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European Banking Authority  
Tower 42  
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London EC2N 1HQ  
by email: [EBA-CP-2013-14@eba.europa.eu](mailto:EBA-CP-2013-14@eba.europa.eu)

Dear Sir/Madam

**Re: EBA/CP/2013/14 Consultation Paper on draft technical standards on securitisation retention rules (“the consultation paper”)**

The Australian Securitisation Forum (“AuSF”) welcomes the opportunity for consultation with market participants provided by the European Banking Authority (“EBA”) in respect of the consultation paper on the draft regulatory technical standards relating to the securitisation retention rules under the Capital Requirements Regulation. This submission is made by the AuSF through a working group of its Regulatory and Prudential subcommittee.

The AuSF was formed in 1989 and is the peak industry body representing the Australian securitisation and covered bonds markets. A primary role of the AuSF is to facilitate the development of industry views and to represent those to policy makers and regulators. The AuSF supports the enhancement of market standards and practices, delivers educational workshops to build the professional standards of industry participants and promotes the Australian securitisation and covered bond markets to local and global stakeholders. The AuSF and its individual members support any proposal that strengthens the market.

European based investors have been, and will continue to be, an important element in the success of Australian securitisations. There are mutual benefits for Australian issuers to diversify their funding base and for European investors to be able to invest with confidence in Australian asset-backed securities structured in accordance with robust market standards and practices.

In the context of IOSCO’s November 2012 recommendation on aligning incentives of investors and securitisers, the AuSF highlights that the Australian securitisation market has always exhibited a strong degree of alignment of interests between sponsors and investors. This alignment of interest was evidenced by the fact that Australian originators retain an ongoing economic interest in securitisation transaction through entitlement to the net interest margin (“NIM”) and were, and continue to be, highly incentivised to maintain the performance of the securitised assets in order to maximise their NIM entitlement. The strength of this retention of interest to maintain an alignment of incentives between originators and investors in Australia is demonstrated by the fact of no loss being incurred on any investment grade rated tranche of an Australian asset-backed security.

By way of background to the Australian market, Australian securitisation sponsors can be divided into three main groups: Australia's four major banks, other regulated deposit-taking institutions and non-bank financial institutions. The main classes of transactions by Australian sponsors seeking compliance with Article 122a to-date have been RMBS and ABS transactions structured as issuances from stand-alone trusts. Generally speaking Australian regulated deposit-taking institutions seeking to market transactions to European investors currently seek to ensure satisfaction with the requirements of Article 122a for their RMBS transactions through paragraph 1(c) by the retention of randomly selected exposures equivalent to no less than 5% of the nominal amount of securitised exposures. On the other hand, Australian non-bank issuers generally seek to ensure compliance of their RMBS transactions by using a contingent guarantee to replicate the requirements of paragraph 1(a) of Article 122a and thereby retaining exposure to no less than 5% of the nominal value of each of the tranches sold or transferred to investors. For Australian ABS transactions compliance is generally sought to be achieved through paragraph 1(d) of Article 122a by way of retention of the first loss tranche equalling in total no less than 5% of the nominal value of the securitised exposures.

AuSF endorse a number of the issues raised by Association for Financial Markets in Europe ("AFME") in relation to the risk-retention provisions of the RTS. In particular, members of the AuSF are concerned to ensure that a retained interest can be held by an entity within the same consolidated group (for accounting or regulatory purposes) whether or not that entity is regulated or established in the EU. The AuSF also endorses AFME's response in relation to the originator interest holding option for revolving securitisations of non-revolving assets. Although most Australian transactions, and certainly those seeking compliance with Article 122a, have to-date been structured as non-revolving standalone trust issuances the Australian market is exploring revolving master trust style structures and would support any clarification that assists compliance by these sorts of structures.

Apart from these aspects the AuSF would like to note the helpful approach taken by the EBA in the draft RTS. Based on the usual retention options relied on by Australian sponsors we would like to note that there are a number of aspects in the proposals which are helpful to Australian securitisation transactions and should be maintained. In particular, this includes the provisions in Article 5.1 in relation to the fulfilment of the retention requirement on a synthetic or contingent basis.

The AuSF would also like to take the opportunity to specifically address one of the questions raised by the EBA in the consultation paper – *Q8: Are there other ways to comply with the retention options set out in Art 394 of the CRR which should be included in this RTS? Please be specific in your description of any additional ways to comply.*

As noted above, the preference of a number of Australian deposit-taking institutions is to seek to satisfy the requirements of Article 122a by retaining randomly selected exposures on their balance sheet. A number of these may encounter practical difficulties achieving compliance through this means where some or all of the assets being securitised are being refinanced and transferred out of a privately placed warehouse securitisation transaction. In this circumstance, they are not permitted to take assets from the warehouse back on balance sheet for the purpose of retaining a pool of randomly selected exposures as the Australian Prudential Regulation Authority's ("APRA") Prudential Standards relating to securitisation restrict the circumstances in which securitised assets can be transferred back on balance sheet.

As such, in order to comply with APRA's Prudential Standards, the pool of potentially securitised exposures from which the retained exposures are selected cannot include any assets being transferred out of the privately placed warehouse transactions – only those, if any being securitised from the institution's balance sheet.

It would be helpful to these Australian deposit-taking institutions that the EBA clarify in the proposed RTS that in those limited circumstances retention of a pool of assets on the sponsor's balance sheet that would have been eligible to be securitised as part of the Article 394 compliant transaction will satisfy the requirements of paragraph 1(c). The AuSF sees no reason why sponsors securitising assets from a warehouse should not have this retention option available in circumstances where they are restricted by regulation applicable to them from taking the relevant assets back on their balance sheet. It is clear that the retention of other assets randomly selected from the sponsor's balance sheet which could have been securitised as part of their compliant transaction would nevertheless ensure that the intent of the regulation is achieved – being an alignment of interests or incentives.

Finally, Australian securitisers remain concerned that the recovery of the global securitisation market is not being aided by inconsistent initiatives being taken by regulators internationally and strongly encourage regulators such as the EBA to work towards mutual recognition of the risk retention regimes. In this regard it is noted that Australian authorities have not yet implemented rules in relation to risk retention. APRA, which regulates Australia's deposit-taking institutions, flagged in 2012 that it will implement a new Prudential Standard governing securitisation by deposit-taking institutions and we expect this Standard will be consistent with any "skin in the game" requirement. Although details of this new Standard are imminent, APRA has not yet released the draft Standard for market comment. The AuSF requests that the EBA consider giving mutual recognition to any future securitisation retention regulations introduced by Australian regulators.

We would like to thank the EBA for its consultative approach in relation to the draft RTS. We would be happy to have a discussion with the EBA about any of the issues raised herein.

Yours sincerely

A handwritten signature in black ink that reads "Chris Dalton". The signature is written in a cursive, slightly slanted style.

Chris Dalton