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Mr. Eric Ducoulombier
European Commission
Internal Market and Services DG
Avenue de Cortenbergh 107
Brussels
Belgium

15th February 2007

Re: Response to the European Commission's consultation on the Recommendations contained in the Mortgage Funding Expert Group Report

Dear Sirs

The European Securitisation Forum¹ (ESF) welcomes this opportunity to comment on the Report (Report) of the Mortgage Funding Expert Group (MFEG). The ESF generally supports the recommendations for the removal of the obstacles identified in the MFEG Report. The ESF also encourages the European Commission (EC) to continue the open and constructive dialogue with the mortgage funding industry.


The ESF proposes a number of initiatives for the EC's consideration to improve the efficiency of mortgage markets, their funding and integration. In order to deliver on the MFEG recommendations and monitor progress made, the ESF supports the creation of the two specialist expert groups described below composed of high level representatives involved in mortgage funding from across Member States. This solution allows a market led approach while maintaining the EC control over progress made. The EC will be in charge of setting up the agenda of the groups in close coordination with industry experts. The EC will also play a major role in providing the necessary political impetus and coordinating actions with the private sector, finance ministries and regulators from Member States, relevant associations and members of the European Parliament. More specifically, the ESF recommends to:

- a) Set up a Market Practice Expert Group (MPEG) to address the technical or market practice recommendations for which the private sector has sole or major responsibility. The Group should be chaired by the EC, it should promote the recommendations and provide to the public the necessary explanations and reports

¹ The ESF, a forum of the Securities Industry and Financial Markets Association, is a pan-European trade association comprised of 160 members, including investment and commercial banks, rating agencies, sellers, investors, law and accounting firms, stock exchanges, trustees and IT service providers. Its mission is to promote the development of the European securitisation markets (including ABS and CDO markets) via legal and regulatory advocacy, market education and information, and establishment of market standards and practices.



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on the state of reform in a transparent manner. The Group should also be coordinating with the group below;

- b) Set up a Legal, Regulatory and Tax Expert Group (LRTEG) to evaluate the current situation for legal issues and, if needed, suggest methods of improvement and consistency of national law and taxation systems and/or procedures. The same Group should also liaise with the Committee of European Banking Supervisors (CEBS), the European Financial Markets Lawyers Group (EFMLG), national regulators and industry bodies with respect to regulatory and supervisory recommendations. The Group should also be chaired by the EC and closely coordinate its work with the MPEG;

We have prioritised below the recommendations (highlighted in bold) included in the MFEG Report affecting RMBS and securitisation in general to be dealt within the two above-mentioned groups.

1. Competitiveness of an integrated European Mortgage Funding Market

- a) **Where a servicer or non-bank originator is authorised in one EU Member State, it should be automatically authorised to do the same in all other EU Member States, subject to minimum notification or registration requirements. The Commission should examine creating a 'passport' for non-bank originators and servicers.**
- b) **Member States, which require banking licences for residential mortgage lenders, should limit the amount of regulation on non-deposit taking institutions to an appropriate level, commensurate with the risks with respect to capital and funding. Member States should ensure that legislation does not require servicers to hold a banking licence.**
- c) **Member States should ensure that legislation, including securitisation laws, should not prohibit or restrict the cross-border servicing of assets – if that is the model chosen by the lender.**


The ESF supports the creation of larger economies of scale for pan-EU lenders and servicers. The reduction in processing costs and credit servicing can have a beneficial impact on consumer products and business opportunities. These three recommendations should be dealt within the LRTEG.

2. Secondary market issues

Residential Mortgage Backed Securities (RMBS)



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- a) **MFEG recommends that all Member States with existing securitisation laws, as well as those Member States considering the enactment of securitisation laws, introduce changes to ensure that the legal framework is based on 10 broad ESF “RMBS Principles”. These changes will make the use of RMBS more flexible and cost efficient.**

The ESF strongly believes in a principle-based approach to improve the existing and future securitisation frameworks in the Member States. Although this recommendation falls within the LRTEG, some of the principles listed below are to be dealt within the MPEG. In particular, the ESF supports the principles that simplify the accessibility of the mortgage market both in terms of assets that can be securitised, flexibility of the structures and elimination of the restrictions and limitations placed on originators. The ESF principles are listed below in order of importance and the ESF strongly recommends delivery of at least the first five principles:

