

Private Credit and Upcoming Amendments to Solvency II

March 11, 2026

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The private credit, structured capital and securitization markets in the United States have to date outpaced those in Europe. In the United States, the growth of these markets is in part due to the support of institutional investment by insurance companies. Market participants have observed that in the United States various parts of the real economy are being financed with insurance company capital. Structured finance technology, including the tranching of underlying risk and regulatory observance of those tranches, has facilitated this trend, and the growth in private asset-backed securities (“**ABS**”) has been significant.

In comparison, insurance companies domiciled in the European Union (the “**EU**”) are subject to the Solvency II Directive¹ and the Solvency II Delegated Regulation² (together, “**Solvency II**”), which requires insurance companies

¹ Directive 2009/138/EC.

² Commission Delegated Regulation (EU) 2015/35.

to maintain assets to meet their best estimate of their future liabilities.³ Currently under Solvency II, the tranching of certain securitization and ABS structures does not create favorable regulatory treatment for senior tranches. The Solvency II regulator has expressed that the current approach lacks risk sensitivity, resulting in an overstatement of the spread risks underlying such tranching investments. On February 18, 2026, the EU adopted amendments to the Solvency II Delegated Regulation (the “**Solvency II Amendments**”)⁴ to, among other things, adjust the regulatory treatment of tranching with respect to certain structures, which amendments will become effective January 30, 2027. The EU’s hope is that this regulatory change will facilitate an increase in investments by insurance companies.

However, the rating requirements under Solvency II remain relatively strict, even after the Solvency II Amendments, and do not permit the submission of private letter ratings because such ratings are not public or accessible by subscription. In the United States, the acceptance of private ratings by the National Association of Insurance Commissioners, with certain guardrails such as sufficient rationale and challenge rights, has been a key component to the growth of private ABS.

In addition, aspects of the prudent investor principle under Solvency II limit the attractiveness to insurance companies of investing in the non-senior tranches of such securitizations and ABS. In the United States, while the market is still developing with respect to investors in the residual tranche of such structures, insurance companies are permitted to invest in both the junior and residual tranches of such structures.

Taken together, from an insurance regulatory perspective EU insurer investment in the senior tranches of publicly rated collateralized loan obligations (“**CLOs**”), publicly rated collateralized fund obligations (“**CFOs**”), and certain other publicly rated ABS, may become meaningfully more attractive, but challenges remain in the EU to fully accessing this source of institutional capital for such structures.

The EU Solvency II Amendments described above do not currently have an equivalent in the United Kingdom’s (“**UK**”) Solvency UK framework. In February 2026, the Prudential Regulation Authority (“**PRA**”) and Financial Conduct Authority (“**FCA**”) launched consultations on reforms to the UK securitisation framework aimed at simplifying due diligence, transparency and risk-retention rules. However, those proposals do not address the capital treatment of securitisation exposures held by UK insurers under Solvency UK. As a result, the existing Solvency II-derived treatment — including the requirement for two eligible external ratings and the current spread-risk calibration — remains in place.

The consultations with respect to Solvency UK close in May 2026 and final rules are expected later in the year. While the reforms are intended to stimulate securitisation activity in the UK, further changes to Solvency UK may

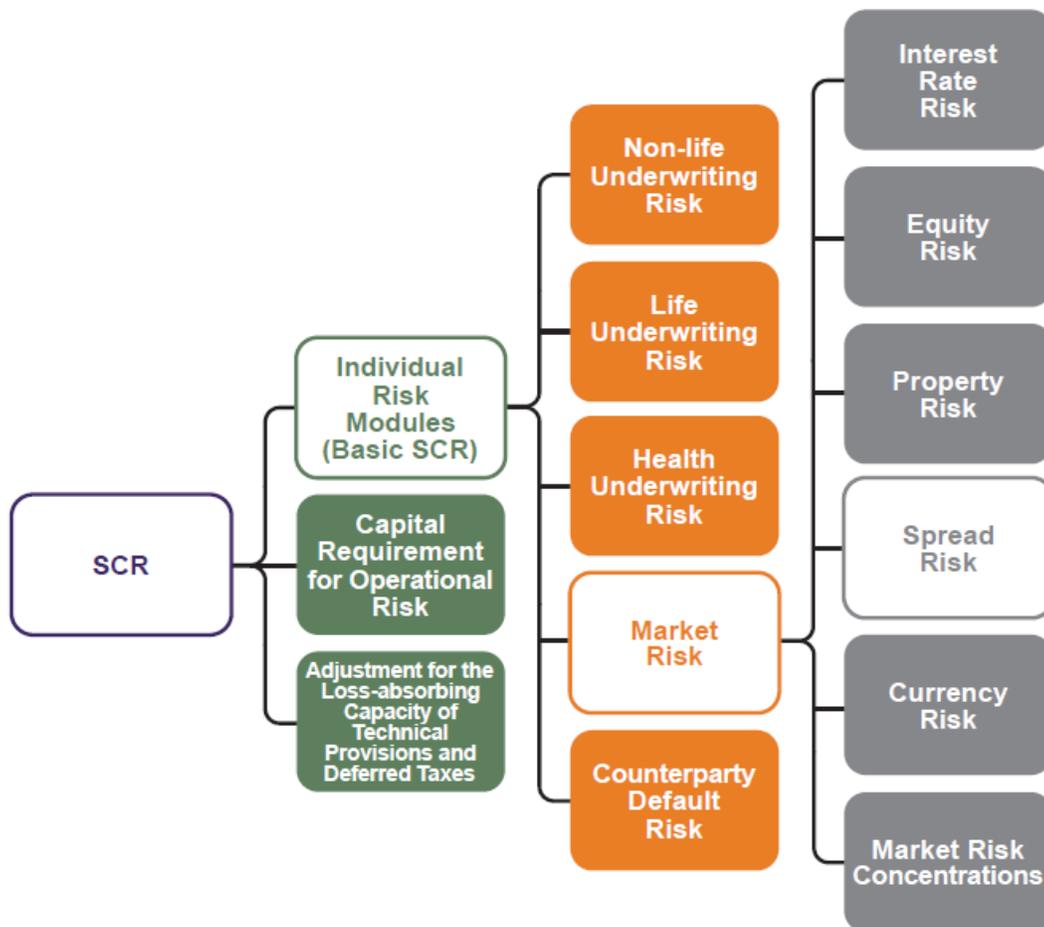
³ For a discussion of insurance regulation of insurers domiciled in the United Kingdom, please see: <https://www.globallegalinsights.com/practice-areas/private-credit-laws-and-regulations/investment-grade-private-credit-product-design-for-insurance-investors/>.

