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EUROPEAN CENTRAL BANK
BANKING SUPERVISION

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Chair of the Supervisory Board

**ECB-PUBLIC**

To: The management of significant banks

Frankfurt am Main, 28 July 2017

**Public guidance on information on transactions which go beyond the contractual obligations of a sponsor institution or an originator institution under Article 248(1) of Regulation (EU) No 575/2013**

## I. LEGAL BACKGROUND

1. Regulation (EU) No 575/2013 of the European Parliament and of the Council[1], and in particular Article 248 thereof, establishes a general notification requirement to the competent authority for a credit institution acting as a sponsor or as an originator which, in respect of a securitisation, has made use of Article 245(1) and (2) of that Regulation in the calculation of risk-weighted exposure amounts or has sold instruments from its trading book to the effect that it is no longer required to hold own funds for the risks of those instruments. The scope of the notification requirement is further specified in Guidelines EBA/GL/2016/08 of the European Banking Authority (hereinafter the 'EBA Guidelines'). The European Central Bank (ECB) intends to comply with the EBA Guidelines.

2. In particular, the EBA Guidelines detail the transactions which go beyond the contractual obligations of a sponsor institution or an originator institution, and therefore require to be notified to the competent authority. Significant supervised entities should take into account the EBA Guidelines when notifying the ECB as the competent authority in accordance with Article 248(1) of Regulation (EU) No 575/2013.

3. This Public Guidance further specifies how the ECB expects to be notified of transactions which go beyond the contractual obligations of a sponsor institution or an originator institution, as referred to Article 248(1) of Regulation (EU) No 575/2013.

1 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.).

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## II. INFORMATION TO BE PROVIDED BY ORIGINATOR OR SPONSOR INSTITUTIONS

1. A significant supervised entity which is required to notify a transaction to the ECB pursuant to Article 248(1) of Regulation (EU) 575/2013 is encouraged to notify each transaction separately to the ECB in accordance with the Annex to this Public Guidance.

2. A notification under the paragraph 1 should be made in writing no later than 15 working days following the execution of the transaction.

## III. INFORMAL SUPERVISORY DIALOGUE

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

Yours sincerely,

*[signed]*

Danièle Nouy

## ANNEX: INFORMATION TO BE PROVIDED TO THE ECB

A significant supervised entity should notify each transaction which meets the definition set out in paragraph 25 of the EBA Guidelines to the joint supervisory team responsible for that significant supervised entity.

### A. Information to be provided by a significant supervised entity acting as originator institution

When notifying a transaction, the significant supervised entity should provide information as follows.

1. If it claims that the transaction does not constitute implicit support, the significant supervised entity should provide adequate evidence of meeting the relevant conditions set out in the EBA Guidelines, taking into consideration the circumstances listed in points (a) to (e) of Article 248(1) of Regulation (EU) No 575/2013, as further specified in paragraphs 19 to 24 of the EBA Guidelines.

2. In particular, the significant supervised entity should provide information demonstrating that:

   (a) the transaction was executed at arm's length conditions (as defined in paragraph 15 of the EBA Guidelines), or at conditions that are more favourable to the originator than arm's length conditions. In this regard the information should specify the following:

   - Measures of market value, including quoted prices in active markets for similar transactions that the institution can access at the measurement date;
   - If such measures are not identifiable, then inputs other than quoted prices that are directly or indirectly observable for the asset should be provided;
   - If such inputs are not identifiable, then unobservable inputs for the asset should be provided. In the case of unobservable inputs, the institution should provide evidence to the ECB regarding how the receivable or payable amounts have been valued and which inputs were used. To this end, the institution may in particular consider providing opinions from qualified third parties, such as accountants or audit firms, to support its valuation.

   (b) the assessment is in line with its credit review and approval process; and

   (c) the transaction does not undermine the significant risk transfer achieved for the securitisation, or that the transaction was not entered into with a view to reducing potential or actual losses to investors. In this regard the information should specify:

   - the accounting entries that the participants to the transaction made with respect to the transaction;
   - the changes in their liquidity position;

- whether the expected losses of a securitisation position and on the securitised exposures are materially increased or reduced, having regard, among other things, to changes in the market price of the position, in the risk-weighted exposure amounts and in the ratings of securitisation positions.

3. The significant supervised entity should provide information on the economic rationale of the transaction. This should include, where relevant, information as to whether the transaction was conducted as part of the market making activities performed by the institution.

4. The significant supervised entity should provide information on how the transaction may affect the credit risk initially transferred to third parties relative to the reduction in risk-weighted exposure amounts on the securitised exposures.

5. If the transaction is undertaken by one of the entities referred to under items (i) or (ii) of (a) of paragraph 25 of the EBA Guidelines, the significant supervised entity should also provide documentation on the type of relationship between the significant supervised entity and the relevant entity or, as the case may be, the financing, support, instructions or arrangements provided or entered into by the significant supervised entity to or with that entity for the purposes of undertaking the relevant transaction.

**B. Information to be provided by a significant supervised entity acting as sponsor institution**

When notifying a transaction, the significant supervised entity should provide information as follows.

1. If it claims that the transaction does not constitute implicit support, the significant supervised entity should provide adequate evidence of meeting the relevant conditions set out in the EBA Guidelines, taking into consideration the circumstances listed in points (a) to (e) of Article 248(1) of Regulation (EU) No 575/2013, as further specified in paragraphs 19 to 24 of the EBA Guidelines.

2. In particular, the significant supervised entity should provide information demonstrating that:

   (a) the transaction that may constitute implicit support was executed at arm's length conditions (as defined in paragraph 15 of the EBA Guidelines), or at conditions that are more favourable to the originator than arm's length conditions. In this regard the information should specify the following.

   - Measures of market value, including quoted prices in active markets for similar transactions that the institution can access at the measurement date;
   - If such measures are not identifiable, then inputs other than quoted prices that are directly or indirectly observable for the asset should be provided;
   - If such inputs are not identifiable, then unobservable inputs for the asset should be provided. In the case of unobservable inputs, the institution should provide

evidence to the ECB regarding how the receivable or payable amounts have been valued and which inputs were used. To this end, the institution may in particular consider providing opinions from qualified third parties, such as accountants or audit firms, to support its valuation.

(b) the assessment is in line with its credit review and approval process

3. The significant supervised entity should provide information on the economic rationale of the transaction. This should include, where relevant, information as to whether the transaction was conducted as part of the market making activities performed by the institution.

4. If the transaction is undertaken by one of the entities referred to under items (i) or (ii) of (a) of paragraph 25 of the EBA Guidelines, the significant supervised entity should also provide documentation on the type of relationship between the significant supervised entity and the relevant entity or, as the case may be, the financing, support, instructions or arrangements provided or entered into by the significant supervised entity to or with that entity for the purposes of undertaking the relevant transaction.