Australian Securitisation Forum

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Mr Tim Pinkowski
General Secretariat
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Dear Mr Pinkowski

Global Developments in Securitisation Regulation – Consultation Report

The Australian Securitisation Forum ("AuSF") appreciates the opportunity to comment on the Global Developments in Securitization Regulation Consultation Report ("Consultation Report") dated June 2012. The AuSF represents issuers, investors and other participants in the Australian securitisation market. We provide comment on the Consultation Report from the perspective of the Australian securitisation market.

We commend the work undertaken by IOSCO's Task Force on Unregulated Markets and Products ("TFUMP") to analyse the various regulatory and industry initiatives which have been initiated in key jurisdictions with respect to risk retention, transparency and standardisation in the context of securitisation. Amongst other things, we support IOSCO's efforts to identify and address material differences in relevant risk retention initiatives. Given the global nature of the securitisation market and the importance of cross-border liquidity to this market, we consider IOSCO's comparative work on risk retention to be particularly important. The following sets out comments on the issues of risk retention, transparency and standardisation.

Comments

Risk retention

We agree with the acknowledgement in the Consultation Report of the issues that are likely to arise from differences in the risk retention requirements which may apply in various jurisdictions. The securitisation market has been a global market and the adoption of different risk retention requirements will inhibit the recovery of the global securitisation market. In practice, it appears that Australian securitisers may be required to comply with both local and international requirements if they wish to issue asset and mortgage-backed transactions on a cross-border basis. Such differences in retention rules is likely to give rise to confusion among market participants lead to increased costs in the form of legal advice and additional structuring in order accommodate multi-jurisdictional expectation which in turn will impede, rather than assist cross-border capital flows.

The AuSF believe global regulators should acknowledge the liquidity implications of needing to comply with multiple and varying risk retention requirements and focus efforts on preserving securitisation as a global funding tool for future economic growth.

We agree with comments made during the industry roundtable discussions held in Madrid in late June that the comparison of the position on risk retention rules within some jurisdictions is premature as the rules in countries such as Australia and the United States are yet to be finalised. We suggest that the conclusions drawn from TFUMPs analysis on the differences are therefore qualified in this manner.

The AuSF supports the concept of risk retention to better align the interests of participants in a securitisation transaction with those of investors. We believe such alignment can be achieved in a number of ways and that a single global approach with respect to retention is not necessary and realistically unlikely to be achieved. It is our view that IOSCO should encourage local regulators to adopt appropriate regulatory responses and mechanisms to address the issue of alignment of interests in securitisation. To facilitate a functioning global securitisation market our members strongly favour a mutual recognition and acceptance process with respect to risk retention between jurisdictions. We regard such a process as necessary to preserve the global nature of securitisation and to enhance global liquidity. This could permit each jurisdiction to accept as equivalent other jurisdictions risk retention rules, provided such rules had been deemed equivalent through an IOSCO review protocol. This would have the effect of exempting an otherwise compliant transaction from meeting multiple jurisdictions' rules.

The policy recommendation on risk retention in the Consultation Report does not call for any specific action to ensure appropriate cross-border cooperation and instead refers to what appears to be a "wait and see" approach based on monitoring industry experience and views. It is the view of the AuSF that given the significance of aiding the recovery of the global securitisation market, we recommend that a more proactive policy recommendation is warranted. We encourage IOSCO to acknowledge the potential significant differences between jurisdictions and to adopt a policy recommendation which seeks a more meaningful resolution of the mismatch issues. We would strongly endorse a conclusion from the TFUMP project that regulators immediately commence discussion of a mutual recognition approach to risk retention.

Transparency

We support the findings of the IOSCO task force that, in many jurisdictions either through regulatory or industry sponsored initiatives disclosure and transparency of securitisation transactions have been enhanced. In Australia's case the AuSF has led an industry project to establish minimum disclosure and reporting standards for Australian residential mortgage and asset-backed securities including minimum sponsor representations and warranties and a common definition of mortgage arrears to improve standardisation and commonality to aid investor due diligence of transactions.

