

**ASSET COVERED SECURITIES ACT 2001**  
**REGULATORY NOTICE (Sections 41(1), 41A(7) and 41B) 2008**

This regulatory notice is issued pursuant to sections 41(1) and 41A(7), as applied and modified by 41B, of the Asset Covered Securities Act 2001 (No. 47 of 2001) (the “Act”) by the Irish Financial Services Regulatory Authority in performance of the functions of the Authority under the Act in accordance with section 33C(1)(a) of the Central Bank Act 1942 (No. 22 of 1942). References in this regulatory notice to any provision of Chapter 1 of Part 4 of the Act or to that Chapter are to such provision or, as applicable, such Chapter as applied and modified by section 41B of the Act.

**Scope of this regulatory notice**

- (1) This notice applies in relation to designated commercial mortgage credit institutions.
  
- (2) The Authority hereby specifies the following requirements in relation to the valuation basis and methodology, time of valuation and, where applicable, any other matter, for determining for the purposes of Chapter 1 of Part 4 of the Act, the prudent market value of:
  - (a) a commercial property asset (whether or not located in the State) that secures a mortgage credit asset (other than a securitised mortgage credit asset) beneficially held by a designated commercial mortgage credit institution (a “**Commercial Property Asset**”);
  
  - (b) a mortgage credit asset (other than a securitised mortgage credit asset) which is secured on a Commercial Property Asset (a “**Commercial Loan**”); and
  
  - (c) a securitised mortgage credit asset the related property assets of which indirectly comprise (in whole or in part) commercial property

(whether or not located in the State) (a “**Relevant Securitised Mortgage Credit Asset**”),

and also specifies requirements and criteria with respect to matters referred to in section 41A(2)(i) to (iii) of the Act in respect of Relevant Securitised Mortgage Credit Assets.

### **Valuation Basis of Commercial Property Assets**

(3) The **Origination Market Value** of a Commercial Property Asset shall, for the purposes of this regulatory notice, be equal to:

- (a) the amount determined or accepted by the originator of that Commercial Loan (whether or not the designated commercial mortgage credit institution) to have been the Market Value of that Commercial Property Asset on or about the date that the Commercial Loan was advanced; or
- (b) if no Market Value referred to in (a) above is available to the designated commercial mortgage credit institution for any reason, the purchase price of the Commercial Property Asset on or about the date the related Commercial Loan was advanced; or
- (c) if that Commercial Property was not purchased on or about the date the related original Commercial Loan was advanced, the total principal amounts of the Commercial Loan(s) advanced on the security of that Commercial Property Asset,

in each case rounded to the nearest thousand (500 or above being rounded upwards and any number strictly less than 500 being rounded downwards). For the purposes of (c) above, the relevant Commercial Loan(s) do not require to have been advanced by the designated commercial mortgage credit institution provided that the institution beneficially holds the relevant Commercial Loan(s).

(4) For the purposes of this regulatory notice, an **Independent Valuer** means a

person, independent from the credit decision process within the designated commercial mortgage credit institution, who possesses the necessary qualifications, ability and experience to make a valuation.

- (5) For the purpose of this regulatory notice, **Market Value**, in relation to a Commercial Property Asset, means the estimated amount for which the Commercial Property Asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion. The Market Value of a Commercial Property Asset shall be documented in a clear and transparent manner.

The Market Value (being the Origination Market Value or, if applicable, the Latest Market Value) of a Commercial Property Asset must be reviewed by an Independent Valuer:

- (a) where the Reference Index applicable to that Commercial Property Asset decreases by 7% or more during the course of any 6 month period ending on the 30<sup>th</sup> June or the 31<sup>st</sup> December of a calendar year;
  - (b) where there is information reasonably available to the designated commercial mortgage credit institution that indicates that the value of the Commercial Property Asset may have declined materially, relative to relevant general market prices;
  - (c) in the case of related Commercial Loans exceeding the lesser of €3,000,000 or 5% of the institution's own funds, at least every three years.
- (6) For the purposes of this regulatory notice, **Latest Market Value**, in relation to a Commercial Property Asset, means the most recent Market Value of that Commercial Property Asset as reviewed and modified from time to time by an Independent Valuer.

## Valuation Methodology for Commercial Property Assets

(7)

(a) **Reference Index:** The “**Reference Index**” for the purposes of certain calculations which are to be made by designated commercial mortgage credit institutions in respect of Commercial Property Assets under this regulatory notice shall such index as agreed between the designated commercial mortgage credit institution and the cover-assets monitor appointed in respect of that institution as being appropriate for an accurate and timely valuation of the Commercial Property Asset or type thereof to be valued. In determining the appropriateness of an index in any given case, the index must satisfy the following criteria:

- (i) The value of the Reference Index should be calculated by a body or person independent of both the designated commercial mortgage credit institution and the cover-assets monitor. The independence of an index is not negated by the fact that the index is published or sponsored by the designated commercial mortgage credit institution or uses information provided by the institution to produce the index;
- (ii) The index should be a generally recognised market index in the relevant market and should reflect general movements in commercial property prices in that market. Accordingly, the index should be able to reflect general movements in the value of the portfolio of relevant Commercial Property Assets in the relevant market held in the cover assets pool by the designated commercial mortgage credit institution;
- (iii) The index must be capable of calculating changes in the capital value of property; and
- (iv) The index should be updated and published frequently and at

least on a quarterly basis.

