



Australian Securitisation Forum

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The Eligible Securities Team

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AUSTRALIAN SECURITISATION FORUM SUBMISSION RBA - NEW CRITERIA FOR ELIGIBLE SELF-SECURITISATIONS

- 1 The Australian Securitisation Forum (“ASF”) welcomes the opportunity to provide comments on the Reserve Bank of Australia’s (“RBA”) consultation paper on proposed updates to the RBA’s eligibility criteria for self-securitisations “New Criteria for Eligible Self-Securitisations” dated April 2023 which contains draft Eligibility Criteria (“Draft EC”).
- 2 The ASF is the peak industry body representing the Australian securitisation market, including ADI originators with self-securitisation programmes. The goals of the ASF are to facilitate the formation of industry positions on policy and market matters, represent the Australian industry to local and global policymakers and regulators and to advance the professional standards of the securitisation industry.
- 3 The ASF makes particular comment and/or seeks clarification in relation to:
 - (a) certification of self-securitisation key terms (section 3.1.1 of the Draft EC);
 - (b) information provision to the RBA (section 3.1.3 of the Draft EC);
 - (c) legal opinion requirements (section 3.1.4 of the Draft EC); and
 - (d) timing for implementation of the changes in the Draft EC.

Section 3.1.1 Market Terms and Conditions

- 4 The proposal in this section is that an ADI certify its self-securitisation is on “key terms” “substantially” similar to the key terms of comparable securitisations under the ADI’s public term

securitisation programme over the preceding 10 years, with the most recent public term securitisation terms to apply in the event the ADI has undertaken multiple public term securitisations in the preceding 10 years.

5 The ASF submits that:

- (a) the most recent public term transaction may not be the most relevant comparison for key market terms (not only due to market conditions, but also if the relevant rating agencies are different to those rating the self-securitisation or their criteria has changed or due to investor requirements (eg in a public deal there may be a tranche that is privately placed and a corner stone investor may require specific terms and particular structural features)).¹ In the Draft EC the RBA notes liquidity support as a key term and this is an example of a term that can vary; and
- (b) APS 120 allows for greater flexibility with self-securitisation programmes (eg the ability to vary the asset pool to meet ongoing RBA eligibility criteria, including rating requirements) and self-securitisation programmes allow for top-up issuance which public term securitisation transactions generally do not (so the approach on asset criteria and triggers may vary). Further APS 120 requirements differ for capital relief term transactions as compared to funding only term transactions which will impact the terms and structural features of a term transaction and therefore the relevance for comparison purposes with a self-securitisation.

6 The ASF proposes that the RBA:

- (a) update the Draft EC so that in certifying substantially similar key terms, the ADI is permitted to select a repo eligible rated term securitisation (rather than a "public" term securitisation) that it considers most relevant (ie not necessarily the most recent transaction). Determination of relevancy can be based on market conditions, investor requirements and rating agency criteria. Where a self-securitisation only has one relevant rating agency, in providing the certification as to terms, criteria of a rating agency not rating the self-securitisation can be disregarded;
- (b) provide greater clarity on what the key terms are that the ADI is providing certification in respect of. The ASF notes the examples in the Draft EC but would like to see clarification as to whether asset eligibility criteria, cashflows and reserves (other than liquidity reserves, for example reserves supporting losses which may be included in rated securitisations from time to time) are also relevant, noting these can vary deal by deal. ADIs typically seek to harmonise key terms in their securitisation transactions already due to the APS 120 requirement that ADI securitisations are documented on market terms and conditions, so items such as SPV Trust Events of Default, Title Perfection Events, Trust Manager Termination

¹ A public term securitisation for example may require two rating agencies. Ratings criteria as they apply, for example, to an ADI as swap or liquidity facility provider, will relate to both agencies criteria (eg counterparty ratings and replacement criteria).

Events and Servicer Termination Events would typically have less variation. The SPV Trust Issuer security (ie all assets security) would generally be standard for all ADI securitisation transactions so certification of this is likely not an issue. However for a funding only term transaction or capital relief term transaction (with multiple tranches of notes in a capital relief transaction) features such as eligibility criteria (loan size, tenor, LVR) as well as transaction triggers and cashflows (principal payment triggers, payment frequency and reserves) can vary greatly and would not necessarily be applicable to a self-securitisation with only two classes of notes. There may also be a difference in the base rate of a self-securitisation and a term transaction, including the approach to fallback rates (eg BBSW fallback to AONIA in the context of 1 month versus 3 month BBSW). The ASF would welcome the opportunity to work with the RBA in identifying key terms that would be relevant for comparison purposes in a self-securitisation and a repo eligible rated term transaction; and

