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Mr Pat Brennan
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Dear Pat

Submission – Discussion Paper in respect of Margining and risk mitigation for non-centrally cleared derivatives ("Discussion Paper"), and draft Prudential Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives ("CPS 226")

We refer to the Discussion Paper and CPS 226.

1. Submission

The Australian Securitisation Forum ("ASF") is the peak industry body representing participants in Australia's securitisation markets.

The ASF endorses the overall approach taken with respect to securitisation transactions in CPS 226, in that it attempts to specifically exclude covered bond special purpose vehicles and securitisation special purpose vehicles from the scope of CPS 226.

The ASF very much appreciates APRA giving consideration to our previous submissions in this regard.

However, we suggest that a drafting amendment is required in respect of the exclusion related to "securitisation special purpose vehicles".

As drafted, the exclusion adopts the definitions of "SPV" and "traditional securitisation", which in turn uses the definition of "pool", each set out in current Prudential Standard APS 120 Securitisation ("APS 120"), being as follows:

- "*pool – the underlying exposure or exposures that are securitised by way of assignment or the transfer of rights and obligations to an SPV....*"
- "*SPV – a financing vehicle that typically purchases and holds the pool for the purposes of a securitisation....*"

- "traditional securitisation – a securitisation where the pool is transferred or assigned to, and held by, an SPV."

Each of these definitions therefore assumes that the relevant assets are originated in the name of another party and then transferred to the SPV. However, in a number of securitisation transactions, the relevant assets are originated directly in the name of the SPV. There would therefore be no "purchase", "transfer" or "assignment".

Accordingly, as drafted, it is likely that a number of securitisation transactions would be caught by CPS 226, notwithstanding that the intention appears to be to exclude them.

We note that this issue has also been raised by the ASF in the context of the draft APS 120, in respect of which ASF provided a written response to APRA dated 1 March 2016. (We note that the definitions in the proposed revised APS 120 are substantially the same as those under the current APS 120.) It was noted in that submission (see paragraph 5.9.2) that the definition of "SPV" & "traditional securitisation" should also contemplate structures where the assets are originated in the name of the SPV as opposed to being acquired from a seller.

2. Suggested drafting amendments

We suggest the definitions of "pool", "SPV" and "traditional securitisation" be amended as follows – so as to largely replicate the current APS 120 definitions, but supplemented with the additional text as shown in mark up:

"pool – the underlying exposure or exposures that are securitised by way of assignment or the transfer of rights and obligations to, or by way of rights and obligations held directly in its name by, an SPV...."

"SPV – a financing vehicle that typically purchases and holds, or otherwise holds directly in its name, the pool for the purposes of a securitisation...."

"traditional securitisation – a securitisation where the pool is transferred or assigned to, and held by, or otherwise held directly in its name by, an SPV."

3. Conclusion

The ASF welcomes the proposed approach to covered bond special purpose vehicles and securitisation special purpose vehicles.

We request that consideration be given to the noted drafting changes, so as to ensure that the exemption fully reflects the intention, and that no securitisation transactions are inadvertently caught by the new regime set out in CPS 226.

We would be pleased to discuss this with you further at your convenience.

Yours sincerely

Chris Dalton