- (b) **Absence of Reference Index:** If a designated commercial mortgage credit institution and the cover-assets monitor appointed in respect of that institution cannot agree pursuant to paragraph (7)(a) on a Reference Index in a relevant country for the accurate and timely valuation of any Commercial Property Asset located in that country, the designated commercial mortgage credit institution must, on a regular basis (no less frequently than quarterly), calculate the total principal amount outstanding of commercial mortgage credit assets (excluding securitised mortgage credit assets) comprised in the cover assets pool that are secured on the relevant Commercial Property Assets for which the designated commercial mortgage credit institution has not agreed any Reference Index in accordance with paragraph (7) above. Where this total exceeds 5% of the total principal amount outstanding of mortgage credit assets comprised in the cover assets pool, the valuation of each Commercial Property Asset for which the designated commercial mortgage credit institution has not agreed a Reference Index in accordance with paragraph (7)(a) above must be reviewed by an Independent Valuer at least annually.
- (8) Any Reference Index agreed for use in valuations under this regulatory notice shall be disclosed to the Financial Regulator in the periodic returns made to the Financial Regulator by the designated commercial mortgage credit institution and the cover-assets monitor under the Act.
- (9) Any Reference Index agreed between the designated commercial mortgage credit institution and the cover-assets monitor for use in relation to Commercial Property Assets shall be disclosed by the designated commercial mortgage credit institution on its website, in any prospectus issued by that institution (being the Reference Index or Indices agreed as of the date of the Prospectus), and in notes to its annual financial statements. For the above purposes, website includes part of a website operated by a parent entity of the institution where that part relates to the institution.

## **Prudent Market Value of Commercial Property Assets**

(10) The **Prudent Market Value** of a Commercial Property Asset for the purposes of Chapter 1 of Part 4 of the Act is the lesser of:

- (a) the Reference Index Valuation; and
- (b) the Latest Market Value or, if the Latest Market Value is unavailable, the Origination Market Value,

in respect of that Commercial Property Asset.

(11) **Reference Index Valuation:** In order to determine the prudent market value of a Commercial Property Asset at any time for the purposes of Chapter 1 of Part 4 of the Act, the reference index valuation (the “**Reference Index Valuation**”) of that Commercial Property Asset shall first be determined as follows:

$$RIV = (((A-B)/B) \times C) + C$$

where:

**RIV** is the Reference Index Valuation of that Commercial Property Asset;

**A** is the index figure determined under the Reference Index which is available for the most recent period covered by the Reference Index;

**B** is the index figure determined under the Reference Index which is applicable to the date of the Latest Market Value or, if no Market Value made by an Independent Valuer is available for that Commercial Property Asset, applicable (or closest in time) to the date of origination of the relevant Commercial Loan;

**C** is the Latest Market Value or, where, no Market Value made by an

Independent Valuer is available for that Commercial Property Asset, the Origination Market Value.

### **Prudent Market Value of Commercial Loans**

(12) **Section 32(8)(b) of the Act:** For the purposes of section 32(8)(b) of the Act, the prudent market value at any time of a Commercial Loan secured on one or more Commercial Property Asset(s) and which is comprised in the cover assets pool of a designated commercial mortgage credit institution, is an amount denominated in the currency in which that Commercial Loan is denominated equal to the lesser of (i) 100 per cent of the principal or nominal amount of that Commercial Loan that is outstanding at that time and (ii) 60 per cent (or such other percentage as may apply at the relevant time for the purposes of section 32(13)(b) of the Act) of the prudent market value of the related Commercial Property Asset(s) at that time, and in each case rounded to the nearest whole number (0.5 or above being rounded upwards and any number strictly less than 0.5 being rounded downwards).

(13) **Overcollateralisation:** For the purposes of section 32(16) and (17) of the Act the prudent market value at any time of an Commercial Loan secured on one or more Commercial Property Asset(s) and which is comprised in the cover assets pool of a designated commercial mortgage credit institution, is an amount denominated in the currency in which that Commercial Loan is denominated, equal to the lesser of (i) 100 per cent of the principal or nominal amount of that Commercial Loan that is outstanding at that time and (ii) 60 per cent (or such other percentage as may apply at the relevant time for the purposes of section 32(13)(b) of the Act) of the prudent market value of the related Commercial Property Asset(s) at that time, and in each case rounded to the nearest whole number (0.5 or above being rounded upwards and any number less than 0.5 being rounded downwards).

