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Ms Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
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Parliament House
Canberra ACT 2600
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16 April 2010

Dear Madam

Inquiry into the Personal Property Securities (Corporations and Other Amendments) Bill 2010 (the “Bill”)

Thank you for the opportunity to comment on the Bill and the impact of the amendments it makes to the Personal Property Securities Bill 2009 (“PPSA”).

The Australian Securitisation Forum (the “ASF”) is the peak industry body for the Australian securitisation industry.

Scope of this submission and support of content of joint law firm submission

The ASF does not propose to resubmit comments made in previous submissions by it or by others which have not been accepted. Instead this submission focuses only on issues that arise out directly from the Bill as they directly affect the securitisation industry. We understand that at least one other submission will focus on issues that affect the finance industry more broadly which the ASF is likely to support.

Specific submission

The specific submission of the ASF on the Bill is in relation to Section 64 of the PPSA. Section 64(1)(b)(ii) has been amended (under Schedule 2, Part 1, Clause 52) to extend the number of business days’ notice (from 5 to 15) to be given to the holder of the purchase money security interest (“PMSI”) of the proposed priority interest in an account. The ASF does not support that amendment.

The ASF understands that one of the purposes of giving priority to the holder of a “priority interest” is to facilitate the business of financing accounts (or trade receivables) in both a securitisation and non-securitisation context. From a policy perspective it was determined (appropriately in the ASF’s view) that the holder of a PMSI should be subordinated to the holder of the priority interest in certain circumstances. Defining those circumstances presents the challenge.

In a securitisation context, a transaction would typically involve a special purpose vehicle borrowing money the proceeds of which are used to acquire (on a revolving basis) a pool of trade receivables originated by, say, a manufacturing business. This would improve the working capital position of the manufacturing business by monetizing its right to future income and (particularly in a securitisation context) potentially reduce the cost of funds otherwise available to it.

Some manufacturing businesses may have hundreds or even thousands of suppliers (PMSI holders) of goods that are used in the manufacturing process to produce the goods that are sold to create the receivable/account. The process therefore of providing notice to the PMSI holders could be administratively difficult.

For the policy behind the priority interest regime to have benefit, the process for giving notice to the holders of PMSI's should be straightforward. If a supplier to the manufacturing business is unhappy with the manufacturing business financing itself by selling its receivables, the supplier can choose to discontinue its supply. The PMSI holder could be in a significant minority position as a creditor of the manufacturing business and has a choice each time it supplies goods as to whether or not to continue to supply credit. The holder of an intended priority interest on the other hand could be supplying finance to the manufacturing business upon which it is entirely reliant for its working capital. The ASF submits therefore that the legislation should facilitate protection of that intended priority interest.

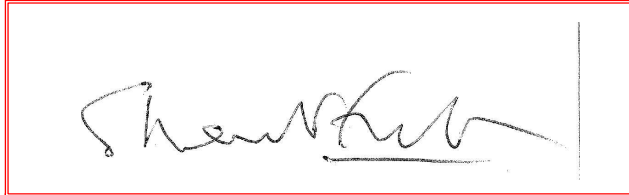
Increasing that burden by requiring 15 instead of 5 business days' notice highlights the hurdles imposed on the holder of an intended priority interest. Assuming it is feasible to give notice to each of the (100's or possibly 1000's) of PMSI holders it will be necessary, to rely on Section 64(1)(b), to withhold initial finance under the receivables facility until at least 15 business days after the notice to the PMSI holders is given. . A receivables financing transaction might be only at its embryonic stages three weeks prior to closing. The ASF submits that it would be unfortunate for the closing timetable of such a transaction to be driven largely around the 3 week notice period. The delays in the availability of finance that this period may cause seem undesirable and unnecessary (particularly in cases where there is a short term or urgent need for funding).The ASF submits that it would be unfortunate for the closing timetable of such a transaction driven largely around the 3 week notice period. The delays in the availability of finance that this period may cause seem undesirable and unnecessary (particularly in cases where there is a short term or urgent need for funding).

The ASF submits that the notice provision in Section 64(1)(b) are unduly burdensome and should be streamlined in favour of the holder of the intended priority interest.

This is particularly so given that under the amendments proposed in Section 64(3) the PMSI holder can protect itself in respect of the new value created under the receivables financing arrangements.

Thank you for your consideration of this submission. We would be happy to provide further clarification of any of the points raised at your convenience.

Yours sincerely

A handwritten signature in black ink, enclosed in a red rectangular box. The signature is cursive and appears to read 'Stuart Fuller'. To the right of the signature is a vertical line.

For the Australian Securitisation Forum
Stuart Fuller
Chair of the Australian Securitisation Forum