

## Chapter 5

# Requirements on risk retention

5.12.1

R

**5.12 Prohibition of hedging or selling the retained interest**

- (1) The obligation in ■ SECN 5.2.1R to retain on an ongoing basis a material net economic interest in the *securitisation* shall be deemed to have been met only where, taking into account the economic substance of the transaction, both of the following conditions are met:
  - (a) the retained material net economic interest is not subject to any credit risk mitigation or hedging of either the retained *securitisation positions* or the retained exposures; and
  - (b) the retainer does not sell, transfer or otherwise surrender all or part of the rights, benefits or obligations arising from the retained net economic interest.
- (2) By way of derogation from ■ SECN 5.12.1R(1)(a), the retainer may hedge the net economic interest where the hedge:
  - (a) is not against the credit risk of either the retained *securitisation positions* or the retained exposures; or
  - (b) is undertaken prior to the *securitisation* as a prudent element of credit granting or risk management and does not create a differentiation for the retainer's benefit between the credit risk of the retained *securitisation positions* or exposures and the *securitisation positions* or exposures transferred to *investors*.
- (3) The retainer may use retained exposures or *securitisation positions* as collateral for secured funding purposes including, where relevant, funding arrangements that involve a sale, transfer or other surrender of all or part of the rights, benefits or obligations arising from the retained net economic interest, provided that such use as collateral does not transfer the exposure to the credit risk of those retained exposures or *securitisation positions* to a third party.
- (4) ■ SECN 5.12.1R(1)(b) shall not apply:
  - (a) in the event of the insolvency of the retainer; or
  - (b) in the case of retention on a consolidated basis, in accordance with ■ SECN 5.14.