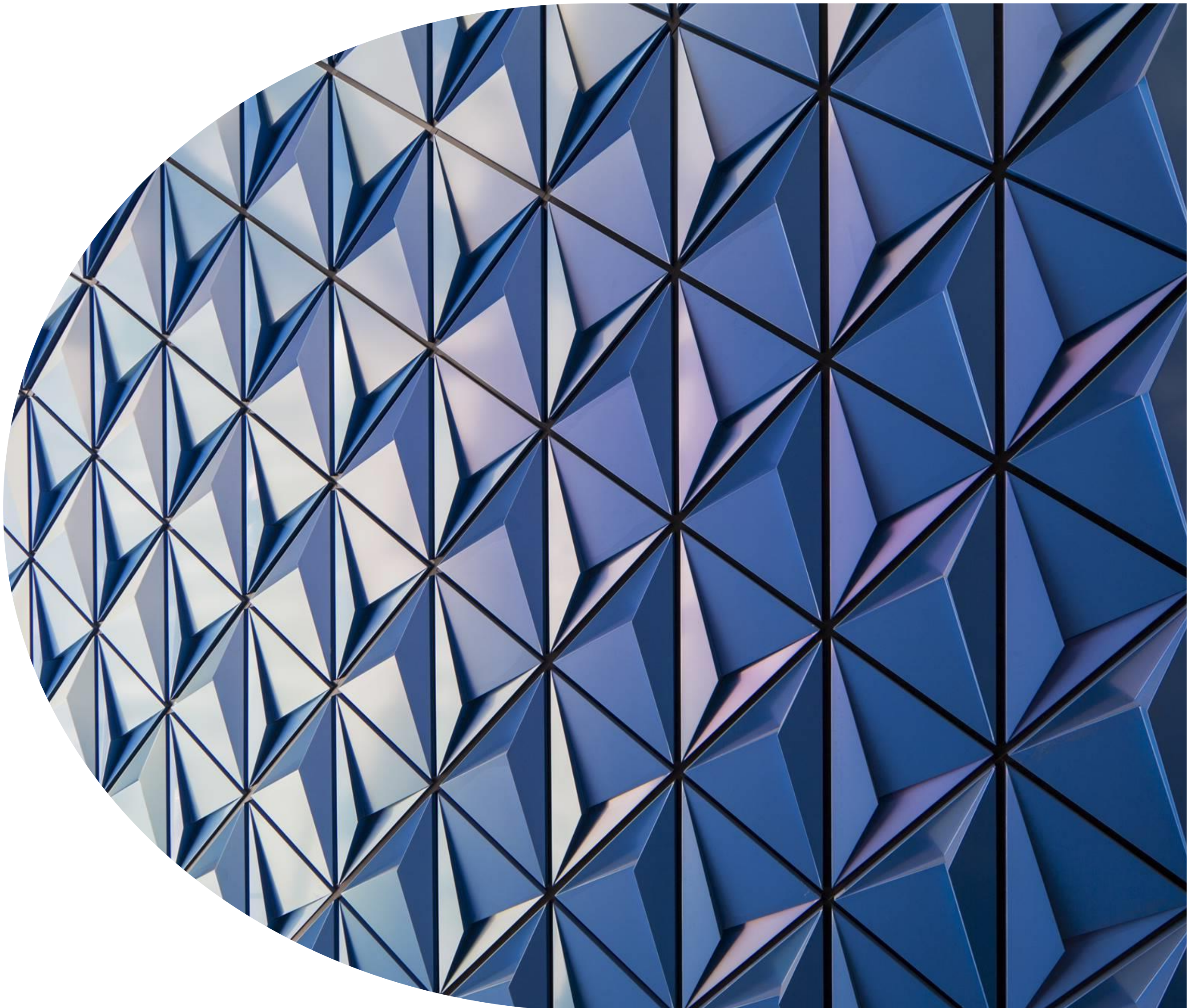
ALLEN & OVERY

The EBA SRT Report – Insights As a Clearer Picture Emerges



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The EBA's long-awaited Report on Significant Risk Transfer (**SRT**) (linked here[1]) was published on 23 November 2020. The Report builds on the EBA's 2017 SRT Discussion Paper (linked here[2]) and subsequent consultation with market participants. This bulletin identifies key points to note in relation to the Report.

