

Date: 28.02.2023

To,
The Chief General Manager,
Credit Risk Group, Department of Regulation,
Central Office, Reserve Bank of India,
12th Floor, Central Office Building,
Shahid Bhagat Singh Marg, Fort,
Mumbai – 400001

Sub: Comments on Discussion Paper on Securitisation of Stressed Assets Framework (SSAF)

Dear Sir/ Ma'am

This is with reference to the Discussion Paper on Securitisation of Stressed Assets Framework released by the Reserve Bank of India on 23rd January 2023. We, on behalf of Indian Securitisation Foundation, are submitting the following response to the questions posted in the Discussion Paper for public comments.

Questi on No.	Question	Response
1.	<i>Should Securitisation of Stressed Assets Framework be limited only to NPAs, or should it include standard assets too, up to a certain threshold? The response may also elaborate pertinent implications viz. regulatory arbitrage, complexity, impact on resolution strategy and effectiveness, possible threshold etc.</i>	<p>The regulatory frameworks, world over, do not restrict the inclusion of standard assets. Therefore, the composition of the pool may be left for the market forces to determine.</p> <p>Currently, the SSA Directions allow securitisation of standard assets, which allow stressed assets as well. It may be apprehended that by allowing inclusion of standard assets as a part of securitisation of stressed assets may lead to a regulatory arbitrage; in this regard, the following may be considered:</p> <p>a. The capital relief may be computed based on the composition of the pool, and in this regard, parallels may be</p>



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		<p>drawn from BCBS' CRE-45 and Bank of England's PS24/21;</p> <p>b. The provisions relating to securitisation of standard assets, must be made applicable to the standard assets forming part of the pool so as to avoid any potential regulatory arbitrage;</p> <p>c. The valuation of the pools may be carried out by independent expert valuers so as to ensure that the complexities around valuation of pools consisting of standard as well as stressed assets are being addressed adequately.</p> <p>Inclusion of standard assets will allow to introduce some degree of certainty in the cashflows from the pool.</p>
2.	<p><i>Which type of assets should be eligible for Securitisation of Stressed Assets? Please support your answer with qualitative/quantitative rationale.</i></p> <p><i>a) Term loans only with the same asset universe as it is there in Securitisation of Standard Assets;</i></p> <p><i>b) Big ticket loans above a certain aggregate threshold (e.g., Rs. 100 crores);</i></p> <p><i>c) Small ticket loans such as commercial/residential mortgages, loans to MSMEs and unsecured retail assets with a floor on pool specifications such as minimum number of loans/ticket size/cumulative loan amount etc.</i></p> <p><i>Please also share views on likelihood of resolvability under the selected option(s).</i></p>	<p>Wholesale transactions are normally done through the ARC route. Thus, under the SSAF, only retail transactions should be permitted, since ARCs lack the capability for retail loans. Certain loans come under the category of 'Re-performing loans', that is, they are categorised as NPA and have started performing again, but have not returned to standard status, since the borrower has not cleared all his dues.</p> <p>The regulations do not recognise this concept of re-performing loans. However, most retail loans are of this nature. Though regulatorily these loans are non-performing, in essence, they are performing.</p> <p>Hence, the regulatory framework may either limit the exposure of a single nonperforming loan to the pool size – say 10% or so, or, since single asset securitisations are permitted in</p>

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		<p>case of standard assets, the choice of retail versus corporate loans may be left to the market. The possibility of regulatory arbitrage and evergreening needs to be adequately provided for.</p>
<p>3.</p>	<p><i>Whether form and quantum of Minimum Retention Ratio (MRR) is required to be prescribed regulatorily for SSAF? If so:</i></p> <p><i>a) Should the MRR stipulation be the same as for SSA or different in terms of quantum/form?</i></p> <p><i>b) Who shall fulfill MRR requirement - Resolution Manager, originator, both or other parties too?</i></p> <p><i>Please support your answer with rationale.</i></p>	<p>The SSAF is intended to deal with securitisation of NPAs. In order for assets to turn into NPAs, they would have had to be on the books for a certain period. Assets securitised under the SSAF would have been held for a certain period on the books of the originator.</p> <p>The idea of Minimum Risk Retention ('MRR') is for the originator to have a continuing stake in the pool and avoid an originate-to-sell model, which would result in sub-par originating/underwriting standards. However, in the case of NPAs, the originator has already shown a continuing stake in the pool and the intent now is to remove such assets from the book, because they have turned non-performing after having retained a continuing stake.</p> <p>Accordingly, imposing MRR requirements seems unnecessary for these loans. However, if at all the regulator considers imposition of a minimum risk retention, parallels may be drawn from the European Regulations¹ which prescribes a 5% MRR, in case of NPLs.</p> <p>Further, as pointed out in the response to Question 2 above, the relevance of this</p>

