




Draft Guidelines  
specifying the conditions for the application of the alternative treatment of  
institutions' exposures related to “tri-party repurchase agreements”

**Public hearing**

8 October 2020

## Suggestions for an efficient session

- Should you need **assistance** or would like to **intervene**:
  1. **write on WebEx chat** to any of the hosts or publicly;
  2. or, **raise your hand on WebEx**.
- **To avoid background noise**, please **stay muted**  unless you take the floor.
- To increase audio quality please turn off video streaming.
- **Please identify yourself** (if you do not use full name on WebEx).
- For the **Q&A session**, please **write on the WebEx chat** to any of the **hosts for taking the floor** for a question.

## 1 Background and rationale

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## 2 The conditions for the application of the “alternative treatment”

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- The tri-party agent has appropriate safeguards to prevent breaches of the instructed limit
- The competent authority has not expressed any material concerns
- The sum of exposures to the collateral issuer does not breach the limits of Art 395(1) of the CRR

## 3 Next steps

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## 4 Overview of questions for consultation

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## Background and rationale (1)



- The CRR was amended by Regulation (EU) 2019/876, published on 7 June 2019 in the OJEU.
- As a result of such amendments, the **substitution approach** of Article 403(1) of the CRR will become **mandatory** as of 28 June 2021.
- The substitution approach concerns both **guarantees** and **collateral** issued by a guarantor or a third party.
  - *The portion of an exposure guaranteed or secured by collateral shall be counted towards the guarantor or third party rather than the client, under the conditions set out in Article 403(1).*
- In the case of exposures to a collateral issuer due to a tri-party repo facilitated by a tri-party agent, the CRR gives institutions the possibility to replace the total amount of its exposures to a collateral issuer with the full amount of the limits instructed by an institution to the tri-party agent > the **alternative treatment of Article 403(3) of the CRR**.

## Background and rationale (2)



- To conduct such an alternative treatment, **three conditions** must be met:
  - *The tri-party agent has in place **appropriate safeguards** to prevent breaches of the instructed limits*
  - *The competent authority has not expressed any **material concerns** on its use*
  - *The sum of all exposures to the collateral issuer does not **breach the limits of Article 395(1) of the CRR***
- Article 403(4) of the CRR mandates the EBA to issue **guidelines** specifying those three conditions.
- Furthermore, the guidelines must set out the conditions for **determining, monitoring and revising the instructed limits**.

# The conditions for the use of the alternative treatment

## *General*



The guidelines require that an institution willing to use the alternative treatment must ensure that the service agreement with a tri-party agent contains as a minimum certain elements, such as:

- A clear **description** of the services provided by the tri-party agent.
- The **limits** set out by the institution and applicable to the portfolio of securities.
- The **safeguards** to ensure compliance with the instructed limits.
- The **monitoring systems** by the tri-party agent.
- The tri-party's obligation to **submit reports** to the institution **at least on a weekly basis**.
- The tri-party's obligation to **report immediately to the institution** in case of breach of the instructed limits.
- The right of the institution or third party to **verify compliance** with the safeguards.

# The conditions for the use of the alternative treatment

## *Appropriate safeguards*



**Art. 403(3)(c)** *The institution must verify that the tri-party agent has in place appropriate safeguards to prevent breaches of the limits instructed by the institution.*

- Tri-party collateral management is **only performed in accordance with the service agreement**.
- The tri-party must have in place a **control environment** that:
  - Ensures that **limits are duly authorised** by the institution and are entered and processed accurately, in due time and only once in the collateral management system.
  - Ensures that **collateral is safeguarded, actively monitored** and pricing values are recorded timely.
  - Detects in a timely manner any **possible breach of the instructed limits**.
  - The market value of collateral securities allocated to cover an exposure does not breach the instructed limits.
- The tri-party agent must submit, at least annually, a **written declaration** to the institution confirming that it complies with the safeguards as detailed in the service agreement.