Next steps/grandfathering

The bulk of the Report's recommendations are expected to be implemented in a Delegated Regulation to be adopted by the Commission under the Capital Requirements Regulation (**CRR**[3]). The timing for adoption the Delegated Regulation is unclear, but could potentially be swift given that the Commission can effect this unilaterally (ie although the Commission must consult with Member State-appointed experts, there is no associated trilogue process with the European Parliament and Commission). The Delegated Regulation would – as a base case – enter into force three months after adoption, absent objection from the European Parliament or Commission, however, the European Parliament and Commission may reduce or waive the waiting period by providing notice of non-objection, or could extend the waiting period by a further three months.

The Report recommends grandfathering for deals that achieve SRT before the Commission Delegated Regulation enters into force. It is not explicit that this means permanent grandfathering, as opposed to – much less helpful – time-limited grandfathering, but the EBA indicated, informally, at a recent industry conference that permanent grandfathering is envisaged.

Irrespective of the grandfathering position, it is possible that originators may begin to comply, or regulators may begin to require compliance, or in either case move towards compliance, with the Report's recommendations before the Commission Delegated Regulation enters into force. This would be unhelpful given the large volume of SRT deals in the market seeking approval before year-end, and the potentially significant changes to both transaction economics (if the new tests are applied) and documentation required to give effect to the Report's recommendations. At the date of publication, we are generally not seeing substantive amendment to deals in the pre-year-end pipeline to take account of the Report's recommended requirements.

[1] https://eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20calls%20on%20the%20EU%20Commission%20to%20harmonise%20practices%20and%20processes%20for%20significant%20risk%20transfer%20assessments%20in%20securitisation%20/936969/EBA%20Report%20on%20SRT.pdf

[2] https://eba.europa.eu/sites/default/documents/files/documents/10180/1963391/228098e3-29ba-473f-9e4c-680ce32e1869/Discussion%20Paper%20on%20the%20Significant%20Risk%20Transfer%20in%20Securitisation%20(EBA-DP-2017-03).pdf

[3] Regulation EU 575/2013. See Articles 244(6), 245(6) and 462.

Key take-aways

The Report aims to harmonise divergent regulatory approaches within the EU (identified in the 2017 Discussion Paper) to certain substantive aspects of SRT assessment and to the assessment process itself.

Significant Risk Transfer and Commensurate Risk Transfer Tests

The adverse treatment of excess spread and pro rata amortisation in the Report's two proposed new "commensurateness" tests, as well as the conservative new tests proposed to identify high cost credit protection, may (as widely anticipated) adversely impact the economics of certain transactions. However, in relation to traditional securitisations only, satisfaction of a 'market test' (aimed at establishing that pricing has not artificially inflated excess spread, and reminiscent of bilateral guidance provided by the ECB to banks regulated by it in recent years) enables originators to mitigate the impact of excess spread in the "commensurateness" tests. If the Report's recommendations are implemented as proposed, compliance with the 'market test' is likely to become important in structuring traditional SRT securitisations involving excess spread. The Report's proposed future amendment to the CRR to impose a capital requirement for unrealised synthetic excess spread - another adverse impact for the economics of synthetic transactions featuring excess spread - appears likely to be front-run in the current 'quick fix' amendments to the CRR and could be in force as early as late January/early February 2021. Excess spread is important to transaction economics for certain higher risk/higher return asset classes such as SME and consumer loans. In more positive news, the greater stability/sustainability of SRT assessments likely to flow from the Report's proposal to (in general) apply the existing SRT tests and new "commensurateness" tests upfront only (and not on an ongoing basis) will be welcomed by the market.

Documentary/structural SRT Requirements

In terms of transaction documentation, the (unexpectedly) limited scope of: (i) permitted early termination events in synthetic securitisations, and (ii) SRT calls in traditional and synthetic securitisations, is likely to involve analysis and potential adjustment to the terms of many SRT transactions (given that non-compliance in this respect means automatic ineligibility). Due to differences in drafting with the existing EBA SRT Guidelines[4], originators may also need to reflect on the status, post the Report, of call options in traditional SRT securitisations granted to unrelated third parties to acquire assets from the SSPE (seen in mortgage lending-backed deals in particular)[5].The detailed drafting of the Report's proposed "safeguard" triggers to switch from pro rata to sequential amortisation where "all or a major part" of the senior tranche is retained by the originator is also likely to prompt analysis and adjustment to transaction documentation in order to obtain the benefit of the safeguard, and avoid "structural features review".

