window approach (2)	Simplified model approach (3)	Rolling window approach (2-1)/(1)	Simplified model approach (3-1)/(1)
0.8	84.50%	85.11%	75.90%	0.72%	-10.17%
0.7	84.50%	85.11%	78.11%	0.72%	-7.55%
0.6	84.50%	85.11%	80.32%	0.72%	-4.94%
0.5	84.50%	85.11%	82.35%	0.72%	-2.54%
0.4	84.50%	85.11%	83.96%	0.72%	-0.63%

This maximisation of the capital relief will be accompanied by an increase in the cost of protection, while the effect on the efficiency of the transactions will depend on how the resulting cost of protection per unit of capital relief compares with the cost of capital of the originator institution.

On the other hand, in the case of STS synthetic transactions other than those with SME underlying exposures, which were already granted a preferential capital treatment prior to the amendment of the CRR, the reduction of the risk weight of the senior tranche retained to 10% granted by the preferential treatment in the CRR amendment may offset most of the negative impact of the exposure value of SES on the capital relief.

In conclusion, the quantitative impact analysis conducted on these 15 SME transactions shows that, at inception:

- a) Under the rolling window approach, the exposure value of UIOLI SES tends to be close to 0, and the impact on the capital relief achieved is due to the allocation of SCRA to the exposure value of SES instead of to the retained actual first loss tranche, in the case of a three-tranche structure. In the case of a two-tranche structure, where the first loss tranche is protected, the impact on the capital relief would also be negligible, as the exposure value of SES net of SCRA would again be close to 0, or even the capital relief would slightly increase due to the higher attachment point of the retained senior tranche (Article 256(6) CRR), as shown in the Table 3.
- b) Under the simplified model approach, the impact depends on the scalar used. With a 0.4 scalar, the results tend to be close to those of the rolling window approach on average. At the other end, a 0.8 scalar would double the exposure value of SES before offsetting by SCRA.
- c) Regarding the impact on the capital relief achieved in SME transactions, which senior tranche was already receiving a preferential risk-weight, the impact of the legislative change would be relevant for securitisations featuring a three-tranche structure (relative decrease of 29% for a 0.8 scalar under the simplified model approach, in comparison with the 14% decrease under the rolling window approach or a 0.4 scalar under the simplified model approach). However, in the case of securitisations with a two-tranche structure, the relative decrease of the capital relief would be 10% for a 0.8 scalar, and no decrease under the rolling window approach or under application of a 0.4 scalar.
- d) In the case of synthetic securitisation of asset classes that were not benefiting from a preferential treatment previously, but the senior tranche of which receives a preferential treatment under the new STS label now, the effect of the higher capital relief granted to the senior tranche retained by the originator institution would mitigate the reduction of the capital relief due to SES in a three-tranche structure. However, in the case of securitisations with a two-tranche structure, it seems that the impact of the higher capital relief due to the lower risk weight of the senior tranche retained will prevail.
- e) In the case of the simplified model approach, the scalar can be adjusted depending on the desired level of conservatism, which does not happen with the rolling window approach and the full model approach.



Additionally, and in order to assess the dynamics of the calculation of the exposure value of SES and the relative calibration of the full and the simplified model approaches, the EBA worked with several transactions for which the cash-flows of the securitised exposures were available. The assessment below provides the results for a representative transaction.

The transaction at hand has a 10-year legal final maturity, the outstanding amount of the securitised exposures at inception is 450 million euros, the amortisation system of the underlying exposures is linear and no prepayments are considered. Regarding the risk parameters, the 1-year expected loss (EL) of the securitised portfolio is 0.11% and the unexpected loss is 5.12%, and the originator is provisioning the assets up to the level of the 1-year EL. The originator institution has also designated 0.11% SES as a variable amount for each of the years of the transaction, based on the outstanding amount of the securitised exposures, on an UIOLI mechanism.