# The conditions for the use of the alternative treatment

## Material concerns



**Art. 403(3)(d)** *The competent authority has not expressed to the institution any material concerns.*

- An institution must **notify ex-ante** its competent authority of its intention to use the alternative treatment.
- Equally, it must inform the competent authority when it **terminates the agreement with the tri-party agent**.
- A competent authority can express **material concerns** on aspects related to (non-exhaustive list):
  - The **institution** itself.
  - The **service agreement**.
  - The **tri-party agent**.

### Procedure for dealing with a material concern:

- The competent authority should inform the institution **within four weeks** following the notification.
- An institution **cannot use the alternative treatment** until the competent authority has satisfied itself that any material concerns has been **satisfactorily addressed**.
- The institution must **cease the use of the alternative treatment** when the competent authority identifies material concerns during its use.



# The conditions for the use of the alternative treatment

## *Overall compliance with large exposure limits*



**Art. 403(3)(e)** *The sum of the amount of the limit referred to in point (b) and any other exposures of the institution to the collateral issuer does not exceed the limit set out in Article 395(1).*

- It is on the institution to ensure that the use of the alternative treatment does not lead to a breach of the large exposure limits of Article 395(1) of the CRR.
- If a breach of the large exposure limit occurs when using the alternative treatment, the **tri-party agent must inform immediately the institution:**
  - a) the name of the collateral issuer in relation to which the breach has occurred.
  - b) the ISIN or security code of the securities received as collateral.
  - c) the market value of the collateral received.
  - d) the date when the breach occurred.
  - e) the remedial action adopted by the tri-party agent; and
  - f) the timeframe within which the breach has been or is expected to be remedied.
- The institution's **management body** must be informed of such breach.
- The institution must have in place **action plans** to deal with breaches to the instructed limits to ensure compliance with the large exposure limits to a collateral issuer at all times.

# The conditions for the use of the alternative treatment (1)

## *Determination, Monitoring and Revision*



### **Art. 403(4) Conditions and frequency for determining, monitoring and revising the instructed limits.**

#### **Determination of the instructed limits**

- **Specific limits** to each collateral issuer.
- Limits expressed in **absolute amount** or **percentage value** of the collateral issuer's portfolio.
- Institutions to set up **eligibility profiles** based on lists of collateral issuers and types of securities.
- Furthermore, a **margin of conservatism** should also be applied to ensure compliance with Art. 395(1).

#### **Revision of the instructed limits**

- The service agreement should set out the **circumstances to revise** the instructed limits and their frequency.
- Institutions to request a revision **based on the weekly reports** or where the institution is informed of a **breach of the instructed limits**.
- Elements like **overall exposures** to a collateral issuer and **risk of breaching Art. 395(1)** must be considered.
- Revision in the form of **change of the absolute amount** or **percentage value** of a specific type of securities.

# The conditions for the use of the alternative treatment (2)

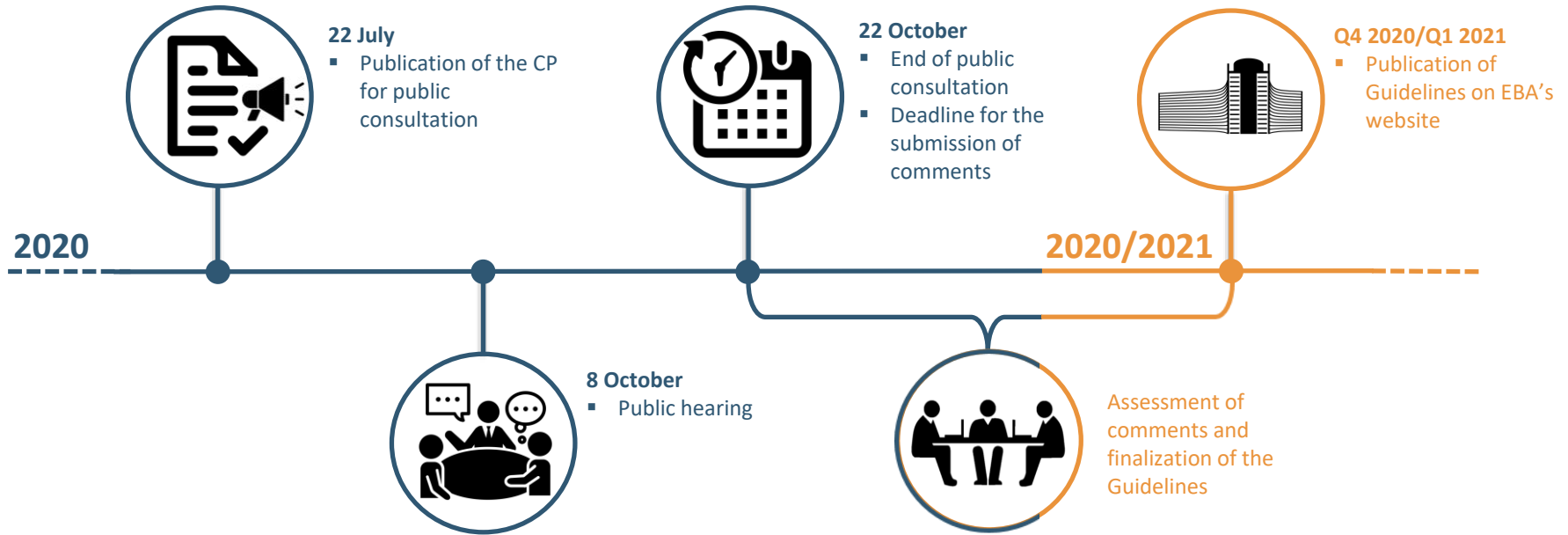
## *Determination, Monitoring and Revision*



### Monitoring of the instructed limits

- The tri-party agent's monitoring systems should allow to **trigger movements** within the portfolio of securities to ensure compliance with the instructed limits.
- They should also allow the institution to verify how the tri-party agent manages **collateral revaluation, variation margining, income payments** on the collaterals and **substitution** of collateral in accordance with the service agreement.

# Next steps



# Overview of questions for consultation (1)



Section	Question
Definitions	<b>Q1</b> Are the definitions and their use throughout the guidelines clear?
Service agreement	<b>Q2</b> Do you think that this general framework is appropriate? Are there other elements that should be included to make the service agreement more comprehensive?
Safeguards	<b>Q3</b> Do you agree with the list of proposed safeguards? If no, please explain why and present possible alternatives. <b>Q4</b> Do you see any practical reasons that would prevent the implementation of any of the safeguards? If yes, please explain.
Determination of instructed limits	<b>Q5</b> Do you consider that the criteria listed in this section, in particular in paragraph 18, provide a sufficient guidance for institutions to determine limits? Are there any other elements that would be useful to include? <b>Q6</b> Is it clear to you how to apply a ‘margin of conservatism’ as set out in paragraph 19? <b>Q7</b> Do you think that applying the same criteria for the alternative treatment is a suitable method? Do you consider that there could be alternative ways?
Revision of the instructed limits	<b>Q8</b> Do you agree with the general approach for the revision of the instructed limits? Is this approach appropriate in the context of general revisions of concentration limits and exclusions that currently govern the relationships with tri-party agents? <b>Q9</b> Do you agree with the general approach regarding when the limits need to be revised?

# Overview of questions for consultation (2)



Section	Question
<b>Monitoring of the instructed limits</b>	<b>Q10</b> Do you think that the guidelines represent an appropriate approach to the monitoring of the instructed limit and in general of the implementation of the alternative treatment?
	<b>Q11</b> Do you think that tri-party agents have in place such controls that would facilitate the management of the instructed limits? Would you assess that the control mechanisms should be more precise and prescriptive?
<b>Material concerns</b>	<b>Q12</b> Do you agree with the non-exhaustive list of material concerns?
	<b>Q13</b> Are you aware of any other material concerns to be included in the guidelines?
<b>Procedure to deal with a material concern</b>	<b>Q14</b> Do you see a need for further clarification of the procedure dealing with a material concern?
	<b>Q15</b> Please specify what overall impact the proposed procedure would have on expected practices.



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