SRT Approval Process

The Report's proposed, harmonised, process and timetable for SRT assessment, and common SRT notification template represent an improvement on previous proposals shared informally with market participants by the EBA. Separate timelines apply in respect of "qualifying securitisations" (ie non NPE securitisations that either do not contain the "structural features" identified in the Report[6], or comply with specified "safeguards" in respect of those features, and do not exceed materiality thresholds set by the relevant NCA) which benefit from a "fast track" process, and "non-qualifying securitisations" which are subject to a longer "structural features review". An NCA may also require a "structural features review" for first time transactions by an originator (ie the originator's first ever securitisation, or its first securitisation of a particular type or asset class). However, the review timeline remains substantial (a 6 month overall standard timeline for for transactions involving "structural features review", a 4 month overall standard timeline on the "fast track"), and does not eliminate post-signing risk and the consequent risk that regulatory calls may be exercised swiftly post-closing (both tracks involve a month's post-signing risk).

Brexit and the Relevance of the Report for UK Originators

Any Commission Delegated Regulation published in response to the Report (and any future changes to the CRR) will not form part of the European law automatically on-shored in the UK following the end of the Brexit transition period. It will be a matter for the UK authorities to determine whether to on-shore the legislation and with what amendments. It is worth noting that the UK Prudential Regulation Authority (**PRA**) takes (and has long taken) a conservative approach on a number of matters addressed in the Report. For example, the PRA generally treats even market value time calls in synthetic securitisations as generating maturity mismatch, requires transaction cash-flow modelling, subjects the impact of pro rata amortisation to close scrutiny, and (since January 2020) subjects excess spread in synthetic securitisations, and excess spread in traditional securitisations that do not achieve accounting de-recognition and where there are concerns in relation to pricing, to a capital charge akin to a first loss securitisation tranche sized based on a prudent estimate of the credit enhancement provided.

Other

The Report's recommendations overlap with the requirements of the existing EBA SRT Guidelines. The future status of the latter is unclear, especially in the event of conflict between its provisions and the provisions of any Commission Delegated Regulation flowing from the Report. There are also areas of overlap between the Report's requirements and the traditional and proposed on balance sheet STS requirements and there will be a need for a thorough cross-check to confirm that they are not incompatible.

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4 https://eba.europa.eu/sites/default/documents/files/documents/10180/749215/5355e9d3-a565-4c58-bd93-0e888407306e/EBA-GL-2014-05%20Guidelines%20on%20Significant%20Risk%20Transfer.pdf?retry=1

5 The current EBA SRT Guidelines indicate that "*features like optional calls"* are problematic in traditional securitisations only where they *"increase the likelihood that the assets will be brought back onto the originator institution's balance sheet"*