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0557&from=EN>

		<p>framework will be greater for retail exposures, instead of whole exposures. Securitisation of wholesale exposures are already covered under the Asset Reconstruction Framework under the SARFAESI Act.</p> <p>In case of retail exposures, the role of a Resolution Manager gets limited, as the scope of turning around an account in a retail loan is limited. In the case of securitisation of non-performing retail exposures, the objective is to remove the loans from the books of the originator, and accelerate the potential recoveries from such loans. Therefore, if at all, the regulator considers imposition of an MRR requirement, it should be made applicable to the originator and not the Resolution Manager.</p> <p>With respect to the wholesale loans, where the Resolution Managers may have a greater role to play, it may be ideal to peg their income with their performance, which would incentivise them to perform better. Therefore, the regulator may consider prescribing a performance linked remuneration for the Resolution Manager.</p>
4.	<p><i>Does the idea of independent Resolution Manager lead to any prudential, economic or any other conflict/arbitrage?</i></p>	<p>The role of an independent resolution manager is greater when the securitisation involves wholesale assets. Currently, the ARC framework provides for a comprehensive framework for resolution of wholesale assets, where the primary objective is to revive the borrower and reconstruct their debt servicing abilities.</p> <p>As discussed in the response to Question 3, the role of a resolution manager gets limited to monitoring and the reporting of the</p>

		<p>performance of the underlying exposures in the case of retail assets, as the possibility of working with the borrower is low.</p> <p>Globally, a resolution manager is not a common feature in most NPA securitisation structures. The GACS framework, the NPA securitisation framework in Italy, in 2017, allowed use of Real Estate Operating Companies for management of real estate leasing contracts; and provision of further finance to specific positions when it would be value accretive to the note holders.</p> <p>Therefore, in this regard, the suggestion will be to provide for enabling provisions which will allow the market participants to appoint a resolution manager should there be a need to appoint one, depending on the characteristics of the underlying pool.</p>
5.	<i>Should the framework completely prohibit any kind of relationship of originator with the Resolution Manager post transfer of stressed assets or an arm's length relationship may be permitted for a certain period (say, 3 months post transfer) to ensure smooth transition and information exchange?</i>	<p>Should the parties decide on a Resolution Manager for the transaction, such a person should be independent from the originator. Further, in order to avoid any potential conflict of interest with respect to the borrower, such person(s) should not be an entity falling under the purview of section 29A of the Insolvency and Bankruptcy Code.</p> <p>For a smooth transition, the regulator may consider providing for a transition period where the originator and the Resolution Manager may work together.</p>
6.	<i>What would be the ideal regulatory framework for the SPE and the Resolution</i>	<p>In order to remove the information asymmetry with respect to information relating to securitised pools, the regulator, in general may</p>

	<i>Manager under SSAF, considering inter alia the imperative of regulatory reporting?</i>	<p>consider setting up a repository for information relating to the performance of underlying pools.</p> <p>This may be implemented for securitisation of both, standard assets as well as stressed assets, irrespective of whether there is a Resolution Manager in the transaction or not.</p> <p>This will create a secondary market for securitised instruments, and therefore, attract more investors in the market, and finally will make the market more dynamic.</p>
7.	<i>What could be the possible corporate structures for the Resolution Manager within the ambit of regulatory power of the RBI? Are there any foreseeable concerns if the Resolution Manager is required to be an NBFC/ARC registered with RBI? Please elaborate on your response covering the legal and functional perspectives of the envisaged structure</i>	Should the transaction require an independent resolution manager, the existing framework for ARCs may be considered.
8.	<i>Should the Resolution Managers be permitted to borrow from other lending institutions towards additional funding for resolution of underlying assets? If so, what safeguards may be necessary?</i>	If resolution of stress in the borrower accounts requires further infusion of debt, the Resolution Manager may be permitted to arrange further debt. In this regard, the RM should retain some skin-in-the-game, and accordingly, option 3 provided in para 19 of the consultation paper may be considered.
9.	<i>Is the capital regime based on External Ratings Based Approach (ERBA), subject to a minimum NRPPD and RW floor of 100 per cent, robust enough to capture the risks associated with the NPA securitisation exposures? How should the NRPPD be</i>	The discussion paper proposes a capital regime based on External Ratings Based Approach ('ERBA'), subject to minimum non-refundable purchase price discount ('NRPPD') of 50% and Risk Weight ('RW') floor of 100%.



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	<i>structured to balance the considerations – a uniform NRPPD of, say, 50 per cent, or a graded NRPPD?</i>	As given in the RBI discussion paper, “NRPPD is the difference between the outstanding balance of the exposures in the underlying pool and the aggregate consideration at which securitisation notes on these underlying exposures are sold to third party investors.”
10.	<i>Should the framework propose a lower NRPPD (e.g. 30 per cent) for it to be ‘qualifying’ under the framework provided the assets are sold promptly (thereby improving their recoverability prospects)? What should be the pre-requisite/safeguard for such dispensation? Please support your arguments with the recoverability experience in the Indian context. Are there any other pragmatic alternatives for Indian markets that may be considered?</i>	<p>The Basel norms prescribe that where the NRPPD is equal to or higher than 50%, regulated entities may apply a 100% RW to the senior tranche of the NPA securitisation. Accordingly, the RBI has proposed a minimum NRPPD of 50% in order to qualify for the SSAF framework.</p> <p>However, a lower NRPPD should not be completely ruled out. A lower NRPPD should also be permitted under the SSAF and a higher RW may be prescribed for NPA pools with a NRPPD lower than 50%.</p>
11.	<i>For the due diligence to be conducted by the investors/resolution manager, will the framework under SSA broadly suffice or is there a need for major modification in the SSAF framework?</i>	Due diligence is always conducted by the investors itself. As mentioned earlier, the need for a resolution manager is unnecessary and not advisable, so there is no question of due diligence being undertaken by the resolution manager. The framework under the SSA directions for due diligence on part of the investors would suffice.
12.	<i>Which of the following options may be considered for permitting credit enhancement: a) Credit Enhancements may be permitted for all tranches; the capital requirement will be based on external credit rating framework for all REs extending Credit Enhancement (CE)</i>	Credit enhancement is an integral part of a structured finance transaction. The intent of credit enhancement is to support the structure and protect the senior tranches in the structure up to a certain extent. Accordingly, credit enhancement should be allowed in NPL securitisation as well.

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	<p><i>b) Credit Enhancement may only be permitted for senior tranches. In either of the options, originator cannot provide CE</i></p> <p><i>c) Credit Enhancements are not allowed.</i></p> <p><i>Further, regarding reset of credit enhancement, is there any specific aspect which should be considered while following a regime similar to the CE reset regime prescribed for SSA?</i></p>	<p>The capital requirements and reset conditions as prescribed under the SSA Directions may be adopted here.</p>
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We will be glad to answer your further queries in this regard.

On behalf of **Indian Securitisation Foundation**

Sd/-

Abhirup Ghosh
Authorised Representative



Annexure: About Indian Securitisation Foundation

Indian Securitisation Foundation (ISF) is a not-for-profit organisation incorporated under section 25 of the Companies Act, 1956, a representative body of the securitisation industry in India. ISF is formed with the objective of developing, promoting and protecting the securitisation, structured finance markets in India in particular, and market for fixed income securities in general.

Securitisation in India is not just a fixed income investing instrument, but essential for the idea of financial inclusion, in form of priority sector lending. Banks meet their priority sector targets partly through portfolio acquisitions and securitisation, thereby putting securitisation at par with the banking book.

Infrastructure sector also depends substantially on securitisation for equity extraction. In essence, the significance of securitisation to India's financial sector cannot be under-estimated. Over time, credit default swaps are also expected to be prevalent as ways of synthetically replicating credit risk.

It is a clear policy choice to have a strong market for fixed income securities in India: structured finance securities are an essential part of that market, to provide variety, choice and alignment to investor needs.

In this background, ISF was conceptualised to provide direction, leadership, advocacy and support to the securitisation and structured finance industry.

Some of the functions of the Foundation include:

- a. **Advocacy** – making representation to various authorities from time to time on matters as may concern securitisation and similar capital market instruments.
- b. **Industry forums and networking** - holding periodic conventions and educational courses.
- c. **Development of industry standards** - framing self-regulatory standards on disclosures, reporting, servicing reporting, DOs and DONTs for securitisation and direct assignment transactions, etc. Development of standards such as standard assignment agreements, assignment procedures, notification procedures, etc. on the lines of ISDA agreements and encouraging members over period to start using such standard templates.
- d. **Information exchange** – on matters of common interest, collateral performance, etc.

