



Commission de Surveillance
du Secteur Financier

Circular CSSF 21/776

on the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' for large exposures purposes (EBA/GL/2021/01)

Circular CSSF 21/776

Re: Application of the Guidelines of the European Banking Authority specifying the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' for large exposures purposes (EBA/GL/2021/01)

Luxembourg, 6 July 2021

To all credit institutions designated as Less Significant Institutions under the Single Supervisory Mechanism and to all branches of non-EU credit institutions

Purpose of the Circular

The purpose of this circular is to inform you that the CSSF, in its capacity as competent authority, applies the Guidelines of the EBA specifying the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' set out in Article 403(3) of Regulation (EU) 575/2013 for large exposures purposes (EBA/GL/2021/01) (the "Guidelines"), published on 16 February 2021. Consequently, the CSSF has integrated the Guidelines into its administrative practices and regulatory approach with a view to promote supervisory convergence in this field at the European level.

All the institutions concerned shall duly comply with them.

The Guidelines

The Guidelines are issued by the EBA in accordance with the mandate set out in Article 403(4) of Regulation (EU) No 575/2013 (the **CRR**) and apply as from 28 June 2021.

The Guidelines specify the conditions that an institution should comply with where it decides to make use of the alternative treatment provided under Article 403(3) of the CRR with regard to tri-party repurchase agreements facilitated by a tri-party agent, including the conditions and frequency for determining, monitoring and revising the limits referred to in point (b) of Article 403(3) of the CRR, for the purposes of applying the substitution approach provided for in point (b) of Article 403(1) of that regulation.

The Guidelines are attached to this circular as an annex and are available on the EBA's [website](#).

Scope of application

The present circular shall apply to Less Significant Institutions¹ and to branches of non-EU credit institutions on an individual basis (**In-Scope entities**).

1. Alternative treatment of institutions' exposures related to 'tri-party repurchase agreements'

Pursuant to Article 403(3) of the CRR and in the context of the mandatory substitution approach set forth in Article 403(1) of that regulation, In-Scope entities may replace the total amount of their exposures to a collateral issuer due to tri-party repurchase agreements facilitated by a tri-party agent, using as an alternative treatment the full amount of the limits that the institution has instructed the tri-party agent to apply to those exposures.

When In-Scope entities decide to perform such a replacement, Article 403(3) of the CRR requires them to comply with three conditions, which are further specified in the Guidelines, namely:

- the institution must verify that the tri-party agent has in place appropriate safeguards to prevent breaches of the limits instructed by the institution;
- the competent authority has not expressed to the institution any material concerns;
- the sum of the limit instructed by the institution to the tri-party agent, and any other exposures of the institution to the collateral issuer does not exceed the limit set out in Article 395(1) of the CRR.

¹ "Significant supervised entities" as defined in Article 2, point 16 of Regulation (EU) No 468/2014 of the European Central Bank (ECB) of 16 April 2014 (the SSM Framework Regulation) shall refer to the relevant ECB rules.

2. Notification to the CSSF

Where an In-Scope entity intends to make use of the alternative treatment with a tri-party agent, it should notify the CSSF at least four weeks prior to the implementation of the alternative treatment. The notification should comprise the following elements:

- a) a confirmation of its intention to use the alternative treatment;
- b) a description of the main elements of the collateral management service agreement entered into between the tri-party agent and the In-Scope entity;
- c) the identification of the tri-party agent(s) that it intends to use;
- d) a declaration approved by the management body of the In-Scope entity that the use of the alternative treatment complies with the requirements of the Guidelines.

The notification shall be addressed to the CSSF's line supervisor via email. The CSSF may request any additional information where necessary.

Upon receipt of a complete notification file, the CSSF will inform the In-Scope entity within four weeks if it has any material concerns about the use of the alternative treatment. An In-Scope entity shall not use the alternative treatment until the CSSF has satisfied itself that the In-Scope entity has satisfactorily addressed any such material concerns.

In the absence of a reaction from the CSSF within four weeks following the receipt of a complete notification file, the In-Scope entity may use the alternative treatment. The use of the alternative treatment by an In-Scope entity shall not preclude the CSSF from raising any material concerns within the scope of its ongoing supervision in accordance with paragraphs 38 and 39 of the Guidelines.

Date of application

This circular shall apply with immediate effect.

Claude WAMPACH
Director

Marco ZWICK
Director

Jean-Pierre FABER
Director

Françoise KAUTHEN
Director

Claude MARX
Director General

Annex

EBA Guidelines specifying the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' for large exposures purposes (EBA/GL/2021/01)



Final guidelines on
tri-party repos for LE

EBA/GL/2021/01

16 February 2021

Final Report

Guidelines specifying the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' set out in Article 403(3) of Regulation (EU) 575/2013 for large exposures purposes

Contents

1. Executive Summary	3
2. Background and rationale	4
3. Guidelines	12
4. Accompanying documents	24
4.1 Cost-benefit analysis / impact assessment	24
4.2 Feedback on the public consultation	26

1. Executive Summary

As part of the 'Risk Reduction Measures Package' adopted by European legislators in May 2019, Regulation (EU) 2019/876 has amended Part Four on Large Exposures of Regulation (EU) No 575/2013 (CRR).

Pursuant to Article 403(3) of the CRR and in the context of the mandatory substitution approach set forth in Article 403(1) of the CRR, an institution may replace the total amount of its exposures to a collateral issuer due to tri-party repurchase agreements facilitated by a tri-party agent, using as an alternative treatment the full amount of the limits that the institution has instructed the tri-party agent to apply to the securities issued by that collateral issuer. The amount of such a limit must be added to any other exposures to the same collateral issuer (direct loans, participations, etc.) with the overall amount (including exposures to a relevant group of connected clients, if available) complying with the large exposure limits. Irrespective of the use of this treatment, institutions remain responsible for monitoring their exposures and complying at all times with the large exposure limits.

To be able to conduct the aforementioned replacement, institutions must observe certain conditions. The EBA is mandated, under Article 403(4) of the CRR, to issue guidelines specifying those conditions, including the frequency for determining, monitoring and revising the full amount of the limits specified by the institution to the tri-party agent.

In particular, the guidelines recommend a set of elements that an institution and a tri-party agent should include in their service agreement for the use of the alternative treatment. The guidelines establish a set of safeguards that the tri-party agent has to put in place and for which the institution needs to verify the appropriateness for the use of the alternative treatment. Furthermore, the guidelines specify how institutions should determine the limits to be applied by a tri-party agent with regard to the securities of a collateral issuer, as well as the general framework under which such limits can be revised.

Finally, the guidelines include a non-exhaustive list of circumstances that could lead the competent authority to raise material concerns and that would prevent the use of the alternative treatment by institutions. A procedure for dealing with those material concerns is also specified.

Next steps

The guidelines will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the guidelines will be two months after the publication of the translations. The guidelines will apply from 28 June 2021.

2. Background and rationale

General considerations on tri-party repurchase transactions and tri-party agents

1. The market of repurchase transactions is a major source of short-term funding for institutions. A repurchase transaction is a financial transaction in which one party (collateral giver/provider and cash taker) sells an asset to another party (collateral receiver and cash provider) with a contractual engagement to repurchase the asset at a pre-specified later date. These transactions are often perceived to be secured lending transactions between the counterparties. Investors/lenders provide cash to a borrower, with the loan secured by the collateral of the borrower. By agreement between the two parties, the borrower buys the collateral back shortly afterwards, usually the following day, at a slightly higher price. The investor/lender charges an interest rate called the 'repo rate'. When a third party is involved to take over the administrative tasks involved in the collateral management (collateral selection, payments and deliveries, custody of collateral securities, collateral management and other operations during the life of the transaction), the transaction is referred to as a tri-party repurchase transaction or 'tri-party transaction'.
2. The third party responsible for collateral management in a tri-party transaction, also known as 'tri-party agent', can be a custodian bank or a national (CSD) or international central securities depository (ICSD). Indeed, among the non-banking type ancillary services that a CSD can perform in accordance with Regulation (EU) No 909/2014, is that of providing collateral management as an agent for participants in a securities settlement system, as well as the provision of general collateral management services as an agent.¹
3. Tri-party agents serve as collateral managers whose main aim is to alleviate the administrative burden related to the transactions, but do not act as intermediaries or counterparties and are not exposed to the risks created by these transactions. The two parties to the repurchase transaction must conduct transactions under a bilateral contractual agreement anyway.
4. Once the parties have agreed to a transaction, they must independently notify the tri-party agent, who will match both sets of instructions and process the transaction. The tri-party agent normally selects, from the seller's securities account, sufficient collateral that satisfies pre-agreed credit and liquidity criteria, concentration limits as well as any other transaction preferences agreed by the parties. The tri-party agent then performs tasks such as the regular revaluation of the collateral, variation margining and income payments on the collateral. The tri-party agent can also substitute any collateral that ceases to conform to the quality criteria of the buyer.

