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16 January 2019

Lauren Hogan  
Financial System Division  
The Treasury, Langton Crescent, Parkes ACT 2600

By email: absf@treasury.gov.au

Dear Ms Hogan

### **Submission on Australian Business Securitisation Fund proposed legislation**

Thank you for the opportunity to make this submission in respect of the proposed Australian Business Securitisation Fund legislation. The Australian Securitisation Forum (ASF) is the peak industry body representing the Australian securitisation and covered bonds markets. The ASF goals 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 industry through a comprehensive suite of educational courses and workshops.

The ASF has collaborated with the Australian Finance Industry Association (AFIA) to solicit industry feedback on the proposed legislation, explanatory memorandum and investment mandate for the Australian Business Securitisation Fund. The ASF expresses its support for the position expressed in AFIA's letter dated 16 January 2019.

### **Summary**

The Commonwealth Government has released an exposure draft of legislation (the draft Australian Business Securitisation Fund Act 2018 (the **Act**)) to establish and regulate the Australian Business Securitisation Fund (the **Fund**), along with the associated draft Investment Mandate (the **Mandate**), and Explanatory Materials (**EM**). The ASF is supportive of the proposed legislation and provides its comments on the draft Act, Mandate and EM as noted below.

## Comments

### 1. Act

- a) We would like to clarify that in section 3 (Objects of this Act) the objects of the Act are to increase the availability "and/or" reduce the cost of credit.
- b) We wish to clarify that the reference to an investment of the Fund maturing in section 12(3) of the Act is to the legal final maturity date of that investment (and not the repayment of amounts, for example, on a pass through basis prior to the legal final maturity date which may be redrawn during a revolving period).
- c) Although less common, an issuer of a securitisation debt security may include an SPV corporate (which offers the same level of insolvency remote protection as an SPV trust) and on this basis, we request the addition of the words "or a special purpose company" in section 12(4) of the Act. In section 12(4)(c) we would like it clarified that reference to "each such amount of credit" is reference to an individual loan credit.
- d) We request that there be a higher level of initial contributions to the Fund for the effect of the legislation to have meaningful impact (noting that as returns on Fund investments are credited to the Account, there will be momentum in available funds as the Fund approaches maturity so lower contributions to the Account in the later stages of the Fund would make sense on this basis). Suggested contributions in the context of section 14 of the Act would be \$600 million in each of the first two years mentioned in this section, with \$400 million in the remaining two years. In the context of section 14(2) we would like the language clarified to allow for the Minister to exercise discretion in allocating more to the Account in a particular period than the amounts specified in section 14(1) (noting that all allocations would still be within the \$2 billion budget).
- e) For the avoidance of doubt, in section 15, we would like to see express reference to the purpose of the Account including the making of investments of the Fund.
- f) In the context of section 16, we would like to see parameters which guide when the Minister may debit the Account (as it appears that the Account could be debited for any reason, including during the initial investment period).

### 2. Investment Mandate

- a) Under 'Investment Considerations', the Mandate refers to prioritising investment in "underdeveloped sectors" of the SME securitisation market. We would suggest that this paragraph refer to the objects of the Act in section 3 of the Act as there is a concern that the reference to "underdeveloped sectors" may preclude funding in certain SME sectors, when all the SME sectors should be supported by this legislation.

- b) We note that under the Risk Profile section of the Mandate, there is reference to a policy being developed to guide Fund investment decisions. We would like to clarify whether this is a policy that will apply at Fund level to all investments or whether such policy will be considered on an investment basis. We welcome the opportunity to contribute to the development of any such policy, particularly given the range of asset classes in the SME space and the diversity of originators currently being funded, including in unrated warehouses with a range of lenders.

### **3. Explanatory Materials**

Please see set out below, suggested changes to section 1.4 of the EM which we think reflects securitisation practices in the Australian market.

1.4 Securitisation is a method of funding whereby the cash flows from illiquid assets, such as loans, are packaged into tradeable debt securities that are generally tranching (but need not be tranching), with each tranche having different risk characteristics. The cash flows from the underlying loans are used to make interest and principal payments to investors in the securities. These securities often only have recourse to the underlying assets, with generally no recourse to the originator of the assets. Securitisation may be undertaken on a warehouse or term basis. Warehouses are securitisation facilities that allow a lender to fund loans until they have built up a large enough pool and track record to refinance them into the term securitisation markets.

#### **Follow up**

Thank you for considering our comments. Please do not hesitate to contact us to discuss these comments. We welcome the opportunity to engage in further discussions.

Yours sincerely

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

Chris Dalton