The originator institution applies an asset model, as set out in Article 3 of these draft RTS, for determining the principal and interest payments and the expected losses for all securitised exposures occurring in any of the future periods within the expected maturity of a transaction on a loan-by-loan basis. The outcome of the asset model is the following:

**Table 4: Output of the asset model**

	0	1	2	3	4	5	6	7	8	9	10	TOTAL
Principal CF		-	-	156.584.471	132.451.124	86.435.547	47.390.182	21.617.484	3.306.199	301.892	62.994	448.149.892
Outstanding values	€ 450.000.000	450.000.000	450.000.000	292.980.408	160.262.782	73.688.885	26.237.917	4.601.278	1.290.756	986.573	921.493	
Credit losses		497.469	495.046	435.121	266.502	138.350	60.785	19.156	4.322	2.291	2.086	1.921.130

The transaction features a replenishment period of 2 years and the originator institution has a call option to terminate the transaction at the end of year 5, after the WAL of the securitised exposures, which is 4.23 years (calculated until the legal final maturity). Therefore, the expected maturity of the transaction, in accordance with Article 1 of these draft RTS, is 5 years.

Where originator institutions choose to apply the full model approach to calculate the exposure value of SES for future periods, they shall assign the losses under a front-loaded, a back-loaded and an evenly-loaded loss distribution scenario to the SES amounts for each of the future periods within the expected maturity of the transaction. The exposure value of SES shall be the arithmetic average of the sums of the relevant losses expected to be covered by the SES amounts for all future periods within the expected maturity of the transaction under each of the three scenarios. The following table shows that allocation of losses and the calculation of the exposure value of SES at inception under the full model approach for both UIOLI and trapped mechanisms.

**Table 5: Exposure value of SES under the three scenarios**

	0	1	2	3	4	5	TOTAL
<b>Credit losses (Evenly-loss distribution scenario)</b>		497,469	495,046	435,121	266,502	138,350	<b>1,832,488</b>
Front-loaded loss distribution scenario		732,995	549,747	183,249	183,249	183,249	1,832,488
Back-loaded loss distribution scenario		183,249	183,249	183,249	549,747	732,995	1,832,488
<b>Total Excess Spread</b>	-	495,000	495,000	495,000	322,278	176,289	
<b>Excess Spread absorbing losses UIOLI</b>							
Evenly-loss distribution scenario		495,000	495,000	435,121	266,502	138,350	1,829,973
Front-loaded loss distribution scenario		495,000	495,000	183,249	183,249	176,289	1,532,787
Back-loaded loss distribution scenario		183,249	183,249	183,249	322,278	176,289	1,048,314
<b>UIOLI EXPOSURE VALUE</b>							<b>1,470,358</b>
<b>Excess Spread absorbing losses TRAPPED</b>							
Evenly-loss distribution scenario		495,000	495,000	435,121	266,502	138,350	1,829,973
Front-loaded loss distribution scenario		495,000	495,000	183,249	183,249	183,249	1,539,747
Back-loaded loss distribution scenario		183,249	183,249	183,249	549,747	732,995	1,832,488
<b>TRAPPED EXPOSURE VALUE</b>							<b>1,734,069</b>

Under the simplified model approach and a 0.8 scalar for UIOLI mechanism, the originator institution would have to calculate the WAL of the securitised exposures until the expected maturity of the transaction (5 years) by weighting the periods by the repayments of principal amounts from the securitised exposures in accordance with the asset model. The result is a WAL of 3.81 years and, taking into account that the SES committed for the year 1 is 495,000 euros, the exposure value of SES at inception, in accordance with the formula in Article 7, would be 1,510,016 in the case of the UIOLI mechanism and 1,887,520 in the case of a trapped mechanism.

As explained above, under the supervisory approach implemented by a competent authority prior to the amending of the CRR the exposure value of UIOLI SES at inception would be zero, and in the rolling window approach would be the SES committed for the next year, which is 495,000.

The table below summarises the exposure value of SES at inception under all the abovementioned approaches:

**Table 6: Exposure value of SES at inception under all the abovementioned approaches**

SUMMARY	AFTER OFFSETTING SCRAs			
	UIOLI	TRAPPED	UIOLI	TRAPPED
Full model approach	1,470,358	1,734,069	975,358	1,239,069
Simplified model approach (0.8 scalar)	1,510,016	1,887,520	1,015,016	1,392,520
Rolling window approach	495,000	x	-	x
Supervisory practice prior to the CRR amendment	-	x	-	x

In order to show the dynamics of the calculation of the exposure value of SES of future periods, the table below shows the results under all the approaches until the expected maturity of the transaction in the case of the UIOLI mechanism.