¹ Section B of the Annex of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

Legal mandate

5. As of 28 June 2021, and in accordance with Article 403(1) of Regulation (EU) No 575/2013 (CRR), as amended by Regulation (EU) No 2019/876² the substitution approach will be mandatory. Accordingly, the portion of the exposure to a client which is guaranteed by a third party or secured by collateral issued by a third party should be counted towards the guarantor or third-party collateral issuer under the condition that the unsecured exposure to the guarantor or the collateralised portion of the exposure is assigned a risk weight that is equal to or lower than the risk weight of the unsecured exposure to the client under Chapter 2 of Title II of Part Three of the CRR.
6. In particular, with regard to collateralised exposures, Article 403(3) of the CRR states that an institution may replace the total amount of its exposures to a collateral issuer due to a tri-party repurchase agreement (tri-party repo) facilitated by a tri-party agent with the full amount of the limits that the institution has instructed the tri-party agent to apply to the securities issued by that collateral issuer. To be able to conduct such a replacement, three conditions must be met, namely:
 - i. The institution must verify that the tri-party agent has in place appropriate safeguards to prevent breaches of the limits specified by the institution (Article 403(3)(c) of the CRR);
 - ii. The competent authority has not expressed to the institution any material concern (Article 403(3)(d) of the CRR); and
 - iii. The sum of the amount of the limit specified by the institution and any other exposures of the institution to the collateral issuer does not exceed the limit set out in Article 395(1) CRR (Article 403(3)(e) of the CRR).
7. The EBA is mandated under Article 403(4) of the CRR to issue guidelines specifying those three conditions, including the conditions and frequency for determining, monitoring and revising the limits that the institution specified to the tri-party agent. The EBA must publish such guidelines by 31 December 2019.³

Large exposure limits under the mandatory substitution approach

8. Where an institution applies the mandatory substitution approach under Article 403(1) CRR, it remains subject to the large exposure limits as set out in Article 395(1) CRR. Such limits must be complied with at all times (Article 395(3) of the CRR). However, for some types of securities

² Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (Text with EEA relevance) OJ L 150, 7.6.2019, p. 1–225.

³ However, the EBA published on 21 November 2019 a roadmap on the risk reduction package with a planned timetable to deliver the regulatory deliverables according to the mandates given by the CRR 2 to the EBA. According to the roadmap, these guidelines should be delivered by December 2020 (<https://eba.europa.eu/eba-publishes-its-roadmap-risk-reduction-measures-package>).

financing transactions, specifically tri-party repos, an institution may not have control over the collateral pool in real time, and thus may, for a certain period of time, exceed the large exposure limits. This could especially happen when an institution already has a substantial exposure to a collateral issuer included in the collateral pool managed by the tri-party agent.

9. In order to ensure compliance with the large exposure limits, while preserving the mandatory substitution approach and at the same time allowing for certain flexibility in monitoring the said limits, institutions might replace the total amount of the institution's exposure to a collateral issuer due to tri-party repos facilitated by a tri-party agent with the full amount of the limits that the institution has instructed the tri-party agent to apply to the securities issued by that collateral issuer ('alternative treatment'). Thus, instead of continuously monitoring and calculating the actual total exposure to the collateral issuer in tri-party repos, institutions may instruct the tri-party agent upfront to apply certain limits on an ongoing basis on exposures to that collateral issuer. The amount of that limit must be added to any other exposures to the same collateral issuer (direct loans, participations, etc.) and subject them to the large exposure limits.
10. The collateral limits specified at the outset of the tri-party repo should be set in a way that would not lead to a breach of the large exposure limits. That requires that the institution applying the alternative treatment has to verify that the tri-party agent has in place appropriate safeguards to prevent the limit specified by the institution from being exceeded. If this and other conditions, as set out in Article 403(3) of the CRR, are met, institutions have the option of not having to continuously monitor their current exposures to collateral issuers under a particular agreement with the tri-party agent. In this regard, the alternative treatment can be deemed more prudent, as it is not the actual exposure to a collateral issuer that is counted towards the large exposure limit, but a communicated maximum amount that may or may not be drawn at any given moment together with any other exposures to that collateral issuer.
11. The use of the alternative treatment implies that any breach of the large exposure limit with respect to a certain collateral issuer could arise from an increase in exposures other than the exposures from tri-party repos. In such a situation, it should be up to the institution to decide how to rectify the breach in accordance with the applicable general procedures. For example, as soon as the amount of other exposures to a collateral issuer increases (or is likely to increase) an institution could change the limits specified to the tri-party agent accordingly and in a timely manner; alternatively, it could manage its other exposures to that collateral issuer to prevent a revision of the specified limits.
12. To help prepare these guidelines, the EBA sought technical input from selected tri-party agents on actual market practices concerning the different areas that these guidelines specify as per the mandate in Article 403(4) of the CRR.

The condition that the tri-party agent has in place appropriate safeguards to prevent breaches to the limits specified by the institution

13. The relationship with a tri-party agent is normally reflected in a bilateral contractual agreement (the service agreement). Amongst other things, the service agreement should include a statement by the tri-party agent confirming that it has in place appropriate safeguards to ensure compliance with the specified limits. These safeguards should be prudent and rely as much as possible on existing arrangements with a tri-party agent, such as concentration limits.
14. Since these safeguards are intended to support the management of risks related to the potential breach of limits specified by the institution, institutions need to take into account the regulatory framework applicable to institutions in general as well as to tri-party agents. In particular, and for the reasons explained in the subsequent paragraphs, where an institution instructs a tri-party agent to manage collateral on its behalf, it needs to give consideration as to whether this arrangement falls under the definition of 'outsourcing' as per the EBA Guidelines on outsourcing arrangements⁴ and, if so, whether it is a critical or important outsourcing arrangement. On the other hand, tri-party agents consist mostly of custodian banks as well as international and/or national central securities depositories (CSD). CSD are subject to regulatory and supervisory prudential requirements and are required to have robust governance arrangements, which should reduce the level of operational risks related to their involvement.
15. In general, as part of the overall internal control framework, institutions should have a holistic institution-wide risk management framework extending across all business lines and internal units. Under that framework, institutions should identify and manage all their risks, including risks caused by arrangements with third parties including with tri-party agents. The risk management framework should also enable institutions to make well-informed decisions on risk-taking and ensure that risk management measures are appropriately implemented.
16. Institutions with a risk-based approach should identify, assess, monitor and manage all risks resulting from arrangements with third parties to which they are or might be exposed, regardless of whether or not those arrangements are outsourcing arrangements. The risks, in particular the operational risks, of all arrangements with third parties, should be assessed.⁵ Institutions should ensure that they comply with all the requirements under CRD/CRR, including in their arrangements with third parties.

EBA Guidelines on outsourcing arrangements

17. The EBA Guidelines on outsourcing arrangements set out how Articles 74 and 109 of Directive 2013/36/EU (CRD) pertaining to robust governance arrangements are to be applied with regard to outsourcing functions. Article 74 of Directive 2013/36/EU (CRD) requires that institutions have in

⁴ See Final Report on EBA Guidelines on outsourcing arrangements. EBA/GL/2019/02. <https://eba.europa.eu/sites/default/documents/files/documents/10180/2551996/38c80601-f5d7-4855-8ba3-702423665479/EBA%20revised%20Guidelines%20on%20outsourcing%20arrangements.pdf>

⁵ See section 12.2 of the EBA Guidelines on outsourcing arrangements, applicable to all third parties and not only under outsourcing.

place robust governance arrangements.⁶ Therefore, these guidelines should be read in conjunction with, but without prejudice to, the EBA Guidelines on outsourcing arrangements. When entering into a tri-party repo with a tri-party agent, an institution should assess whether such arrangement falls under the definition of outsourcing as defined in the EBA Guidelines on outsourcing arrangements. In any case, institutions are required to manage all their risks, including the operational risks related to the involvement of tri-party agents.

18. In order to determine whether an arrangement with a third party falls under the definition of outsourcing, institutions should assess such arrangement, giving consideration as to whether the function (or a part thereof) that is outsourced to a service provider is performed on a recurrent or an ongoing basis by the service provider and whether this function (or part thereof) would normally fall within the scope of functions that would or could realistically be performed by institutions, even if the institution has not performed this function in the past itself.⁷ This is without prejudice of paragraph 28 of the EBA Guidelines on outsourcing arrangements that provide examples of functions that institutions, as a general principle, should not consider outsourcing.
19. Notwithstanding that assessment, institutions should have an appropriate risk management framework to manage all their risks, including risks stemming from contracts with third parties, in accordance with Article 74 of the CRD and the EBA Guidelines on internal governance⁸.

