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Public guidance on the recognition of significant credit risk transfer

To: The management of significant banks

I. LEGAL BACKGROUND

According to Article 4(1)(d) of Council Regulation (EU) No 1024/2013[1] ('SSM Regulation'), the ECB is to ensure compliance with the legal acts referred to in the first subparagraph of Article 4(3) of the SSM Regulation, which impose prudential requirements on credit institutions.

Regulation (EU) No 575/2013 of the European Parliament and of the Council[2] ('CRR'), and in particular Articles 243 and 244 thereof, sets out the conditions under which a significant risk transfer ('SRT') by an originator institution is recognised. Furthermore, other articles of the CRR[3] as well as the relevant parts of the EBA Guidelines on Significant Credit Risk Transfer (EBA/GL/2014/05)[4] provide further details on the recognition process[5].

[1] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

[2] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[3] In particular, see Articles 245, 247 and 248. See also Articles 249 and 250 (regarding synthetic securitisations). This is not an exhaustive list and other articles may also apply or be relevant.

[4] EBA Guidelines on Significant Credit Risk Transfer relating to Article 243 and Article 244 of Regulation 575/2013 (EBA/GL/2014/05), 7 July 2014.

[5] In particular, see Title IV - Requirements for originator institutions.

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II. SCOPE AND APPLICATION

This guidance lays down the procedure to be followed by significant supervised entities as defined in Article 2(16) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17)[6] ('SSM Framework Regulation') when acting as originator institutions with regard to the recognition of SRT.

The ECB recommends that entities follow this guidance with respect to all securitisation transactions issued after its publication.

This guidance shall be updated from time to time to reflect developments.

III. NOTIFICATION OF SECURITISATION TRANSACTIONS FOR WHICH SRT IS CLAIMED OR FOR WHICH ORIGINATOR INSTITUTIONS APPLY FOR THE RECOGNITION OF SRT

III.1 Notification of transactions by originator institutions

Originator institutions that have initiated or are considering initiating the process of structuring a securitisation transaction for which they intend either:

(i) to recognise SRT in accordance with Articles 243(2) or 244(2) of the CRR; or

(ii) to apply for a permission in accordance with Articles 243(4) or 244(4) of the CRR;

should notify the ECB of their intentions at least three months in advance of the expected closing date of the transaction.

This notification should be made to the ECB in electronic form to:

- the following address for all originator institutions: srt_notifications@ecb.europa.eu; and

- the respective Joint Supervisory Team (JST) coordinator of each originator institution.

[6] Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

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Originator institutions that intend to recognise SRT in accordance with Articles 243(2) or 244(2) of the CRR should also attach to their notification a declaration confirming that they take full responsibility for the transaction, once finalised, meeting the conditions of Articles 243(2) or 244(2) of the CRR.

Originator institutions are also invited to indicate if and how the transaction is similar to previous transactions already originated by the same institution or, if only a few changes have been made, to highlight those changes.

III.2 Information to be provided by originator institutions

Jointly with the notification defined in Section III.1, originator institutions are encouraged to provide the ECB with the information mentioned in Annex I relating to the transaction, at least in a draft form.

Annex I does not constitute an exhaustive list and the ECB may also ask the institution to provide any other information necessary to perform its assessment of the transaction, e.g. due to the specific features of an individual transaction.

Once the transaction has been finalised, originator institutions should also provide the final version of all documents and information mentioned in Annex I no later than 15 days after the closing date of the transaction.

IV. ECB ASSESSMENT

When originator institutions apply for approval under either Articles 243(4) or 244(4) of the CRR, an SRT will not be recognised until the ECB adopts an individual decision.

Moreover, as the conditions for SRT have to be met on a continuous basis over the life of the securitisation transaction, the ECB will also continuously review the securitisation transactions for which originator institutions apply an SRT for the determination of their capital requirements.

If the review concludes, at any point in time, that the conditions for SRT are not met and a decision is adopted by the ECB, the entity will be required not to apply Section 3 of Chapter 5 of Title II of Part Three of the CRR (concerning the calculation of risk-weighted exposure amounts) in determining its capital requirements for the securitised exposures.

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V. ONGOING MONITORING OF SRT

Originator institutions should meet the requirements defined in paragraph 12 of the EBA Guidelines on Significant Credit Risk Transfer and, where applicable, also comply with Part 2 of the Guidelines.

Originator institutions are recommended to provide the information mentioned in Titles B and C of Annex I to the ECB (in the manner and using the means specified in Section III.1) at least on a quarterly basis for each securitisation transaction to which Article 245 of the CRR (calculation of risk-weighted exposure amounts) is applied. The information should be provided using template C14 as set out in Commission Implementing Regulation (EU) No 680/2014[7] . The following information should be provided directly to the JST:

- the second, third, sixth and seventh items under Title B; and

- the fourth item under Title C.

The information provided should be supplemented by investor reports or similar documents.

In addition, originator institutions should also notify the ECB without undue delay of any event affecting or likely to affect the effectiveness of an SRT for a particular transaction. This obligation is without prejudice to the provision on implicit support laid down in Article 248 of the CRR.

[7] Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

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VI. INFORMAL EXCHANGE OF VIEWS BEFORE ISSUANCE

An informal dialogue on the specific features of an instrument may take place between an originator institution's representatives and the relevant JST once a transaction has been notified to the ECB.