Advisory Committee

Mr. M.R Umarji

Mr. Madhukar R Umarji, Chief Advisor - Legal of the Indian Banks' Association is acknowledged as an authority on Secured Transactions Law in India. He began his career as a Legal Assistant for the state government simultaneously pursuing his Masters in law. Following his Masters, he shifted to being a Legal Advisor in commercial banks and completed his transition to a commercial banker by becoming

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Executive Director of a public sector bank. Later he was taken on deputation at Reserve Bank of India as Executive Director in charge of Department of Non-Banking Supervision. He has been a part of several Expert Committees set up by the Government and Working Groups concerned with Banking Sector Reforms in India. His pivotal role in the drafting of secured transactions legislation in India shaped the way for a path-breaking reform for the Indian banking industry. Presently, he is actively involved with Working Group VI of UNCITRAL on Secured Transactions as an expert from India.

Mr. Sanjay Chamria

Mr. Chamria founded Magma in 1988, along with Mr. Mayank Poddar. As the Vice Chairman and Managing Director of Magma, he anchors policy formation, strategy planning and execution. He was born and educated in Kolkata, and graduated as one of the country's youngest chartered accountants in 1985 with national ranking. For the past 23 years, he has steered the organization from a three-employee, one-office set up to a company with 225+ branch offices and more than 6000 employees. Mr. Chamria uses his position as one of the foremost leaders in India's asset financing industry to articulate his views on critical issues facing the industry and its future. He has represented the BFSI and NBFC industry at various forums, including RBI, and before the finance ministry and other government bodies. He has also chaired committees at the FICCI, the Hire Purchase & Lease Association of India, the CII, the Finance Industry Development Council (FIDC) and the Indian Merchants Chamber in Mumbai.

Mr. D.K. Vyas, CEO, SREI BNP

Mr. D K Vyas, CEO of Srei BNP, has catapulted Srei BNP Paribas to a dominant leadership position in the infrastructure and construction equipment finance business, with over 33% market share, leading a team of over 1,000 professionals, and with distribution across the country. Demonstrating a judicious balance between growth and prudence in lending, the company under his leadership has registered a CAGR of over 35% over the past five years, disbursed over Rs. 10,010 crore in FY 11 and has one of the lowest NPA's in the industry.

Mr. V. S Rangan

Mr. V. Srinivasa Rangan is Executive Director at Housing Development Finance Corporation Limited (HDFC Ltd). He has been associated with the company since 1986. Mr. Rangan is a Graduate in Commerce, CWA and an Associate member of the Institute of Chartered Accountants of India with national ranking.

Mr Rangan has worked on international consulting assignments in housing finance in countries such as Ghana and the Maldives. He has also been a member of various committees constituted by the regulators in the areas of development of Mortgage Backed Securitisation and Secondary Mortgage Markets which includes RBI's Committee on Asset Securitisation and Mortgage Backed Securitisation and Technical Group formed by National Housing Bank for setting up of a Secondary Mortgage market institution in India.

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Mr Rangan was recently conferred the "Best CFO in the Financial Sector for 2010" by "The Institute of Chartered Accountants of India" (ICAI) for exceptional performance and achievements as CFO in the Financial Sector for the year 2010.

Mr. T.T Srinivasraghavan

Mr. T. T. Srinivasaraghavan is the Managing Director at Sundaram Finance Ltd. He served as Joint Managing Director of Sundaram Finance Ltd. Mr. Srinivasaraghavan serves as Chairman of Infreight Logistics Solutions Ltd. He serves as an Executive Director of Sundaram Finance Ltd, and Director of Sundaram BNP Paribas Home Finance Limited and Sundaram BNP Paribas Asset Management Co. Ltd. Mr. Srinivasaraghavan has a vast experience in the Banking and Finance sectors. He serves as President of International Finance & Leasing Association, United Kingdom. Mr. Srinivasaraghavan holds an M.B.A. in Finance Degree.

Executive Committee

Executive functions of the ISF are currently being discharged by team of Vinod Kothari Consultants P. Ltd. The team is led by Mr. Vinod Kothari and Ms. Vinita Nair.

Mr. Vinod Kothari

Mr. Kothari is a noted scholar on securitisation and has lectured all over the World on securitisation. Vinod Kothari has been consulted by regulators in various countries, and has structured transactions in several markets. Vinod Kothari is the author of several books on the subject including Securitisation: Financial Instruments of Future, Introduction to Securitization (co-author with Frank Fabozzi), Credit Derivatives, Structured Credit Trading and Guide to Structured Finance etc. For detailed profile of Vinod Kothari, see www.vinodkothari.com/profile

Ms. Vinita Nair

Ms. Vinita Nair is the Director of the Indian Securitisation Foundation. Her expertise lies in the field of Corporate Laws, Corporate Restructuring, Merger/Amalgamation and general corporate advisory matters, incorporation of companies including section 25 companies, FEMA matters and compliances. Vinita has also taken lectures on related topics. See full profile of Ms. Vinita Nair at - <http://vinodkothari.com/ms-vinita-nair/>

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