Australian Securitisation Forum 2011 conference

Speaking notes for the keynote address by Greg Medcraft, Chairman, Australian Securities and Investments Commission, at the Australian Securitisation Forum 2011 Conference, Hilton Sydney

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Introduction

I am here to talk about ASIC's priorities for the next 12 months and our ongoing work in the securitisation market.

I will outline:

- ASIC’s 3 strategic outcomes and how they relate to the securitisation market;
- how we set our priorities; and
- the regulatory tools at our disposal.

I will finish by touching on covered bonds and how ASIC's regulatory focus can benefit the sector.

ASIC’s three key outcomes

Over the next five years, ASIC will focus on three key outcomes.

- Key outcome 1: Confident and informed investors and financial consumers
- Key outcome 2: Fair and efficient markets
- Key outcome 3: Efficient registration and licensing

I want to go into more detail about our first key outcome and discuss how the securitisation market fits into this.

Key outcome 1: Confident and informed investors and financial consumers.

Since the onset of the GFC, the Australia securitisation market has been struggling.

In line with our first key outcome, ASIC has been focused on improving confidence to the securitisation market.

We have been approaching this both internationally and domestically.

At the international level, we are working with our fellow regulators through IOSCO’s Task Force on Unregulated Financial Markets and Products (TFUMP) that we co-chair.

At the domestic level, we have been working with Treasury and the Australian Securitisation Forum (AuSF).

One element of ASIC’s focus on confident and informed investors is gatekeepers.

Gatekeepers play an essential role in the functioning of our financial system.

Investors depend on a host of gatekeepers in the securitisation sector, and I use the term gatekeepers in its widest sense – e.g. CRAs, trustees, auditors, advisers and issuers.

Gatekeepers must do their jobs properly otherwise investors will lose confidence in the market.

To assist with this, ASIC has required CRAs to hold an Australian Financial Services (AFS) licence since January 2010.

In addition to the standard licence obligations, we have imposed specially-tailored licence conditions on the CRAs.

Credit providers are also important gatekeepers, and last year, they came under ASIC’s regulation. ASIC released *Regulatory Guide 209 Credit Licensing: Responsible Lending Conduct* setting out our expectations about compliance with the responsible lending obligations of the *National Consumer Credit Act*.

Since last year we have been undertaking a number of reviews of industry's responsible lending practices and last Thursday (17 November 2011) we released a report on mortgage brokers' responsible lending conduct between July and December 2010.

This review focused on low doc home loans given the role such products played in the lead-up to the US sub-prime crisis and in equity stripping, as identified in our March 2008 report, *Protecting Wealth in the Family Home: An examination of refinancing in response to mortgage stress* (REP 119).

We encourage credit licensees to review their processes and procedures in light of our findings to ensure that they are able to demonstrate that they meet their responsible lending obligations.

I am a strong supporter of self-regulation and industry standards are critical in terms of complementing regulation. They provide guidance on how to comply with the law and go beyond the law in setting standards, particularly in areas such as ethics.

ASIC supports the AuSF’s initiative in developing industry standards first for RMBS and then other asset classes. These industry standards will improve the conduct of the gatekeepers and therefore, assist in improving confidence to the market.

The standards relate to:

- Disclosure – pre and post issuance reporting, reps and warranties, arrears reporting and asset pool disclosure; and
- 'Skin in the game' – to align the incentives and interests of the originators and sponsors with the interests of the investors.

ASIC and Treasury are considering the policy merits of providing regulatory backing to these industry standards.

You will have seen that other jurisdictions are implementing the IOSCO recommendations for their securitisation markets.

Earlier this year, the IOSCO Task Force, TFUMP, released an implementation report which noted wide endorsement of the 'skin in the game' concept by regulators and the need for greater disclosure for private or wholesale offerings.

Further work will be done at the IOSCO level to assess countries' implementation of the IOSCO recommendations.

We need to ensure Australia's standards are aligned with offshore standards to the extent possible to facilitate cross-border capital flows.

We understand Australian issuers will most likely comply with US and EU requirements in addition to the Australian requirements. Therefore, we will need to ensure the cumulative effect of all regulations is appropriate.

It has been over 12 months since the release of the AuSF's RMBS disclosure standards and ASIC looks forward to industry feedback on the effectiveness and the industry uptake of these standards.

We note that these standards take effect from 1 January 2012 and ASIC will undertake a surveillance project to assess the uptake of the industry standards.

Ultimately, these reforms are aimed at improving investor confidence in securitisation markets and this is in line with ASIC's first key outcome of confident and informed investors and financial consumers.

As mentioned earlier, ASIC and Treasury are considering the policy merits of providing regulatory backing to these standards.

However, a change of this kind would represent a departure from the current policy approach in the Corporations Law of focusing the disclosure regime on retail investors.

Currently, there is no disclosure regime for financial products (such as RMBS and covered bonds) that are issued to wholesale investors.

However, we note that in other major securitisation markets, prescriptive disclosure requirements are being considered. For example, the US SEC is considering changes to Reg AB which include reporting loan-level data for public ABS offerings. In the EU, the European Central Bank has imposed loan-level disclosure requirements for RMBS to be repo-eligible.

Accordingly, we are interested in your views on whether the industry's standards should be given regulatory backing – in particular, the ASF's disclosure standard for RMBS. Further, industry's views on the form of any regulatory backing are also welcome.

How we set our priorities

We set our priorities with reference to:

- our legislative responsibilities;
- systemic or regulatory risk;
  - building resilience in the financial system
  - as Benjamin Franklin once said "an ounce of prevention is worth a pound of cure"
    - need to be proactive and forward-looking
- the expectation gap between what stakeholders expect and what ASIC is doing; and
- Government policy objectives;
  - IOSCO commitments
    - convergence of standards internationally.

The regulatory tools at our disposal

- Engagement with industry and other stakeholders (including our sister regulators here and overseas)
- Surveillance (risk based, pro-active and reactive)
- Regulatory guidance
  - As I mentioned earlier, we have released RG 209 to provide guidance on responsible lending, and we are looking to provide regulatory backing to the ASF industry standards.

- Education
- Deterrence
- Policy advice to Government

Covered bonds

Before I conclude, I'd like to touch on covered bonds.

The Government recently passed legislation to amend the Banking Act to allow ADIs to issue covered bonds.

Last Wednesday, ANZ was the first ADI to complete a covered bond issue and we understand a number of ADIs will soon follow suit. ASIC is looking to industry bodies such as the AuSF to develop relevant disclosure standards similar to those that have been introduced for RMBS.

Again, we would be interested in industry's views on whether an industry disclosure standard for covered bonds should have regulatory backing.

Concluding remarks – How regulation can help the sector by ensuring investor confidence

ASIC remains focused on our three strategic outcomes.

Continued improvements in the regulation of securitisation by both ASIC and industry, will assist with this.

Specifically, improved disclosure and greater gatekeeper scrutiny will promote confident and informed investors.

We consider engagement with industry critical in:

- Identifying and addressing local market issues while still imposing the lowest compliance burden possible in the attainment of our objectives.
- Engagement also ensures that industry remains up to date with international and domestic regulatory initiatives.

We encourage issuers and stakeholders to get involved with industry associations, such as the AuSF, to ensure your views are represented in the development of industry standards.

Thank you.