Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 625/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)EUR 2014 No. 625 may be subject to amendment by EU Exit Instruments made by both the Prudential Regulation Authority and the Financial Conduct Authority under powers set out in The Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 (S.I. 2018/1115), regs. 2, 3, Sch. Pt. 4. These amendments are not currently available on legislation.gov.uk. Details of relevant amending instruments can be found on their website/s. (See end of Document for details) View outstanding changes*

Commission Delegated Regulation (EU) No 625/2014 of 13 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lender and originator institutions relating to exposures to transferred credit risk (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) No 625/2014

of 13 March 2014

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original **[**[F1]lender**]** and originator institutions relating to exposures to transferred credit risk

(Text with EEA relevance)

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[(1)], and in particular Article 410(2) thereof,

Whereas:

(1) The retention of an economic interest aims at aligning interests between the parties respectively transferring and assuming the credit risk of the securitised exposures. Where an entity securitises its own liabilities, alignment of interests is established automatically, regardless of whether the final debtor collateralises its debt. Where it is clear that the credit risk remains with the originator the retention of interest by the originator is unnecessary and would not improve on the pre-existing position.

(2) It is appropriate to clarify when exposure to transferred credit risk is deemed to occur in relation to certain specific instances in which institutions, other than when acting as originator, sponsor or original lender, may become exposed to the credit risk of a securitisation position, including when institutions act as a counterparty to a derivative instrument with the securitisation transaction, as a hedge counterparty with the securitisation transaction, as a liquidity facility provider to the transaction and when institutions hold securitisation positions in the trading book in the context of market making activities.

(3) In re-securitisation transactions credit risk transfer occurs at the level of the first securitisation of assets and at the second 'repackaged' level of the transaction. The two levels of the transaction, and the two corresponding instances of credit risk transfer, are independent with respect to the requirements set out in this Regulation. Retention of net economic interest and due diligence should be ensured at each level of the transaction by the institutions that become exposed to transferred credit risk at that particular level.

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Therefore if an institution becomes exposed only to the second 'repackaged' level of the transaction, the requirements relating to retention of net economic interest and due diligence only apply to that institution in relation to the second level of the transaction. Within the same re-securitisation transaction, those institutions who became exposed to the first level of securitisation of assets should comply with the retention and due diligence requirements in relation to the first level of securitisation in the transaction.

(4) It is appropriate to specify in greater detail the application of the retention commitment including compliance when there are multiple originators, sponsors or original lenders, details regarding the different retention options, how to measure the retention requirement at origination and on an on-going basis, and how to apply the exemptions.

(5) Points (a) to (e) of Article 405(1) of Regulation (EU) No 575/2013 lay down various options pursuant to which the required retention of interest may be fulfilled. This Regulation, clarifies in detail the ways to comply with each of those options.

(6) The retention of an interest could be achieved through a synthetic or contingent form of retention, provided that such methods fully comply with one of the options laid down in points (a) to (e) of Article 405(1) of Regulation (EU) No 575/2013, to which the synthetic or contingent form of retention can be equated, and provided that compliance with the disclosure requirements is ensured.

(7) Hedging of or selling the retained interest is prohibited where those techniques undermine the purpose of the retention requirement, implying that they can be permitted where they do not hedge the retainer against the credit risk of either the retained securitisation positions or the retained exposures.

(8) In order to ensure the ongoing maintenance of the net economic interest, institutions should ensure that there is not any embedded mechanism in the securitisation structure by which the minimum retention requirement at origination would necessarily decline faster than the interest transferred. Similarly, the retained interest should not be prioritised in terms of cash flows to preferentially benefit from being repaid or amortised such that it would fall below 5 % of the ongoing nominal value of the tranches sold or exposures securitised. Moreover, the credit support provided to the institution assuming exposure to a securitisation position should not decline disproportionately relative to the rate of repayment on the underlying exposures.

(9) Institutions should be able to make use of financial models developed by third parties, other than ECAIs, in order to reduce administrative burden and compliance costs for the fulfilment of due diligence obligations. Institutions should only use third party financial models where they have taken due care, prior to investing, to validate the relevant assumptions in, and structuring of, the models and to understand the methodology, assumptions and results of such models.

(10) It is essential to further specify how frequently institutions should review their compliance with due diligence requirements, how to assess whether the use of different policies and procedures for the trading book and non-trading book is appropriate, how to assess compliance when the positions pertain to the correlation trading portfolio and

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to clarify certain terms under Article 406, Regulation (EU) No 575/2013, such as 'risk characteristics' and 'structural features'.

(11) Pursuant to Article 14(2) of Regulation (EU) No 575/2013, entities established in third countries which are included in the consolidation in accordance with Article 18 of Regulation (EU) No 575/2013, but do not directly fall within the scope of application of the additional risk weights, should, in limited circumstances, such as for exposures held in the trading book for the purpose of market-making activities, not be deemed to be in breach of Article 405 of Regulation (EU) No 575/2013. Institutions should not be considered to be in breach of that Article where any such exposures or positions in the trading book are not material and do not form a disproportionate share of the trading activities, provided that there is a thorough understanding of the exposures or positions, and that formal policies and procedures have been implemented which are appropriate and commensurate with that entity's and the group's overall risk profile.

