IACPM

IACPM Response to:

- **PRA Consultation Paper CP15/23**
- **FCA Consultation 23/17**

Introduction

IACPM is pleased to respond to the PRA's Consultation Paper CP15/23 (the "**PRA CP**") and the FCA's Consultation Paper 23/17 (the "**FCA CP**") in respect of the new rules for securitisation in the UK (together, the "**UK Securitisation Rules**") to replace the existing UK Securitisation Regulation which was on-shored in the UK pursuant to the European Union (Withdrawal) Act 2018 (the "**UKSR**"). Given that the rules proposed by each of the PRA and the FCA cover largely the same ground, and in many cases are substantively the same, we are providing a single response to both the PRA CP and the FCA CP (together the "**Consultation Papers**"). This approach also allows us to identify specific areas where divergence between the approach taken by the PRA and the FCA could create issues for market participants.

Our response focusses on the application of the new UK Securitisation Rules to synthetic securitisations executed by banks on their own originated asets for the purposes of achieving **significant risk transfer and capital release.** We have not sought to comment on the impact of the rules on other types of securitisations.

We would welcome the opportunity to discuss our response with the PRA and/or FCA.

1. General Observations

Effect of multiple sets of rules

Perhaps the most obvious observation in respect of the Consultation Papers is that there are two of them, setting out largely parallel rules covering the same subject matter. However, the drafting approach taken by the PRA and the FCA is different, with the PRA largely retaining the structure and, to a large extent, the drafting of the existing UKSR and the associated regulatory technical standards, while the FCA has taken the approach of redrafting the rules into a style more consistent with other parts of the FCA Handbook.

While IACPM appreciates the differing regulatory responsibilities of the PRA and the FCA, it is not clear why this should result in the need for two separate sets of rules covering the same subject matter, particularly when many institutions, such as UK credit institutions, will be required to comply with *both* sets of rules. While it does appear that the substance of the rules is largely the same, they are not identical, and this therefore creates a need for market participants to adopt a "lowest common denominator" approach, whereby the effective rules will not be either those of the PRA or the FCA, but a *de facto* combined set of rules which is not set out in any one place, and which are likely to include at least some inconsistencies, particularly as the two sets of rules evolve over time. This position is further exacerbated by the fact that there is also a third set of rules in the form of the Securitisation Regulations (the "**Statutory Instrument**"), which also overlaps with the PRA Rules and the FCA Rules to some extent. In light of this, IACPM members urge the PRA and the FCA to (re)consider whether it is possible for them to agree on a single set of rules, at least in respect of those parts of the rules where they currently overlap.

We also note that, given most securitisations originated by UK institutions will be marketed on a cross-border basis to investors in both the UK and the EU, it will also be necessary for the securitisation to be structured so as to comply with the investor-facing provisions of the EU Securitisation Regulation ("**EUSR**"). Similarly, UK credit institutions which are subsidiaries of EU banking groups will also need to comply with the UK and EU rules for the purpose of the EU parent institution determining its consolidated capital requirements in respect of the securitisation. While IACPM members appreciate that, post-Brexit, some level of divergence is unavoidable between the UK and EU rules, there is no reason to complicate the compliance burden further by having multiple sets of rules at the UK level.

Following from the previous point, IACPM members acknowledge that the proposed Securitisation Rules in both Consultation Papers do largely align with the existing framework of the EUSR, as well as adopting some of the post-Brexit changes to that framework (such as the updated Risk Retention RTS) which were not previously onshored in the UK, and we strongly support this approach. Against that backdrop, we nevertheless encourage the PRA and FCA to take advantage of the opportunity of on-shoring the securitisation rules in the UK to address some of the imperfections and challenges with the EU rules, some of which we identify in our response below.

