



Australian Securitisation Forum

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2 March 2020

The Chair
Australian Registrars National Electronic Conveyancing Council

By email chair@arnecc.gov.au

Dear Chair

Proposed changes to the Model Participation Rules (MPR) (Version 6 Consultation Draft 6)

1. INTRODUCTION

The Australian Securitisation Forum (ASF) welcomes the opportunity to provide a submission to this consultation on behalf of its members. The ASF is the peak industry body representing the securitisation and covered bond industry in Australia and New Zealand. These sources of funding are a material source of funding for financial institutions (banks and non-banks), as well as assisting Australian banks for day-to-day cash and liquidity management and operating as part of the Reserve Bank of Australia's open market operations.

This submission provides an overview of how the proposed changes will impact the industry, and is divided into the following sections:

- (a) section 2 provides an introduction to the Australian Securitisation Forum (ASF);
- (b) section 3 contains an executive summary of this submission and recommendation; and
- (c) section 4 outlines the potential impact of certain proposed changes to the Model Participation Rules (MPR) and the ASF's recommendations to address the issues raised by this submission.

2. INTRODUCTION TO THE AUSTRALIAN SECURITISATION FORUM

The Australian Securitisation Forum was established in 1989 to represent the securitisation and covered bond industry in Australia and New Zealand.

The ASF is comprised of a National Committee of 12 members, 10 task specific sub-committees and a national membership of 138 organisations. ASF members include Australian banks,

domestic and foreign investment banks, building societies and credit unions, non-bank mortgage originators, investors and many other participants in the Australian financial system including organisations that provide professional services to the securitisation industry (such as trustee companies, mortgage insurers, ratings agencies and the major legal and accounting firms).

The ASF goals are to promote the development of securitisation in Australia by facilitating the formation of industry positions on policy and market matters, representing the Australian industry to local and global policymakers and regulators and advancing the professional standards of the industry through educational courses and market outreach initiatives.¹

3. EXECUTIVE SUMMARY AND RECOMMENDATION

The proposed new rules 6.5.1(b)(iii) and (iv) (**new VOI Rules**) in the MPR impose a new requirement in respect of a "transfer of mortgage", applying in all jurisdictions other than South Australia, on the transferee mortgagee or its Subscriber representative to conduct verification of identity (**VOI**) on the mortgagor. For reasons discussed below, the requirement is not practically achievable and will therefore have a material adverse impact on the Australian securitisation market (in particular the large Australian residential mortgage backed securitisation (**RMBS**) market) and the covered bond market.

The primary method for securitisation of mortgage loans in Australia, and to create covered pools for residential mortgage backed covered bonds, is by way of an equitable assignment of the mortgage loan and related mortgage by the relevant mortgage lender to a special purpose vehicle (**SPV**) securitisation issuer or covered bond guarantor (as applicable). This is done on a bulk basis, with hundreds if not thousands of mortgages being assigned at any one time. In certain circumstances (for example, insolvency of the relevant mortgage lender), that equitable assignment can be perfected as a legal assignment by giving notice to the relevant borrowers and by registering a transfer of mortgage at the appropriate land registry office.

Securitisation and covered bonds are important sources of funding and liquidity for financial institutions:

- (a) from a funding perspective, in 2019:
 - (i) there was \$39bn of publicly issued Australian RMBS (in addition to many private RMBS transactions);² and

¹ You can find further information about the ASF, our members and core activities on [our website](#).

² This does not take into account the large number of private revolving RMBS warehouse transactions through which many lenders also obtain material funding. Source: [Westpac Australian Securitisation – 2019 Year in Review – 2020 Year Ahead](#)

- (ii) approximately \$15bn of covered bonds issued by Australian banks. These bonds are fully backed by pools of mortgages held in SPVs³.
- (b) In terms of liquidity, APRA and the RBA have made \$223bn of Committed Liquidity Facilities (CLF)⁴ available to regulated Authorised Deposit-taking Institutions (ADIs) in 2020. These facilities are collateralised by securitisation products and are a critical source of liquidity for the Australian market.

Given the potential breadth of the term "transfer", the new VOI Rules would require the VOI to be conducted each time a mortgage is assigned to the SPV in the context of such a securitisation/covered bond issuance both (a) at the time of the initial equitable assignment; and (b) at the time of any subsequent legal perfection.