### **Prudent Market Value of Relevant Securitised Mortgage Credit Assets**

(14) The prudent market value of a Relevant Securitised Mortgage Credit Asset for the purposes of Chapter 1 of Part 4 of the Act shall be an amount equal to the

lesser of the amounts referred to in section 41A(2)(i) to (iii) of the Act as determined in accordance with section 41A(3) of the Act and this regulatory notice.

**Amounts referred to in section 41A(2)(i) to (iii)**

- (15) When determining the prudent market value of a Relevant Securitised Mortgage Credit Asset, the amount referred to in section 41A(2)(i) shall be the principal or nominal amount outstanding of the Relevant Securitised Mortgage Credit Assets concerned on the date that such prudent market value is determined, or to be determined, under this regulatory notice.
- (16) When determining the prudent market value of a Relevant Securitised Mortgage Credit Asset, the amounts referred to in section 41A(2)(ii) and (iii) shall be determined by reference to:
- (a) the most recent information available to the designated commercial mortgage credit institution provided by or on behalf of the securitisation entity which is the issuer of the Relevant Securitised Mortgage Credit Asset; and
  - (b) the most recent publicly available information relating to:
    - (i) the Relevant Securitised Mortgage Credit Asset,
    - (ii) the securitisation entity described in (a) above,
    - (iii) the mortgage credits related to the Relevant Securitised Mortgage Credit Asset held by the securitisation entity described in (a) above, and
    - (iv) the property assets which are the subject of the mortgage credits described in (iii) above.



## Timing

(17) **Timing of valuation of Commercial Property Assets:** A designated commercial mortgage credit institution shall calculate the prudent market value of a Commercial Property Asset:

(a) where the related Commercial Loan is comprised in a cover assets pool maintained by that institution:

(i) at the time that the institution includes that Commercial Loan in the cover assets pool;

and thereafter,

(ii) at least every 3 months or at such intervals as are required to ensure that the institution complies with the requirements of the Codified Banking Directive with respect to collateral for covered bonds in the form of loans secured by commercial real estate;

(iii) where applicable to the Commercial Property Asset concerned, on the publication of a Reference Index, agreed by the institution with the cover-assets monitor in accordance with paragraph (7) above; and

(iv) at such intervals as may be specified by the Authority to that institution from time to time so as to ensure that the institution can demonstrate to the satisfaction of the Authority compliance by the institution with the requirements of section 31(1) of the Act;

and

(b) where the related Commercial Loan is not comprised in the cover assets pool, at least annually.

**Timing of valuation of Commercial Loans, Relevant Securitised Mortgage Credit Assets and amounts specified in section 41A(2)(i) to (iii):**

- (18) A designated commercial mortgage credit institution shall calculate:
- (a) the prudent market value of each Commercial Loan;
  - (b) the prudent market value of each Relevant Securitised Mortgage Credit Asset; and
  - (c) the amounts specified in section 41A(2)(i) to (iii) in respect of each Relevant Securitised Mortgage Credit Asset,

at such intervals as may be specified by the cover assets monitor from time to time so as to ensure that the institution can demonstrate to the satisfaction of the cover-assets monitor compliance by the institution with the requirements of section 32(8)(b) and (15) of the Act and the Asset Covered Securities Act 2001 (Section 61 (1), 61(2), 61(3)) [Overcollateralisation] Regulation 2004 (S.I. No. 419 of 2004) (as amended), and, if not so specified by the cover-assets monitor, then at intervals not exceeding 3 months.

**Exchange Rates**

- (19) When, in order to calculate an amount for the purposes of this regulatory notice, any sum is to be converted from one currency to another currency:
- (a) such conversion shall be based on an applicable rate available on the relevant date to the designated commercial mortgage credit institution in the interbank market for the sum concerned; and
  - (b) in the case of calculating amounts for the purposes of section 41A(2)(ii) and (iii) in respect of a Relevant Securitised Mortgage Credit Asset, regard may be had to any contract to which the securitisation entity which is the issuer of the Relevant Securitised Mortgage Credit Asset is a party the effect or purpose of which contract is to reduce the

exposure of that securitisation entity in respect of such Relevant Securitised Mortgage Credit Asset to fluctuations in the value of the currencies concerned.

### **Codified Banking Directive**

**(20)** In determining:

- (a) the prudent market value of Commercial Loans or related Commercial Property Assets,
- (b) the prudent market value of Relevant Securitised Mortgage Credit Assets, or
- (c) the amounts specified in section 41A(2)(i) to (iii) in respect of Relevant Securitised Mortgage Credit Assets,

for the purposes of Chapter 1 of Part 4 of the Act, including without limitation under any requirement specified in this regulatory notice, a designated commercial mortgage credit institution shall act in a manner consistent with requirements under the Codified Banking Directive applicable to collateral for covered bonds in the form of loans secured on commercial real estate.

Signed for and on behalf of

THE IRISH FINANCIAL SERVICES REGULATORY AUTHORITY

on this the 17 day of June 2008

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Mr Patrick Neary

Chief Executive

Irish Financial Services Regulatory Authority