6 Or other complex structural features not considered in the Report

SRT and commensurate risk transfer tests

New and revised tests

- As expected the Report introduces **two new quantitative tests of risk transfer "commensurateness"** (the "principle based approach" (**PBA**) and "commensurate risk transfer" (**CRT tests**)) as well as a **new minimum first loss tranche thickness requirement in the existing first loss test** and a **new quantitative self-assessment of risk transfer**. In broad terms, the PBA test aims to ensure that ≥50% of the unexpected losses associated with the securitised assets are transferred to third parties, while the CRT test aims to ensure that the proportionate reduction in capital requirements achieved as a result of the securitisation does not exceed the proportionate transfer of credit risk (lifetime expected losses and unexpected losses). The new thickness requirement in the existing first loss test aims, in broad terms, to ensure that the tranche is thick enough to covers the whole lifetime expected loss (**LTEL**) and at least two-thirds of the regulatory unexpected loss (**UL**) associated with the securitised assets (an implicit assumption in the existing test). The new quantitative self-assessment of risk transfer involves modelling the interaction of the transaction's structural features (including the applicable amortisation structure and triggers, and, in the case of synthetic securitisations, credit protection payments, premium payments and any time call) over the life of the transaction including in specified "adverse" scenarios relating to loss levels, loss realisation timing, and the availability of excess spread (where used). The quantitative self-assessment of risk transfer is used to compare the total losses absorbed by third party investors over the lifetime of the transaction (as a percentage of the losses in the transaction/portfolio) to the average reduction in risk-weighted exposure amounts post-securitsation, and to the total losses expected to arise over lifetime of transaction, demonstrating that the SRT tests are passed in all cases.
    - As expected, **excess spread** – specifically the part of the excess spread that absorbs expected losses and unexpected losses throughout the life of the transaction in accordance with the model for a given scenario[7] conceptualised as a first-loss tranche that would absorb the same amount of losses throughout the life of the transaction (the equivalent exposure value of excess spread, or **EEVES**) – is reflected in the new "commensurateness" tests in ways that make the tests harder to pass and SRT harder to achieve. In traditional securitisations only, however, the adverse impact of excess spread in the "commensurateness" tests can be mitigated where a "market test" is passed (to establish that pricing has not artificially inflated excess spread). The market test requires an originator to either sell >15% of each tranche that is risk-weighted < 1,250%, or otherwise to demonstrate to the NCA's satisfaction that pricing is "consistent with market conditions" (eg by comparison with the pricing of other tranches with similar characteristics placed by the originator, or pricing in recent public placements). The market test is a new feature in the Report, but is reminiscent of bilateral guidance provided by the ECB to banks regulated by it in recent years whereby traditional securitisations including excess spread could be exempted from compliance with commensurateness tests based on the EBA SRT Discussion Paper where the ECB was satisfied in relation to the pricing of securitisation tranches. Interestingly, no reference is made to the pricing of the sale of assets to the SSPE. By contrast, excess spread makes the new minimum first loss tranche thickness requirement in the existing first loss test easier to pass (in the case of traditional securitisations provided that the "market test" is passed).
    - The new "commensurateness" tests also reflect **pro rata amortisation** in ways that make them harder to pass and SRT harder to achieve (in the presence of non-sequential amortisation where the originator retains the senior tranche, the commensurateness tests must be passed in both an evenly-loaded scenario (the base case) and a back-loaded scenario in which in which two thirds of the evenly-loaded

[7] Not the part that goes back to the originator as a deferred income

scenario defaults take place in last third of transaction's life). This impact was not wholly clear in the EBA's previous communications with the market.

- The **non-refundable purchase price discount** (**NRPPD**) that characterises non-performing loan securitisations is treated in a relatively neutral way in the new "commensurateness" tests and makes the new minimum first loss tranche thickness requirement in the existing first loss test easier to pass in traditional securitisations. Large NRPPDs, however, can render the commensurateness tests meaningless (by making the denominator certain tests zero or negative) in which case, NCAs must assess such transactions on a case by case basis requesting additional data.
- The tests require development of cash flow models (based on the asset and liability models referred to in the EBA's guidelines on determining weighted average maturity (**WAM**) (the WAM Guidelines, linked here[8]), but with some amendments) to calculate LTEL and to allocate LTEL and Regulatory UL to tranches. The EBA assumes that originators will already have such models in connection with the calculation of WAM, but that will not be true universally (WAM is only relevant to the SEC-IRBA and SEC-ERBA (not the SEC-SA) and need not be calculated if – the more conservative input - final legal maturity is used instead). Happily, as under the WAM guidelines, there is no requirement for prior regulatory approval of the models.

Timing for running the SRT and CRT tests

- As expected, the **existing SRT tests and new "commensurateness" tests now (in general) apply only at the initial SRT assessment**. Compliance was previously required at all times, but they are now not 'brought down' unless a "transaction" occurs within the meaning of the implicit support regime (eg transaction restructuring, changes to T&Cs), or it comes to light that incomplete/incorrect information was provided in the intial assessment (in which case the test is re-run based on the fact pattern at the initial assessment). This is very helpful, increasing the stability of SRT assessments. This change is one we, in particular, take considerable satisfaction from, as Allen & Overy provided legal analysis to the EBA on this point in support of market efforts to secure this change. The scope of "transactions" under Article 250 CRR and the Implicit Support Guidelines is broad, but clearly directed at changes capable of having an economic impact (rather than merely technical changes). It would be helpful if the EBA could confirm our understanding that the exercise of time calls is not intended to trigger re-assessment (this is particularly relevant to synthetic deals where protection for assets previously subject to credit event notices survives the call).

