International Banking Federation

Pinners Hall
105-108 Old Broad Street
London EC2N 1EX

tel: + 44 (0)20 7216 8947
fax: + 44 (2)20 7216 8928
web: www.ibfed.org

D1277E-2012

6 August 2012

Mohamed Ben Salem
General Secretariat IOSCO
Calle Oquendo 12
28006 Madrid
Spain
Email: gdsr@iosco.org

Dear Mr. Ben Salem,

Re: IOSCO Consultation Report on Global Developments in Securitisation Regulation

The IBFed appreciates the opportunity to comment on the IOSCO Consultation Report on Global Developments in Securitisation Regulation. The IBFed supports the FSB's work on shadow banking and wishes to ensure a strong securitisation market in the future. We wish to offer the following comments:

General

The IBFed agrees with the Consultation Report that securitisation of high-quality assets provides an important and stable source of alternative funding for banks and their customers and has the potential to be a robust risk transfer mechanism. Therefore, any final policy recommendations need to take account of the global impact on the ability of banks to provide finance to their customers and the broader economy. Given the current financial and economic fragility, it is imperative that the current level and diversity of funding is increased or at least maintained and that interlinkages are properly understood.

Numerous regulatory steps have already been taken to enhance securitisation transactions and increase the transparency of the market. Regulatory change is being supported by market

initiatives such as the Prime Collateralised Securities (PCS) that reduce the need for further regulation. Furthermore, the current Basel III proposals for a liquidity coverage ratio at this time do not provide clarity as to whether ABS securities would be included as eligible assets for calculating the liquidity ratio. This will be another regulation that could potentially disrupt the ABS market as it could reduce demand among bank investors. While we understand that regulators are interested in providing incentives to encourage distribution of ABS securities to non-bank investors, excluding the use of ABS securities for liquidity ratio compliance will severely impact the trading of ABS securities by banks, resulting in even lower liquidity levels in the ABS market. It would also serve to discourage banks from diversifying their asset exposure away from their home markets, which we understand is a policy goal of the regulators.

Given the above, any global initiative regarding securitisation transactions should only be considered after all the regulatory requirements have taken effect and been assessed for their effectiveness and impact. If further measures are considered necessary, then these should use the contractual standards and structures used in the market (which incorporate solid guarantees for creditors) as well as the rules included in the Basel Accord as a starting point.

The IBFed opposes any definition of shadow banking that includes banks' funding activities that are already regulated. Banks-sponsored asset-backed commercial paper (ABCP) conduits are a case in point. In a number of jurisdictions, ABCP conduits are on banks' balance sheets – hence subject to the bank accounting and regulatory requirements. The IBFed notes that, indeed, the current round of regulation has only increased the focus on bank funding activities in general and securitisation activity in particular (e.g. Basel III, Dodd Frank Act, stress testing). Contrary to what the FSB seems to imply, such activities do not exist outside the reach of regulators / supervisors.

We believe there should be a concerted effort to achieve a much higher degree of consistency and convergence in practice between jurisdictions as securitisation markets are essentially global markets. This would avoid confusion, duplication and unlevel playing field issues. However, it should also be considered whether global market forces can achieve the objective of global harmonisation more efficiently than developing additional regulatory measures.

In this respect, there seems to be an inconsistency between the comments on page 4 of the Consultation Report that securitisation markets should not be seen as purely domestic versus the overall tone of the paper that does not seem too inclined to propagate a higher degree of harmonisation of regulation. The IBFed encourages international standards setters to pursue a higher degree of global harmonised of regulation.

Detailed Comments

The IBFed would like to make the following more detailed comments with regards to the Consultation Report:

- We believe more work should be done, for instance on the inconsistency between the UNITED STATES SEC rule 17g-5 and the Article 8 proposal in the EUROPEAN UNION CRA Directive proposal.[1]

- Furthermore, the different approaches to loan-by-loan data between the European Central Bank (the ECB data warehouse), the Bank of England and the US SEC are also undesirable and we do not believe that these differences are justified by different practices. They are not mentioned in the paper but do play a role.

- We furthermore note that the paper remains silent on regulatory measures which may change the dynamics between issuers and investors and which will impact on investor appetite:

    - The incentives for investors to invest in ABS differ between jurisdictions, with EU investors having strict due diligence requirements and responsibilities to verify adherence by issuers to risk retention rules, and in addition insurance companies are penalised by high capital requirements under Solvency II. More convergence in these areas is desirable.

    - The CRA rotation principles which are proposed in Europe only create an additional unlevel playing field issue for European issuers as investors have their own preferences for rating agencies and the choice in future for E.U.-based issuers will no longer be free.

