



Submission to the Australian Competition and Consumer Commission in support of application for authorisation by Australian Securitisation Forum on behalf of its members

1 April 2020

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1. Application for Authorisation

1. In this application, the Australian Securitisation Forum (**ASF**) seeks, on behalf of its current and future members (**Members**):
 - (a) authorisation to allow Members to discuss, exchange information and develop a coordinated industry response to the implementation of the Structured Finance Support Fund (**SFSF**) for a period of 12 months from the date on which authorisation is granted; and
 - (b) interim authorisation to allow Members to engage in that conduct as soon as possible before the final authorisation comes into effect.
2. The SFSF, initially consisting of A\$15 billion, is a critical part of the Federal Government's COVID-19 economic response package. The objective of the SFSF is to give the Australian Office of Financial Management (**AOFM**) significant investment capacity to invest in wholesale funding markets used by small Authorised Deposit-taking Institution (**ADI**) and Non-Authorised Deposit-taking Institution (**non-ADI**) lenders, and support a substantial volume of expected loan issuance by these lenders over a 12 month period.

2. The Applicants

3. The Australian Securitisation Forum (**ASF**) is the industry body that promotes the development of the securitisation and covered bond markets in Australia. The ASF represents key participants in the industry with a broad-based membership consisting of issuers, banks, non-ADIs, investment banks, investors and service providers.
4. Further details about the Applicant are set out below:

Name	Australian Securitisation Forum
Address	Level 32, 200 George Street, Sydney NSW 2000
Telephone	
Contact person(s)	<p>Robert Gallimore, Policy Executive</p> <p>Phone: </p> <p>Email address: </p> <p>with a copy to:</p> <p>Linda Evans, Partner Clayton Utz Phone: </p> <p>Email address: </p>
Email address for service	Linda Evans,

5. Further information about the ASF and its members can be found on its website: <https://www.securitisation.com.au/>.
6. Authorisation is sought on behalf of the ASF and its current and future members.

7. A list of the ASF's current members can be found at:
<https://www.securitisation.com.au/membership/current-members>

3. Background

8. Securitisation is the process of converting a pool of illiquid, financial assets into tradeable securities. In Australia, the two main types of securitisation are:
- (a) residential mortgage-backed securities, where the issued security is backed by residential loans and mortgages; and
 - (b) asset-backed securities, where the issued security is backed by other assets such as auto loans and leases, commercial mortgages, credit card repayments, trade receivables and other debt payments or non-debt assets.
9. The securitisation process typically involves the formation of a special purpose vehicle (**SPV**) in which the underlying assets are pooled. The SPV then issues debt instruments (such as notes) to investors. When payments of principal and income are made on the underlying asset (for example, a mortgage repayment), this payment is passed on to the SPV and the SPV repays principal on the note as well as paying an interest component to investors (usually a floating rate of interest based on a common benchmark, such as BBSW). Most Australian securitisations are known as "pass through" structures - that is, any income or principal that is received by the SPV from the underlying assets is passed straight through to the investors. Consequently, although interest payments on the notes are required to be paid on a regular basis and a prescribed amount, principal tends to be paid as and when received.
10. Importantly, unlike straight corporate loans or debt issuances, securitisation allows the credit risk relating to the securitised pool of assets to be isolated from the credit risk of the sponsor/originator, enabling cheaper funding as well as access to funding markets that might otherwise not be available to the sponsor/originator.
11. Securitisation is an attractive financing option for investors. Among other things, it allows investors to transform illiquid assets (such as mortgage repayments) into a liquid asset (a debt instrument that can be traded) as well as giving lenders credit exposure to asset classes that they may not be able to access directly.
12. The COVID-19 pandemic has already caused significant impacts on the Australian securitisation market. There is an increasing likelihood that the underlying assets that have been securitised will become distressed. For example, mortgagees or trade debtors may delay or default on their payments, which can have flow on effects on the ability to pay out the interest components on debt instruments that have been issued on the back of those assets. The COVID-19 pandemic has also resulted in a tightening of credit in securitisation markets. Small lenders and non-ADI lenders, in particular, may experience greater difficulty in accessing financing, and may have greater exposure to distressed assets and therefore be more adversely affected compared to lenders with a larger and more diversified portfolio.
13. On 19 March 2020 the Treasurer announced the Government's intention to create the Structured Finance Support Fund (**SFSF**), initially consisting of \$15 billion to be managed by the Australian Office of Financial Management (**AOFM**). The establishment of the SFSF is part of the Federal Government's COVID-19 economic response package. A copy of the Treasurer's media release announcing the creation of the SFSF can be accessed at: <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/government-invest-15b-support-sme-lending>.
14. The *Structured Finance Support (Coronavirus Economic Response Package) Act 2020* (the **Act**) establishes the SFSF and was enacted on 24 March 2020. The Treasurer, being the relevant Minister under the Act, is empowered to invest amounts standing to the credit of the SFSF. In accordance with the requirements of s 18 of the Act, the Treasurer has, by written

notice, delegated these powers (among others) to the AOFM¹ and issued a direction to the AOFM covering investment strategies and priorities, decision-making criteria, and appropriate risk and return levels (the **Direction**).²