⁴ Commission Delegated Regulation (EU) 2026/269.

ultimately be required if the UK wishes to match the EU’s reforms designed to encourage insurer investment in securitisations.

CURRENT CAPITAL REQUIREMENTS FOR SECURITIZATIONS AND ABS

Under Solvency II, insurers must hold eligible own funds to meet their Solvency Capital Requirement (“**SCR**”). The SCR level is set in such a way that the insurer should be able to meet its liabilities even in the face of a relatively unlikely economic shock. The SCR is determined to the largest extent by the aggregation of individual risk modules, such as the counterparty default risk module and the market risk module. Under the market risk module, a risk capital charge is calculated pursuant to a formula that considers various sub-modules, such as the spread risk sub-module and the equity sub-module. While both US insurers and EU insurers engage in asset-liability matching, in the US, only assets are assigned risk capital factors, whereas under Solvency II, these capital charges take into account both assets and the liabilities that are matched to those assets, aiming to reflect structural mismatches between assets and liabilities. In order to avoid the burden of a high SCR, insurers that are subject to Solvency II will generally prefer investments with lower capital charges.



Under the spread risk sub-module, the capital charge for an investment into a securitization is determined by a risk factor variable. The determination of this risk factor generally depends on five considerations:

- whether the investment is a simple, transparent and standardized (“**STS**”) securitization;
- if the investment is an STS securitization, whether or not it is a senior tranche;
- whether the investment has effectively two eligible credit assessments by nominated external credit assessment institutions (“**ECAIs**,” which is the Solvency II equivalent of a nationally recognized statistical rating organization (NRSRO) in the US);
- the credit quality step of the investment; and
- the maturity (tenor) of the investment.

STS Securitizations

Currently under Solvency II, an insurer must determine whether a securitization or ABS investment is an “STS securitization” or a “non-STS securitization,” and that determination has an outsized impact on the ultimate capital charge of the investment. Both public and private ABS are considered securitizations and would be assessed for whether they count as an STS or non-STS securitization.

The technical eligibility standards for STS securitizations are laid out in the Securitization Regulation.⁵ When the EU introduced the opt-in high standards for securitizations through the Securitization Regulation, it sought to both restart high-quality securitization markets and protect against some of the risks that led to the 2008 global financial crisis. At their core, STS securitizations must fulfill the three eponymous eligibility criteria: they must be simple, transparent and standardized. As regards the simplicity requirement, the transfer of the title generally requires a “true sale” of assets, and the underlying exposures should be homogeneous in nature. Transparency addresses investor information, and standardization requires the originator to retain a material net economic interest of at least 5% (which also applies to most transactions in scope of the Securitization Regulation). As a consequence, these criteria generally lead to an exclusion of most synthetic securitizations, CLOs, and securitizations of nonperforming loans (NPLs). The European Commission put forward a proposal for reform of the Securitization Regulation in June 2025, including modest revisions for STS securitizations to adjust the homogeneity requirements for the benefit of small and medium-sized enterprises (SMEs).

Generally speaking, CLOs, rated note feeder funds, CFOs and various ABS (such as infrastructure or other esoterics) may all be seen as non-STS securitizations. These products: (i) may not involve a sale from an originator

⁵ Regulation (EU) 2017/2402.

to the issuer, (ii) may have concentrated and/or heterogenous underlying assets, and (iii) may involve blind-pool risk instead of the transparency of a known set of underlying assets.