1. **Unrestricted Asset Eligibility;**
2. **Flexibility of Structures;**
3. **Origination by Banks and Non-Banks;**
4. **Facilitation of Third Party and Cross-border Servicing of Assets;**
5. **Transparent Disclosure and Financial Reporting (including the data protection changes described below);**
6. **Flexibility of SPVs;**
7. **Cross-border Recognition of Securitisation Vehicles;**
8. **Legal Clarity of Sale, Transfer, Asset Isolation and Insolvency/Bankruptcy Laws;**
9. **More Efficient Foreclosure Process;**
10. **Tax Neutrality and Transparency.**

- b) **The UCITS Directive should be amended so that investment funds can invest up to 25% of their assets in AAA rated RMBS of a single RMBS issuer.**


The ESF supports the increase of investment funds limit in AAA RMBS given the relative price and rating stability of this debt instrument that can also be used as collateral in repo transactions. This recommendation should be dealt within the LRTEG.

3. Data Protection

- a) **MFEG recommends that personal data be permitted to be transferred between originators and third parties, including lenders and servicers that have a legitimate professional reason to review the data. The receiver must, however, treat the information confidentially.**



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The ESF maintains that it is crucial that servicers, investors, rating agencies and other market participants are able to access and transfer information related the assets securised without onerous, costly or time-consuming regulatory or approval process. These two recommendations are to be dealt within the LRTEG.

4. Investor issues

Definitions

- a) **MFEG recommends the development of market-driven standardisation of some of the key terms used in secondary markets. These standards would be used for monitoring the performance of a transaction and at the same time promoting transparency.**

The ESF strongly recommends that the harmonisation process of common terms and definitions for RMBS information is market driven to deal with market developments and to respond to the increasing investor and market participant demand for comparability of RMBS transactions across Europe. The information comprises terms and definitions at security level data, collateral level data, loan level data and contact details. This recommendation should be dealt within the MPEG.

Consistency and Transparency of Reporting

- b) **MFEG encourages private sector standardised reporting initiatives for RMBS, such as, the ESF “Market Practice Guidelines”.**
- c) **MFEG believes that the use of issuers' websites, third party vendor services and other electronic media including Regulatory Information Services² (RIS) for post issuance reporting as the most accessible method should be encouraged.**


The ESF supports market driven initiatives to improve the consistency, timeliness and availability of reports. The ESF Securitisation Market Practice Guidelines are regularly updated to further enhance the standardisation of reporting among new and existing issuers in specific jurisdictions.

As identified in the ESF Securitisation Market Practice Guidelines, issuers should consider making reports available through readily accessible communication channels for current or prospective investors. Both recommendations should be dealt within the MPEG.

² This is in compliance with the Market Abuse Directive.



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5. Foreclosure

- a) **The Commission should undertake a study to determine best practices for enforcement procedures in all Member States and develop a scoreboard to encourage convergence toward best practice. A maximum target for the duration of legal enforcement procedures should be set.**

As lengthy foreclosure periods have an impact on pricing of RMBS transactions in certain jurisdictions, the ESF supports a general process of convergence in the European Union. This recommendation should be dealt within the LRTEG.

6. Land Registration

- a) **The Commission should ensure that mortgage loan portfolios are transferable to a new lender in all Member States without registration of a new mortgage deed for each loan in the transferred portfolio. Furthermore, the Commission should ensure that the transfer of a mortgage loan is not subject to the acquiescence or consent of the borrower if the loan conditions are not altered to the disadvantage of the borrower.**
- b) **The Commission should ensure equal access to mortgage registers in all Member States for domestic and foreign lenders thereby creating a level playing field. In this respect, the development of central and dematerialised registers should also be encouraged.**

The ESF strongly support the transferability of loan portfolios to improve the diversification of risk from a geographical perspective and to improve the transferability of mortgage portfolios among market participants while ensuring consumer protection remains intact. These two recommendations should be dealt within the LRTEG.

Please do not hesitate to contact Rick Watson (Managing Director, Head of ESF) or Marco Angheben (Associate Director, ESF) at +44 (0) 20 77 43 93 11 should you have any questions.

Yours sincerely

Rick Watson