15. The objective of the SFSF is to give the AOFM significant investment capacity to invest in wholesale funding markets used by small ADIs and non-ADI lenders, and support a substantial volume of expected loan issuance by these lenders over a 12 month period.
16. On behalf of Members the ASF has been consulting closely with the AOFM to ensure that the SFSF achieves its objectives and is implemented in a timely manner. In particular, the ASF has requested the AOFM to consider structures that not only permit support for issuances of new debt (as the AOFM did during the Global Financial Crisis) but also invest in structures that allow lenders to provide "hardship" relief to borrowers and other debtors by deferring interest and principal payments on their debts (as such deferrals would most likely have an adverse impact on the ability of the relevant SPVs to service interest on their notes).
17. One of the key issues will be determining the circumstances in which the SFSF support will be provided which will involve identifying the conditions that will need to be met to qualify for hardship relief as a result of the COVID-19 pandemic.

4. Proposed conduct to be authorised

18. For the purpose of facilitating the implementation of the Federal Government's SFSF, which is designed to enable customers of smaller lenders to continue to access affordable credit given the adverse effect of the spread of COVID-19 on the securitisation market, the ASF on behalf of its Members seeks authorisation:
 - (a) for its Members to exchange information, discuss, enter into or give effect to any arrangement between them as to:
 - (i) the conditions that will need to be met to qualify for hardship relief arising as a result of the COVID-19 pandemic and any other requirements for eligible funding by the AOFM;
 - (ii) the terms of a pro-forma liquidity payment and reimbursement agreement that would apply under the SFSF arrangements between each seller/servicer and the relevant securitisation vehicle; and
 - (iii) the mechanism by which the funding arrangements between the Members and the AOFM will be effected (expected to be by way of a separate debt-issuing special purpose vehicle); and
 - (b) for its Members and the AOFM to exchange information, discuss, enter into or give effect to any arrangement between them as to the matters set out in paragraphs 18(a)(i) to 18(a)(iii) above,

(Proposed Conduct).

19. It is a matter for the AOFM whether it accepts or rejects any proposals put to it by ASF or Members.
20. Once the AOFM funding arrangements for the SFSF are implemented, participation in the scheme by Members is expected to be voluntary, and the specific terms (including effective margin and repayment term) of any particular arrangement are expected to be a matter of negotiation between AOFM and the relevant seller/servicer.

¹ *Structured Finance Support (Coronavirus Economic Response Package) Delegation 2020.*

² *Structured Finance Support (Coronavirus Economic Response Package) (Delegation) Direction 2020.*

21. The ASF seeks authorisation for the Proposed Conduct for a period of 12 months, which aligns with the current investment horizon for the SFSF.
22. The Proposed Conduct does not extend to the exchange of information in relation to margins and cost data, or the specific terms of offer or supply to customers.
23. The relevant provisions of the *Competition and Consumer Act 2010* (Cth) which may apply to the Proposed Conduct include:
 - (a) making and or giving effect to a contract arrangement or understanding that may include a cartel provision (Division 1 of Part IV);
 - (b) making and or giving effect to a contract arrangement or understanding that have a purpose or effect, or likely effect, of substantially lessening competition (section 45(1)(a) and(b)); and
 - (c) engaging in concerted practices that have a purpose or effect or likely effect of substantially lessening competition (section 45(1)(c)).

