

# SECURITISATION REGULATION

BY: BART P.M. JOOSEN

10 FEBRUARY 2020

**VU**  **VRIJE  
UNIVERSITEIT  
AMSTERDAM**

**LOOKING FURTHER**

# Background – Motives European Commission

*Proposal for amendment Capital Requirements Regulation (p. 6):*

“ ... having regard to the overall objective of the Commission legislative package on securitisation, i.e. remove stigma attached to securitisations among investors; remove regulatory disadvantages for STS products; and reduce or eliminate unduly high operational costs for issuers and investors.”

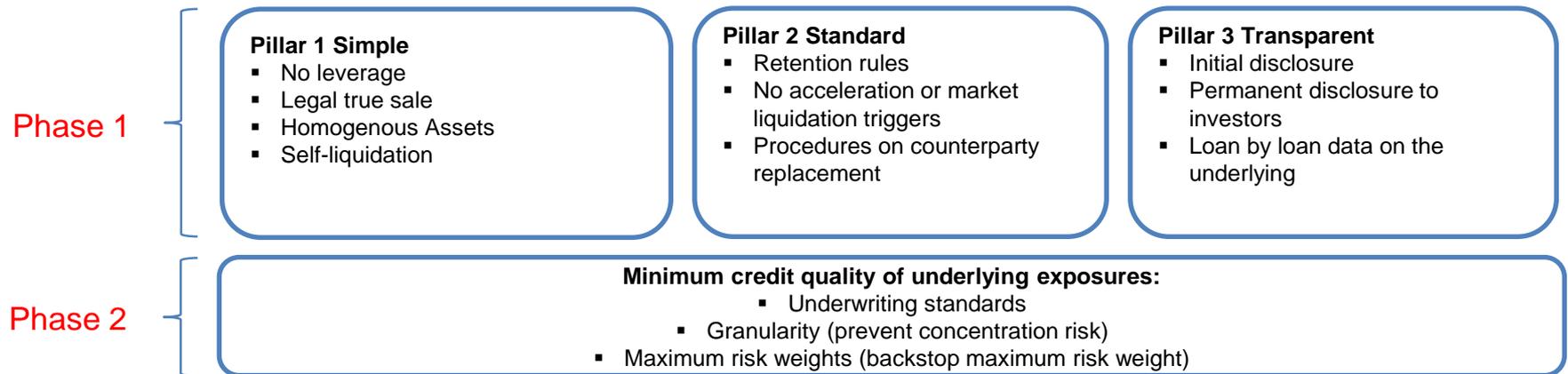
“Introducing a clear distinction between STS and non-STS securitisations in the area of capital charges will bring a number of positive effects, namely:

- The resulting securitisation-framework would be more risk-sensitive and better balanced;
- Preferential capital requirements would incentivize banks and insurers to comply with differentiated STS-criteria;
- Investors would be encouraged to re-enter the securitisation market [...] [and] the likelihood of a systemic crisis reoccurring would have been reduced.”

# Securitisation Regulation

Cross sectoral approach of what constitutes a “qualifying securitisation”, results in opportunities to level the playing field, according to EBA and the European Commission. This applies for banks, investment firms insurers, AIFMD Managers, UCITS Managers and IORP Pension Schemes. They are made subject to an identical regime to test whether a securitisation qualifies as STS or not. For banks and insurers this is **furthermore supported with capital relief measures**, but these rules supplement the generic cross sectoral framework:

Source: Paragraph 5.2 and 5.3 EBA Report July 2015



# Securitisation Regulation

The two phase approach contemplates:

## Phase 1:

Criteria monitor that no additional complexity is created in addition to the inherent credit risk of the underlying assets (for example, mortgage loans), for example:

- ✓ No leverage within the securitisation structure
- ✓ No complexity with regard to maturity transformation (combating refinancing risk)
- ✓ Right incentives to avoid a return to the "originate-to-distribute" model

## Phase 2:

Criteria for the underlying exposures aim to:

- ✓ Prevent unnecessary risky assets from being securitized
- ✓ Preventing the risk of error during the "tranching" of securitisations or the "repackaging" process.

# Securitisation Regulation

- Rules apply to ordinary "traditional" securitisations but also to Asset Backed Commercial Paper programs ("**ABCP**");
- No rules are yet given for "synthetic" securitisations, for example Credit Default Swaps, but EBA launched its consultation paper on STS criteria for synthetic securitisations mid- October 2019;
- Commercial Mortgage Backed Securitisations are not considered as STS;
- Even qualifying STS securitisations are in principle not suitable for investment by "retail" customers, being non-professional clients within the meaning of MiFID II (2014/65 / EU);
- "Securities" within the meaning of MiFID II cannot be included in a securitisation, unless it concerns unlisted bonds that serve as an alternative to "loan agreements" with (SME) companies.

# After 1 year experience,...

- ✓ Many if not most of the new transactions in 2019 are structured to fit into STS criteria, and few constraints arose to adapt to the new rules particularly for RMBS (and other asset classes)
- ✓ Because of consistent application STS transaction type market is experiencing quick learning curve
- ✓ Considerable backlog in implementing the technical standards by regulators, particularly:
  - ✓ Disclosures, STS notifications
  - ✓ ABCP
  - ✓ Synthetic
- ✓ New Prospectus regime effective July 2019 considerable additional complication
- ✓ Poor coordination by Supervisory Authorities to give clear guidance
- ✓ Market participants demonstrated more agility to adapt to the new rules than public authorities