Full deduction option

- As expected, the Report continues to permit use of the '**full deduction option**' (whereby all retained positions in a securitisation are deducted/1,250% risk-weighted) as an alternative way to achieve prudential de-recognition of securitised assets (ie as instead of demonstrating SRT). However, like the EBA SRT DP, the Report indicates that the requirements of Article 244(4)/245(4) CRR (and presumably the EBA SRT guidelines relating to Article 244(4)/245(4) CRR) must be complied with, ie, although the economic SRT tests in Article 244(2)-(3)/245(2)-(3) CRR (and presumably the new 'commensurateness' tests) need not be met, the documentary and structural SRT requirements must be complied with. As indicated below, recommended future changes to the CRR would explicitly apply certain of the SRT Report's recommendations (call options and early termination events are mentioned) to full deduction option transactions, and impose a new regulatory notification requirement in relation to these transactions.

[8] https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2020/Guidelines%20on%20the%20determination%20of%20the%20weighted%20average%20maturity%20of%20the%20tranche/883213/Guidelines%20on%20WAM.pdf

Documentary/structural SRT requirements

Ineligible structural features vs structural features that result in “structural features review” unless compliant with “safeguards”

- As expected, the Report identifies certain **ineligible structural features**, being call options (in traditional and synthetic securitisations) and early termination clauses (in synthetic securitisations) in each case other than those permitted in the Report.
- As expected, the Report identifies **other structural features that result in “structural features review” unless structured for compliance with “safeguards”** specified in the Report. The inclusion of such features, absent compliance with the relevant safeguard, makes it harder to achieve SRT, but assessment is at the discretion of the NCA. The following structural features fall in this category: amortisation structure (ie non sequential amortisation) in both traditional and synthetic securitisations, excess spread in both traditional and synthetic securitisations, cost of protection in synthetic securitisations only, and credit events in synthetic securitisations only.

Ineligible structural features

- As non-compliance results in SRT ineligibility, it will be critical to follow the Reports “safeguards” for call options (in traditional and synthetic securitisations) and early termination events (in synthetic securitisations) closely. The following points are worth noting in this respect:
  - The **permitted early termination events** in synthetic securitisations, diverge from current market practice in certain respects. As expected, termination for originator insolvency is permitted only where coupled with a servicing failure and failure to appoint a back-up servicer (ie an originator insolvency termination event on its own will no longer be permitted). Unexpectedly and oddly, the permitted early termination events appear to exclude: termination for breaches of representation by the originator (including in relation to capacity, and the non-misleading nature of the information/data supplied) and termination for material adverse change to the originator’s credit and collection policies. Such events are distinguished from ‘material breaches of contractual obligation’ by the originator (see paragraphs 64(d) and 67 of the Report) - these exclusions are new and likely to be contentious for protection sellers. As expected, the permitted early termination events also cast doubt on some widespread automatic termination events, such as tax events absent a breached originator gross up requirement, that do not involve breach of contract by the originator (reliance on the originator’s regulatory call in these circumstances is sub-optimal as – for implicit support reasons – the originator is not able to exercise the regulatory call unless this is in its own interests). Originators and their advisers will need to reach views on such events (eg as to whether it is possible to think of there being an implicit obligation to gross up that has been breached).
  - The **permitted call options** in traditional and synthetic securitisations are: clean up calls and regulatory calls in both traditional and synthetic securitisations, and, in synthetic securitisations only, time calls that are exercisable post-expiry of the weighted average life (**WAL**) of portfolio, as at closing or if there is replenishment period, post-termination of the replenishment period). Each call option type is subject to certain eligibility/scope requirements. The permitted call options are largely as expected and consistent with market practice, except that the safe harbour for SRT calls now only covers failure to achieve SRT in the *initial assessment* (ie to call for subsequent loss of SRT/any other post-closing capital problem, an originator will need to rely on the general regulatory call (which requires change of law/regulation/official interpretation)). This is unexpected (the concern seems to be use of SRT calls to undermine the restriction on time calls), but the change may not be as adverse as it immediately appears given that quantitative SRT and CRT tests are no longer brought down post-closing (so any change of SRT status

might be expected to flow from change of law/regulation/interpretation). The current EBA SRT Guidelines indicate that "*features like optional calls"* are problematic in traditional securitisations where they *"increase the likelihood that the assets will be brought back onto the originator institution's balance sheet"*. In this context it does not appear problematic, from a purposive perspective, for a third party that is unrelated to the originator of a traditional securitisation to benefit from an option or obligation to acquire securitised assets from the SSPE at a market price[9]. Such third party options are frequently seen and approved in traditional SRT securitisations of long dated assets such as mortgage loans, in particular, and can be important to the economics of those deals. It is to be hoped that the lack of explicit reference in the Report to the purposive concern driving the regulation of call options is not intended to limit parties' ability to incorporate such calls.