5. Interim authorisation

24. The primary objectives of the SFSF are to ensure that small and medium enterprises (**SMEs**) impacted by the economic effects of COVID-19 have continued access to funding markets and to mitigate impacts on competition in consumer and business lending markets caused by COVID-19.
25. The AOFM is working with ADI and non-ADI providers of warehouse finance, which includes larger lenders, to facilitate the flow of credit to smaller lenders. The AOFM has noted the urgency of this task.³ The AOFM has already commenced initial investments under the SFSF⁴ and it is anticipated that further investments will be made in April 2020⁵.
26. The grant of interim authorisation by the ACCC is urgently required to enable the ASF and its Members to work collaboratively with the AOFM to develop a standardised industry approach to AOFM funding arrangements under the SFSF. A standardised approach will allow AOFM and the industry to quickly and effectively implement the funds and ensure continued access to funding and credit for lenders and consumers and SMEs in the consumer and business lending market. These markets have already experienced significant disruption. Urgent relief is critical as consumers and SMEs respond to the crippling financial and economic consequences of the COVID-19 crisis, including legislated business shutdowns, tightening of credit and loss of consumer demand for certain goods and services.

6. Public benefits significant outweigh any competitive detriments

27. The COVID-19 pandemic has resulted in significant disruption across the economy, including funding markets.
28. The SFSF is a significant component of the Federal Government's COVID-19 economic response package, and provides vital support to smaller ADIs and non-ADI lenders to ensure their continued ability to issue new loans in the current economic conditions resulting from the impact of COVID-19 and obtain funding from markets at a competitive price. As detailed in

³ <https://www.aofm.gov.au/aofm-update>.

⁴ <https://www.aofm.gov.au/sfsf/sfsf-update-1>.

⁵ <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/government-invest-15b-support-sme-lending>.

this section, the involvement of the ASF and its Members is key to the successful implementation of the SFSF.

29. The Federal Government has recognised that the securitisation market has been an important source of funding for smaller lenders and has been an important driver of competition for residential mortgages and other types of loans. Ensuring continued access to this market for smaller lenders will allow these lenders to have greater liquidity in their portfolios and continue to compete effectively.⁶ The SFSF proposal is directed at maintaining competition in the securitisation market as it is targeted at providing support for smaller lenders. As the Treasurer said when announcing the SFSF arrangements:

The Government's actions will enable customers of smaller lenders to continue to access affordable credit as the world deals with the significant challenges presented by the spread of coronavirus.

Small lenders are critical to Australia's lending markets, often driving innovation and providing competition for larger lenders.

30. Customers of these smaller lenders, many of whom are individuals and SMEs, require access to these lines of credit to minimise the impact of the COVID-19 pandemic and the associated financial and economic strains as a consequence of illness, unemployment and legislated business shutdowns.
31. The ASF has been working closely with the AOFM to ensure that the SFSF program effectively achieves its objectives and is implemented in a timely manner, and the AOFM has acknowledged the ongoing assistance of the ASF on its deliberations.⁷ The Proposed Conduct will allow the ASF to consult with its broad membership (which includes issuers, ADI and non-ADI lenders, service providers such as trustees, accountants and lawyers) and provide the AOFM with an industry-wide proposal on key elements of the proposed funding arrangements, which will speed up the implementation of the SFSF program with a view to developing a standardised approach to AOFM funding.
32. The ASF also represents a number of small and non-ADI lenders who are critical players in Australia's lending markets that have driven innovation and competition against larger lenders. As these lenders are likely to have significant exposure to the adverse impacts of COVID-19 on securitisation markets, it is important that those lenders are given a voice through the ASF on the proposed AOFM funding arrangements. The work being undertaken by the ASF is to ensure that the businesses of the small and non-ADI lenders are not adversely impacted by the effect of COVID-19 and that competition in the lending markets is not materially compromised.
33. The ASF submits that the public benefits arising from the Proposed Conduct significantly outweigh any potential competitive detriments which are limited by the fact that:
- (a) the Proposed Conduct is limited to ensuring a coordinated industry approach to the formation and structure of the funding arrangements for the SFSF;
 - (b) participation in the scheme by Members is expected to be voluntary, and the specific terms (including effective margin and repayment term) of any particular arrangement with AOFM are expected to be a matter of negotiation between AOFM and the relevant seller/servicer;
 - (c) the Treasurer's written direction to the AOFM requires it, when making investment decisions, to prioritise (among other things) investments that are likely to promote competition in the securitisation market for smaller lenders; and

⁶ Explanatory Memorandum, *Structured Finance Support (Coronavirus Economic Response Package) Bill 2020* (Cth), [20.10].

⁷ <https://www.aofm.gov.au/sfsf>.

- (d) absent the Proposed Conduct the SFSF arrangements are likely to be less effective in achieving the stated objective of assisting smaller lenders and thereby maintaining the competitive dynamic in Australia's lending markets.

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Chief Executive Officer

Office held

(Print) Name of authorised person

Chris Dalton

This 1st day of April, 2020

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.