Status of pre-Brexit regulatory guidance and recitals

The restatement of the UK Securitisation Rules raises a question about the status of pre-Brexit regulatory guidance provided by the European regulators, as well as post-Brexit advice provided by the PRA and FCA on the UKSR. We note that, at the time of Brexit, both the PRA and the FCA provided helpful guidance as to the continued applicability of pre-existing regulatory guidance to the extent that it related to rules that continued to be relevant in the UK. Given that many of the legislative provisions to which that guidance relates will continue to be reflected in the proposed UK Securitisation Rules, we urge the PRA and FCA to provide a reconfirmation that that guidance will also continue to be treated as relevant for the purpose of interpreting the new rules, subject, of course, to any contrary guidance provided by the PRA or FCA in relation to the same rules.

Finally, one of the peculiar features of EU legislation, perhaps reflecting the unique nature of the EU legislative process, is the extent to which statements included in the recitals to that legislation are often accorded more operative effect that would usually be the case for UK legislation. Thus, in incorporating the substance of the EU Securitisation Regulation into domestic UK legislation, it is important to take into account certain provisions set out in the recitals which in practice operate as operative provisions of the legislation.

2. Scope of Application of the UK Securitisation Rules

One issue with the EUSR which has been carried into the UKSR and remains reflected in the Consultation Papers is that the **scope of application** is not clear. The rules purport to apply to securitisations and to certain categories of persons, including originators, sponsors, original lender, SSPEs and institutional investors. However, the way in which some of these persons are defined means that, on their face, they may include persons who are not actually involved in a given securitisation in any way. For example, an originator includes both an entity involved in the original agreement which created the securitised exposures, as well as an entity which purchases exposures on its own account and then securitises them. It is immediately apparent that where the second of these definitions applies to one person, the first definition must also apply to at least one different entity. At the same time there may be yet another entity which is the original lender. Similarly, because an originator includes entities which are "directly or indirectly" involved in the original agreement, there will often be multiple entities which may be classified as an originator of the same exposures even under the first definition. This means, for example, that an originator which has no involvement in, and possibly not even any knowledge of, a securitisation may find that it is subject to the risk retention requirements and reporting requirements if no other entity has assumed those obligations. We do not think this is the intention, and it is certainly not how the market has approached this issue to date. However, we think that it would be useful for the rules clearly to state, either as part of the overall scope, or in respect of individual rules as relevant, that they apply to an originator, sponsor, original lender or SSPE *which is a party to a securitisation, or which was involved in the establishment of the securitisation*.

A second Issue relates to **correlation trades and tranched index credit default swap** transactions. There is an argument that some of these transactions fall within the scope of the definition of "securitisation" as set out in the UKSR and carried over unto the UK Securitisation Rules. IACPM members take the view that this should not be the case, on the basis that such transactions do not involve the securitisation of a specific portfolio of exposures held on the balance sheet of an originator or original lender. Rather, they are derivative positions and should be classified and regulated as such. Most of the rules set out in the UKSR (and the UK Securitisation Rules) are difficult, if not impossible, to apply to correlation and tranched index transactions, with the effect that such transactions would in practice be banned for UK institutional investors if they are classified as securitisations. We do not think that is the intention behind the UK Securitisation Rules, and indeed such transactions were not captured by the risk retention rules under the regime which applied under Article 405 of the CRR prior to the introduction of the EURR. We therefore suggest that such transactions should be carved-out from the definition of "securitisation" for the purposes of the UK Securitisation Rules.

Thirdly, there is some **ambiguity in the rules** as to whether a securitisation position includes *any* exposure to a securitisation, or merely an exposure to a loss-bearing tranche of a securitisation. This is particularly relevant in the context of interest rate and currency swap providers. They enter into transactions with the SSPE, and thus in this sense these swaps constitute exposures to a securitisation. However, the nature of these exposures is that they are not intended to be loss-bearing. Therefore, while such exposures may be treated as securitisation positions for the purposes of the relevant bank calculating its capital requirements in respect of that exposures, it is not appropriate for the bank to be treated as an institutional investor in the securitisation such that it is required to comply with the due diligence requirements that would apply if it was holding a loss-bearing securitisation position.