(12) Initial and ongoing disclosure to investors on the level of the retention commitment and of all materially relevant data, including on the credit quality and performance of the underlying exposure, is necessary for effective due diligence on the securitisation positions. Disclosed data should include details of the identity of the retainer, the retention option chosen and the original and ongoing commitment to retain an economic interest. Where exemptions provided for in Article 405(3) and (4) of Regulation (EU) No 575/2013 are applicable, there should be explicit disclosure of securitised exposures where the retention requirement does not apply and the reason for the disapplication.

(13) This Regulation is based on the draft regulatory technical standards submitted by the European Supervisory Authority (European Banking Authority) to the Commission.

(14) The European Supervisory Authority (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[(2)],

HAS ADOPTED THIS REGULATION:

Textual Amendments

F1 Substituted by Commission Delegated Regulation (EU) 2015/1798 of 2 July 2015 correcting Delegated Regulation (EU) No 625/2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council by way of regulatory technical standards specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk (Text with EEA relevance).

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CHAPTER I

DEFINITIONS AND EXPOSURE TO THE RISK OF A SECURITISATION

Article 1

Definitions

For the purposes of this Regulation the following definitions apply:

(a) 'retainer' means the entity acting as originator, sponsor or original lender which retains a net economic interest in the securitisation in accordance with Article 405(1) of Regulation (EU) No 575/2013;

(b) 'Synthetic form of retention' means retention of economic interest through the use of derivative instruments;

(c) 'Contingent form of retention' means retention of economic interest through the use of guarantees, **[**[F1]letters of credit**]** and other similar forms of credit support ensuring an immediate enforcement of the retention;

(d) 'Vertical tranche' means a tranche which exposes the holder of the tranche to the credit risk of each issued tranche of the securitisation transaction on a pro-rata basis.

Textual Amendments

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CHAPTER II

EXPOSURE TO THE CREDIT RISK OF A SECURITISATION POSITION

Article 2

Particular cases of exposure to the credit risk of a securitisation position

1 Where an institution acts as a credit derivative counterparty or as a counterparty providing the hedge or as a liquidity facility provider with regard to a securitisation transaction, it shall be deemed to become exposed to the credit risk of a securitisation position when the derivative, the hedge or the liquidity facility assumes the credit risk of the securitised exposures or the securitisation positions.

2 For the purposes of Article 405 and 406 of Regulation (EU) No 575/2013, where a liquidity facility complies with the conditions specified in paragraph 2 of Article 255 of Regulation (EU) No 575/2013, the liquidity provider shall not be deemed to become exposed to the credit risk of a securitisation position.

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3 In the context of a re-securitisation with more than one level or a securitisation with multiple discrete underlying transactions, an institution shall be deemed to become exposed to the credit risk only of the individual securitisation position or transaction to which it is assuming exposure.

4 Institutions shall not be deemed to be in breach of Article 405 of Regulation (EU) No 575/2013 in accordance with Article 14(2) of Regulation (EU) No 575/2013 on a consolidated basis provided that the following conditions are met:

a the entity which holds the securitisation positions is established in a third country and is included in the consolidated group in accordance with Article 18 of Regulation (EU) No 575/2013;

b the securitisation positions are held in the trading book of the entity referred to in point (a) for the purposes of market making activities;

c the securitisation positions are not material with respect to the overall risk profile of the trading book of the group referred to in point (a) and do not form a disproportionate share of the trading activities of the group.

CHAPTER III

RETENTION OF NET ECONOMIC INTEREST

Article 3

Retainers of material net economic interest

1 The retained material net economic interest shall not be split amongst different types of retainer. The requirement to retain a material net economic interest shall be fulfilled in full by any of the following:

a the originator or multiple originators;

b the sponsor or multiple sponsors;

c the original lender or multiple original lenders.

2 Where the securitised exposures are created by multiple originators, the retention requirement shall be fulfilled by each originator, in relation to the proportion of the total securitised exposures for which it is the originator.

3 Where the securitised exposures are created by multiple original lenders, the retention requirement shall be fulfilled by each original lender, in relation to the proportion of the total securitised exposures for which it is the original lender.

4 By way of derogation from paragraphs 2 and 3, where the securitised exposures are created by multiple originators or multiple original lenders, the retention requirement may be fulfilled in full by a single originator or original lender provided that either of the following conditions are met:

a the originator or original lender has established and is managing the programme or securitisation scheme;

b the originator or original lender has established the programme or securitisation scheme and has contributed over 50 % of the total securitised exposures.

5 Where the securitised exposures have been sponsored by multiple sponsors, the retention requirement shall be fulfilled by either: