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Dear Mr Cicchini

Goods and Services Tax - Securitisation

I write on behalf of the Australian Securitisation Forum (**ASF**) and refer to our meeting in November 2004.

During the meeting you requested information on the activities carried out by a Servicer in a securitisation transaction. We enclose a schedule which identifies the activities performed by a Servicer in a typical securitisation transaction.

You will recall that our concern is with the treatment adopted by the Australian Taxation Office (**ATO**) in its public ruling GSTR 2004/4 to the effect that only very limited reduced input tax credits are available to a securitisation vehicle in respect of the fees paid to the Servicer.

Since the inception of GST from 1 July 2000, the industry, to the best of the ASF's knowledge, has consistently claimed reduced input tax credits in respect of the full amount of servicing fees paid to the Servicer, in reliance upon items 7, 14, 15, 17, 23 and 29 of the table in subregulation 70-5.02(2) of the GST Regulations. The ATO takes the view that items 14 and 15 are not applicable to a securitisation vehicle on the basis that it is not the lender but merely an assignee of the receivables. As discussed at the meeting, items 14 and 15 in a draft version of the regulations were restricted by reference to "the lender". These words do not appear in the final version. Therefore, it is patently obvious that such a restriction should not be implied into items 14 and 15. If the items were intended, as a matter of policy, to be read with that restriction implied then those words would never have been deleted.

As discussed at our meeting, we are seeking confirmation that the artificial restriction read into items 14 and 15 by the ATO is not consistent with the intention of the legislature. We note that you indicated that the reason for the deletion of references to *the lender* was not apparent from your files. With respect, there surely can be no other explanation for the deletion of those words than a clear decision to allow items 14 and 15 to apply to assignees of debts rather than just lenders. The information (including the copies of file notes) provided to you at our November meeting by Chris Plakias of St. George Bank illustrates very clearly the context in which the relevant words were removed from the regulations.

It appears from subsequent discussions with the ATO that the ATO analyses securitisation transactions as assignments of income streams, which, of course, is legally incorrect. The correct

analysis is that there is a transfer of the ownership of the choses in action (ie the receivables) which, only because notice is not given to the underlying obligors, takes effect in equity rather than at law.

In applying item 17, the ATO draws a distinction between the collection of debts in the normal course and the management of delinquent debts. We can see no basis in item 17 or in any supporting material to give any credence to such an interpretation. Item 17 has been generally interpreted by the securitisation industry as allowing a reduced input tax credit for the general management and collection of debts.

We would also be grateful for your consideration of the more general issue of tax policy that the approach adopted by the ATO in its ruling clearly discriminates against securitised transactions compared with unsecuritised transactions. Since securitisation is generally regarded as lowering the cost of finance for borrowers and broadening competition amongst lenders, it seems strange that it would be government policy to discriminate against and thus discourage securitisation transactions.

The ASF considers the uncertainty surrounding this fundamental issue almost five years after the commencement of the GST regime to be unacceptable. The ASF is therefore very keen to have this matter resolved and in this regard we look forward to your response by the end of April.

Should you require any further information or wish to discuss this issue, please do not hesitate to contact me.

Yours sincerely



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Appendix 1**Services supplied by Servicer in relation to loans**

Item	Activity
1	Credit analysis
2	Security valuations
3	Loan/finance lease/CHP settlements and discharge
4	Registration & stamping of loan/finance lease/CHP documentation
5	Property title searches
6	Loan/finance lease/CHP & security variations
7	Loan/finance lease/CHP maintenance & customer support
8	Debtor / guarantor discussions, correspondence & negotiations
9	Arrange repayments
10	Prepare, issue, execute statutory notices
11	Make decisions in relation to collections process
12	Maintain debtor file
13	Arrange / receive valuation on security
14	Arrange / obtain possession of security
15	Secure, preserve, maintain security in possession
16	Arrange sale / realisation of security in possession
17	Prepare documentation and attend to settlement of realised security
18	Collection of arrears
19	Prepare and collate performance statistics
20	Collect and enforce loans/finance lease/CHP's
21	Keep accurate accounts and records
22	Comply with all applicable laws, rules and regulations
23	Comply with all requirements of the relevant Servicing Agreement