



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

**Australian Securitisation Forum –
Application for authorisation AA1000490
Interim authorisation decision
8 April 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000490 lodged by Australian Securitisation Forum (**ASF**) on 1 April 2020.
2. The ASF has applied for authorisation on behalf of itself and its current and future members (**Members**) to discuss, exchange information and develop a coordinated industry response to the implementation of the Structured Finance Support Fund (**SFSF**). Authorisation is sought for 12 months from the date when it is granted.
3. The SFSF, initially consisting of \$15 billion, has been established as part of the Federal Government's COVID-19 economic response package, and is to be administered by the Australian Office of Financial Management (**AOFM**). The objective of the SFSF is to give the AOFM investment capacity to invest in wholesale funding markets used by Authorised Deposit-taking Institution (**ADI**) and Non-Authorised Deposit-taking Institution (**non-ADI**) lenders to support a substantial volume of expected loan issuance by these lenders over the next 12 months.
4. The ACCC has granted interim authorisation to enable:
 - (a) the ASF and 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) ASF 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 paragraph 4(a)(i) to 4(a)(iii) above

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 **Proposed Conduct**).

5. 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.
6. The AOFM will decide whether to accept any proposal put forward by the ASF about any of the matters set out in paragraph 4, including whether to enter into any agreements with the ASF and/or its Members about any of these matters.
7. The AOFM has confirmed to the ACCC that it will keep the ACCC informed about the exchange of information between ASF Members and the AOFM, and of any contracts, arrangements or agreements entered into between them about any of the matters set out in paragraph 4.
8. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

Background

9. The ASF is an industry body that promotes the development of the securitisation and covered bond markets in Australia. The ASF represents participants in the industry with a broad-based membership consisting of issuers, banks, non-ADIs, investment banks, investors and service providers. A complete list of ASF's current members is available on its [website](#).

Securitisation

10. Securitisation is the process of converting a pool of illiquid, financial assets into tradeable securities. In Australia, the two main types of securitisation are:
 - residential mortgage-backed securities, where the issued security is backed by residential loans and mortgages, and
 - 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.
11. The securitisation process typically involves the formation of a special purpose vehicle (**SPV**) in which the underlying assets, such as mortgages, are pooled. The SPV acquires the pooled assets from lenders using funds raised through the issue of asset-backed securities to investors. The SPV then pays interest to investors and a return of capital using the funds received from the underlying borrowers making repayments to the securitised loans.
12. The ASF submits the COVID-19 pandemic has caused significant impacts on the Australian securitisation market. The ASF submits small lenders and non-ADI lenders, in particular, may experience greater difficulty in accessing financing and therefore be more adversely affected compared to lenders with a larger and more diversified portfolio.

Structured Finance Support Fund (SFSF)

13. The *Structured Finance Support (Coronavirus Economic Response Package) Act 2020* (the **Act**) establishes the SFSF and was enacted on 24 March 2020. 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. Specifically, the SFSF provides support to smaller ADIs and non-ADI lenders to ensure their continued ability to offer access to affordable credit to Australian consumers and SMEs.

14. The AOFM's primary role is to manage the Australian Government's borrowing needs (debt management) and ensure that there is enough money in its bank account (the Official Public Account) to meet its payment obligations at all times (cash management). To administer the SFSF, the AOFM will be provided with an investment capacity of \$15 billion to invest in wholesale funding markets used by small ADIs and non-ADI lenders in order to assist those lenders ability to continue to maintain the flow of credit to consumers and businesses. All funding decisions, and decisions about the approach to funding, will be made by the AOFM.
15. The ASF submits that 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.

Rationale for Proposed Conduct

16. The ASF submits that it has been working closely with the AOFM to ensure that the SFSF effectively achieves its objectives and is implemented in a timely manner. The ASF notes that the AOFM has publicly acknowledged the ongoing assistance of the ASF in its deliberations.
17. The ASF submits the Proposed Conduct will allow the ASF to consult with its broad membership 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.
18. The ASF represents a number of small and non-ADI lenders who it submits are critical players in Australia's lending markets, driving innovation and competition against larger lenders. Further, the ASF submits that the work being undertaken by it is to ensure that the businesses that rely on these lenders are not adversely impacted by the effect of COVID-19.
19. The ASF considers the involvement of the ASF and its Members, facilitated by the Proposed Conduct, is key to the successful and timely implementation of the SFSF program.