RECOMMENDATION

If the changes introducing the new VOI Rules are made, they should not apply in respect of either an equitable or legal assignment of mortgages in the context of securitisation and covered bond transactions (including residential and commercial mortgages) if the relevant verification was undertaken by or on behalf of the lender of record at origination.

We are happy to discuss possible language to be included in the MPR for the exclusion of such transactions from the new VOI Rules.

4. NEW VOI RULES AND ASF SUBMISSION

The new VOI Rules impose a new requirement applying in all jurisdictions other than South Australia in respect of a "transfer of mortgage" on the transferee mortgagee or its Subscriber representative to conduct verification of identity (**VOI**) on the mortgagor (in the case of a Subscriber representative, the representative need only be reasonably satisfied that the transferee mortgagee it represents has taken reasonable steps to establish this). In South Australia only, the new rules set out in Schedule 1 impose a new requirement on the transferee mortgagee to take reasonable steps to establish that the original mortgagee complied with any VOI obligation.

With the exception of the special rules for South Australia set out in Schedule 1, the proposed amendments to the MPR do not permit a transferee mortgagee to rely on a VOI conducted by the original mortgagee even where the transferee mortgagee has taken reasonable steps to confirm that the original mortgagee undertook a VOI of the mortgagor. There has been no commentary or reasons provided explaining why South Australia has a less onerous regime for transfers of mortgages.

³ [Westpac: Australian Covered Bonds February 2020](#)

⁴ [Letter from APRA](#)

The language in both proposed new rules 6.5(1)(b)(iii) and (iv) refers to a "transfer" of mortgage. The word "transfer" is broad and is typically understood to mean an equitable or a legal assignment.

As noted above, the primary method of transferring mortgages to a securitisation or covered bond SPV is by way of equitable assignment (as distinct from a legal assignment) which means that no notice is given to the mortgagors. This helps to facilitate efficient bulk transfers of assets such as mortgages and reduces overall costs. It also means that the mortgagor can continue to make all payments to, and have all relevant dealings with, the transferor lender and not have to deal with the SPV. Such transfers may be done on a closed pool basis, for term securitisation transactions, or on a revolving basis where there is a securitisation warehouse or a covered bond transaction.

The new VOI Rules, however, are likely to have material adverse consequences for the securitisation and covered bond markets because:

- (a) the transferee has no leverage with or against a mortgagor to procure the relevant information to verify the identity of the mortgagor (this is because the mortgage was granted to the transferor lender and the mortgagor generally has no knowledge that their loan and mortgage has been sold); and
- (b) even if the transferee is able to conduct a VOI, there is a material risk that any interaction with the mortgagor could constitute notice for the purposes of section 12 of the *Conveyancing Act 1919* (NSW) (and equivalent laws in other jurisdictions) resulting in a legal assignment of the relevant mortgage. As noted above, a legal assignment may be undesirable because:
 - (i) the lender may not want specific borrowers to know that their loans have been transferred;
 - (ii) once title to a loan has been legally perfected the borrower is required to make payments to the SPV; and
 - (iii) once title to the loan is legally perfected the related mortgage would need to be transferred by registration. Given the large size of securitised and covered bond loan pools, this would be an expensive and administratively cumbersome process.

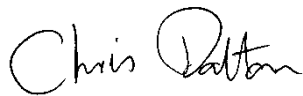
Critical to investors in securitisations and covered bonds is the ability to perfect title to the mortgages in the event of mortgage lender insolvency (i.e. a title perfection event). The delay that would be imposed by having to comply with the new VOI Rules in the context of effecting a legal assignment where the assignee has no relationship with the underlying mortgagor would be an adverse credit risk for relevant investors.

It would therefore not be practically feasible to satisfy the proposed VOI requirements due to significant operational overheads and complexity (such as contacting potentially hundreds if not thousands of borrowers to re-verify their identity in a timely fashion to meet funding or enforcement requirements).

The policy reasons as to why a mere assignment of the mortgage should trigger a requirement to do a new VOI are not clear to the ASF. The ASF is of the view that the new VOI Rules, if applied to assignment of mortgages in a securitisation or covered bond context, would materially adversely affect the wholesale capital markets funding that banks and other lenders currently access for their mortgage lending activities in Australia.

The ASF would welcome an opportunity to meet with ARNECC representatives to discuss and elaborate on any aspect of the above. In that regard, please contact either Chris Dalton at cdalton@securitisation.com.au or Robert Gallimore at rgallimore@securitisation.com.au.

Yours sincerely,

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

Chris Dalton

Chief Executive Officer