3. Absence of any Equivalence Regime

Another of the shortcomings of the EUSR is that it does not contain any provisions for recognising the equivalence of parallel regimes in other jurisdictions. One obvious consequence of this is that, when the EU rules were onshored, there is also no equivalence regime in the UKSR (despite the rules being almost identical), nor does it appear that such equivalence regime is being proposed in the Consultation Papers.

IACPM urges the PRA and FCA to consider including such a regime, at least for **securitisations where neither the originator nor the sponsor is a UK entity.** This would be relevant for non-UK subsidiaries of UK credit institutions which act as the originator of a securitisation. In such a situation, if that non-UK subsidiary is established in a jurisdiction which has an equivalent regime, and complies with the rules in that regime, the UK parent institution should be permitted to treat that securitisation as complying with the UK rules for the purposes of determining its capital requirements on a consolidated basis. Given the similarity between the existing EUSR and the proposed UK Securitisation Rules, we also suggest that the EU securitisation regime should be considered equivalent for this purpose, even though the EU does not provide any reciprocal equivalence recognition.

An equivalence regime would also be useful for **UK institutional investors investing in non-UK securitisations**, where the due diligence requirements require the investor to confirm that the non-UK securitisation complies with risk retention requirements in accordance with the UK rules. Again, we would suggest that given the close similarity of the EU and UK rules on risk retention, it would be entirely appropriate for the UK to recognise that it is sufficient for the securitisation to comply with those EU rules.

The same should apply to the requirements in Article 5(1)(e) of the PRA Rules and Paragraph 4.2.1(e) of the FCA Rules. While we agree that the proposed rules here are an improvement of the equivalent rule in Article 5(1)(e) of the EUSR, it would also be helpful if the fact that an originator, sponsor or original lender is complying the corresponding rules of an equivalent regime would automatically satisfy this requirement.

A third area where an equivalence regime would be particularly appropriate is in the context of a **STS securitisation**, so that a UK investor in a non-UK STS securitisation would be able to treat that securitisation in the same way as a UK STS securitisation. While some provisions in this regard may [also] be included in those parts of the PRA and FCA rulebooks dealing with the implications of holding a STS securitisation (eg., in the CRR for the purposes of calculating the capital requirements in respect of that securitisation position), in our view, the UK Securitisation Rules are the correct place to deal with what constitutes an equivalent regime for this purpose.

4. Transparency, Disclosure and Reporting

IACPM members acknowledge that the PRA and FCA are not currently proposing any substantive changes to the disclosure obligations in the UKSR, and that this will be the subject of future consultations. Nevertheless, given the significance of this issue for IACPM members, and that the FCA has made some observations of its own in this regard in the FCA CP, we thought that it would be helpful to set out some high-level observations on this issue.

Public v Private securitisations

First, we note that the PRA and FCA intend to give further consideration to whether any changes should be made to the classification of securitisations as "public" or "private" for the purpose of these rules, and that the FCA in particular has suggested broadening the definition of what constitutes a "public" securitisation, to capture securitisations listed on a UK or non-UK MTF or in respect of which a public announcement or other general communication is made to a wide audience of potential investors. While IACPM members acknowledge that the current definition of a "public" securitisation (which refers to a securitisation for which a prospectus is required to be drawn up under the Prospectus Regulation) maybe unduly narrow, we also urge the PRA and FCA to avoid replacing that with a definition that turns on a structural technicality rather than the economic substance. For example, particularly in the UK context, virtually all securitisations are listed on a recognised stock exchange for the purpose of the quoted Eurobond exemption from UK withholding tax, even though the securitisation is not a public transaction in the ordinary meaning of that term. It is likely that most of these recognised stock exchanges would constitute a non-UK venue similar to a UK MTF, thus rendering virtually all UK securitisations "public". Similarly, the fact that the originator initially makes a general communication to a wide audience of potential investors does not mean that the securitisation will be "public" in the ordinary sense of that word. Rather, such a communication may be simply for the purpose of gauging interest, following which detailed negotiations would take place with only a small number of investors in private. **This is particularly the case in the context of synthetic securitisations, where these negotiations will invariably also result in large amounts of confidential information being disclosed to those potential investors pursuant to a non-disclosure agreement as part of the pre-trade due diligence process.**