The authorisation process

20. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.

Interim authorisation

21. The ACCC may, where it considers it appropriate, grant an interim authorisation which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
22. ASF requested urgent interim authorisation 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, which will allow AOFM and the industry to quickly implement the funds and ensure continued access to funding and credit for lenders, consumers and SMEs. ASF submits that urgent relief is critical as consumers and SMEs respond to the financial and economic consequences of COVID-19, including

legislated business shutdowns, tightening of credit and loss of consumer demand for certain goods and services.

Consultation

23. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation in light of the impact of COVID-19 on the consumer and SME lending markets and the securitisation market, and the urgency of the request for interim authorisation.
24. The ACCC did seek the views of the AOFM about the Proposed Conduct. The AOFM supports the Proposed Conduct. The AOFM submits that:
- The SFSF is designed to support the ADIs who cannot self-securitise and non-ADIs, and thus is the complement to term funding from the Reserve Bank of Australia. While the banks will be able to deal with forbearance arrangements¹ for loans that are on their balance sheet, the securitisation vehicles that smaller lenders such as non-ADIs rely upon will struggle to cope with large scale COVID-19 induced hardship among underlying borrowers.
 - To this end, the AOFM is seeking to work with industry, through the ASF, to establish a forbearance facility, or, potentially, facilities via which the SFSF would invest in compliant securities so as to provide sufficient finance into securitisation vehicles to cover the interest costs of those loans in COVID-19 induced hardship.
 - Due to the widespread nature of the problem the AOFM is seeking to implement this arrangement on as consolidated a basis as can be accommodated. This will necessarily require a degree of standardisation of arrangements across industry members.
25. The ACCC will conduct a public consultation process on the substantive application for authorisation in the coming days, and details regarding how to make a submission will be available on the ACCC's authorisations [public register](#).

Reasons for decision

26. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the challenges facing smaller lenders to support their customers as a result of the COVID-19 pandemic.
27. The ACCC considers that there are a number of factors which mean markets will be able to return to substantially their current state if final authorisation is later denied, or which mitigate the risk of longer-term competitive detriment arising from the Proposed Conduct. In particular:
- The Proposed Conduct is a temporary measure pursuant to the SFSF.
 - Interim authorisation only extends to the ASF and its Members engaging in the Proposed Conduct outlined at paragraph 4, which is broadly to develop and provide a coordinated industry response to assist AOFM in the implementation of the SFSF. The Proposed Conduct does not extend to the exchange of information between ASF Members in relation to margins and cost data, or the specific terms of offer or supply to customers.
 - The Proposed Conduct will facilitate a coordinated approach by ASF Members to providing views to the AOFM about the operation and administration of the SFSF. However, the AOFM, acting independently of lenders and other industry stakeholders under directions issued by the Federal Government, will make all

¹ Forbearance arrangements, usually implemented in response to borrower hardship, are those under which a lender provides a borrower with temporary relief from specific obligations under a loan contract. For example, by deferring principal repayments and allowing a borrower to capitalise interest for a specific period of time.

decisions about the administration of the SFSF, including any of the matters set out in paragraph 4 and whether to enter into any agreements with the ASF and/or its Members about any of these matters.

- Participating in the Proposed Conduct is voluntary, and ASF Members and other stakeholders will be free to individually engage with the AOFM about the administration of the SFSF independently of the ASF.
- The AOFM supports the application for urgent interim authorisation for the ASF and its Members to engage in the Proposed Conduct.
- The AOFM will keep the ACCC informed about its engagement with the ASF, and any arrangements or agreements entered into with the ASF and/or its Members, in relation to the administration of the SFSF.
- The ACCC may review its decision to grant interim authorisation at any time, including in response to feedback as the Proposed Conduct is engaged in.

28. The ACCC considers the Proposed Conduct, by facilitating the development of a coordinated approach to providing ASF Members' input to the AOFM about the administration of the SFSF, is likely to result in a public benefit by expediting the implementation of the SFSF program and increasing its effectiveness. Coordination amongst ASF Members in providing input about key elements of the proposed funding arrangements is more likely to ensure that the SFSF program effectively achieves its objectives in a timely manner.

29. The ACCC is satisfied that, given the circumstances of the COVID-19 pandemic, it is appropriate to grant interim authorisation.

Reconsideration of interim authorisation

30. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.