Structural features that result in "structural features review" unless compliant with "safeguards"

- As expected, where pro rata amortisation is used and "all or a major part' of the senior tranche is retained by the originator, the Report recommends "safeguard" **triggers to switch from pro rata to sequential amortisation** in adverse scenarios. The recommended triggers differ somewhat from similar requirements in the traditional STS regime and proposed on-balance sheet STS regime. In particular, it is now mandatory to include at least one forward looking trigger and one backward looking trigger (whereas transactions in the market often reference backward looking triggers only). Responsibility for setting the thresholds for the triggers (which had been expected to be within the transaction parties' control) is also now placed in the hands of NCAs until the EBA produces guidelines on the triggers and threshold levels (ie there is much less flexibility in relation to threshold levels). No indication is provided as to timing for the development of guidelines.
- As expected, the **safeguard for excess spread in traditional securitisations** requires actual excess spread (as opposed to guaranteed or otherwise pre-determined excess spread). By contrast, and as expected, the **safeguard for excess spread in synthetic securitisations** requires a fixed nominal amount annually to absorb losses on first loss basis (ie not variable excess spread). There is no requirement for use-it-or-lose-it (**UIOLI**) excess spread (as opposed to excess spread trapping) in synthetic securitisations (which was once envisaged), but UIOLI will generally result in more favourable treatment under the new commensurateness tests. There is no cap on excess spread quantum in synthetic securitisations (as once envisaged), but the more excess spread that is included, the harder the commensurateness tests will become to pass. In both traditional and synthetic securitisations, the transaction documentation is required to define excess spread and clearly indicate where it enters the waterfall.
- As expected, the Report recommends "safeguard" tests, that are hard to pass and are contentious, to demonstrate the absence of "**high cost credit protection**" in synthetic securitisations. However, failing a test now means a "structural features review" rather than (as expected) automatic disqualification from SRT (which is helpful). The nature of the "adverse scenario" referred to in one of the problematic tests (broadly: payments of premia > pay-outs borne by the investor in an "adverse scenario") is unclear, but important. As expected, premia in synthetic securitisations must be structured to be contingent on the outstanding amount of protected tranche (not guaranteed, upfront, or subject to rebate or other mechanisms to avoid allocating losses to investors), save that upfront premium is permitted where: (i) paid in full by a third party such as the borrower (this is new); (ii) fully recognised in the originator's P&L at the payment date; or (iii) paid in context of a guarantee scheme provided for in the law of a Member State benefitting from a counter guarantee from an entity listed in Art 214(2)(a)-(d) CRR (ie specified public sector bodies).

[9] ie the restrictions on compliant originator and investor options outlined in Article 5(2) and 5(3) of the EBA SRT Guidelines can be read in light of Article 5(1) of the EBA SRT Guidelines as not restricting options resulting in the acquisition of the securitised assets other than by the originator institution.

- The Report (unlike the SRT Discussion Paper) no longer seeks to impose additional requirements in relation to the contents of **credit events in synthetic securitisations**, merely requiring compliance with the relevant existing CRR credit risk mitigation (**CRM**) requirements. Previous proposals would have required the addition of language from the Art 178 CRR default definition (happily it looks as though a parallel requirement in the on-balance sheet STS regime is also likely to be dropped in favour of consistency with the CRR). The credit event requirements are common to synthetic securitisations and non-securitisation CRM, and the application status of the previously proposed requirements to the latter had been confusing.
- Generally there are areas of overlap between the Report's requirements and the traditional and proposed on-balance sheet STS requirements and there will be a need for a thorough cross-check to confirm that they are not incompatible.

SRT approval process

As expected the Report recommends a **harmonised, process and timetable for SRT assessment**, as well as a **common SRT notification template**. The recommendation is an improvement on previous proposals, but remains substantial and does not eliminate post-signing risk (and the consequent risk that regulatory calls may be exercised swiftly post-closing).