IACPM members are therefore of the view that the mere fact that a transaction is listed, or initially marketed to a large number of potential investors does not in any way indicate that the transaction should be treated as "public". We acknowledge that determining how to draw the line between a public and private securitisation is challenging. The reality is that the **distinction should turn not on the legal form of the securitisation but rather on the way in which the transaction is negotiated and executed.** A public securitisation is generally one which is structured by the originator and arranger(s) and marketed to investors, who then bid to invest in the securitisation. In contrast, a private securitisation is one where there are detailed negotiations between the originator and the investors on the terms of the securitisation before closing the transaction. Naturally this is not a black and white distinction. In the case of a public securitisation, the terms of the securitisation will likely be adjusted to reflect feedback from potential investors as part of the marketing process. Likewise, there may be private securitisations where some investors do not themselves negotiate in detail, but rather rely on the negotiations undertaken by an anchor investor. It is therefore important to avoid formulaic or arbitrary definitions that simply perpetuate the imperfections in the current definition. IACPM members would welcome the opportunity to discuss this further with the PRA and FCA, and it goes without saying that whatever approach is ultimately taken on this issue, it must be the same across both the PRA Rules and FCA Rules.

Reporting templates

Secondly, IACPM members strongly urge the PRA and FCA to **drop the use of mandatory reporting templates, at least in the context of private synthetic securitisations**. Following from the above observations, one of the features of a private securitisation is that the originator and investors will have negotiated the form of reporting that is required, and which is consistent with any confidentiality or other restrictions applicable to information about the securitised exposures (for example, if such information constitutes inside information). There is no need for mandatory reporting templates to apply in such context. In fact, IACPM members are not aware of any case where investors in a private synthetic securitisation have been interested in the prescribed reporting templates, which means that originators have been required to make huge investments in reporting infrastructure to produce reports that are of absolutely no interest to investors. To be clear, we do not have any objection to the basic principle that investors should have access to detailed information about the securitised exposures. However, we believe that, **in the context of a private securitisation aiming at significant risk transfer on own originated assets, it should be open to the parties to negotiate the appropriate form of such disclosure** rather than relying on arbitrary one-size-fits-all templates that have not proven to be useful to date.

Further comments

In terms of the proposed UK Securitisation Rules set out in the Consultation Papers, we have the following observations.

- First, we agree with the general approach taken in the context of the **investor due diligence provisions** which requires disclosure of certain types of information but without mandating that this occurs in the form of the mandatory disclosure templates. However, while this is helpful for UK investors investing on non-UK securitisations, it provides no relief for UK originators, which would still be required to use the mandatory templates.

- Secondly, in the PRA CP, the provision from Article 7 of the existing UKSR which provides that the reporting entity shall comply with national and UK law governing the **protection of confidential information** is missing, although this does appear in the FCA CP (see Rule 6.2.5). It is not clear if this was an oversight in the PRA CP, but we urge the PRA to retain this carve-out. This does, however, raise one of the deficiencies with the existing EUSR, which has been caried over into the UKSR. Notwithstanding that this obligation to comply with confidentiality requirements exists in the legislation, there is no recognition of this in the ESMA reporting templates. While those templates permit the use of certain non-disclosure codes relating to the availability of information, they do not on their face permit non-disclosure for confidentiality reasons or provide any means for anonymising or aggregating the data so as to permit disclosure in accordance with that level one text. We therefore urge the PRA and FCA to include a specific acknowledgement that, where the originator or sponsor is required to apply the mandatory reporting template, it is not required to include any information in those templates if to do so would breach the requirement to comply with confidentiality obligations. Further, the **scope of the relevant confidentiality obligations** referred to in Rule 6.2.5 in the FCA CP should not be restricted to laws applicable in the UK but should include any laws to which the reporting entity is subject in respect of the securitised exposures. For example, if a UK bank securitises a portfolio of loans made by its French branch to French borrowers, the UK bank would also need to comply with French confidentiality laws in respect of disclosure of information about those exposures. Finally, it should be clear that this carveout applies to confidentiality obligations that apply by operation of law or contract, as it will often be the case that loan agreements contain confidentiality undertakings independent of those mandatorily applied by law.

- Thirdly, we suggest **removing the requirement for a Transaction Summary where there is no prospectus or offering memorandum for the securitisation**. The experience to date has been that this is a relatively pointless document as in the case of a securitisation with no prospectus or offering memorandum, the investors will invariably undertake a detailed review of the transaction documentation. Further, in the case of some types of synthetic securitisation, such as those executed in the form of a bilateral financial guarantee or contract of insurance, the investor is actually a party to all of the transaction documentation in its own right, meaning that there is even less purpose in having a separate Transaction Summary.

- Fourthly, on a more detailed level, it should be clarified that **the reporting obligations should commence from the first payment date.** This is to address the common situation where the first interest period may run for more than three months, such that the first reporting period would be slightly longer than a quarter. Provided that the reporting continues on a quarterly basis after that initial period, this should be considered to be consistent with the requirement for quarterly reporting. This would be consistent with ESMA pre-Brexit guidance (albeit not directly on point),[1] which we suggest should continue to apply.

5. Due Diligence

The due diligence provisions require an investor investing in a STS securitisation to undertake some level of due diligence as to whether that securitisation actually complies with the STS criteria. In our view, **this should only be necessary where the investor will actually derive a benefit from the fact that the securitisation is a STS securitisation** (such as, in the case of a UK credit institution, where a lower risk-weight would apply if the securitisation satisfies the STS criteria). We also submit that, contrary to the current proposed rules, an institutional investor should be permitted to rely for this purpose on a third-party verification undertaken

[1] There is some pre-2021 guidance in the ESMA Q&As on the EUSR which assists with the interpretation that the trigger for the first reporting is the first interest payment date (IPD), meaning that shorter or longer first IPD is the relevant reference point for the reporting to commence. See Q&A 5.15.11.

in accordance with the Securitisation Rules without being required to undertake its own investigation of the STS criteria.

6. Resecuritisation

We note that the UK Securitisation Rules include new proposals in relation to circumstances where a resecuritisation may be permitted. We have no comments on those proposals as such.

However, we do think that it would be helpful to clarify that **sub-tranching of an existing securitisation *does not* constitute a resecuritisation** for the purposes of the UK Securitisation Rules. Sub-tranching can take various forms, but the two most relevant would be as follows:

- First, where the holder of a securitisation position purchases **partial credit protection** in respect of that securitisation position, on a tranched basis (ie, first loss protection on a mezzanine tranche). In that context, the correct assessment should be that Article 249(7) of the CRR would apply, and the credit protection should be treated as effectively splitting the existing mezzanine tranche into two separate tranches *of the original securitisation*, albeit that that sub-tranching would only be visible to the parties to that credit protection arrangement.

- The second scenario is a variation of the first and applies in the case of a synthetic securitisation where, after the closing of the securitisation, the originator wishes to purchase **additional credit protection** in respect of part of its existing retained positions in the securitisation in a way which does not involve amending the existing securitisation tranches, but rather carves out an additional tranche from those retained exposures. Again, this should be seen as creating two new tranches *of the original securitisation*, even though investors in the original securitisation would have no visibility of those new tranches.

This would be consistent with the approach set out in Paragraph CRE 40.5 of the Basel Framework, but it would be helpful for this either to be formalised in the Securitisation Rules, or for updated supplemental guidance to be issued to this effect.

7. Risk Retention

IACPM members support the fact that these proposed rules are largely aligned with the EUSR Risk Retention RTS which were finalised post-Brexit.

We do, however, have some technical comments on these rules, primarily as the apply to synthetic securitisations:

- First, it should be clarified in that in the context of a synthetic securitisation, the **"nominal value" of each securitised exposure** should be the amount of protection referenced in the securitisation (commonly referred to as the "Reference Obligation Notional Amount"). This may be less than the outstanding balance of the exposure. It may also be more than the outstanding balance (for example, where the originator has securitised an undrawn commitment or a revolving credit facility), in which case, where the originator is retaining on the basis of vertical retention pursuant to options (a) or (b) this should still be considered compliant provide that that the loss which can be claimed by the originator is limited to 95% of the outstanding balance at the time of the credit event.

- Secondly, where the originator chooses to comply with risk retention by holding a randomly selected portfolio of exposure (ie, option "c") in the case of a revolving securitisation, **clarity is required as to when the originator is required to replenish the randomly selected portfolio**. The market understanding is that such replenishment should only be required at the time the originator exercises its replenishment rights in respect of the securitised portfolio, and then only to the extent that the randomly selected portfolio has itself amortised to be less than 5% of the replenished securitised portfolio, but it would be helpful for this to be confirmed.

8. Synthetic Securitisation and STS

Perhaps the most significant deviation between the EU Securitisation Regulation and both the UKSR and the proposed UK Securitisation Rules is that the **STS framework in the UK rules does not cover synthetic securitisations** (or "on-balance-sheet securitisations" as referred to in the EUSR). While IACPM members understand that the PRA, FCA and HMT do not currently plan to extend the STS regime to include synthetic securitisations, we do invite the regulators to reconsider their position in this regard.

Since the STS regime under the EUSR was expanded to include synthetic securitisations, it has proven to be very effective, **with many EU credit institutions moving to take advantage of the regime,** including to apply the lower risk-weight which the originator is permitted to apply to the senior retained tranche of such securitisation under Article 270 of the EU CRR. This has been an important factor in making significant risk transfer synthetic securitisations economic for a number of smaller banks across the EU, which are in a similar position to many of the so-called "challenger banks" in the UK, and thus to facilitate continued lending by those institutions to support the wider economy. In addition, together with the recent modification to the "p-factor" which will apply under the SEC-SA formula for the purposes of the Basel 3.1 output floor under the EU CRR, this STS regime goes a long way towards mitigating the disproportionate (and we consider unintentional) impact which the output floor otherwise has on securitisation transactions for IRB banks.

The absence of a STS framework for synthetic securitisations puts UK banks at a significant competitive disadvantage to their EU counterparts, in a way which is not consistent with the PRA's and FCA's objective of having regard to the competitiveness of UK financial markets. We note that the PRA in particular has previously expressed reservations about the appropriateness of extending the STS framework to synthetic securitisations given that STS is an "investor-focussed" framework, whereas the only economic benefit which flows from a STS synthetic securitisation is to the originator. While IACPM members acknowledge that the STS framework is not without its issues, it has nevertheless proven to be successful in the EU context and is now viewed very positively by specialised credit investors. That said, IACPM members are also open to discussing with the PRA [and FCA] alternative ways of introducing an equivalent regime in the UK which would enable UK credit institutions to achieve parity of treatment with their EU counterparts, without necessarily implementing the full STS framework. We raised some suggestions in this regard in our response to the PRA's Consultation Paper on the Basel 3.1 proposals,[2] and we would welcome the opportunity to discuss this further with the PRA [and FCA].

9. Transitional Provisions and Grandfathering

The proposed Securitisation Rules do not appear to include any proper grandfathering or transitional provisions. The provisions which have been included either replicate the original transitional provision in the original EU Securitisation Regulation (see, etc., Article 43 of the PRA Rules) or are limited to the treatment of existing STS securitisations (see Schedule 3 to the Statutory Instrument). However, there are no provisions to deal with the obligations imposed on originators, sponsors and original lenders, or institutional investors in respect of existing securitisations that were executed under the EU Securitisation Regulation pre-Brexit or the UK Securitisation Regulation post-Brexit.

