



Chris Dalton | Chief Executive Officer
Level 7, 14 Martin Place, Sydney NSW 2000
M +61 (0)403 584 600
E cdalton@securitisation.com.au
www.securitisation.com.au

TO Jill Kitto | Principal Adviser
Business Tax and Tax Administration Branch
Personal and Indirect Tax, and Charities Division
The Treasury
Langton Crescent
Parkes ACT 2600

17 SEPTEMBER 2026

Dear Ms Kitto

Minimum tax on discretionary trusts – exposure draft legislation: Submission by the Australian Securitisation Forum

1 Introduction

- 1.1 We write on behalf of the Australian Securitisation Forum (“**ASF**”) in response to the exposure draft legislation and explanatory memorandum for the proposed minimum 30% tax on distributions from discretionary trusts.
- 1.2 The ASF appreciates the opportunity to make submissions on the exposure draft.
- 1.3 We refer to the submissions previously made on 30 July 2026 in relation to this issue.

2 Securitisation industry in Australia

Securitisation as part of Australia’s financial system

- 2.1 Securitisation is an important part of Australia’s financial system. It is a flexible funding tool for regulated banks, non-banks and emerging lenders seeking to fund their businesses through the debt capital markets.
- 2.2 Very broadly, securitisation is a form of secured funding backed by a portfolio of financial receivables such as home loans, auto loans or SME receivables. The process involves the creation of an insolvency-remote special purpose vehicle (“**SPV**”) which issues debt securities to investors and uses the proceeds to purchase a pool of financial assets. The cash flows from the assets repay the principal and interest on the debt securities. The SPVs are typically unit trusts with third-party professional trustees. We set out the typical securitisation transaction structure in more detail below.
- 2.3 The Australian securitisation market is a mature, successful and active financial market segment that serves a vital role in facilitating the supply of finance for homeowners, consumers and SME businesses. It enables lenders to serve parts of the market that some regulated banks find less attractive due to regulatory risk weights applied to certain asset classes. It also provides a competitive dynamic in Australia’s concentrated banking market to exert downward pressure on margins for mortgages and other consumer and SME finance than otherwise would prevail in the absence of the securitisation market. The market has operated continuously for over three decades.

- 2.4 Total public issuance over 2024 reached A\$80 billion across 100 individual transactions and 57 organisations. There are hundreds, if not thousands, of existing securitisation trusts currently operating in the Australian market.

The ASF

- 2.5 The ASF is the peak industry association representing participants in the securitisation and covered bond sectors in Australia and New Zealand. It facilitates the formation of industry positions on policy and market matters. It represents the Australian industry to local and global policymakers and regulators, and advances the professional standards of the securitisation industry.
- 2.6 The ASF is comprised of a governing National Committee, standing subcommittees and a national membership of 240 financial institutions and market organisations.

Summary of ASF's view on the exposure draft

- 2.7 The exposure draft acknowledges the issues caused by the existing definition of “fixed trust” and attempts to resolve them, however the proposed drafting does not achieve a clear exclusion for securitisation SPVs. The new section 272-65(1)(b) and the “matters suggesting” in section 272-65(2) instead create significant uncertainty for industry participants. It is likely to be unworkable for a large number of securitisation trusts.
- 2.8 The Australian government has, since the initial announcement of the discretionary trust minimum tax measure, always stated that it is not its intention to capture commercial trusts. We refer, for example, to paragraph 1.5 of the explanatory memorandum to the exposure draft legislation:

In light of this feedback, an expanded, codified definition of fixed trust will be adopted to help ensure that a range of modern commercial trusts, which are not intended to be captured by the minimum tax, are excluded.