- Separate timelines apply in respect of "qualifying securitisations" (which benefit from a "fast track" process) and "non-qualifying securitisations" (which are subject to "structural features review"). "Qualifying securitisations" are securitisations that are: not NPE securitisations, do not contain any of the "structural features" identified in the Report unless they also comply with specified "safeguards" in respect of those features; do not contain complex structural features not considered in the Report[1]; and do not exceed materiality thresholds (capturing aggregate transactions over a calendar year) set by the relevant NCA in relation to (i) the notional value of the issuance; and (ii) the consolidated capital relief generated (in basis points)[2]. Even for "qualifying securitisations", the NCA may require "structural features review" for "first time transactions" by an originator (ie the originator's first ever securitisation, or its first securitisation of a particular type or asset class). An NCA can agree shorter timelines for individual transactions or pre-defined classes/categories of transaction (eg repeat transactions under a programme), and may agree to start the "freeze period" (see below) early if final documents are submitted early. However, an NCA can also 'stop the clock', including where final documents are not submitted by the start of the "freeze period", or where substantial amendments are made during the "freeze period", to request essential changes, or to request additional information, documentation or clarification.
  - A **"fast track" process applies for "qualifying securitisations"**: this has a four month overall timeline (three months pre-signing with a "freeze period" in the final month during which no "major changes" can be made (eg substantially altering portfolio composition, transaction economics or structural features; one month post-signing for a final document review)). The NCA issues a provisional non-objection letter at signing, and the originator can claim SRT at that point. Regulatory call risk remains in the final month, though the grounds on which an NCA can change a provisional non-objection are restricted.
  - A **"structural features review" process applies for "non-qualifying securitisations"**: this has a six month overall timeline (three months prior to NCA notification that a "structural features review" has been triggered, two months further "structural features review" with a "freeze period" in the final month, followed by one month's post-signing final document review). The NCA issues a provisional non-objection letter at the end of the substantive review period (ie five months in) and originator can claim SRT at that point (though regulatory call risk remains in the final month). Signing

[1] Note: this is presumably only relevant to new features, not features of the current market that the EBA would be expected to have considered

[2] It seems open to abuse to apply the tests based on a calendar year measure rather than a rolling 12 month period measure

presumably also occurs at the end of the five month substantive review process, but this is not explicit (perhaps it can take place earlier, eg after the initial three month review period, with a longer period of post-signing risk).

  - The above processes apply to permission-based SRT under Art 244(3)/245(3) CRR, as well as to SRT based on the first loss/mezzanine tests in Article 244(2)/245(2) CRR with certain adjustments[[3]] and can be applied to SRT applied for post signing with slight adaptation.

- The Report recommends that notification should be made using a common template and provides indicative lists of the information and documentation that should be submitted – the requirements are extensive. The originator should "endeavour" to submit draft documents with the notification, or "as soon as possible thereafter" and promptly update its submission for changes in information and documentation. Final SRT test calculations and documentation are required to be submitted at start of the "freeze period" referred to above and final documentation to be submitted within seven days of signing. The EBA suggests that it could be mandated to develop guidelines on standard SRT assessment documentation to supplement the Commission Delegated Act.

Potential future changes to the CRR

- The Report's most contentious proposed change to the CRR (which has adverse economic impacts synthetic securitisations involving excess spread) is a capital requirement for unrealised excess spread in synthetic securitisations, and consequent adjustment to the attachment and detachment points of other tranches under Art 256 CRR. This change, however, is being front-run in the current 'quick fix' proposals and could be in force as early as late January/early February 2021.

- Other recommended future changes to the CRR are:

  - Wholesale replacement of the existing first loss and mezzanine SRT tests (and possibly also the new CRT test, and the permission-based alternative to the existing first loss and mezzanine SRT tests in Article 244(3)/245(3) CRR) by the PBA test.

  - Changes to facilitate the originator splitting a retained position attaching below and detaching above KIRB/KSA into two separate positions to enable the originator to net SCRAs from the tranche below KIRB/KSA in accordance with Article 248(1) CRR.

  - A regulatory notification obligation (though not a regulatory review requirement) in respect of the full deduction option, and clarification that aspects of the Report's recommendations (call options and early termination events are mentioned) apply to full deduction option transactions.

  - A market monitoring role for the EBA to identify new structural features requiring regulation in SRT assessments.

Brexit and the relevance of the report for UK originators

Any Commission Delegated Regulation published in response to the Report (and any future changes to the CRR) will not form part of the European law automatically on-shored in the UK following the end of the Brexit transition period. It will be a matter for the UK authorities to determine whether to on-shore the legislation and with what amendments.

[3] For permission-based SRT, the permission would be a formal administrative decision at the end of the assessment period (not preliminary non-objection with final non-objection up to a month later) but could still be revoked if the executed documents deviated materially from those approved

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