- There is an emphasis in the paper on the underlying asset stress testing information being provided in the paper. In the EU according to CRD III stress testing on the underlying assets is a requirement, but disclosure of the results to ABS investing banks is not. Nevertheless, banks in the EU must provide investors information that accommodates sensitivity analysis. IBFed members are cautious of disclosing stress testing results since regardless of the level of severity of the stress scenarios the results are subject to varying interpretation as judgment is required. This in turn makes it impossible to audit this information.

- The paper does not sufficiently distinguish between reporting/disclosure and transparency. As was done during the PCS project initiation, further work could be done to identify a list of data of true relevance, rather than accumulating reporting requirements, part of which investors do not feel add real value to their due diligence. In this work stream, it should be borne in mind that in principle retail investors are not allowed to invest in securitisations.

[1] This is the rule requiring rating info having to be posted on a website for other agencies to see, in order to encourage unsolicited ratings. The requirements are slightly different, which might lead to confusion about compliance, and the burden of proof of compliance and related sanctions fall on different parties.

- Annex 2: Even though it might be desirable to categorise different classes of securitisations, we do not believe that eligibility criteria for underlying assets should be set in such a way that it would automatically prohibit certain asset classes from being included in a securitisation. In the current environment of deleveraging and credit squeezes and an increasing use of secured debt issuance, the broader economy might be served by expanding rather than limiting the type and eligibility of assets, albeit in a controlled and fully transparent manner.

IBFed Comments on IOSCO Proposals

The IBFed provides the following remarks to the proposed policy recommendations in the Consultation Report:

Issue One: Risk Retention Requirements

We agree with the IOSCO approach to monitor industry experience as the ABS markets recover from the economic crisis.

After having done so much already, an assessment of existing and forthcoming regulation is needed at global and national levels to identify potential gaps and overlaps as well as any residual risk and opportunity for arbitrage. No one knows yet where the present regulatory initiatives will end up. Incompatible regulation or duplication of policy measures should be avoided in an effort to reduce regulatory uncertainty and confusion.

Nevertheless, the IBFed is concerned about the potential for significant increases in costs in order to comply with differing regulations across jurisdictions. The IBFed therefore encourages a proactive approach to identify regulatory gaps and potential recommendations for policy alignments early on in this process of consideration.

We note that IOSCO is concerned about the effect of the potential US exemptions to risk retention *vis a vis* those of other jurisdictions. Our members believe that the exemptions from risk retention for specified assets demonstrating sound underwriting standards are warranted, both from the perspective of addressing the lax underwriting standards that contributed significantly to the economic crisis, as well as the perspective of restarting these ABS markets. We continue to seek input from our members as to the feasibility of bifurcating their transactions to address separately the risk retention requirements of the US market and the EU market.

Issue Two: Disclosure of Information about Stress Testing and Scenario Analysis

Prior to consultation with investors about their appetite for stress testing information, we believe issuers must have the opportunity to thoroughly assess the feasibility, risks and potential liability attendant to stress testing.

Supplying stress testing information and scenario analysis will be onerous for issuers and as noted above there are serious concerns among IBFed members with regard to disclosure of

stress test results as these can be easily be misconstrued. Among the key questions raised would be defining the appropriate stress tests and the relationship of such tests to rating agency analyses. Moreover, in some jurisdictions, there is a question of whether issuers would be liable for the stress scenarios and assumptions, including whether this information could be deemed to be "forward-looking statements" for purposes of the applicable securities laws. Therefore, any such recommendation in favour of a perceived net benefit to investors must be weighed against these concerns. Therefore, we believe that before IOSCO consults with investors about stress testing, it should consult with issuers to determine (1) whether all issuers conduct such stress testing, and (2) whether issuers have any concerns about sharing such information with investors.

Issue Three: Standardisation of Disclosure

The IBFed in principle supports the development of industry best practice principles and templates and is willing to take an active role to coordinate work between jurisdictions to ensure consistent and harmonised approaches.

However, the IBFed notes that standardisation will likely be successful only in similar jurisdictions with similar structures, asset types and markets. Therefore, the goal of standardisation will likely require alignment of diverging rules as discussed in Issue One above.

Transparency is also crucial to allow market discipline to properly work. Thus, details about the securitised assets could be made available, for instance, in the case of mortgages where collateralisation levels, arrears, etc. will provide useful information to investors. In this context, the PCS initiative that was taken by the industry will increase transparency.

We hope you will find our reflections useful for your work and would like to express our appreciation for the steps you have taken to ensure a constructive dialogue with the industry. Please contact us should you require any further information.

Yours sincerely,

Sally Scutt

Managing Director

IBFed

Pierre de Lauzan

Chairman

IBFed Financial Markets Working Group