**Table 7: Exposure value of SES of future periods under all the approaches until the expected maturity of the transaction in the case of the UIOLI mechanism**

**Exposure value of SES of future periods**

WAL until expected maturity

Full model approach

Simplified model approach Scalar

Rolling window approach

Current supervisory practice

0.8

	0	1	2	3	4
WAL until expected maturity	3.81	2.81	1.81	1.39	1.00
Full model approach	1,470,562	1,079,479	688,396	421,189	163,754
Simplified model approach	1,510,016	1,114,016	718,016	359,634	141,031
Rolling window approach	495,000	495,000	495,000	322,278	176,289
Current supervisory practice		-	-	-	-

The table below shows the results of the different calculation once the exposure value of SES is offset by the SCRA's on the securitised exposures, which are supposed to match the 1-year EL of the corresponding period under the evenly-loaded loss distribution scenario.

**Table 8: Exposure value of SES of future periods after offsetting SCRA's under all the approaches until the expected maturity of the transaction in the case of the UIOLI mechanism**

**Exposure value of UIOLI SES of future periods after offsetting SCRA's**

Full model approach

Simplified model approach Scalar

Rolling window approach

0.8

	0	1	2	3	4
Full model approach	973,093	582,010	193,350	-	-
Simplified model approach	1,012,547	616,547	222,969	-	-
Rolling window approach	-	-	-	-	-

**Current supervisory practice**

	-	-	-	-
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In view of the results of the impact assessment, and with reference to the UIOLI mechanism, which is the most commonly used type of SES, the EBA favours approaches that, firstly, provide an exposure value also at inception; secondly, take into account the loss absorbing capacity of SES in all the periods until the end of the expected maturity of the transaction; and thirdly, generally result in a positive exposure value at inception after offsetting the SCRA based on a 1-year horizon. Only the full model approach, and the simplified model approach under certain scalars, fulfil these requirements.

The EBA considers that the full model approach is the approach that best captures the loss absorbing capacity of SES throughout the expected maturity of the transaction. This is the reason why the simplified model approach should generally provide more conservative calculations than the full model approach, and why the 0.8 scalar has been chosen. However, the EBA recognises that the new regulation would have a lower impact on the exposure value of SES for the type of synthetic transactions that currently feature UIOLI SES, in comparison with the exposure value of the SES determined under the supervisory practice adopted by a competent authority prior to the regulatory change, if the simplified model approach were only included in the final RTS in connection with scalars in the range of 0.5 to 0.7.

## 5.2 Overview of questions for consultation

**Q1.** Do respondents find the provisions clear enough or would any additional clarification be needed on any aspect?

**Q2.** Do you agree with the possibility of choosing between the full and the simplified model approaches in a consistent manner?

**Q3.** Instead, would you favour that the RTS consider only one method (i.e. the full model approach or the simplified model approach) for the calculation of the exposure value of the synthetic excess spread of the future periods?

**Q4.** Do you agree with the specifications of the asset model made in Article 3?

**Q5.** Do you agree with the specifications for the determination of the relevant losses made in Article 5?

**Q6.** Do you agree with the calculation of the exposure value of synthetic excess spread for future periods made in Article 6?

**Q7.** Shall the average of the scenarios be made in a different way for UIOLI and trapped mechanisms (e.g. back-loaded and evenly-loaded only for UIOLI mechanisms, and front-loaded and evenly-loaded for trapped mechanisms)?

**Q8.** Do you agree with the specification of the simplified model approach made in Article 7?

**Q9.** Do you consider that the formula can be further simplified (e.g. by using the maturity of the credit protection multiplied by a conservative scalar instead of WAL)?

**Q10.** Do you agree with the scalar assigned for UIOLI mechanisms? If not, please provide empirical evidence that justifies a different scalar based on the different loss absorbing capacity of UIOLI vs trapped mechanisms.

**Q11.** Regarding the current supervisory practices on SES, described in paragraph 9 of the background section, the question is whether these practices could be adapted while keeping them aligned with the amended regulation, and the relative impact they would imply in comparison with the approaches included in the draft RTS. One way to try to further adapt the current supervisory practices on UIOLI SES to the provisions of the amended regulation could be by taking into account the part that is expected to cover for losses in the next period instead of the part that it is not, including at issuance of the transaction, keeping the rolling-window approach.

Would you favour that approach? If so, how do you think that this rolling-window approach for calculating UIOLI SES will affect the efficiency and viability of synthetic transactions in comparison with the current supervisory practices? Please justify your response with specific illustrative examples or data.

**Q12.** Do you agree with the treatment of the ex-post SES of future periods in the RTS? If not, please provide rationale and data supporting your views

**Q13.** Do you have any other comments on these draft RTS?