The regulation of central securities depositories (CSD) and custodian banks

20. Regulation (EU) No 909/2014 on improving securities settlement in the EU and on central securities depositories, among other things, introduces strict organisational, conduct of business and prudential requirements for CSD and sets out increased prudential and supervisory requirements.⁹
21. The Regulation requires that a CSD have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate remuneration policies and internal control mechanisms, including sound administrative and accounting procedures.¹⁰ Furthermore, a CSD must have robust management and control systems as well as IT tools in order to identify, monitor and manage general business risks, including losses from poor execution of business strategy, cash flows and operating expenses.¹¹ In terms of operational risk, a CSD must identify sources of operational risk, both

⁶ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance. OJ L 176, 27.6.2013, p. 338–436.

⁷ See section 3 of the EBA Guidelines on outsourcing arrangements.

⁸ Final Report on Guidelines on Internal Governance under Directive 2013/36/EU (EBA/GL/2017/11) of 26 September 2017.

⁹ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

¹⁰ Article 26 of Regulation (EU) No 909/2014.

¹¹ Article 44 of Regulation (EU) No 909/2014.

internal and external, and minimise their impact through the deployment of appropriate IT tools, controls and procedures, including for all the securities settlement systems it operates.¹²

The condition that the competent authority has not expressed to the institution any material concerns

22. To support the implementation of the alternative treatment, the guidelines provide guidance as to whether a concern expressed by a competent authority to an institution should be considered 'material', in which case the institution should not make use of the alternative treatment; or, when it is already using it, address it within the timeframe given by the competent authority before it can resume again its use. A material concern could primarily arise from the institution itself, from the tri-party agent or from the provisions of the service agreement. The guidelines do not provide an exhaustive list of such material concerns but rather a series of elements where this condition could be met.
23. To determine whether a concern is 'material', competent authorities should take into account the overall exposures reported by an institution to collateral issuers. A competent authority should take into account the management procedures and internal controls that the institution has in place to identify, manage, monitor, report and record all large exposures and subsequent changes to them. The competent authority should also satisfy itself that the provisions included in the service agreement with the tri-party agent comply with applicable laws and regulatory requirements, including these guidelines. In this context, the safeguards implemented by the tri-party agent to observe the specified limits should be taken into account. A material concern can arise too where the tri-party agent is a regulated entity and during the use of the alternative treatment, its authorisation is withdrawn by the authority responsible for its supervision. Finally, the competent authority can also have material concerns with regard to the practical implementation of the conditions and frequency for monitoring and revising the specified limits.
24. Prior to using the alternative treatment, institutions should notify the competent authority of their intention to use the alternative treatment and submit a notification. The notification should be accompanied by a declaration approved by the management body of the institution that the use of the alternative treatment is in line with the requirements of these guidelines. Further to the receipt of that notification, the competent authority should inform the institution only in the case that it has any material concerns about the use of the alternative treatment. If there are no material concerns, the competent authority should not communicate with the institution.
25. A competent authority can express material concerns at any time during the use of the alternative treatment. In that case, the institution has to cease the use of the alternative treatment and take the appropriate measures to remedy them within the timeframe given by the competent authority if it wants to continue using it.

¹² Article 45 of Regulation (EU) No 909/2014.

The condition that the sum of the amount of the limit specified by the institution to the tri-party agent and any other exposures of the institution to the collateral issuer does not exceed the limit set out in Article 395(1) of the CRR

26. Institutions are under the obligation to observe the large exposure limits set out in Article 395(1) of the CRR at all times, regardless of whether or not they make use of the alternative treatment under Article 403(3) of the CRR.
27. An institution should ensure that the sum of all its exposures to a collateral issuer and its group of connected clients, if available, plus the limits specified to the tri-party agent as regards the securities issued by that collateral issuer, after taking into account the effect of credit risk mitigation, do not exceed the limits set out in Article 395(1) of the CRR. For these purposes, an institution should integrate the specified limits in its systems and procedures so that it has real-time knowledge of its exposures to a collateral issuer and its group of connected clients, if available, including the specified limits to a tri-party agent in respect of the securities issued by the same collateral issuer.
28. Furthermore, to ensure that an institution is not constrained by the specified limits in the management of its overall exposures to a given collateral issuer and its group of connected clients, if available, while the tri-party repo is not devoid of its economic and operational advantages to manage collateral, the specified limits should be subject to revisions. The collateral management service agreement with a tri-party agent should set out the conditions for the introduction of changes to the specified limits.
29. Where a limit managed by a tri-party agent has been breached, the institution should be informed immediately by the tri-party agent using their choice of communications as agreed by both parties. The tri-party agent should have it remedied and inform the institution of the time taken to remedy it. Furthermore, the institution should ensure that its management body is informed of any breaches of the specified limits and their likely impact on the large exposure limits. It is the duty of an institution to ensure that the specified limits are revised immediately to deal with any breaches.

Conditions and frequency for determining, monitoring and revising the limits specified by the institution to the tri-party agent

30. While the guidelines leave ample room to the counterparties to negotiate the conditions of the contract, they however provide some elements to determine the conditions for the use of the alternative treatment. In particular, the guidelines should specify the conditions that an institution should take into account when setting the specified limits for the tri-party agent; the form and frequency of the monitoring of the specified limits; and the conditions for revising the specified limits and frequency of their revision.

31. Such conditions should respect the principle of proportionality, i.e. they should not render the management of collateral by a tri-party agent void of its economic and operational advantages. They also rely as much as possible on current market practices and at the same time represent a prudent approach to the management of large exposures.
32. In terms of determining the specified limits, the guidelines provide the elements that should inform such determination. The institution should apply a margin of conservatism such that it would facilitate the management of its exposures within the limits of Article 395(1) of the CRR. The specified limits should be expressed as an absolute amount or a percentage value of a specific type of security in the portfolio.
33. Equally, an institution should consider its overall exposures to a collateral issuer and its group of connected clients, if available, and the risk of breaching the large exposure limits with a view to revising the specified limits. Such revisions should be possible during the lifetime of the agreement with the tri-party agent, and should be implemented in a timely manner in order to prevent a breach of the limits. The guidelines should not be construed as granting in all cases a unilateral right to institutions to introduce revisions to the limits that could render void the bilateral agreement between the counterparties to a tri-party repurchase agreement.
34. Finally, the guidelines rely on current monitoring systems to integrate the alternative treatment. Institutions should receive, at least on a weekly basis, information from the tri-party agent about the amount and composition of the received collateral. This information should help institutions to decide whether revisions are necessary so as to ensure compliance with the large exposure limits.

Rationale for the guidelines

35. The purpose of these guidelines is to provide guiding principles on the use of the alternative treatment referred to in Article 403(3) of the CRR for those instances where an institution decides to make use of such possibility. While current market practices have constituted a major starting point for the development of these guidelines, some deviations are necessary to ensure that the use of the alternative treatment is consistent across institutions in the Union and implemented in a sufficiently prudent manner.
36. The guidelines were developed with the following objectives:
 - i. Ensure a prudent and harmonised application of Article 403(3) of the CRR while keeping the approach simple;
 - ii. Ensure a level playing field among institutions in the Union; and
 - iii. Provide guidance to competent authorities in their assessment of compliance.

EBA/GL/2021/01

15 February 2021

3. Guidelines

Guidelines

specifying the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' set out in Article 403(3) of Regulation (EU) 575/2013 for large exposures purposes

1. Compliance and reporting obligations

1.1. Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010.¹³ In accordance with Article 16(3) of the Regulation, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. The guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to which guidelines are addressed to comply with the guidelines. Competent authorities to which guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

1.2. Reporting requirements

3. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by `[[dd.mm.yyyy]]`. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference EBA/GL/2021/01. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010.

2. Subject matter, scope and definitions

Subject matter

¹³ 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

5. These guidelines specify, in accordance with the mandate set out in Article 403(4) of Regulation (EU) No 575/2013, the conditions that an institution should comply with where it decides to make use of the alternative treatment provided under Article 403(3) of that Regulation with regard to tri-party repurchase agreements facilitated by a tri-party agent, including the conditions and frequency for determining, monitoring and revising the limits referred to in point (b) of Article 403(3) of Regulation (EU) No 575/2013, for the purposes of applying the substitution approach provided for in point (b) of Article 403(1) of that Regulation.

Scope of application

6. These guidelines apply in relation to institutions' exposures to collateral issuers due to tri-party repurchase agreements (tri-party repos) facilitated by a tri-party agent.

Addressees

7. These guidelines are addressed to competent authorities as defined in point (i) of Article 4(2) of Regulation (EU) No 1093/2010 and to financial institutions as defined in Article 4(1) of Regulation (EU) No 1093/2010.

Definitions

8. Unless otherwise specified, the terms used and defined in Regulation (EU) No 575/2013 and Directive 2013/36/EU have the same meaning in the guidelines.

Tri-party repurchase transaction (tri-party transaction)	means a repurchase transaction where the cash/collateral is received in deposit and managed by a tri-party agent.
Tri-party repurchase agreement (tri-party repo)	means a repurchase agreement whereby the counterparties appoint a tri-party agent to act as their agent and facilitate collateral management services during the execution of tri-party transactions.
Collateral management service agreement (service agreement)	means the agreement between an institution and a tri-party agent for the management of collateral provided to the institution in the context of the execution of a tri-party transaction.
Tri-party agent	means a third party that executes collateral management services, which may include payments and/or delivery of securities, safekeeping and administration services of securities including collateral selection and custodianship for the account of the counterparties to a tri-party transaction.

Collateral issuer

means the third party issuing the security that is received by the institution as collateral for a tri-party transaction as referred to in point (b) of Article 403(1) and points (a) and (b) of Article 403(3) of Regulation (EU) No 575/2013.

Alternative treatment

means the approach whereby an institution replaces the total amount of the institution's exposures to a collateral issuer due to a tri-party repo facilitated by a tri-party agent with the full amount of the limits that that institution has instructed the tri-party agent to apply to the securities issued by the same collateral issuer in accordance with Article 403(3) of Regulation (EU) No 575/2013.

Specified limits

mean the limits communicated by an institution to a tri-party agent, applicable to the securities issued by the collateral issuer as referred to in point (b) of Article 403(3) of Regulation (EU) No 575/2013.

3. Implementation

3.1 Date of application

9. These guidelines apply from 28 June 2021.

4. Conditions for the application of the alternative treatment

10. Institutions should rely on a tri-party agent for the use of the alternative treatment only where they have carried out appropriate due diligence to verify that the tri-party agent complies with the conditions specified in these guidelines.

4.1 Governance arrangements

11. For the purposes of these guidelines, institutions should ensure, in accordance with the EBA Guidelines on Internal Governance, that:

- a) the use of the alternative treatment is adequately documented in its policies and procedures; and
- b) their management body oversees and monitors the implementation of the alternative treatment.

4.2 Verification of the establishment of appropriate safeguards by the tri-party agent to prevent breaches of the limits specified by the institution for the securities issued by the collateral issuer

4.2.1 Minimum elements to be included in the service agreement

12. For the purposes of verifying that the tri-party agent has put in place appropriate safeguards to prevent breaches of the specified limits and without prejudice to other provisions in these guidelines, institutions should ensure that the service agreement sets out at least the following elements:
- a. a clear description of the services provided by the tri-party agent with regard to collateral management including securities delivery;
 - b. the limits set out by the institution and applicable to a portfolio of securities in respect of a given collateral issuer as well as the conditions for their revision and the frequency of revision;
 - c. a statement confirming that the tri-party agent has put in place appropriate safeguards in accordance with paragraph 13 to ensure compliance with the specified limits;
 - d. the tri-party agent's monitoring systems, including the communication by the tri-party agent of any development that may have a material impact on its ability to effectively carry out its functions in line with the service agreement and, where applicable, in compliance with the applicable laws and regulatory requirements;
 - e. the tri-party agent's obligation to submit reports to the institution, at least on a weekly basis, on the amount and composition of the collateral received and/or managed by the tri-party agent for the account of the institution;
 - f. the tri-party agent's obligation to report immediately to the institution when a breach of the specified limits has occurred;
 - g. the right of the institution or a legitimate third party (inter alia the statutory auditor, the competent authority or third parties appointed by them) to verify that

the tri-party agent has put in place the safeguards in accordance with paragraph 13 of the guidelines;

- h. the communication channels to be used between the institution and the tri-party agent during the performance of the agreement.

4.2.2 Safeguards to be put in place by a tri-party agent to ensure compliance with the specified limits

13. The safeguards that the tri-party agent should put in place to ensure compliance with the specified limits should include the following:

- a. Tri-party collateral management is only performed in accordance with the duly signed service agreement;
- b. Tri-party agents have set up a control environment which ensures, for each communication on specified limits, that these limits are duly authorised by the institution, and are entered and processed accurately, in due time and only once in their collateral management system;
- c. Tri-party agents have set up a control environment that ensures that collateral is safeguarded, actively monitored and pricing values are duly recorded in a timely manner;
- d. Tri-party agents have set up a control environment which ensures the detection, in a timely manner, of possible breach(es) of the specified limits;
- e. When allocating collateral securities to cover an exposure, the tri-party agent's systems ensure that their market value does not breach any of the specified limits and/or exclusions. In case of an inadequate application of the revised limits specified by the institution due to operational issues, the tri-party agent should notify the institution in good time;
- f. Tri-party agents should be contractually required to comply with the specified limits and to ensure that the eligibility profiles of collateral issuers and securities as referred to in section 4.3.1 can be verified on the basis of the information provided under the service agreement by the institution and the collateral provider.

14. Institutions should obtain, at least annually, an adequate level of assurance in the form of a written declaration that the tri-party agent complies with the safeguards put in place in accordance with the service agreement.

4.3 Determination, revision and monitoring of the limits specified by the institution to the tri-party agent for the securities issued by the collateral issuer

4.3.1 Determination of the specified limits

15. Institutions should determine specific limits for each collateral issuer and, if deemed necessary, exclude certain collateral issuers in order not to breach the large exposure limits set out in Article 395(1) of Regulation (EU) No 575/2013.
16. Limits should be expressed as an absolute amount or percentage value of all securities or a specific type of security in the collateral issuer's portfolio.
17. With a view to determining the specified limits, institutions should set up eligibility profiles based on lists of collateral issuers and on types of securities which the tri-party agent could use for the composition of a given collateral issuer's portfolio of securities. For these purposes, institutions should take into account possible connections between single collateral issuers or between single collateral issuers and clients of the whole portfolio that could lead to a group of connected clients in accordance with Article 4(1)(39) of Regulation (EU) No 575/2013.
18. For the purposes of determining the specified limit applicable to a portfolio of securities by a given collateral issuer, institutions should take into account the following:
 - a) their current exposures to the collateral issuer and its group of connected clients, if available;
 - b) their exposures to the collateral issuer and its group of connected clients, if available, during the previous calendar year;
 - c) their scheduled exposures to the collateral issuer and its group of connected clients, if available, for the forthcoming 6 to 12 months;
 - d) whether the institution has managed the securities issued by a collateral issuer via tri-party repos or a combination of tri-party repos and repo transactions entered into directly with a counterparty.
19. In addition to the elements mentioned in paragraphs 17 and 18, institutions should set limits by applying a margin of conservatism that would allow the institution to comply with the large exposure limits set out in Article 395(1) of Regulation (EU) No 575/2013 at all times.

4.3.2 Revision of the specified limits and its frequency

20. Institutions should ensure that the service agreement includes the circumstances under which the specified limits could be revised and the frequency of their revision.
21. In particular, institutions should be in the position to request the revision of the specified limits based on the reports from the tri-party agent referred to in point e) of paragraph 12 or when they are informed of any breaches of the specified limits by the tri-party agent.

22. In determining the circumstances referred to in paragraph 20, institutions should consider their overall exposures to a collateral issuer and its group of connected clients, if available, and the risk of breaching the large exposure limits set out in Article 395(1) of Regulation (EU) No 575/2013. Institutions should also take into account their ability, with due regard to their administrative and accounting procedures and internal control mechanisms, to manage in a timely manner any other exposures to a collateral issuer they may have so as to avoid a breach of the large exposure limits.
23. The revision of the specified limits should take the form of a change of the absolute amount of the specified limit or the percentage value of a specific type of securities in the portfolio of a collateral issuer. It may also take the form of the exclusion or inclusion of a type of securities in the portfolio of a collateral issuer.
24. The revision of the specified limits should be possible during the lifetime of the service agreement and should be executed in a timely manner by the tri-party agent once it has been informed thereof.

4.3.3 Monitoring of the specified limits and its frequency

25. Where institutions make use of the alternative treatment, they should verify that the systems that the tri-party agent has in place to monitor the collateral composition are adequate with regard to the accurate and timely management of the specified limits.
26. In particular, institutions should verify that the tri-party agent's monitoring systems allow the tri-party agent to trigger movements within the portfolio of securities of a given collateral issuer to ensure compliance with the specified limits.
27. Institutions should also verify that the tri-party agent manages the collateral revaluation, variation margining, income payments on the collaterals and possibly any necessary substitution of collateral in accordance with its tri-party obligations under the service agreement.

4.4 Ensuring compliance with the large exposure limits of Article 395(1) of Regulation (EU) No 575/2013

28. Institutions should ensure that the use of the alternative treatment does not lead to a breach of the large exposure limits set out in Article 395(1) of Regulation (EU) No 575/2013.
29. Where a breach of the specified limits has occurred, the tri-party agent should inform the institution immediately of:
 - a) the name of the collateral issuer in relation with 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.
30. The institution's management body should be informed without undue delay of any breaches of the specified limits on the securities by a collateral issuer and its likely impact on compliance with the large exposure limits of Article 395(1) of Regulation (EU) No 575/2013 with respect to the same collateral issuer.
31. Without prejudice to the actions by the tri-party agent to remedy any breach of the specified limits, institutions should also have in place appropriate action plans to deal with breaches of the specified limits to ensure that the large exposure limit of Article 395(1) of Regulation (EU) No 575/2013 to a given collateral issuer is complied with at all times.

4.5 Communication with competent authorities

4.5.1 Notification of the intention to use the alternative treatment

32. Where an institution intends to make use of the alternative treatment with a tri-party agent, it should notify ex-ante the competent authority. The notification should at least comprise the following elements:
- a. a confirmation of its intention to use the alternative treatment;
 - b. a description of the main elements of the service agreement;
 - c. the identification of the tri-party agent(s) that it intends to use;
 - d. a declaration approved by the management body of the institution that the use of the alternative treatment complies with the requirements of these guidelines.
33. The competent authority should have access to all the information deemed necessary to verify the institution's adequacy with the requirements of these guidelines. The competent authority should be able to request additional information where necessary.
34. Where an institution intends to terminate the agreement concluded with a tri-party agent, it should inform the competent authority as soon as possible.

4.5.2 Material concerns expressed by the competent authorities

35. A material concern about the use of the alternative treatment should be based at least on any of the following reasons:

Material concerns with regard to the institution

- a) the use of the alternative treatment leads or is likely to lead to a breach of the large exposure limits of Article 395(1) of Regulation (EU) No 575/2013;
- b) the institution is not complying with its reporting requirements in accordance with Articles 394 and 430 of Regulation (EU) No 575/2013;
- c) the alternative treatment is not integrated or is only partially integrated in the risk management framework of the institution;
- d) relevant findings from on-site inspections, internal and external audits or other supervisory assessments provide evidence of insufficient internal procedures to manage and/or monitor the use of the alternative treatment in accordance with these guidelines.

Material concerns with regard to the service agreement

- e) the provisions included in the service agreement do not ensure compliance with applicable laws and regulatory requirements, including these guidelines. In particular:
 - i. the provisions of the service agreement regarding the revision of the specified limits would make it impossible for an institution to request the timely implementation of changes to prevent a breach of the large exposure limits of Article 395(1) of Regulation (EU) No 575/2013.
 - ii. the institution or a legitimate third party do not have the right to audit the services provided by the tri-party agent under the service agreement to verify that the tri-party agent has in place appropriate safeguards to prevent breaches of the limits specified by the institution as referred to in point (b) of Article 403(3) of Regulation (EU) No 575/2013;

Material concerns with regard to the tri-party agent

- f) the tri-party agent is a regulated entity and its authorisation is subsequently withdrawn by its competent authority;
- g) there is evidence that the tri-party agent has not complied with the requirements for the timely introduction of revisions to the specified limits in accordance with the terms of the service agreement, or it has not observed requests from the institution to exclude certain types of collateral or collateral issuers; or its monitoring systems do not provide for accurate and timely management of the specified limits.

4.5.3 Procedure for dealing with a material concern

- 36. Upon receipt of the notification set out in section 4.5.1, the competent authority should inform the institution within four weeks if it has any material concerns about the use of the alternative treatment, in which case it should state its reasons. If there are no material

concerns, there does not need to be any further communication regarding that notification.

37. Institutions should not use the alternative treatment until the competent authority has satisfied itself that the institution has satisfactorily addressed any material concerns.
38. If an institution is already making use of the alternative treatment and subsequently the competent authority informs the institution that it has material concerns about its use, the institution should cease to use the alternative treatment and provide evidence to the competent authority to that effect.
39. The institution should only resume the use of the alternative treatment where, within the timeframe set by the competent authority, it has satisfactorily addressed the material concerns and provided evidence to the competent authority to that effect.

4. Accompanying documents

4.1 Cost-benefit analysis / impact assessment

Article 403(4) of Regulation (EU) No 575/2013 requires the EBA to issue by 31 December 2019 guidelines specifying the conditions for the application of the alternative treatment referred to in paragraph 3 of Article 403 of Regulation (EU) No 575/2013, including the conditions and frequency for determining, monitoring and revising the limits referred to in point (b) of that paragraph.

The present analysis provides the reader with an overview of the findings as regards problem identification, possible options to resolve problems and their potential impacts. Given the nature and the scope of the guidelines, the analysis is high-level and qualitative in nature.

A. Problem identification and baseline scenario

The large exposure framework complements the risk-based capital standard (Basel II / III). Indeed, the minimum capital requirements (Pillar 1) of the Basel capital framework implicitly assume that a bank holds infinitely granular portfolios. As a backstop to risk-based capital requirements, the large exposure framework is designed so as to limit the maximum possible loss a bank could incur if a single counterparty or group of connected counterparties fail.

With the aim of obtaining a comprehensive measure of the exposures towards a counterparty, besides direct on-balance exposures, off-balance exposures and indirect exposures that can arise through financial instruments such as derivatives must also be included in the definition of exposures to a single counterparty or group of connected counterparties. However, credit risk mitigation (CRM) techniques can be used to reduce the level of the exposures.

In particular, if the substitution approach of the CRM is applied, Regulation (EU) No 575/2013 requires that the portion of the exposure to a client which is guaranteed by a third party or secured by collateral issued by a third party must be included in the definition of the exposures towards the guarantor or the third-party collateral provider.

Pursuant to Article 395(3) of Regulation (EU) No 575/2013, institutions must comply with the large exposure limits at all times. This implies that institutions should have knowledge of collateral received on a continuous basis but in the case of certain types of securities financing transactions, specifically tri-party repurchase agreements, an institution may not have complete control over the collateral pool on a daily basis.

B. Policy objectives

In order to allow for flexibility in monitoring the large exposure limits, an alternative treatment to apply the mandatory substitution approach to tri-party repos has been introduced in Article 403(3) of Regulation (EU) No 575/2013. It specifies that institutions can replace the total amount of the

institution's exposure to a collateral issuer due to tri-party repos facilitated by a tri-party agent with the full amount of the limits that the institution has instructed the tri-party agent to apply to the securities issued by a certain collateral issuer. Thus, instead of continuously monitoring and calculating the actual total exposure to a collateral issuer in tri-party repos, institutions may instruct the tri-party agent upfront to apply certain limits on exposures to that collateral issuer.

Article 403(4) of Regulation (EU) No 575/2013 requires the EBA to issue guidelines specifying the conditions for the application of such an alternative treatment. The objective of the guidelines is to set a common framework between Member States to harmonise the conditions and the limits needed for the application of the alternative treatment.

C. Cost-benefit analysis

Scope of the guidelines

The common framework presented in these guidelines ensures the harmonised identification and application of the conditions required for the application of the alternative treatment set out in Article 403(3) of Regulation (EU) No 575/2013.

Without the indications provided by the guidelines, different interpretations across banks and countries could be made about the conditions and frequency for determining, monitoring and revising the limits used as proxy of exposures toward the collateral issuers.

It should be noted that the alternative treatment of Article 403(3) of Regulation (EU) No 575/2013 may be deemed to be more conservative, as a communicated maximum amount that may or may not be drawn at any given moment is counted towards the large exposure limit, rather than the actual exposure to a collateral issuer.

Breach of the large exposure limits

Under the alternative approach of Article 403(3) of Regulation (EU) No 575/2013 a breach of the large exposure limit with respect to a certain collateral issuer could arise from an increase in exposures other than the exposures from tri-party repurchase transactions. In such a situation, it is suggested by the guidelines that, to prevent a breach, as soon as the amount of other exposures to a certain collateral issuer increases (or is likely to increase), an institution should change the limits communicated to the tri-party agent accordingly and in a timely manner.

It is worth mentioning that the guidelines also suggest setting the limits to take account of the current, past and scheduled exposure to a collateral issuer and its group of connected clients, if available, but also to include a margin of conservatism. The requirement about the inclusion of a margin of conservatism could help to reduce the risk of a breach and consequently reduce the possible burdensome activities needed to regularise the situation.

4.2 Feedback on the public consultation

The consultation paper was published on 22 July and comments were welcome until 22 October 2020. Four answers were received. In general, the feedback on the consultation paper of 22 July was positive. Some concerns were expressed about the general application of the 'alternative treatment' of Article 403(3) of the CRR and the framework's consequences on the pool of collateral and liquidity in the market and on current practices, in particular the change from the current dynamic approach to set limits to static lists of issuers and limits that could impinge on the performance of tri-party arrangements, thus negatively affecting collateral allocation. However, no data or examples were submitted to support these allegations.

Comments were submitted on the neutral role that tri-party agents should have; also on the current reports used to notify institutions about collateral management, and this should also be used for the purpose of the alternative treatment.

Some feedback was also submitted on the level of audit and due diligence of tri-party agents that the guidelines would lead to. Respondents are reminded that current regulatory instruments address such aspects and that the guidelines do not intend to create new obligations in that regard.

EBA responds

The EBA welcomes the feedback provided by respondents. It has addressed some of the comments by including adjustments with a view to clarifying some of the points raised and to ensure that, on those particular points, the guidelines cannot be construed in an unintended manner.

A more detailed presentation of the comments received along with the EBA response is included in the feedback table set out below.

Summary of responses to the consultation and the EBA analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
Consultation Paper EBA/CP/2020/2023 on guidelines specifying the conditions for the use of the substitution approach to tri-party repos			
General comments			
On the role of the tri-party agent and setting of limits	<p>One respondent emphasises that the role of the tri-party agent must be neutral. For this reason, a tri-party agent could not facilitate the setting of concentration limits across collateral providers ‘as this would mean that the tri-party agent (rather than the collateral receiver) has to discriminate between collateral providers’. Currently limits are set at portfolio level but not across portfolios. Limits could not be changed during the lifetime of a trade, as this would influence the price. Additionally the respondent notes the broader context of the tri-party agents’ operations, which also includes securities-based lending and the initial margin. The collateral management comprises all underlying trades, so the guidelines would have effects not only on tri-party repos but also on other trades.</p>	<p>To respond to this first part of this general comments, we would like to refer the respondent to Questions 5 and 8.</p> <p>The EBA believes that the guidelines strike the correct balance and respect the neutrality that tri-party agents have in the bilateral relationship between collateral issuers and receivers. For instance, the removal of collateral issuers is something that the systems used by tri-party agents can perform at present when instructed by institutions: it is the institution’s decision to remove/exclude collateral issuers, and the tri-party agent remains neutral in this respect.</p> <p>The guidelines do not require limits to be revised at any particular point in time, but merely refer to the circumstances that should trigger such revisions, which is part of the mandate under Article 403(4) of the CRR. In particular, paragraph 24 states that revisions should be possible during the lifetime of the service agreement and should be executed in a timely manner by the tri-party agent, without any further detail that could compromise the efficiency and price of the trade, as suggested by the respondent.</p>	No amendments.

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>Another respondent also highlights the fact that the collateral management services comprise different underlying collateral trades and are not limited to repurchase transactions. In this respect, the respondent believes the approach taken by the guidelines might be useful for other exposures under CRR2 as well.</p> <p>Two of the respondents are concerned about negative effects on the secured business. Applying certain limits to certain collateral issuers instead of defining a basket of asset classes would lead to less liquidity, reduced market depth, lesser liquidity management tools and reduced flexibility in the tri-party market. This would also lead to a loss of flexibility to identify appropriate securities that match the risk appetite and liquidity needs of cash takers and cash providers and the requirements of the tri-party agreement. This would not only affect tri-party repos but also GC Pooling transactions. One of these respondents adds that even if Article 403(3) CRR2 seems to be tailored to tri-party repos only, in practice a 'group concentration limit' would be applied across the entire portfolio and could therefore affect other transaction types (SBL, IM) by the concentration limit approach. In addition, he points out that the implementation would occur precisely at the time when the EU capital markets are more important than ever in the context of</p>	<p>For this second comment, the EBA notes that the guidelines apply to exposures to collateral issuers due to repurchase agreements facilitated by tri-party agents, as specified in letter (a) of Article 403(3) of the CRR and that even if the guidelines could apply to other exposures under the CRR, this was not the intention of the legislator. For that reason, the guidelines limit themselves to the scope of the mandate as set out in Article 403(3) of the CRR.</p> <p>For the third comment, we refer to Question 7.</p>	

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
On the use of the LEI	<p>Covid-19, the relaunched CMU 2.0 and the green-led economic recovery.</p> <p>One respondent recommends making use of the LEI as a global unique identifier. This would facilitate the identification of the involved parties across borders.</p>	<p>The use of identifiers/codes is specified in the reporting framework developed under Article 430 of the CRR, notably in template C 27.00 on identification of the counterparty (LEI) of Annex 9 on large exposures.</p> <p>It must be noted too that the new reporting framework, adopted by the EBA in June 2020 and submitted to the European Commission for endorsement, includes some amendments with a view to harmonising the use of LEI codes in supervisory reporting as well as harmonising practices that make it possible to identify unequivocally the same entity across different reporting requests. The EBA considers that promoting the use of LEI codes should improve the quality of the data reported, reducing redundancy, enabling data processing, aggregation and calculation, ensuring the comparability of data from different sources and times and thereby improving data quality.</p>	No amendments.
Responses to questions in Consultation Paper EBA/CP/2020/23			
<p>Question 1</p> <p>Are the definitions and their use throughout the guidelines clear?</p>	<p>While one respondent agrees with the definitions, another suggests the following changes (proposals in bold letters) to some of the definitions:</p> <p>Tri-party repurchase agreement means a repurchase transaction where the counterparties appoint a tri-party agent to act as their agent and</p>	<p>The EBA considers that the proposed amendments of the definitions 'tri-party repurchase agreement' and 'tri-party agent' are an improvement and that they do not alter the substance of the definitions in the consultation paper.</p>	<p>Amendment to the definitions 'tri-party repurchase agreement' and 'tri-party agent' in paragraph 8.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>facilitate collateral management services during the execution of tri-party transactions.</p> <p>It is also proposed to shorten the definition of tri-party agent as follows:</p> <p>Tri-party agent means a third party that executes collateral management services which may include payments and/or delivery of securities, safekeeping and administration services of securities including collateral selection, custodianship for the account of the counterparties to a tri-party transaction.</p>		
<p>Question 2</p> <p>Do you think that this general framework is appropriate? Are there other elements that should be included to make the service agreement more comprehensive?</p>	<p>Although one respondent thinks that the general framework would support the EBA's remit under Article 403 of the amended CRR, concerns are expressed that consequently the framework will reduce the pool of collateral and liquidity in the market.</p> <p>One other respondent sees the risk that the framework would lead to an exaggeration in the exposure calculation, as the full limit is used instead of the actual exposure, and ultimately result in a highly exaggerated picture of exposures compared with the real existing ones. This problem would be exacerbated because institutions have exposures across multiple businesses and multiple tri-party agents. Additionally, as an unintended consequence, lower quality assets might be preferred over better quality assets as indirect exposure breaches would more likely occur with the latter. This would result in possible limiting of very good collateral, i.e. forcing substitution of better</p>	<p>The EBA regrets that respondents have not provided examples or data of how the framework can reduce the pool of collateral and liquidity in the market. Therefore, the EBA reiterates that the use of the alternative approach of Article 403(3) of the CRR remains an option for institutions and they are not obliged to make use of it.</p> <p>The EBA notes that the approach under Article 403(3) of the CRR requires the replacement of the total amount of exposures of an institution to a collateral issuer with the full amount of the limits that the institution would instruct the tri-party agent. It is acknowledged that this overtly prudential approach is intended to spare an institution from having to control every single exposure arising from each tri-party repurchase agreement facilitated by tri-party agents. Furthermore, the EBA reiterates that the use of the alternative approach by an institution is of a voluntary nature (the choice of wording in paragraph 3 of Article 403 of the CRR so indicates: 'for</p>	<p>No amendments.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>quality collateral with lower rated one. Therefore, the respondent recommends that institutions should monitor their collateral holdings and react when there is a breach instead of managing the indirect collateral exposures ex ante through the setting of limits. Triparty agents would provide all the necessary tools to help institutions for monitoring.</p>	<p>the purposes of point (b) of paragraph 1, an institution may replace...').</p> <p>Furthermore, an institution can also choose for which tri-party agent it decides to use the alternative approach and for which it continues calculating the exposures arising from tri-party repurchase agreements as per the methods used so far.</p> <p>With regard to the comment that the monitoring of collateral holdings should be preferred over the ex-ante setting of limits, the mandate under Article 403(4) of the CRR requires the EBA to issue guidelines including the conditions and frequency for determining [...] the full amount of the specified limits of letter (b) of Article 403(3) of the CRR; for this reason, such setting of limits is an integral part of the guidelines and a requirement where an institution chooses to use the alternative treatment of Article 403(3) of the CRR.</p>	
<p>Question 3</p> <p>Do you agree with the list of proposed safeguards? If no, please explain why and present possible alternatives.</p>	<p>One respondent views the list of proposed safeguards as 'generally OK' but voices the opinion that they do not need to be replicated in the contract with the tri-party agent. A general contractual obligation would be sufficient. The inclusion of certain safeguards in the agreement should not be mandatory but left to the contractual negotiations. In addition, the respondent refers to the MiFID2 which regulates the safeguarding of collateral held in custody.</p> <p>One other respondent highlights the ISAE 3402 type II report as being an appropriate compliance vehicle, which gives substantial information on</p>	<p>The EBA welcomes the fact that the list of safeguards as set out in the guidelines is regarded as optimal.</p> <p>The current version of the guidelines does indeed require that the safeguards should be listed in the service agreement (paragraph 12 c. read in conjunction with paragraph 13). The institution, as per letter (d) of paragraph 3 of Article 403 of the CRR, needs to verify that the tri-party agent has in place safeguards to prevent breaches of the specified limits, and this should be done by reference to the list of safeguards of paragraph 13. For this reason, the EBA agrees that it would appear proportionate and sufficient if, among the minimum elements of the service agreement of paragraph 12, a</p>	<p>Amendment to points c) and g) of paragraph 12, and paragraph 13.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>internal controls and procedures and could serve as annual declaration requirement.</p>	<p>statement to the effect that the tri-party agent will put in place appropriate safeguards as per paragraph 13 of the Guidelines would suffice.</p> <p>With regard to ISAE 3402 type II report, the EBA notes that indeed it is a very comprehensive report that provides ample information about an organisation's controls and their detailed testing over a minimum period of time. Paragraph 14 is rather general and does not prescribe a specific type of report: it simply requires an institution to obtain an adequate level of assurance from the tri-party agent that the agent complies with the safeguards put in place. If an ISAE 3402 type II report serves that purpose, then a tri-party agent can indeed use it to inform an institution about its compliance with the safeguards as agreed bilaterally.</p>	
<p>Question 4</p> <p>Do you see any practical reasons that would prevent the implementation of any of the safeguards? If yes, please explain.</p>	<p>With regard to the ISAE 3402 type II report, one respondent is critical about allowing audits by individual firms. Another respondent states that the audit rights as provided for in paragraph 12(g) of the draft guidelines must be subject to appropriate advance notification and confidentiality obligations. Furthermore, the written declaration of assurance as foreseen in paragraph 14 would be an unnecessary layer. The contractual undertaking and notification obligation would be enough to ensure compliance with the limits at all times and immediate notification if they are breached. With regard to the breach notification, the respondent recommends a change from a 'prompt' notification requirement to an 'immediate' one. To him, it is not realistic to expect notification to occur in real time.</p>	<p>With regard to audit rights, the guidelines explain in their background section (paragraphs 17 to 19) that, where an institution enters into a contract with third parties, it should have an appropriate risk management framework to manage all its risks, including risks stemming from those contracts, in accordance with Article 74 of the CRD and the guidelines on internal governance. Therefore, such audit rights should be exercised in accordance with the existing legal and regulatory obligations. Therefore, there is no need to further explain in these guidelines how the audit rights should be exercised, as there is currently a regulatory framework governing how audits are to be implemented, which institutions should observe.</p>	<p>Addition of letter h) in paragraph 12.</p>

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
	<p>In addition, the respondent recommends a clarification 'that the notification can occur electronically and through existing online systems'.</p>	<p>With regard to the written notification of assurance, as explained under question 3 (see above), paragraph 14 is rather general and does not prescribe a specific format: it simply requires institutions to obtain an adequate level of assurance. Thus, if the ISAE 3402 type II report or other documents serve that very purpose, the institution should consider that it has met this obligation.</p> <p>Paragraph 12, letter (f), requires that the tri-party agent report immediately to the institution when a breach of the specified limits has occurred; also paragraph 29 requires such immediate notification. An institution ought to comply with the obligation in Article 393 of the CRR to identify, manage, monitor, report and record all large exposures in accordance with the Regulation, and for that purpose, it must be kept informed of any such breaches. Furthermore, it must be recalled that the use of the alternative treatment does not exempt an institution from complying with the large exposure limits in Article 395(1) of the CRR since, in any case, an institution remains legally bound to comply with those limits.</p> <p>The Guidelines do not provide a specific format for the notification, and thus it could be transmitted via any appropriate channel as agreed between the institution and the tri-party agent. Therefore, a clarification will be added that the service agreement should include a general reference to the channels of communication that</p>	

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Question 5	<p>One respondent deems the guidance sufficient, while adding that it would require the institutions to change from the current dynamic approach to setting limits to static lists of issuers and limits. This would be 'detrimental to the performance of the current tri-party arrangements as it would be cumbersome, not standardised and not transparent to counterparties'. The respondent points out, that it is possible to define collateral profiles and to implement exclusions and limits at the level of any collateral criterion in his provided environment. It should be noted that it might be difficult for the collateral receiver to anticipate all the issuers he might receive. In addition, tri-party agents maintain information on 'Families' of securities based on standardised information (e.g. a stake of 50% or higher in another). Regarding the aforementioned, the respondent recommends that EBA should revisit its approach.</p>	<p>the institution and the tri-party agent will use during its performance.</p> <p>The EBA notes that it has tried to adhere as much as possible to market practices as communicated during technical exchange with selected tri-party agents concerning the different areas covered by the guidelines.</p> <p>Furthermore, the guidelines do not provide for specific quantitative limits, but merely list some criteria which institutions should apply themselves to set limits on the securities issued by collateral issuers due to tri-party repurchase agreements facilitated by tri-party agents as per the mandate in Article 403(3) of the CRR.</p> <p>The EBA acknowledges that the alternative treatment (necessitated by making the current optional substitution approach mandatory) is indeed a significant change as compared with current practices under which institutions need to monitor said exposures on a continuous basis (dynamic). For that reason, it remains an additional, alternative option to the current approach to managing exposures to collateral issuers due to tri-party repurchase agreements facilitated by tri-party agents.</p> <p>The EBA notes, in particular, that paragraph 17 of the guidelines does indeed intend to facilitate the practical implementation of the alternative treatment in view of current market practices by means of setting up eligibility profiles, on the basis of which limits should be set up. It trusts that the current environment mentioned by the</p>	No amendments.

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		<p>respondent should facilitate this and that, although acknowledging the changes that the alternative treatment will cause to current market practices, the criteria listed in the guidelines to set up limits will not render it impossible to continue using said environments to define collateral profiles. Furthermore, it must be taken into account that limits can be revised at all times. The criteria for revising the specified limits provide for a very general framework of elements to consider and by no means restrict in a disproportionate manner the introduction of such limits when the parties deem it necessary.</p>	
<p>Question 6 Is it clear to you how to apply a 'margin of conservatism' as set out in paragraph 19?</p>	<p>For two respondents the meaning of applying a 'margin of conservatism' is clear. One of them adds, however, that application might differ according to the institution's risk appetite. In this respect, institutions would need to provide the tri-party agent with a limit based on an absolute amount rather than the percentage value of a specific type of security in the portfolio.</p>	<p>Indeed, the EBA believes that each institution needs to decide, in view of its particular circumstances and its risk management framework, the extent of its risk appetite. Therefore, the guidelines do not elaborate on how a 'margin of conservatism' needs to be interpreted or implemented, and it is left to each institution to apply it in view of its own management of large exposures.</p> <p>Also, the guidelines prescribe that limits 'should be expressed as an absolute amount or percentage value of all securities or a specific type of security in the collateral issuer's portfolio can take the form of a change'. Therefore, they can choose between both options, which the EBA understands is a current market practice.</p>	<p>No amendments.</p>

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<p>Question 7</p> <p>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?</p>	<p>One respondent requests that EBA revisit its approach. In his opinion, limits should be set at issuer type or asset class level instead of by individual issuer or group of issuers. Furthermore, the respondent recommends defining groups of connected issuers on the basis of standardised data available to the entire market instead of building bespoke groups of issuers that are different for each counterparty. Defining limits on lists of specific issuers will increase the costs for the counterparties and the agents and will reduce standardisation and transparency.</p>	<p>The application of large exposure limits is performed at the level of individual clients or groups of connected clients; Article 395(1) of the CRR reads ‘an institution shall not incur an exposure [...] to a client or group of connected clients [...]’. The mandate under Article 403(4) of the CRR, with regard to the use of the alternative treatment, does as a result apply the same approach: ‘the full amount of the limits that the institution has specified to the tri-party agent referred to in point (a) to apply to securities issued by the collateral issuer referred to in that point’ (letter (b) of Article 403(3) of the CRR).</p> <p>However, with a view to setting up specific limits, the guidelines require that the limits be expressed as ‘an absolute amount or percentage value of all securities or a specific type of security in the collateral issuer’s portfolio’ (paragraph 16 of the guidelines). And in all cases, the criteria to set up those limits are fundamentally based on the amount of exposures (assets) (see paragraph 18).</p> <p>With regard to the definition of groups of connected clients, institutions need to follow the requirements of Article 4(1)(39) of the CRR, which provides a definition of groups of connected clients. The objective of such a definition is to identify clients so closely linked by idiosyncratic risk factors that it is prudent to treat them as a single risk. The EBA has also published guidelines on connected clients (EBA/GL/2017/15) that apply to all areas of the CRR where the concept of connected clients is used. The guidelines cover the two types of interconnection that, in accordance with the definition of connected clients, lead to two or more clients being</p>	<p>No amendments.</p>

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Question 8	<p>Two respondents agree in general with the proposed approach for the revision of the specified limits. One of them states that revisions of limits would be possible at any time 'to the extent both parties to the tri-party agreement have agreed to the amendment.'</p> <p>The other respondent points out, however, that unilateral rights to set a concentration limit cannot be granted to clients as this would violate the agent's neutral role. The setting of concentration limits can influence the price of the trade, especially when limits are changed during the transaction. Generally, both parties to the transaction would need to agree to the change. Therefore, the requirement to force unilateral rights to change concentration limits should be removed from the guidelines. The provision of client access to the online platforms of tri-party agents that facilitate the change of collateral schedules in a prompt manner should be a sufficient approach. In addition, the respondent reports that from his point of view, in case of large exposure limit breaches, affected clients prefer to amend the concentration limits for</p>	<p>regarded as a single risk, i.e. control relationships and economic dependencies. Therefore, institutions are bound to apply the definition in the CRR and the guidelines with a view to forming groups of connected clients. The present guidelines do not represent a deviation from the legal definition or the guidelines of connected clients, and institutions ought to apply them in all cases.</p> <p>The EBA notes that nothing in the guidelines precludes the parties to the tri-party agreement from agreeing such revisions. The guidelines provide the general framework of how and when the specified limits should be revised. Both parties should exercise their contractual freedom when implementing paragraph 20 of the guidelines ('Institutions should ensure that the service agreement includes the circumstances under which the specified limits could be revised and the frequency of their revision').</p> <p>However, for the sake of clarity, it will be explained in the background that the guidelines should not be construed as giving a unilateral right in all cases to institutions to change the limits in a way that could go against the bilateral agreement entered into by the counterparties to a tri-party repo agreement.</p>	<p>Clarification added to paragraph 33 of the background.</p>

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	<p>single bilateral trades rather than specifying changes of concentration limits to tri-party agents, as this seems to be more practical.</p>		
<p>Question 9 Do you agree with the general approach regarding when the limits need to be revised?</p>	<p>One respondent agrees with the general approach together with the note that 'the implementation time will depend on the number and the relative complexity of the requested changes, and the criticality of the request.' The other respondent refers to his answer to Q8.</p>	<p>The EBA agrees that the implementation of revisions to the specified limits should take into account the particulars of the service agreement and the ability of the tri-party agent to implement them within an appropriate timeframe. In this regard, the guidelines do not state anything about the timeframe as to when such revisions should be implemented; paragraph 24 merely states that 'the revision of the specified limits should be possible during the lifetime of the service agreement and should be executed in a timely manner by the tri-party agent once the institution has informed it thereof'.</p>	<p>No amendments.</p>
<p>Question 10 Do you think that the guidelines represent an appropriate approach to the monitoring of the specified limit and in general of the implementation of the alternative treatment?</p>	<p>One respondent expresses concerns that paragraphs 25-27 of the guidelines would 'impose an unnecessary level of audit and due diligence requirements upon tri-party agents'. Existing regulatory obligations as well as national competent authority supervision would provide adequate assurance.</p> <p>Another respondent agrees with the proposed approach to monitoring limits but notes that he would not automatically trigger a revision of limits in case of a breach, but would rather change the collateral composition as the revision of the limit as part of the tri-party service agreement has to be agreed by both parties of this agreement. As part of his tri-party collateral management service, the limits applicable to a security are checked in</p>	<p>In terms of audit, and as said in response to the comments to Question 4, the EBA notes that the guidelines explain in their background section (paragraphs 17 to 19) that, where an institution enters into a contract with a tri-party agent, it should have an appropriate risk management framework to manage all its risks, including risks stemming from those contracts, in accordance with Article 74 of the CRD and the guidelines on internal governance. Therefore, such audit rights should be exercised in accordance with existing legal and regulatory obligations.</p> <p>Section 4.3.3 on the monitoring of the specified limits and its frequency is rather general and follows, again, market practices as communicated to the EBA when it sought technical input to inform the development of the guidelines. This very general framework on monitoring</p>	<p>No amendments.</p>

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	<p>advance of a tri-party transaction as well as monitored during a transaction. In the rare case of a breach, collateral leading to the breach will be replaced to heal the breach rapidly.</p>	<p>does not affect the revision of the specified limits; the guidelines merely require institutions to verify that the tri-party agent's systems are adequate to manage accurately and in a timely manner the specified limits. Breaches of the specified limits are dealt with in section 4.4 of the guidelines imposing on institutions the obligation to gather certain information from the tri-party agent, since institutions remain ultimately responsible for managing large exposures in line with legal and regulatory obligations.</p> <p>Paragraph 21 of the guidelines state that an institution should be in the position to request the revision of the specified limits based on the reports from the tri-party agent referred to in point e) of paragraph 12 or when they are informed of any breaches of the specified limits by the tri-party agent. However, this should not be read as a breach leading in all cases to a revision of the specified limits. Institutions and tri-party agents need to manage collateral within the limits imposed by the guidelines when they make use of the alternative treatment while also ensuring maximum efficiency of collateral management.</p>	
<p>Question 11</p> <p>Do you think that tri-party agents have in place such controls that would facilitate the management of the specified limits? Would you assess that the</p>	<p>Two respondents are of the opinion that the existing controls are sufficient and that there is no need for further instructions.</p> <p>One of them highlights the fact that they provide continuous collateral management reporting to</p>	<p>The EBA notes that the guidelines are fairly high-level while reflecting current market practices; it thus concurs with the respondents that there is no need to prescribe further detailed control mechanisms.</p> <p>It is the responsibility of the institution to verify that the mechanisms put in place by the tri-party agent are adequate for managing the specified limits, and the</p>	<p>No amendments.</p>

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control mechanisms should be more precise and prescriptive?	their clients. The frequency depends on the reporting channel the client opted for.	guidelines specify further what institutions should in particular verify (paragraphs 26 and 27).	
Question 12 Do you agree with the non-exhaustive list of material concerns?	One respondent agrees in general with the non-exhaustive list of material concerns. However, he points out that the audit rights by the institution or third parties must be subject to appropriate advance notification and confidentiality obligations.	The EBA notes that the respondents agree in general with the list of material concerns as reflected in the guidelines. With regard to audit rights, the guidelines explain in their background section (paragraphs 17 to 19) that, where an institution enters into a contract with third parties, it should have an appropriate risk management framework to manage all its risks, including risks stemming from those contracts, in accordance with Article 74 of the CRD and the guidelines on internal governance. Therefore, such audit rights should be exercised in accordance with the existing legal and regulatory obligations.	No amendments.
Question 13 Are you aware of any other material concerns to be included in the guidelines?	There are no proposals for other material concerns.	No need for assessment.	No amendments.
Question 14 Do you see a need for further clarification of the procedure dealing with a material concern?	One respondent does not see a need for further clarification.	No need for assessment.	No amendments.

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Question 15 Please specify what overall impact the proposed procedure would have on expected practices.	One respondent highlights that changing 'from the alternative approach to the standard approach' would require a certain transition period.	The EBA regrets that no further information is provided to support this statement. In any case, the alternative treatment of Article 403(3) of the CRR is not mandatory but instead an option that institutions can exercise if they so wish; equally, nothing prevents them from ceasing to use it if and when they so wish. In any case, at all times (also when an institution transitions from the alternative treatment to the 'standard approach', to use the terminology used by the respondent) institutions continue to be bound by Article 393 of the CRR, which requires them to have sound administrative and accounting procedures and adequate internal control mechanisms to identify, manage, monitor, report and record all large exposures and subsequent changes to them, in accordance with the Regulation.	No amendments.



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