- 2.9 Securitisation unit trust vehicles are clearly commercial trusts. Each such SPV is created to facilitate a specific large-scale financing transaction.
- 2.10 As such we understand Treasury's goal to be ensuring that commercial trusts like securitisation SPVs are clearly excluded while not extending that exclusion to trusts that are intended to be captured.
- 2.11 The exemption in section 820-39 of the *Income Tax Assessment Act 1997* (Cth) (“**1997 Act**”) for insolvency-remote special purpose vehicles was drafted 23 years ago specifically to capture securitisation SPVs, and has been applied to exclude them from both the thin capitalisation rules and the global minimum tax rules on account of their unique nature.
- 2.12 The ASF submits that the section 820-39 exemption should be similarly applied to the new discretionary trust minimum tax rules.
- 2.13 The section 820-39 definition recognises that securitisation vehicles are debt-funded vehicles that are primarily designed to house and repackage cashflow-generating assets, and which therefore operate fundamentally differently from ordinary investment trusts.
- 2.14 The economics of each securitisation transaction depends on certainty of cashflows through the SPVs, including in relation to any taxation liabilities. Those cash flows are modelled upfront and set down in a strict payment waterfall in the transaction documents. This certainty underpins the credit ratings of the notes and the insolvency remoteness of the vehicle. The economics also depend on the trust remaining tax neutral, such that the professional third-party trustee will not itself be subject to tax on the trust income. Any uncertainty in the application of the minimum tax to securitisation SPVs will be of great concern to industry participants. Any tax liability imposed on a securitisation SPV could potentially render the SPV unable to discharge its liabilities.
- 2.15 We note in particular:
- (a) the section 820-39 exemption is targeted, longstanding and well understood, having been introduced in 2003. The vast majority of existing securitisation vehicles have the benefit of tax opinions considering its application;

- (b) securitisation vehicles are well known and understood by the market, investors, regulators and Treasury;
- (c) a bright line test is needed by the securitisation industry in order for tax advisors to provide the level of certainty required by participants in these transactions; and
- (d) without the section 820-39 exemption, the industry faces an enormous compliance burden, as the industry would need to revisit and possibly amend hundreds or potentially thousands of existing vehicles, many of which have been in existence for decades.

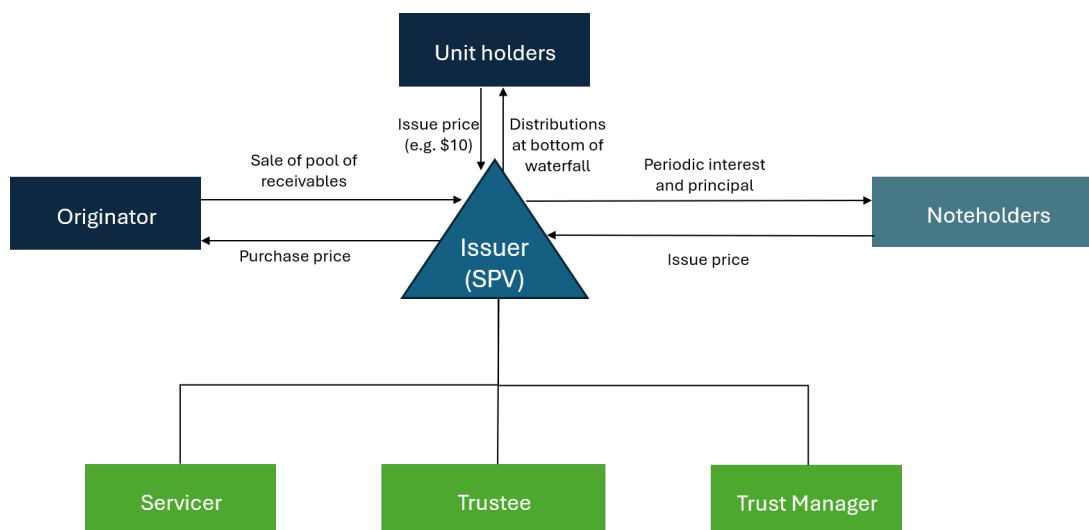
2.16 The ASF's primary request is that the section 820-39 exemption be included directly in the Act itself, rather than in subordinate legislation under the proposed section 101AB(2)(a). This is consistent with the approach taken for the thin capitalisation rules and the global minimum tax rules, where the section 820-39 exclusion is included in the primary legislation.