(Re)insurers generally prefer non-STS securitizations, according to findings by the Joint Committee of the European Supervisory Authorities, presumably due to their better availability in the markets as well as the additional obligations that need to be addressed when purchasing STS products.

Tranches

Tranching is defined by reference to the Capital Requirements Regulation (“**CRR**”).⁶ A senior tranche of both an STS securitization and a non-STS securitization means any position backed or secured by a *first* claim on the whole of the underlying exposures irrespective of any difference in maturity.

Credit Assessments

The capital charge will also depend on whether an eligible credit assessment by a nominated ECAI is available, with unrated securitizations resulting in much higher capital charges. Currently under Solvency II, both STS and non-STS securitizations fall under the double credit rating requirement. If only a single credit assessment is obtained, then current Solvency II treats that investment as if it were unrated. This means if an issuer wants to make an investment attractive to insurers, the issuer must obtain at least two credit assessments from ECAIs that match those selected by the insurer for the class of items. From insurer to insurer, such ECAIs may not overlap—most insurers have nominated more than two ECAIs in their rating policies. This means an issuer may ultimately have to obtain more than two credit assessments to fill out a syndicate of investors. In addition, in accordance with general requirements under the CRA Regulation,⁷ the rating must either be published or distributed by subscription. Consequently, private letter ratings do not seem to meet current requirements.

Credit Quality Steps

The credit quality steps range from 0 to 6 and allocate the credit rating of ECAIs to establish an objective scale for the purpose of the calculation of the SCR.⁸ To illustrate, a AAA rating would be considered a credit quality step with the value 0, whereas a CCC rating would be attributed the value 6. If only a single credit rating is obtained, then Solvency II treats that investment as if it were unrated.

A LOWER CAPITAL CHARGE UNDER THE SOLVENCY II AMENDMENTS

Under Solvency II, an investment in the investment-grade-rated senior tranche of an STS securitization with a short tenor and a credit quality step of 0 is given the lowest capital charge, while investments in unrated non-STS

⁶ Regulation (EU) No 575/2013.

⁷ Regulation (EC) No 1060/2009.

⁸ Cf. Commission Implementing Regulation (EU) 2016/1800.

securitizations with longer maturities and a weaker credit quality step would result in the highest capital charge. While this general theme will remain in principle under the Solvency II Amendments, risk sensitivity will allow for more differentiation in between securitizations, particularly with regard to non-STS securitizations. The risk factor reduction benefits all product designs, both STS and non-STS, high credit and low credit quality steps, and short and long duration.

Changes Related to STS Securitizations

The Solvency II Amendments do not change the criteria for what counts as an STS securitization versus a non-STS securitization, but they do change the respective capital requirements. For senior tranches of STS securitizations, the aim is to broadly align the risk factors with those applicable to corporate or covered bonds, as STS securitizations are subject to specific due diligence and transparency requirements and thus constitute asset classes with comparable risk profiles.

As a result of the revision, a AAA-rated STS securitization with a maturity of up to five years would benefit from a reduction of 30% of the respective risk factor, while an STS securitization rated CCC would still see a reduction of roughly 20%.

In addition, the requirement for double ratings will be deleted for STS securitizations.

Changes Related to Non-STS securitizations

The Solvency II Amendments introduce a distinction between senior tranches and non-senior tranches for non-STS securitizations. In the view of the EU, the prior regime lacked a properly calibrated risk sensitivity which led to overstating the spread risks of underlying investments in the highest-quality tranches of non-STS securitizations. As a result of the reform, a AAA-rated senior CLO with a maturity of up to five years would benefit from a risk factor reduction of roughly 80%. For non-senior securitizations with lower ratings, the risk factor is not as pronounced but still substantial; for example, a BB-rated tranche would see a 50% reduction.

Three Key Insights

Current Solvency II Requirements	Solvency II Amendments
<p>For non-STS securitizations, there is no differentiation in risk sensitivity for senior and non-senior positions.</p>	<p>Risk sensitivity increases and, as a result, capital requirements for tranches of all durations and credit qualities decrease. Senior tranches of non-STS securitizations benefit the most and may see a reduction of up to 80% in their risk factor.</p>
<p>Senior tranches of STS securitizations are assigned the lowest risk factor. However, the risk factor remains above those applicable to comparable corporate or covered bonds.</p>	<p>The risk factors of STS securitizations are aligned closer to those applicable to corporate or covered bonds, further lowering risk factors for the securitization product with the lowest relative capital requirement. Non-senior tranches benefit from lowered requirements as well.</p>
<p>Both STS and non-STS securitizations fall under the double credit rating requirement.</p>	<p>For STS securitizations, only a single rating will be required.</p>

CONCLUSION

The Solvency II Amendments introduce improved risk sensitivity and lower capital charges, aligning the treatment of securitizations closer to corporate and covered bonds under the CRR. The senior tranches of publicly rated non-STS securitizations are likely to see the biggest benefits from these changes, and we will continue to monitor developments with respect to privately rated non-STS securitizations.

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