Chris Dalton, Chief Executive Officer
Australian Securitisation Forum
3 Spring Street
SYDNEY NSW 2000
(t) + 61 2 8243 3906
cdalton@securitisation.com.au

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European Banking Authority
Floor 46
One Canada Square
Canary Wharf
London E14 5AA

submitted via www.eba.europa.eu

Dear Sir/Madam,

Response to EBA Discussion Paper on simple standard and transparent securitisations

The Australian Securitisation Forum (AuSF) appreciates the opportunity to respond to the October 2014 Discussion Paper on simple standard and transparent securitisations (Discussion Paper).

The AuSF was formed in 1989 and is the peak industry body representing the Australian securitisation market. A primary role of the AuSF is to facilitate the development of industry views and to represent those to policy makers and regulators. The objectives of the AuSF include supporting the enhancement of market standards and practices, delivering educational workshops to build the professional standards of industry participants and to promote the Australian securitisation market to local and global stakeholders. The AuSF, in representing a regional securitisation market, supports any proposal that strengthens the global securitisation market.

European based investors have been, and will continue to be, an important component in the success of Australian securitisations. We believe there are mutual benefits for Australian issuers and European financial institutions that invest in Australian residential mortgage and asset-backed securities (ABS). Australian issuers can benefit by diversifying their funding base through issuing ABS to European financial institutions and fund managers. European investors are able to benefit by diversifying their ABS portfolio to include highly creditworthy and well performing Australian ABS.

The following response to your Discussion Paper is structured to provide some general comments as well as specific comments on some questions pertinent to the AuSF membership. We would be happy to discuss the views set out in this response with you by conference call.

General Comments

The AuSF supports any regulatory measures that increase investor participation in global securitisation markets. In particular, we commend regulations that don't restrict cross border securitisation flows or create arbitrary regional markets.

Our principal request and response is that the EBA should not define simple standard and transparent securitisations in a single jurisdictional or euro-centric way. To do so would be contrary to the direction given by the G20 leaders at their 2009 meeting in London where it was agreed G20 members would "take action to build a stronger, more globally consistent, supervisory and regulatory framework for the future financial sector"[1]. This theme was reiterated at the following G20 meeting in Pittsburgh where the final communique stated that there was "commitment to take action at the national and international levels to raise standards together so that national authorities implement global standards consistently in a way that ensures a level playing field and avoids fragmentation of markets, protectionism and regulatory arbitrage"[2]. The AuSF agrees wholeheartedly with the G20's endorsement that cross-border capital flows are vital for economic growth and serve the global economy well in terms of competition.

The AuSF believes if definitions of high quality or simple, standard and transparent securitisations or the like are to be incorporated into regulations, such definitions should reference the final principles recommended by the working group of the Basel Committee on Banking Supervision (BCBS) and the Board of the International Organization of Securities Commissions (IOSCO)[3]. It is our view that globally agreed principles are better benchmarks to use than those that are jurisdiction specific and that potentially give rise to varying and inconsistent definitions and criteria across markets. Recovery of the global securitisation market will be best served not only by simple and transparent securitisation structures, but also by simple principle-based and harmonised regulations.

The AuSF also suggests that any new regulatory treatment of securitisations in which European financial institutions invest should be introduced with an appropriate timetable to allow markets to prepare and adjust. We also suggest existing investments in ABS should be grandfathered to avoid disruption of prices in secondary markets.

In finalising its approach, the AuSF recommends that the EBA recognise regulatory changes that have or are occurring in non-European securitisation markets. We suggest consideration be given to either mutual recognition or substituted compliance based on local regulations governing or applicable to securitisations. For example, in Australia the Reserve Bank of Australia (RBA) has specified expanded and detailed reporting requirements for ABS, including a model of a transaction's cash flow waterfall, which are required to be provided to the market in order for the ABS to be eligible for repurchase at the RBA. This has set a new and improved standard of transparency in the Australian securitisation market. The Australian Prudential Regulation Authority (APRA) is also finalising a new prudential standard governing securitisation. This includes differing regulatory treatment of senior and subordinated tranches of securitisations held by Australian financial institutions. This new standard will focus on encouraging a simple securitisation market to flourish in Australia.

Specific Questions of the Discussion Paper

[1] Item 13: The Global Plan for Recovery and Reform 2 April 2009
[2] Item 12: Leaders' Statement: The Pittsburgh Summit September 24-25 2009
[3] BCBS and IOSCO Consultative Document Criteria for identifying simple, transparent and comparable securitisations

The AuSF's responses to the specific questions posed by EBA are as follows:

1. *Do you agree with the identified impediments to the securitisation markets?*
   We believe the factors set out in the Discussion Paper identify the major impediments to the recovery of global securitisation markets. The Australian market has not suffered the same stigma that securitisation appears to have attracted in European markets. The AuSF believes encouraging a larger and growing investor base is a critical factor necessary for sustainable markets to evolve.

2. *Should synthetic securitisations be excluded from the framework for simple standard and transparent securitisations? If not, under which conditions/criteria could they be considered simple and transparent?*
   Synthetic securitisations are not a feature of the Australian securitisation market and the AuSF has no comment on this question.