Such informal dialogue does not represent an approval (whether explicit or implicit) of an SRT, or confirmation that the conditions for SRT are met by a particular transaction.

Yours sincerely,

[signed]

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ANNEX I: INFORMATION TO BE PROVIDED TO THE ECB[8]

For each of the following items, the originator institution should provide the relevant information which should be based on the transaction documentation[9] or on the originator institution's internal projections and information systems.

A. General information on the transaction

1. The nature of the transaction (whether it is a traditional or a synthetic securitisation, as defined in Article 242 of the CRR).
2. The legal provisions that the originator institution relies on to claim a significant risk transfer, together with a declaration by the originator institution that the transaction meets the conditions of Articles 243(2) or 244(2) of the CRR, when applicable, and an explanation of how these conditions are met.
3. The deal's notional value in euro.
4. The weighted average life of the transaction and the longest maturity of any exposure being securitised.
5. The initial public documentation or investor documentation for the transaction, and any additional information covering in particular the structure of the transaction (number, respective size, seniority and thickness of all tranches and their respective attachment and detachment points, including all credit enhancements such as funded or unfunded reserve accounts, funded or unfunded guarantees provided on certain tranches in the case of traditional securitisations, and liquidity facilities) and a breakdown of all securitisation positions whether retained or transferred to third parties.
6. Information on the amount sold on the primary market to investors who have close links with the originator institution (using the definition of "close links" provided in Article 4(38) of the CRR.
7. In the case of a privately placed transaction, the name, type, legal form and country of establishment of potential/actual investors, and whether any of these investors have close links with the originator institution.

[8] As per paragraph 11.1 of the EBA Guidelines on Significant Credit Risk Transfer.

[9] Either on the draft documentation prior to the finalisation of the transaction or on the final version once the transaction has been finalised.

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B. Information on the securitised exposures

1. The type(s) and asset class(es) of the securitised exposures.
2. The originator institution needs to provide full details of the underlying assets/reference portfolio either in the form of loan-level data or detailed stratification tables, depending on the concentration risk or granularity of the underlying portfolio, as well as on the methodology used to select exposures to be securitised.
3. The currency (or currencies) of issuance and the currency (or currencies) of the securitised exposures.
4. The reference portfolio size in euro.
5. The total risk-weighted exposure amounts (RWEAs) of the securitised exposures before the securitisation.
6. If the originator institution uses the Supervisory Formula Method of Article 262 of the CRR, the K_{IRB}, corresponding to the IRB capital charges on the securitised exposures had they not been securitised.
7. The amount and percentage of expected losses and unexpected losses and the methodology applied to determine them, in particular for non-IRB originator institutions.

C. Information on the securitisation positions

1. The total RWEA equivalent of the capital post-securitisation for the entire securitisation and the approach used to calculate it (Standardised Approach for non-IRB banks; the Ratings Based Method or the Supervisory Formula Method for IRB banks with approved IRB models for exposure classes corresponding to the securitised exposures).
2. The amount of capital deductions relating to securitisation exposures retained by the originator institution.
3. The magnitude of the risk transferred by the originator institution as a proportion of RWEAs post-securitisation.
4. The attachment and detachment points of positions transferred to third parties.

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D. Other aspects of the transaction

1. If and how the originator institution will comply with the retention requirement, in accordance with Article 405 of the CRR, and in particular which form of retention will be used.
2. The existence and modalities of specific features, in particular:
    a. revolving or rechargeable pool structure(s) where securitised exposures can be added to the pool after closing over the life of the transaction;
    b. early amortisation provisions;
    c. discount rate for securitised exposures;
    d. time calls and clean-up calls;
    e. excess spread;
    f. obligations or options for the originator institution to repurchase securitised exposures;
    g. any other triggers related to the performance of the securitised exposures or the transaction;
    h. liquidity or credit facilities granted to the special purpose vehicle in the case of a traditional securitisation and any other feature that could represent implicit support from the originator institution as described in Article 248 of the CRR.
3. For traditional securitisations, an opinion from a qualified legal counsel confirming that the securitised exposures are put beyond the reach of the originator institution and its creditors, including in bankruptcy and receivership.
4. For synthetic transactions, an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.
5. The concentration of securitised exposures by geographical origin, by exposure class, by business sector and by outstanding balance (as a proportion of the total outstanding balance of all securitised exposures).
6. The originator institution should provide full details of any periodic FX resets and any relevant information on how currency exposure is to be hedged and managed.

In addition, the originator institution should submit the following documents:

7. An economic rationale for the transaction from the originator institution's perspective.
8. Details of the internal approval process for the transaction, in line with the institution's governance and risk management policies and arrangements.
9. A description of the risks retained by the originator institution.

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10. A copy of the SRT policy applied to the transaction, and in particular how the originator institution will ensure that the significant transfer of risk is effective on a continuous basis.
11. Information on ratings provided by external credit assessment institutions on the securitisation positions, or an explanation of why external ratings have not been solicited for part or all of the securitisation positions.
12. A modelling of cash flows covering the entire life of the transaction, with differentiated modelling in the case of time calls and other options affecting the final maturity of the transaction.
13. Only for synthetic transactions, an assessment of how the protection complies with the requirements of Article 247 of the CRR and the legal documentation of instruments by which the risk is effectively transferred (particularly when the transfer is effected via credit default swaps).

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