

Chapter 9

Securitisation

9.4 Traditional securitisation

Minimum requirements for recognition of significant credit risk transfer

- 9.4.1 **R** The *originator* of a *traditional securitisation* may exclude *securitised exposures* from the calculation of *risk weighted exposure amounts* and *expected loss* amounts if either of the following conditions is fulfilled:
- (1) significant credit risk associated with the *securitised exposures* is considered to have been transferred to third parties; or
 - (2) the *originator* applies a 1250% *risk weight* to all *securitisation positions* it holds in the *securitisation* or deducts these *securitisation positions* from *capital resources* according to ■ GENPRU 2.2.237 R;
- and the transfer complies with the conditions in ■ BIPRU 9.4.2R ■ BIPRU 9.4.14R.
[Note: BCD Annex IX Part 2 point 1, paragraph 1]
- 9.4.2 **R** The *securitisation* documentation must reflect the economic substance of the transaction.
[Note: BCD Annex IX Part 2 point 1 (part)]
- 9.4.3 **R** The *securitised exposures* must be put beyond the reach of the *originator* and its creditors, including in bankruptcy and receivership. This must be supported by the opinion of qualified legal counsel.
[Note: BCD Annex IX Part 2 point 1 (part)]
- 9.4.4 **G** Legal counsel's opinions should be reviewed as necessary. For example, an opinion should be reviewed if a relevant statutory provision is amended or where a new decision or judgment of a court might have a bearing on the conclusions reached.
- 9.4.5 **R** The securities issued must not represent payment obligations of the *originator*.
[Note: BCD Annex IX Part 2 point 1 (part)]
- 9.4.6 **R** The transferee must be a *securitisation special purpose entity*.
[Note: BCD Annex IX Part 2 point 1 (part)]

- 9.4.7** **R** The *originator* must not maintain effective or indirect control over the transferred *exposures*.
[Note: BCD Annex IX Part 2 point 1 (part)]
- 9.4.8** **R** Where there is a *clean-up call option*, the following conditions must be satisfied:
- (1) the *clean-up call option* is exercisable at the discretion of the *originator*;
 - (2) the *clean-up call option* may only be exercised when 10% or less of the original value of the *exposures securitised* remains unamortised; and
 - (3) the *clean-up call option* is not structured to avoid allocating losses to *credit enhancement* positions or other positions held by investors and is not otherwise structured to provide *credit enhancement*.
- [Note: BCD Annex IX Part 2 point 1 (part)]
- 9.4.9** **R** The *securitisation* documentation must not contain clauses that:
- (1) other than in the case of *early amortisation provisions*, require positions in the *securitisation* to be improved by the *originator* including but not limited to altering the underlying credit exposures or increasing the yield payable to investors in response to a deterioration in the credit quality of the *securitised exposures*; or
 - (2) increase the yield payable to holders of positions in the *securitisation* in response to a deterioration in the credit quality of the underlying pool.
- [Note: BCD Annex IX Part 2 point 1 (part)]
- 9.4.10** **R** For the purposes of **■ BIPRU 9.4.7 R**, an *originator* will be considered to have maintained effective control over the transferred *exposures* if it has the right to repurchase from the transferee the previously transferred *exposures* in order to realise their benefits or if it is obligated to re-assume transferred risk. The *originator's* retention of servicing rights or obligations in respect of the *exposures* does not of itself constitute indirect control of the *exposures*.
[Note: BCD Annex IX Part 2 point 1 (part)]
- 9.4.11** **R** Significant credit risk will be considered to be transferred for an *originator* in the following cases:
- (1) the *risk weighted exposure amounts* of the *mezzanine securitisation positions* held by the *originator* in the *securitisation* do not exceed 50% of the *risk weighted exposure amounts* of all *mezzanine securitisation positions* existing in this *securitisation*;
 - (2) where there are no *mezzanine securitisation positions* in a given *securitisation* and the *originator* can demonstrate that the exposure value of the *securitisation positions* that would be subject to deduction from *capital resources* or a 1250% *risk weight* exceeds a

reasoned estimate of the expected loss on the *securitised exposures* by a substantial margin, the *originator* does not hold more than 20% of the exposure values of the *securitisation positions* that would be subject to deduction from *capital resources* or a 1250% risk weight.

[Note: BCD, Annex IX, Part 2, Point 1, paragraph 1a]

- 9.4.12** **R** An *originator* must notify the *appropriate regulator* that it is relying on the deemed transfer of significant credit risk under **■ BIPRU 9.4.11R** within a reasonable period before or after a relevant transfer, not being later than one month after the date of the transfer. The notification must include the following information:
- (1) the *risk weighted exposure amount* of the *securitised exposures* and retained *securitisation positions*;
 - (2) the *exposure value* of the *securitised exposures* and the retained *securitisation positions*;
 - (3) details of the *securitisation positions*, including rating, *exposure value* broken down by *securitisation positions* sold and retained;
 - (4) a statement that sets out why the *firm* is satisfied that the reduction in *risk weighted exposure amounts* is justified by a commensurate transfer of credit risk to third parties;
 - (5) any relevant supporting documents, for example, a summary of the transaction.
- 9.4.13** **G** In the event that the *appropriate regulator* decides that the possible reduction in *risk weighted exposure amounts* which the *originator* would achieve by the *securitisation* referred to in **■ BIPRU 9.4.11R** is not justified by a commensurate transfer of credit risk to third parties, it will use its powers under section 55J (Variation etc on the Authority's own initiative) of the *Act* to require the *firm* to increase its *risk weight exposure amount* to an amount commensurate with the *appropriate regulator's* assessment of the transfer of credit risk to third parties.
- 9.4.14** **G** An *originator* may be granted a *waiver* of the requirements in **■ BIPRU 9.4.11R** and **■ BIPRU 9.4.12R**.
- 9.4.15** **D** An *originator's* application for a *waiver* of the requirements in **■ BIPRU 9.4.11R** and **■ BIPRU 9.4.12R** must demonstrate that the following conditions are satisfied.
- (1) it has policies and methodologies in place which ensure that the possible reduction of capital requirements which the *originator* achieves by the *securitisation* is justified by a commensurate transfer of credit risk to third parties; and

- (2) that such a transfer of credit risk to third parties is also recognised for the purposes of all the *firm's* internal risk management and internal capital allocation.

[Note: BCD, Annex IX, Part 2, Point 1, paragraph 1c]

- 9.4.16** **G** ■ BIPRU 1.3.10 G sets out the *appropriate regulator's* approach to the granting of *waivers*. The conditions in ■ BIPRU 9.4.15D are minimum requirements. Satisfaction of those does not automatically mean the *appropriate regulator* will grant the relevant *waiver*. The *appropriate regulator* will in addition also apply the tests in section 138A (Modification or waiver of rules) of the Act.
- 9.4.17** **G** When considering an application for a *waiver* of the requirements in ■ BIPRU 9.4.11R and ■ BIPRU 9.4.12R, the *appropriate regulator* may undertake a visit to the *firm* in order to examine the *firm's* risk management and governance arrangements. Before such a visit, the *appropriate regulator* may request information from the *firm* additional or supplementary to that provided in the *waiver* application.
- 9.4.18** **G** An *originator* should clearly state the scope of the *waiver* of the requirements in ■ BIPRU 9.4.11R and ■ BIPRU 9.4.12R it is seeking in its application. For example, residential mortgage backed securities may be subdivided into prime and sub-prime with only one sub-category within the scope of the *waiver*. Relevant asset classes may therefore be defined according to a *firm's* internal usage of terms.