3. *Do you believe the default definition under criterion 5 (ii) above is appropriate? Would the default definition as per Article 178 of the CRR be more appropriate?*
   The AuSF considers it to be counterproductive for regulations to define 'default'. What constitutes a 'default' will depend on the nature of the receivable, the legal terms of the receivables contract and local consumer credit laws and regulations. We see any proposal to define 'default' according to a particular market to be very disruptive and detrimental to cross-border securitisation flows. We suggest that investors in ABS should, through their own analysis of the transaction, understand what constitutes default under the underlying receivables contracts so that they can understand the ramifications of default to the cash flows of a particular transaction.

4. *Do you believe that, for the purpose of standardisation, there should be limits imposed on the type of jurisdiction (such as EEA only, EEA and non-EEA G10 countries, etc.): i) the underlying assets are originated and/or ii) governing the acquisition process of the SSPE of the underlying assets is regulated and/or iii) where the originator or intermediary (if applicable) is established and/or iv) where the issuer/sponsor is established?*
   As stated earlier, we believe jurisdictional limits are contrary to the desire of G20 leaders. If any geographical restriction is to be adopted we recommend a broader group of jurisdictions, such as OECD rather than EEA or EEA and non-EEA G10. We support the view of the European associations (AFME, BBA, ICMA and ISDA) on this matter. In their response to you they indicate the view "we do not believe geographical limitations on transactions are required or helpful"[4].

5. *Does the distribution of voting rights to the most senior tranches in the securitization conflict with any national provision? Would this distribution deter investors in non-senior tranches and obstacle the structuring of transactions?*
   The view of the AuSF is that it is unhelpful for regulations to prescribe voting rights in a securitisation. The rights of creditors and equity participants in a securitisation transaction are something that should reflect local laws and the nature and structure of the transaction. For securitisation markets to recover and be sustainable, the rights of both senior and junior creditors need to be balanced appropriately.

[4] Letter dated 14 January 2015 to EBA from the Joint Associations (AFME, BBA, ICMA, ISDA)

6. *Do you believe that, for the purposes of transparency, a specific timing of the disclosure of underlying transaction documentation should be required? Should this documentation be disclosed prior to issuance?*
   In Australia, transaction documents are outlined in the information memorandum and investors have the right to request access to specific documents prior to issuance. Again, we consider that specific regulations governing access to transaction documents is unnecessary and may be detrimental to sustainable securitisation markets developing. The impact of forcing transaction sponsors to make public documents with commercially sensitive information needs to be carefully considered.

7. *Do you agree that granularity is a relevant factor determining the credit risk of the underlying? Does the threshold value proposed under Criterion B pose an obstacle to the structuring of securitization transactions in any specific asset class? Would another threshold value be more appropriate?*
   The AuSF considers this criterion could be problematic for securitisations of commercial mortgage-backed securities and some non-retail ABS.

8. *Do you agree with the proposed criteria defining simple standard and transparent securitizations? Do you agree with the proposed credit risk criteria? Should any other criteria be considered?*
   The AuSF advocates that the EBA adopts the final BCBS/IOSCO principles rather than attempt to regulate similar but European specific criteria.

9. *Do you envisage any potential adverse market consequences of introducing a qualifying securitization framework for regulatory purposes?*
   As proposed in the Discussion Paper the concept of a qualifying securitisation framework could lead to a bifurcated global securitisation market which will result in European financial institutions being incentivised to invest in concentrated European ABS collateral pools. Such a development will limit their interest in diversifying into other high quality securities emanating from well regulated markets such as Australia.

10. *How should capital requirements reflect the partition between qualifying and non-qualifying?*
    The AuSF suggests capital treatment between qualifying and non-qualifying ABS should be based on whether the ABS reflects the global principles being finalised by the BCBS/IOSCO working group and not the geography of the underlying assets. If an ABS is simple, standard and transparent it should qualify for any preferential regulatory treatment regardless of the jurisdiction of the underlying collateral pool.

11. *What is a reasonable calibration across tranches and credit quality steps for qualifying securitizations? Would re-allocating across tranches the overall capital applicable to a given transaction by reducing the requirement for the more junior tranche and increasing it for the more senior tranches other than the most senior tranche be a feasible solution?*
    In the absence of knowing how qualifying and non-qualifying securitisations will be treated under European regulations, The AuSF does not have a current view on how the allocation of capital across tranches should be applied. As a general principle, we would suggest capital should be allocated to reflect the risk of the particular exposure and in a manner that avoids creating regulatory distortions between tranches or between the treatment of similar on-balance sheet or structured exposures.

12. *Considering that rating ceilings affect securitizations from certain countries, how should the calibration of capital requirements on qualifying and non-qualifying securitizations be undertaken, while also addressing this issue?*

The AuSF considers it ideal if the determinations of capital should not be dependent on or based on ratings from credit rating agencies.

In conclusion, we reiterate our request for the EBA to take the opportunity to help reinvigorate global securitisation markets by adopting a principles and not geographic based approach to what is consider simple standard and transparent securitisations. This will facilitate a more harmonious set of regulations that apply to both the issuance and investment in high quality securitisations.

Please feel free to contact me should you wish to discuss the above views in more detail.

Yours sincerely

Chris Dalton