



28<sup>th</sup> March 2020

To,  
The Market Intermediaries Regulation and Supervision Department  
Securities and Exchange Board of India  
SEBI Bhavan, Plot No. C7, "G" Block, Bandra Kurla Complex  
Bandra (East), Mumbai -400 051  
Ph: 022-26441315

**Sub: Modification of waterfall of securitisation pass-through transactions owing to moratorium on loans as announced by the RBI on 27<sup>th</sup> March, 2020**

Respected Sir/Ma'am,

#### About the Indian Securitisation Foundation (ISF)

ISF is a not-for-profit entity representing the securitisation industry in India. The membership of the Foundation includes banks, NBFCs, microfinance institutions, other issuers and investors and securitisation professionals for promoting interest of securitization and fixed income securities in India.

#### Context

Securities and Exchange Board of India (SEBI) issued a Circular<sup>1</sup> to Mutual Funds/ AMCs/ Trustee Companies/ Board of Trustees of Mutual Funds/ Association of Mutual Funds of India on 24<sup>th</sup> September, 2019 on Valuation of Money Market and Debt Securities. Pursuant to Para 5.1.1.2 of the said circular *a money market or debt security shall be classified as "Default" if the interest and / or principal amount has not been received, on the day such amount was due or when such security has been downgraded to "Default" grade by a CRA.*

Most of the mutual funds are investors in securitisation/PTC transactions as well. As you are well aware, securitisation is one of the very important instruments for refinancing loan pools, and has been seen as a key stimulator of financial inclusion in the country. You are also aware that securitisation is receiving impetus from the Government.

SEBI has also been constantly taking steps to promote securitisation in the country. COBOSAC is SEBI's standing forum for discussing measures to promote securitisation in the country.

An urgent situation calling for regulatory clarity has emerged. Your urgent intervention is called for.

The outbreak of COVID-19 has largely impacted the financial sector. In this regard the RBI has on 27<sup>th</sup> March, 2020, permitted Banks and financial institutions to grant moratorium to borrowers, in case of term loans, for

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<sup>1</sup> [https://www.sebi.gov.in/legal/circulars/sep-2019/valuation-of-money-market-and-debt-securities\\_44383.html](https://www.sebi.gov.in/legal/circulars/sep-2019/valuation-of-money-market-and-debt-securities_44383.html)

**INDIAN SECURITISATION FOUNDATION**

(A Not-For-Profit Company Licensed under Section 25 of Companies Act, 1956)

**Corporate Identity Number:** U65923MH2013NPL242178

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a term of 3 months. Preliminary indications are that banks and NBFCs across board will be granting a moratorium across board for all loans and similar financial facilities.

The loans originated by banks and NBFCs include loans which have been securitized, or transferred to buyers by way of direct assignment transactions. In such cases, the originating lenders are simply the servicers.

It cannot be that lending institutions do not confer the benefit of the moratorium to such loans as have been securitized, as that would amount to discrimination. Moreover, the borrower was never a privy to the securitisation transaction; therefore, the borrower cannot be deprived of the benefit of moratorium, arising from a systematic disruption due to a supervening force majeure, merely because his loan has been securitized by the originator.

Thus, there are two implications:

- (a) The modification of the loan repayments in case of securitized loans requires the permission of the investor(s) who have invested in the securitisation/direct assignment transaction, as the servicer cannot take the action himself.
- (b) Resulting modification of the cashflow waterfall of PTC transactions, to reflect the modification of the repayment schedule of the underlying loan transactions.

Kindly note that the repayment schedule of the PTCs has to reflect the repayment from the underlying loans. If the underlying loans get restructured, in accordance with the moratorium granted across board, the same will have to reflect on the PTC transactions as too, as the latter are simply a replica of the loan cashflows.

We have had a discussion with a wide spectrum of originators, investors in securitisations (including several mutual funds), rating agencies, intermediaries and advisers, and legal counsels.

The general consensus that emerged is as follows:

- a. In situations of exigency such as the present one, the modification of the loan cashflows is not a case of delinquency or default, but a case of modification of the contractual obligation itself. It may be noted that the Law Ministry has opined that the COVID-19 is a case of force majeure event.
- b. Servicers may agree to modify the loan obligations in case of securitized loans with “investor consent” (in most cases, meaning consent of 75% of the investors).
- c. Investors, being regulated financial sector entities or market intermediaries, appreciate the need to permit the lenders to pass on the benefit of the moratorium.
- d. Such modification, once done with the consent of the investors, reflects on the investors’ cash inflows as well.
- e. It is felt that this is not a case of “restructuring” leading to a default, because the aforesaid restructuring is not a result of a “credit event”. It is the result of an externality, causing a system-wide disruption.

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However, investors, primarily mutual funds, will be obliged to have a comfort from SEBI that SEBI does disapprove the action of modification of the waterfall.

#### Our Representation

Based on the above context, Indian Securitisation Foundation, on behalf of the stakeholders of the Indian securitization industry, requests that SEBI may be pleased to issue a clarification that if there is any modification in the cashflow waterfall of PTCs to reflect the modification of the underlying loans, due to the moratorium, the same will not be taken as “credit event” or “default event”.

**Kindly note that lenders will be required to proceed for loan modifications immediately – therefore, a very urgent action from SEBI will be appreciated.**

Should you need any further clarification, we would be glad to provide the same.

Thanking you,

Yours truly,

For Indian Securitisation Foundation

Sd/-

Vinita Nair Dedhia  
Director

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