While it may be that the PRA and FCA have taken the view that the proposed new rules are sufficiently aligned with the existing UK Securitisation Regulation that they should not present any compliance issues for existing transactions, to the extent that the rules relate to features of a securitisation which are fixed from the closing of the securitisation (for example, the method of risk retention or the reporting to be undertaken by the transaction parties), IACPM members nevertheless submit that it is appropriate to include grandfathering provisions to address the following:

- First, in respect of an **originator, sponsor, original lender or SSPE,** the obligations to which it is subject in respect of any securitisation executed prior to the entry into force of the new rules should remain those to which it was subject under the UKSR.

- Secondly, for an **institutional investor** investing in a securitisation that was executed prior to the entry into force of the new rules, the due diligence requirements should not prevent it from investing in an existing securitisation where such investment would not have been prevented by the rules which would have applied to it had it invested in that securitisation at the time of its origination.

10. Technical and Drafting Observations

We also have a number of technical and drafting comments in respect of the proposed rules.

- *Definition of SSPE:* The definition of SSPE is drafted with traditional securitisation in mind and does not sit particularly well in the context of a synthetic securitisation. It would be appropriate for the definition to be bifurcated and a separate definition included to address the nature of a synthetic securitisation (ie, an entity which provides credit protection to the originator and transfers that risk to investors through the issue of credit-linked notes, with or without the use of a SSPE). The various

[2] http://iacpm.org/iacpm-responds-to-the-pra-final-implementation-of-basel-standards-consultation/

references to SSPE in the Securitisation Rules should also be checked to ensure that they work in the context of s synthetic securitisation. For example, the “no cherry-picking” rule (see Article 6(2) of the PRA rules and Rule 5.12.1 of the FCA rules) refer to assets being “transferred to the SSPE”, which would never be the case in context of a synthetic securitisation. Should this be taken as meaning that this rule does not apply to a synthetic securitisation, or does the rule need to be modified to refer to the securitised exposure rather than the exposures transferred to the SSPE.

- *Traditional Securitisation without the use of a SSPE*: The definition of “traditional securitisation” specifically refers to the transfer of exposures to a SSPE. However, the definition of “securitisation” does not actually require the existence of a SSPE, nor does it require that a securitisation is either a traditional securitisation or a synthetic securitisation. This appears to be anomalous and raises the question of exactly which rules should apply to securitisation that does not meet the definition of either a traditional securitisation or a synthetic securitisation. Is it the case that it would be subject to only those rules that do not specifically apply to a traditional securitisation or synthetic securitisation? Or should it be classified as a traditional securitisation, and therefore be subject to all of the rules applicable to a traditional securitisation, notwithstanding the absence of a SSPE? Given the breadth of the definition of “securitisation”, encompassing may types of transaction that do not fall within the common understanding of what a securitisation is, some clarification in this regard would be helpful.

- *Classification of traditional vs synthetic securitisation:* Some hybrid transaction structures exhibit features of *both* a traditional and a synthetic securitisation and aim at risk transfer or capital release as well as collateralised long-term funding. For example, in the case of a traditional securitisation, the SSPE may itself enter into some sort of credit protection agreement to transfer some of the risk on the securitised portfolio to a third party. Alternatively, the originator or an investor may purchase the notes issued by the SSPE, and then enter into a credit risk mitigation instrument to transfer the credit risk on those notes to a third party. In those circumstances, IACPM members consider that the classification is that there is a traditional securitisation, and that the credit protection arrangements should be considered to be part of that scheme, rather than creating a separate synthetic securitisation. This is to be contrasted with a scenario where an originator executes a fully retained traditional securitisation, and then executes an independent synthetic securitisation which references the same portfolio. In that context, the synthetic securitisation should be considered to be totally separate from the traditional securitisation. Again, some clarification in this regard would be helpful.

The IACPM and its members are available to further discuss the above proposals with regulators, as well as the results of its private surveys on synthetic on balance sheet securitisations executed by banks. We appreciate the opportunity to share our comments on the Proposed Rules.

Yours Sincerely,

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