However, we are not comfortable with the suggestion for further stress testing and scenario analysis in the Consultation Report. It is the view of the AuSF that professional fixed income investors are best equipped to make assumptions and model collateral performance based on their risk appetite and investment preferences of each investor. We consider investors are best placed to conduct their own research and analysis rather than place undue reliance on transactions parties including credit rating agencies. Stress testing requires a number of macro-economic and collateral specific assumptions to be made and these will vary based on the economic expectations and risk appetite of individual investors.

Given that many of the enhanced disclosure requirements are still being implemented in many jurisdictions, we support calls for TFUMP to adopt a cautious approach when considering policy recommendations relating to further transparency measures for securitisation at this time. We suggest it would be preferable to allow markets to fully implement new disclosure and reporting standards and allow an appropriate period to pass to evaluate the benefit of the measures and decide if further regulatory or industry led improvements are required to assist recovery of the securitisation markets.

The general experience of the Australian securitisation market has been that there has been adequate disclosure and reporting by securitisers and this has not been flagged as being inadequate by global investors that the AuSF has spoken with over the last four years. The Australian industry has worked to enhance disclosure and reporting since the financial crisis. We support the proposal that the introduction of any further disclosure requirements should involve a balancing of interests and a clear cost benefit analysis and to confirm that any benefit to investors clearly justifies the corresponding costs to securitisers.

Standardisation

The Consultation Report refers to standardisation of both collateral pool data and securitisation transaction documentation (including risk disclosures), although the policy recommendation does not clearly differentiate between these important and distinct topics and does not clearly outline those specific areas where standardisation should be considered. The AuSF submits that for Australian securitisations a good deal has been done and is still on-going to enhance the standardisation of data. As indicated earlier the industry has also adopted minimum representations and warranties to be given in transaction documents by either the sponsor or seller of mortgage assets. Further, the Australian industry has adopted a common definition for calculating and reporting arrears in residential mortgage portfolios. In general, we would suggest that a cautious approach should be adopted to any proposed further action proposed to be taken with respect to standardisation of data and documentation.

In principle, the ASF supports TFUMP's proposal that IOSCO continue to encourage industry to develop best practice templates and to encourage industry bodies to work with their counterparts in other jurisdictions to ensure consistent and harmonised approaches. We submit that IOSCO should also consider developing principles to support harmonisation in these approaches.

The suggestion that the securitisation market should move towards the use of a standardised summary document raises concerns for our members. A number of initiatives have already been put forward in general with respect to securitisation disclosures and it is not clear that further work is required and, or that use of standardised disclosures could be sensibly adopted across issuers and jurisdictions.

Specifically, the AuSF has concerns that certain transparency initiatives in some jurisdictions that will by definition disadvantage similar quality asset and mortgage-backed securities from outside those jurisdictions. It is our suggestion that regulators and securitisation market participants strive to facilitate a recovery of the global securitisation market and not, with the best intentions, bifurcate the market into a series of regional markets.

The AuSF notes two initiatives in the United States and Europe that may have such unintended consequences. The proposed US definition of Qualifying Residential Mortgage ("QRM") and the European Prime Collateralised Securities ("PCS") labelling initiative appear to create classifications that Australian (and other jurisdictions) assets will not be able to meet. It is our understanding that the criteria for QRM are US centric that include specific requirements not relevant for Australian collateral of similar or higher quality. Pools that contain QRM assets will benefit from not being required to hold a minimum level of risk retention in the transaction structure.

The European PCS seems to include a requirement that asset-backed classes be of European origin. Adoption of a label such as PCS to receive preferential European regulatory treatment would be troubling for Australian issuers and investors and be contrary to the objective of facilitating the recovery of global securitisation markets. In addition to repo and existing regulatory capital arrangements for EEA issued collateral, we see an increasing trend of the primary securitisation markets becoming bifurcated between those within and those outside of particular trading or economic blocs.

Conclusion

Conditions in global in funding markets, including securitisation markets, remain fragile, and we encourage the TFUMP to consider adopting final policy recommendations that are appropriate and measured so as to facilitate and not restrict, the recovery of global securitisation markets.

Thank you once again for the opportunity to provide comments on the Consultation Report. Should you have any questions or desire additional information regarding any of the comments, please do not hesitate to contact me at the Sydney office of the AuSF.

Yours sincerely

Chris Dalton