- (c) amend the Draft EC to make it clear that a self-securitisation certification in respect of key terms (ie under proposed paragraph 3(d) of the Annual Certificate Template) does not need to be refreshed or updated on an ongoing or annual basis (which would be onerous given the way the market evolves and APS 120 requirements can change) and is only required by reference to when the RBA certification requirements first take effect for the relevant self-securitisation. An updated annual certification in respect of key terms should not be required if the self-securitisation met the RBA eligibility criteria when the RBA certification requirements first applied to the self-securitisation transaction.

For the avoidance of doubt the ASF understands that if an ADI has not done a public term transaction, the RBA does not intend for the ADI, where it has a self-securitisation transaction, to have to undertake any certification process with respect to its self-securitisation transaction.

Section 3.1.3 Information Provision

- 7 In this section the RBA has proposed that ADIs are required to ensure that notices or information that is required to be provided to a rating agency or holders of securities in the self-securitisation is also copied to the RBA, irrespective of whether the RBA is a holder of such securities at the relevant time.
- 8 The requirement to provide to the RBA notices or information provided to a rating agency is overly broad and would, for example, capture general engagement with the rating agency, which is not relevant to investors, including the initial engagement process, as well as annual operational reviews. Further, rating agencies may receive information that investors would not receive, such as detailed pool data, offset balance details and proposed substitution pools. The ASF would like the Draft EC amended to clarify that the notices or information referred to by the RBA is limited to information which materially relates to the rating of the self-securitisation notes and does not include information provided to the rating agency (but not investors) as part of the rating engagement and pool audit process or the annual operational reviews conducted by a rating agency.

The ASF would welcome the opportunity to work with the RBA in identifying the information to be provided to the RBA.

- 9 Further, the ASF notes that ADIs provide the RBA with specific RBA reporting which can duplicate information that is provided to the rating agency or security holders. The ASF would like the language in section 3.1.3 to be qualified so that such information does not need to be provided to the RBA in the form provided to the rating agency or security holder to the extent it will be provided to the RBA in a different format.

Section 3.1.4 Legal Opinions

- 10 The RBA has proposed an annual certification that key legal opinions for the self-securitisation have been issued.
- 11 Legal opinions for a self-securitisation (transaction (including enforceability and true sale), trustee and tax neutrality) are issued at inception of the self-securitisation and are not updated annually or in connection with a top-up issuance. The ASF submits that the Draft EC should be amended to clarify that certification of key legal opinions (ie under paragraph 3(e) of the Annual Certificate Template) is required when the ADI first applies for the securitisation notes to be eligible for repurchase transactions (or when the RBA certification requirements first applied to the self-securitisation transaction).
- 12 The ASF is fine to include annual certification (potentially as part of the insurability confirmation) of the key legal opinions that were issued at inception however for the avoidance of doubt, the ASF wishes to clarify that the RBA is not looking for annual updated opinions. The ASF recognises that if material changes were made to the transaction documents in respect of a self-securitisation where the rating agency required an opinion on such changes or in connection with a material change in law the opinion could also be provided to the RBA and in this context a new certification in respect of the opinion could be provided.

Timing

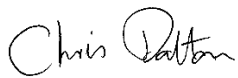
- 13 The RBA proposes in the Draft EC that the changes outlined will take effect for new self-securitisations from 1 December 2023 and to existing self-securitisations from 1 July 2024 and has asked for feedback on whether releasing the final Eligibility Criteria requirements no later than 30 November 2023 is feasible from a timing perspective. Given the rating agency process for self-securitisations, the ASF submits that there should be more of a gap between when the final Eligibility Criteria is published and when the changes take effect for new self-securitisations (including to allow for any updates to be reviewed by the relevant rating agencies).
- 14 For the avoidance of doubt, the ASF also seeks clarification that the reference to "new self-securitisations" at the start of section 3 of the Draft EC does not include existing self-securitisations

where there is a top up issuance. The ASF would also like to clarify the time frame for when existing self-securitisations need to be updated (eg would it be the first top-up issuance following 1 July 2024 and any top-up thereafter or is this expected to be an annual process?).

Concluding remarks

15 The ASF is grateful for the opportunity to provide this submission and we would be pleased to discuss it with you in greater detail at your earliest convenience.

Yours sincerely

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

Chris Dalton
Chief Executive Officer, Australian Securitisation Forum