3 Securitisation transactions

Structure

- 3.1 In a typical securitisation transaction, a lender (the "**originator**" or "**sponsor**") transfers a pool of financial assets, such as residential mortgage loan or auto loan receivables, to an SPV for value. In some transactions, known as "direct origination" structures, the financial assets are originated directly into the SPV.
- 3.2 The transfer or origination of financial assets is funded by the issue of debt interests (notes) by the SPV in various tranches to investors such as fund managers, investment banks, pension funds, domestic and international banks and private credit.
- 3.3 Amounts are paid into the SPV periodically on the financial assets in the asset pool. Those amounts are distributed first to service providers (such as the trustee, trust manager and servicer), then to investors as interest and principal on the notes. At the end of the waterfall, any residual amounts are distributed to the unitholder.
- 3.4 In Australia, the SPV is typically a unit trust. The unitholder is almost always the originator itself, or a corporate entity associated with the originator. Some trusts also have a capital unit held by a third party to facilitate deconsolidation of the trust. That third-party unitholder has no economic interest in the trust, and can easily be defeased of its interest.
- 3.5 The unitholder pays tax the trust's net income at the corporate tax rate, as under the transaction documents the unitholder is always made presently entitled to that income. The trustee is therefore not taxed on that income.

3.6 A simplified version of the transaction structure can be represented diagrammatically as follows:



- 3.7 The SPV is established as a vehicle through which the transaction is carried out by lenders and investors. It is established specifically for a given transaction. It does not itself carry on a business in any meaningful sense. Its role is fixed and limited both in activity and lifespan. Its sole function is to hold the asset pool and distribute the resulting cash flows in accordance with a strict, predetermined payment waterfall set out in the transaction documents. Once the transaction reaches its end, the trust is wound up.
- 3.8 The trustee of the SPV trust is almost always a third-party professional trustee such as BNY, Perpetual or AMAL Trustees. Such a trustee is paid fees for its services. The discretions of the trustee vis-à-vis the management of the trust, and the transaction mechanics, set out in the transaction documents in a prescriptive manner. Where there are discretions to be exercised, the trustee is often directed by the trust manager, which is typically the originator (as well as the unitholder) but may also be a third-party manager.
- 3.9 The units are merely the residual interest that constructs the trust structure rather than part of the transaction's economics. The unitholder is more akin to a settlor than a traditional beneficiary. The units are not traded and are almost never transferred. If units are transferred, it would be in the unusual context of, for example, the acquisition or divestment of the originator.
- 3.10 Instead, the investment in the transaction comes in through the notes. Securitisation transactions are almost entirely debt funded. This underpins their exemption from the thin capitalisation rules. Only a nominal amount of financing comes in via the issue of units: in general, no more than approximately \$10-\$200.
- 3.11 As a result, the unit structure is not an economically significant feature of these vehicles in comparison to the return of the notes. What defines a securitisation vehicle is the repackaging of income on financial assets into debt instruments. However, it is critically important that the SPV remain tax neutral and insolvency remote, as described below.

Tax neutrality

- 3.12 Tax neutrality is fundamental to securitisation transactions. The unitholders are, under the transaction documents, always made presently entitled to the trust income and are properly assessed on that income under the ordinary trust taxation provisions. The professional third-party trustee must not itself be subject to tax on the income of the trust. Financiers expect that all cashflows will be available to meet payment obligations under the notes.

- 3.13 This tax neutrality is essential to the economics of the transaction and to the strength of the legal and tax opinions on which investors, rating agencies, and other transaction parties rely. If the trustee were subject to tax, it would disturb the expected balance of cash flows through the vehicle, undermine the insolvency remoteness of the structure, and compromise the legal and tax opinions on which all participants depend.

Insolvency remoteness

- 3.14 Insolvency remoteness is another essential feature of every securitisation vehicle. The SPV must be structured so that it cannot be affected by the insolvency or financial distress of the originator or any other party.
- 3.15 This insolvency remoteness is essential to the credit rating that is assigned to the notes issued by the SPV. When a rating agency assesses the credit quality of the notes, it examines the cash flows of the trust: the interest and other income received from the asset pool, and the payments made out to investors and service providers. These are predictable and well-defined. The only material variable is the rate of bad debts in the asset pool. If the trust could be subject to unpredictable tax liabilities, or tax liabilities that arise before there is cash available in the waterfall to pay the tax, this would undermine the credit rating of the notes and therefore the economics of the entire transaction.
- 3.16 Insolvency remoteness is also a requirement to access the exemption from the thin capitalisation rules and global minimum tax rules in section 820-39.

4 History of section 820-39

- 4.1 Section 820-39 was enacted 23 years ago by the *Taxation Laws Amendment Act (No. 5) 2003* (Cth).
- 4.2 It exempts certain “special purpose entities” from the thin capitalisation rules. The definition is aimed squarely at securitisation SPVs. An exemption had previously been included in section 820-942(2) for “securitisation vehicles”, but in practice this was found to be too narrow. It is not generally relied upon.
- 4.3 The application of section 820-39 will have been considered by the tax opinions issued in relation to the vast majority of securitisation transactions since its introduction. It is a key plank in the taxation treatment of these vehicles.
- 4.4 The conditions to access the exemption in section 820-39 are (section 820-39(3)):
- (a) the entity is one established for the purposes of managing some or all of the economic risk associated with assets, liabilities or investments (whether the entity assumes the risk from another entity or creates the risk itself); and
 - (b) the total value of debt interests in the entity is at least 50% of the total value of the entity's assets; and
 - (c) the entity is an insolvency-remote special purpose entity according to criteria of an internationally recognised rating agency that are applicable to the entity's circumstances.
- 4.5 The explanatory memorandum to the Taxation Laws Amendment Bill (No. 5) 2003 explained the purpose and rationale of the exemption in section 820-39 from paragraph 1.5:

This treatment reflects that securitisation vehicles are tax neutral entities established to pool assets and are generally funded entirely through the issue of debt interests without the need to hold equity.

The securitisation industry is complex and dynamic. Many securitisation programs are not able to avail themselves of the benefits of the zero capital treatment provided under the current thin capitalisation legislation. In particular, the current definitions do not contemplate origination, warehousing, two-tiered securitisation or synthetic securitisation. Nor do the current rules allow any residual equity holding in a securitisation vehicle. As a consequence, many bona fide securitisation vehicles will inappropriately have a proportion of their interest deductions denied under the thin capitalisation rules.

...

The first condition is a purpose test that seeks to exclude entities that are not specifically established for what might be commonly referred to as securitisation or origination activity. It also seeks to exclude entities that undertake any activities not related to the process of securitisation or origination.

- 4.6 When the thin capitalisation rules were subsequently amended and expanded in 2024, the section 820-39 exemption was carried forward and applied to the expanded subdivisions. This reflected the continued recognition that securitisation vehicles are fundamentally different from other entities and should not be subject to rules that are not directed at them.
- 4.7 The section 820-39 exemption was then also adopted for the purposes of the global minimum tax (Pillar Two) rules in 2024. This was another instance of Parliament recognising:
- (a) the unique characteristics of securitisation vehicles;
 - (b) the need for a specific exemption; and
 - (c) the reasonableness of adopting the existing section 820-39 definition, rather than crafting a new one.

5 Use of the section 820-39 exemption in this context

- 5.1 As noted above, the application of section 820-39 will have been considered by the tax opinions issued in relation to the vast majority of securitisation transactions since its introduction in 2003. It is well understood by the market, tax advisors and the Australian Taxation Office.
- 5.2 To the ASF's knowledge, the exemption is not relied upon by any type of entity outside securitisation and structured finance.¹
- 5.3 A practical benefit of incorporating the section 820-39 definition is that the vast majority of existing securitisation vehicles have already had the section 820-39 analysis completed as part of their initial structuring.
- 5.4 If the section 820-39 exemption is not included in the Act, the securitisation industry faces the enormous burden of reviewing all existing trust deeds against the new "fixed trust" definition (addressed in section 7 below). There is no standard securitisation trust deed. Although trust deeds share similarities, each securitisation programme has its own deed, having been prepared by different firms, for different clients, or at different times. As such, there are variables that cannot be addressed by a single piece of guidance or clarification.
- 5.5 The review exercise would be extremely expensive and time-consuming. It would affect hundreds if not thousands of existing trusts across the Australian market. Where a trust deed is found not to satisfy the new definition, it would need to be amended. Whether that is possible would depend on the amendment provisions of the relevant deed and any limitations on the exercise of amendment powers. That amendment would also need to occur prior to the end of the year of income given new section 101AA(b).
- 5.6 Non-securitisation entities should not be able to structure themselves into the section 820-39 exemption, given that the exemption requires the entity to be established for the specific purpose of managing economic risk associated with assets, liabilities or investments (section 820-39(3)(a)) and that the entity must be legally and economically remote from the originator such that it is regarded as an insolvency-remote special purpose entity according to the criteria of an internationally recognised rating agency (section 820-39(3)(c)). Coupled with the requirement that the entity is at least 50% debt financed (section 820-39(3)(b)), it is improbable that the exemption would be available to non-

¹ While we located TD 2014/18 concerning the application of section 820-39 to securitised licence structures used in some social infrastructure Public Private Partnerships, these are commercial arrangements very similar to standard securitisation transactions, and are not at all similar to the types of trust arrangements intended to be affected by the exposure draft.

securitisation entities, including family trusts (which are characterised by an economic alignment with the familial originator of the trust).

- 5.7 If the Treasury is concerned that non-securitisation entities could improperly attempt to structure themselves into the exemption, instances of that occurring could be addressed by existing anti-avoidance rules.

6 Why the section 820-39 exemption should be included in the Act itself

- 6.1 The ASF strongly submits that the section 820-39 exemption should be included directly in the Act itself, rather than being left to subordinate legislation under new section 101AB(2)(a).
- 6.2 This is consistent with the approach taken for the thin capitalisation rules and the global minimum tax rules, where the section 820-39 exclusion is included in the primary legislation.
- 6.3 Inclusion in the Act provides certainty and clarity regarding the application of the exemption, allowing investors, trustees, originators, rating agencies, and other participants in the transaction to have confidence in the tax treatment of the trust into the future. The securitisation market is a sophisticated capital market that relies on the ability of participants to provide clear legal and tax opinions at the time a transaction is structured and issued. Those opinions must be capable of being issued with a high degree of confidence. An exemption that exists only in subordinate legislation, which can be amended or revoked without full Parliamentary scrutiny, does not provide the same degree of certainty.
- 6.4 We note that the exposure draft legislation already includes a number of exclusions directly in the Act itself: testamentary trusts, primary production income, trusts with vulnerable child beneficiaries, and charities. These exclusions reflect a recognition that certain types of trusts or certain types of income should not be subject to the minimum tax. There is no reason in principle why securitisation vehicles should be treated differently. Their exclusion is at least as well-justified as those already in the Act and, in many respects, more so, given the longstanding legislative history of section 820-39 and the specific design of that provision for these types of vehicles.
- 6.5 The explanatory memorandum to the exposure draft says at paragraph 1.80 that:

It is consistent with the hierarchy of laws that the primary law contains a principles based definition, and if necessary, more specific matters can be clarified through subordinate legislation.

- 6.6 It is uncommon in the tax law to have exemptions in delegated legislation. The section 820-39 exemption itself is in the 1997 Act. Its expansion is also picked up by other parts of the 1997 Act, not by delegated legislation. The 1997 Act and the *Income Tax Assessment Act 1936* (Cth) are, by their nature, highly prescriptive statutes. They contain detailed rules, definitions, and exclusions. Leaving a key exclusion to subordinate legislation is inconsistent with the established approach of the income tax law.

7 Concerns about the new "fixed trust" definition in section 272-65

- 7.1 The explanatory memorandum states that the expanded definition of "fixed trust" was to "help ensure that a range of modern commercial trusts, which are not intended to be captured by the minimum tax, are excluded". However, the proposed expanded definition of "fixed trust" in section 272-65 is still very narrow and will not consistently capture securitisation SPVs, resulting in the unintended application of the minimum tax.
- 7.2 Trust deeds vary between securitisation transactions. However, based on the ASF's review of a variety of securitisation trust deeds, the following concerns arise with respect to the section 272-65 definition. These are provided by way of example only, since other trust deeds may contain other provisions giving rise to problems.
- 7.3 The definition of "fixed trust" in section 272-65 is expanded to include trusts where "there are no material discretionary elements affecting the entitlements or rights of the trust's beneficiaries." This formulation is not limited to entitlements or rights to income or capital of the trust, but extends to all entitlements or rights of the trust's beneficiaries. This appears to be excessively broad.

7.4 Section 272-65(2) sets out a number of “matters” that are relevant to determining whether a trust has material discretionary elements. We note:

- (a) **Section 272-65(2)(a):** On the ASF's review of selected securitisation trust deeds, this matter is of less concern. At the end of the income year, the beneficiaries of securitisation trusts have clearly defined and enforceable entitlements or rights to the income and capital of the trust. We did not identify any unitholders having rights relating to the governance of the trust.
- (b) While the rights of the beneficiaries are often “subject to rules” (such as the unitholder's rights to income being subject to the payment of other parties under the waterfall payment mechanism), the rules governing the payments are generally not discretionary. However, the requirement that “none of the rules are discretionary” suggests that even an immaterial discretionary power would cause this matter to point against an entity being fixed in nature.
- (c) **Section 272-65(2)(b):** Subsection (2)(b) specifies a broad range of powers which cannot be exercised to “significantly” vary existing entitlements or rights, or to “significantly” affect the value of the existing beneficiaries' interests. It is unclear where the line is drawn between something that is “significant” and something that is not. It is immaterial that those powers are unlikely to be used, or may be constrained by other requirements or undertakings: it must be the case that they cannot be so exercised.
- (d) Some trust deeds reviewed by the ASF permitted amendments to the trust deed due to changes of law. Such powers were without limitations on such changes being not materially prejudicial to the interests of the beneficiaries (which is appropriate, given the limited role of beneficiaries in these structures). It is impossible to say whether such changes might significantly vary existing entitlements or rights, or significantly affect value.
- (e) A further concern relates to the power of the trust manager to determine whether amounts are income or capital. Securitisation trusts may have different income and capital unitholders, and the trust manager may have a power to determine whether a particular receipt is to be characterised as income or capital. The power is not a critical part of the structure, but it is generally included to ensure there is always an amount of trust income to which the income unitholder can be made presently entitled. It may never have been exercised or may not be intended to be exercised adversely. Nevertheless, any exercise of the power to determine whether something is income or capital may have a material effect on entitlements. It determines which unitholder receives the amount. The fact that such powers would not be exercised, have never been exercised, or that there is an undertaking that they will not be exercised, is not relevant under the legislation as drafted.
- (f) Other trust deeds permit amendments to ensure that the tax neutrality of the trust is maintained. Further, it is common for the issue supplement (a key transaction document, to which the unitholder is not in that capacity a party) to amend the trust deed, without restriction on how those amendments affect the unitholder's rights or the value of the units.
- (g) As noted above, securitisation SPVs may have third party unitholders with no economic interest in the trust that can easily be defeased of their interest, for example in order to facilitate deconsolidation. To allow for management of such units, the trust deed will generally allow for the trustee to redeem units for the original subscription price or another agreed amount. While the exercise of this power would significantly vary the rights of an existing beneficiary of the trust, for the reasons provided above, this power does not materially change the economic structure of a securitisation trust.
- (h) **Section 272-65(2)(c):** The trust deeds reviewed by the ASF required certain other changes to be approved where those changes were prejudicial. Approval was not necessarily required from all beneficiaries – it might be required from, for example, the income unitholder but not the capital unitholder. That would fall foul of subsection (c)(i).
- (i) Subsection (c)(ii) requires the powers to be exercised only in a way that “cannot adversely affect” the beneficiaries. This removes the materiality limitations permitted in subsection (2)(b).

- (j) Subsections (2)(b) and (2)(c) do not sit easily together. Subsection (b) contemplates a threshold of "significant" variation, while subsection (c)(ii) imposes an absolute standard of "cannot adversely affect". Subsection (b) considers powers being inherently limited, while (c) considers actions being permitted with consent. It is unclear how these are intended to interact.
- 7.5 Section 272-65(2) provides no guidance about how the listed "matters" are to be weighed or applied. It is unclear whether satisfying one of the matters is sufficient to establish that a trust is a fixed trust, or whether all matters must be satisfied, or whether some other combination is required.
- 7.6 The note to section 272-65(2) states that the "existence of anything contrary" to paragraphs (a) to (d) would suggest that the trust is not a fixed trust. This implies that each of the "matters" must be satisfied to establish that a trust is a fixed trust.
- 7.7 Additional matters can be prescribed by the regulations under section 272-65(4)(a), but it is unclear how any prescribed matters will relate to the existing matters in the list. This adds a further layer of uncertainty.
- 7.8 The listed matters are only indicia. A trust can satisfy the "no material discretionary elements" test in section 272-65(1)(b) and be classified as a fixed trust without ticking off any of the listed matters, and conversely a trust can satisfy one or more of the "matters" and still not be classified as a fixed trust. There are merely factors to be considered. This makes the analysis extremely uncertain.
- 7.9 As a result, even with a comprehensive analysis of the trust deed, or even amendments targeted at meeting the new definition of fixed trust, tax advisors will not be able to provide a definitive answer on whether a given securitisation SPV will be a fixed trust.
- 7.10 This is the opposite of the bright-line test that the securitisation industry needs.
- 7.11 The powers described in securitisation trust deeds are not particularly relevant to the commercial reality of how securitisation SPVs operate. Securitisation trust deeds typically contain certain powers for operational and legal flexibility. Those powers are often broad. However, they are not intended to allow the trustee to alter distributions or entitlements unless necessary to ensure the continued operation or tax neutrality of the transaction. The economics of the transaction do not turn on those distributions or entitlements, and the powers exist for administrative and structural reasons only. As such their presence should not determine whether the vehicle is subject to the minimum tax.
- 7.12 Since securitisation vehicles operate in a fundamentally different way to ordinary investment trusts, in particular where the primary investment instrument are the notes issued by the trust rather than the units, developing a single principles-based definition of fixed trust that is workable both for securitisation vehicles and for ordinary investment trusts is exceedingly difficult.

8 Material impact if securitisation vehicles are not excluded

- 8.1 If a securitisation trust does not satisfy the fixed trust requirements and is therefore treated as a discretionary trust for the purposes of the minimum tax, the consequences for the securitisation industry would be significant.
- 8.2 **Double taxation.** The trustee would be subject to tax at 30% on distributions to the unitholder. The unitholder, which is almost always a body corporate, would then be subject to tax on the same amounts at the corporate tax rate. Because the unitholder is a body corporate, it does not get the benefit of the tax offset that is available to individual beneficiaries under new section 101AF of the exposure draft. This additional liability fundamentally changes the economics of the transaction for all participants.
- 8.3 **Impact on SPV's liabilities:** Any tax liability imposed on a securitisation SPV could potentially render the SPV unable to discharge its other liabilities in accordance with the transaction documents.
- 8.4 **Impact on insolvency remoteness.** A tax liability imposed on the trustee would undermine the insolvency remoteness of the SPV. The credit rating assigned to the notes depends on the predictability of the cash flows through the trust. An additional, potentially unpredictable tax liability would affect the rating agencies' assessment of the vehicle and potentially result in a downgrade of

the notes. This would have flow-on consequences for the pricing and economics of the entire transaction.

- 8.5 **Scale of impact.** There are hundreds if not thousands of existing securitisation trusts across the Australian market. The new minimum tax would not be limited to future transactions, but would affect the entire existing stock of securitisation vehicles, many of which will remain in existence for years to come.
- 8.6 **No alternative relief.** The proposed rollover relief and electable regime is of no utility for securitisation vehicles. The electable regime is only available to trusts where the trust's beneficiaries have rights to the income and capital of the trust in the same proportion. This is generally not the case for the securitisation trusts which have different income and capital units.

9 Conclusion

- 9.1 In summary, the ASF's key requests in respect of the exposure draft legislation are as follows:
- (a) The Act should provide for a specific exemption for section 820-39-compliant trusts in section 101AB(1). This is consistent with the approach taken in the thin capitalisation rules and the global minimum tax rules.
 - (b) This exemption should be included directly in the Act itself, not in subordinate legislation under section 101AB(2)(a).
- 9.2 The ASF welcomes the opportunity to engage with Treasury on this measure. We remain available to discuss any aspect of this submission further with you and your colleagues, and we would be happy to provide any additional information that may assist Treasury in the design and development of the legislation.
- 9.3 If you have any queries, please do not hesitate to contact either Chris Dalton, Chief Executive Officer, at cdalton@securitisation.com.au or Robert Gallimore, Policy Director, at rgallimore@securitisation.com.au.

Yours sincerely



Chris Dalton
Chief Executive Officer – Australian Securitisation Forum