WALKERS

Global Legal and Professional Services

New EU Securitisation Regulation: Impact for UCITS and AIFs

April 2018

On 17 January 2018 the new Securitisation Regulation (Regulation EU 2017/2402) (the "Securitisation Regulation") came into force and will apply from 1 January 2019. The Securitisation Regulation represents a long awaited reform of the EU securitisation rules which will replace the existing patchwork of sector-specific legislation governing European securitisations with harmonised rules on due diligence, risk retention and disclosure applying to all securitisations and introduces the rules for issuing simple, transparent and standardised ("STS") transactions.

Significantly, UCITS will be within the scope of the Securitisation Regulation. This briefing highlights key points for managers of UCITS and AIFs to consider in terms of the impact the new rules will have on their existing portfolios and investment strategies going forward.

1. What is a Securitisation?

The definition of "securitisation" (broadly speaking, a transaction or scheme, whereby credit risk is tranched) used in the Capital Requirements Regulation ("CRR") and cross-referred to in the Alternative Investment Fund Managers Directive ("AIFMD") has been replicated in the Securitisation Regulation with the addition of a new limb exempting transactions which create "specialised lending exposures" in accordance with Article 147(8) of the CRR, being exposures towards an entity specifically created to finance or operate physical assets.

2. Risk Retention - Direct and Indirect Approach

While the minimum level of material net economic interest which must be retained (5%) and the five permitted retention methods remain, the existing risk retention rules which are set out in various pieces of sector specific regulation (CRR, Solvency II and the AIFMD) will be repealed and replaced by Article 6 of the Securitisation Regulation which imposes a new direct obligation on originators, sponsors and original lenders to ensure compliance with the risk retention rules (the 'direct approach'). This new direct approach will apply in addition to the existing indirect approach which requires investors to verify before investing whether or not the originator, sponsor or original lender has complied with the risk retention rules, which will be maintained, but will now apply to UCITS as well as AIFMs.

3. Due Diligence Requirements for Institutional Investors

Article 5 of the Securitisation Regulation outlines due diligence requirements that apply to "institutional investors", the definition of which now includes UCITS management companies and internally managed UCITS as well as AIFMs to whom rules relating to exposures to securitisation transactions already apply pursuant to Article 17 of the AIFMD.

The existing due diligence requirements set out in various pieces of sector specific regulation (including the AIFMD) will be repealed and replaced by Article 5 of the Securitisation Regulation which requires institutional investors to undertake identical due diligence processes prior to holding a securitisation position and on an on-going basis as long as they are exposed. The new due diligence requirements are broadly similar to the existing due diligence requirements.

The Securitisation Regulation replaces Article 17 of the AIFMD and Article 50a of the UCITS Directive with new provisions which provide that where AIFs or UCITS, respectively, are exposed to securitisation positions which do not meet the requirements of the Securitisation Regulation, corrective action shall be taken, if appropriate.

While the indirect approach requiring institutional investors to verify compliance with the risk retention rules remains, provided AIFMs and UCITS have complied with applicable due diligence requirements, they should be able to take comfort from the risk retention disclosure made by securitising entities, now subject to a direct obligation to ensure compliance, in terms of discharging their obligations under the amended Article 17 of the AIFMD and Article 50a of the UCITS Directive. For STS transactions, the Securitisation Regulation provides that institutional investors may rely to an "appropriate extent" on an STS notification and related information prepared by the securitising entities with respect to compliance with the STS requirements, provided they do not solely or mechanistically rely on such information.

4. Legacy Transactions and Grandfathering

The Securitisation Regulation only applies to securitisations the securities of which are issued, or the securitisation positions of which are created (in the case of securitisations which do not involve the issuance of securities), on or after 1 January 2019.

For securitisations the securities of which are issued, or the securitisation positions of which are created, prior to 1 January 2019, the existing applicable sector specific risk retention and due diligence requirements under the CRR, Solvency II and AIFMD will continue to apply to transactions currently subject to them.

Contacts

If you would like to discuss in more detail please do not hesitate to contact us or your regular Walkers contact.

Garry Ferguson
Partner, Finance & Capital Markets
T: +353 1 470 6659
E: garry.ferguson@walkersglobal.com

Nicholas Blake-Knox
Partner, Investment Funds
T: +353 1 470 6669
E: nicholas.blake-knox@walkersglobal.com

Sarah Maguire
Partner, Investment Funds
T: +353 1 470 6691
E: sarah.maguire@walkersglobal.com

Kerill O'Shaughnessy
Partner, Investment Funds
T: +353 1 470 6676
E: kerill.oshaughnessy@walkersglobal.com

Noeleen Ruddy
Partner, Finance & Capital Markets
T: +353 1 470 6650
E: noeleen.ruddy@walkersglobal.com

Andrew Traynor
Partner, Finance & Capital Markets
T: +353 1 470 6632
E: andrew.traynor@walkersglobal.com

Emily Davy
Of Counsel, Investment Funds
T: +353 1 470 6648
E: emily.davy@walkersglobal.com

Ailís Garvey
Of Counsel, Finance & Capital Markets
T: +353 1 470 6667
E: ailis.garvey@walkersglobal.com

Matt Hedigan
Of Counsel, Finance & Capital Markets
T: +353 1 470 6688
E: matt.hedigan@walkersglobal.com