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EBA Regular Use

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# Decision of the European Banking Authority EBA/DC/462

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of 25 July 2022

concerning the consultation process under Article 26e (10) of Regulation (EU) No 2017/2402

## The Board of Supervisors

### Having regard to

- (1) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) ('EBA'), amending Decision No 716/2009/EC1 and repealing Commission Decision 2009/78/EC1 (hereafter, the 'EBA Regulation'<sup>1</sup>), in particular Articles 2 (4) and 41 (1) thereof,
- (2) Regulation (EU) No 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (hereafter, the 'Securitisation Regulation'<sup>2</sup>), in particular Article 26e (10) thereof,

### Whereas:

- (1) As part of the Capital Markets Recovery Package, the Securitisation Regulation has set out the regulatory framework of on-balance-sheet securitisations and the criteria for simplicity, transparency, standardisation (hereafter, the 'STS'), as well as, for credit protection agreements.
- (2) Pursuant to Article 26e (10) first subparagraph of the Securitisation Regulation, the credit protection referred to in Article 26e (8) (c) of that Regulation must meet the condition that the originator as protection buyer and the investors as protection sellers must have recourse to high quality collateral in order to qualify as STS on-balance-sheet securitisation. By way of

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<sup>1</sup> OJ L 331, 15.12.2010, p. 12

<sup>2</sup> OJ L 347, 28.12.2017, p. 35-80

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derogation from that provision and under the conditions as set out in Article 26e (10) second subparagraph of the Securitisation Regulation only the originator may have recourse to high quality collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies as a minimum for credit quality step 2.

- (3) In accordance with Article 26e (10) third subparagraph of the Securitisation Regulation competent authorities may, after consulting EBA, allow collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies for credit quality step 3 and under the conditions thereon.
- (4) It is necessary to establish the rules concerning the procedure for consultation between the competent authority concerned and the EBA to enable the latter to express a properly informed view on the subject matter of the consultation exercise.
- (5) As the EBA may be required to express its opinion regarding a substantial number of consultations which require complex technical assessments, those opinions should be prepared by the EBA Standing Committee on Regulation and Policy (hereafter 'SCRePol'). To facilitate the decision-making process, a delegation to SCRePol is necessary in relation to the adoption of such opinions, subject to appropriate mechanisms for escalation to and oversight by the Board of Supervisors.

**Has decided as follows:**

**Article 1 – Delegation of decision-making powers and tasks**

1. In accordance with Article 41 (1) of the EBA Regulation, the Board of Supervisors delegates to SCRePol the adoption of opinions pursuant to Article 29 (1) (a) of the EBA Regulation in response to consultations received from competent authorities pursuant to Article 26e (10) of the Securitisation Regulation.
2. The opinions shall be adopted on behalf of and under the responsibility of the Board of Supervisors and signed by the Chair or a co-Chair of SCRePol.
3. The delegation referred to in paragraph 1 is subject to the conditions and oversight arrangements set out in Article 3. The delegation may be terminated at any time by the Board of Supervisors.

**Article 2 – Consultation process with the EBA**

1. Any competent authority intending to allow collateral in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies for credit quality step 3, in accordance with the third subparagraph of Article 26e (10) of the Securitisation Regulation (the 'Waiver'), shall send a consultation request to the EBA through a letter addressed to the Chair of SCRePol via the generic SCRePol email address (e.g. SCRePol.Support@eba.europa.eu).

2. The consultation request shall be accompanied by the following:
  - a. an indication of which of the three conditions set out in the third subparagraph of Article 26e (10) of the Securitisation Regulation is met for the implementation of the Waiver in its jurisdiction, concerning:
    - i. market difficulties;
    - ii. objective impediments related to the credit quality step assigned to the Member State of the institution; or
    - iii. significant potential concentration problems in the Member State concerned due to the application of the minimum credit quality step 2 requirement referred to in the second subparagraph of Article 26e (10) of the Securitisation Regulation;
  - b. a statement of reasons for the application of the Waiver; and
  - c. relevant documentation providing qualitative or quantitative evidence of the fulfilment of the condition(s) indicated in accordance with point (a) of this paragraph.
3. The consulting competent authority shall provide the EBA with all information that is required to enable it to express a properly informed view on the subject matter of the consultation process set out in this Decision.

### **Article 3 – Adoption of the opinion**

1. The proposed draft opinion shall be submitted to SCRePol for agreement. Members of SCRePol shall strive for consensus when adopting the opinion. In the absence of consensus, an opinion shall be adopted by simple majority of SCRePol members appointed by a voting member of the Board of Supervisors. Abstentions shall not be counted as approval or as objections and shall not be considered when calculating the number of vote cast. Each adopted opinion shall be sent to the Board of Supervisors for information.
2. On objection of three (3) or more SCRePol members appointed by a voting member of the Board of Supervisors to the adoption of the opinion, the draft opinion shall be sent to the Board of Supervisors for approval.
3. Each opinion issued further to this Decision shall be communicated to the requesting competent authority and published on the EBA website.
4. The procedure for preparing and adopting an opinion may be effectuated through written procedure.

5. Each opinion issued further to this Decision shall be normally adopted within three months from the date of receipt of a complete consultation request.

#### **Article 4 – Entry into force and application**

This Decision enters into force on the date following its adoption.

Done at Paris, 25 July 2022

A handwritten signature in black ink, appearing to be 'José Manuel Campa', is positioned above the printed name.

José Manuel Campa

Chairperson

For the Board of Supervisors