



August 30, 2024

Secretariat to the Financial Stability Board
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Submitted to fsb@fsb.org

RE: *Evaluation of the Effects of the G20 Financial Regulatory Reforms on Securitization*

To Whom It May Concern,

SIFMA¹ is pleased to respond to the Financial Stability Board's ("FSB") consultation report on its evaluation the effects of G20 financial regulatory reforms on securitization.² SIFMA's members are active in all aspects of the securitization markets, which in the United States provide a critical source of risk management and funding for residential and commercial mortgage lending, auto finance, and other forms of consumer and business finance.

Summary of Views

This response to FSB's consultation is similar to our 2023 response to the announcement of the evaluation. Securitization is an important avenue for credit creation and risk management in

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² *Evaluation of the Effects of the G20 Financial Regulatory Reforms on Securitization* (July 2, 2024), <https://www.fsb.org/wp-content/uploads/P020724.pdf> ("FSB Consultation")

the U.S. financial markets.³ A retrospective review of changes to regulation governing this sector is both necessary and important as a component of good governance.⁴ We commend the FSB for beginning this analysis and continue to believe that it needs to be broadened to incorporate review of additional instances of reform. Most significantly, the implementation of the Basel securitization framework (along with other major reforms to the banking and trading books) have the potential to dramatically change, shift, or eliminate incentives for banks to issue, underwrite, invest in, and provide liquidity for securitized products.

SIFMA agrees with FSB's conclusion that today's securitization markets are more robust than pre-crisis markets, and the conclusion that there are numerous factors that confound a specific analysis connecting individual reforms to market outcomes.⁵ Regulatory-driven reform may be a powerful factor in some areas – but in others, demands from the securitization investor base can be even more compelling. After all, if there is no one to buy the product, there is no need to create it. Apportioning specific impacts to one or the other driver can be challenging. However, there are some reforms that do connect directly to market outcomes (Reg AB2, in particular) that can be analyzed, and final capital rules in the U.S. would be required to draw firmer conclusions.

Additional Regulatory Changes Should be Considered for a Post-Crisis Reform Analysis

As noted in our previous response, in the U.S. there have been more than a dozen material regulatory and prudential reforms targeted toward securitization, including (but not limited to): (1) risk retention rules, (2) changes to disclosure requirements for registered asset-backed securities (Reg AB2), (3) reforms to credit rating agency rules, (4) reforms to permissible uses of credit ratings and rating agencies more generally, (5) the conservatorships of the U.S. housing government sponsored enterprises, (6) the creation of the Consumer Financial Protection Bureau and its implementation of the qualified mortgage rules, (7) regulation of conflicts of interest in securitizations (the SEC's recently finalized Rule 192), (8) the Volker Rule (in particular, covered funds provisions), (9) requirements related to pre-securitization due diligence, (10) requirements related to representations and warranties, (11) TILA-RESPA integrated disclosures (TRID), (12) changes to accounting treatment and recognition of off-balance sheet activities, (13) the implementation of post-trade reporting across securitization asset classes, and (14) various changes to the capital treatment of securitizations. There have also been other changes in these markets that are not necessarily tied to regulation, including the implementation of credit-risk transfer programs at the Government Sponsored Enterprises

³ Over \$2.5 trillion of mortgage- and asset-backed securities were issued in 2022, according to SIFMA data, and is particularly important for mortgage lending, where typically >70% of U.S. mortgage lending is funded by securitization. See more here: <https://www.sifma.org/resources/archive/research/statistics/>.

⁴ In 2017, in response to an Executive Order, SIFMA provided holistic input to the U.S. Department of the Treasury regarding post-crisis reform of Securitization markets, noting our positions on the effects of regulatory changes, and suggesting amendments to strengthen the ability of Securitization to fund credit for consumers and businesses. The Securitization discussion begins on page 148 of this document and is relevant to FSB's current effort: <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-EO-White-Paper.pdf>.

⁵ See e.g. FSB Consultation, at 5.

(which compete with non-agency RMBS for investor interest), a shift from bank to non-bank mortgage lending and servicing (driven in part but not entirely by regulation and litigation risk), as well as a shift to whole loan investing by some investors who previously purchased securitized products.

Of these, the current FSB analysis has only considered risk retention (since the U.S. capital reforms are incomplete). However, the other reforms listed above also warrant attention. In particular, the SEC's implementation of Regulation AB2, which dramatically changed disclosure requirements as well as the regulatory and legal risk profiles for registered (public) ABS in the U.S., has had material effects on securitization particularly for RMBS. There have been very few registered RMBS issued since the SEC implemented these rules more than a decade ago – this market has entirely shifted to 144A/private issuance or the Government Sponsored Enterprises. The private/144A securities investor base is not as large as the investor base for registered/public transactions. Accordingly, the impact of Regulation AB2 (and disclosure reforms globally) warrants attention, at least with respect to its impact on RMBS markets.⁶ However, as in our previous response, the implementation of capital requirements changes in the U.S is the biggest missing piece of the analysis.

Final Basel Endgame Reforms Will Be Key to the Future Direction of Securitization in the U.S., and Therefore Are Key to a More Complete Analysis of Post-Crisis Reforms

As FSB knows, U.S. regulators have not yet finalized their proposed sweeping changes to the U.S. capital framework, including for securitization exposures (both in terms of the banking book as well as the trading book). Incentives for origination, underwriting, investment in and liquidity provision for securitized will be driven by the finalization of these rules.⁷ Dramatic increases in capital on the trading book will likely result in increased costs of and/or reduced capital and credit to end users of these markets.⁸ There may also be interplay between finalized capital rules and other reforms, such as the nature of risk retention banks prefer to hold, or where in the capital structure banks will prefer to invest or provide liquidity through their broker-dealer affiliates.

⁶ We note in this regard an initiative launched by the SEC in 2019 to review the impact of Reg AB2 that apparently has not been acted upon. At that time, the SEC's Chair noted that "While there are a number of factors that may be contributing to the absence of SEC-registered RMBS offerings, I am interested in receiving feedback on whether any portion of the Commission's 2014 ABS rules are a significant contributing factor to this absence" and "I have asked SEC staff to review our RMBS asset-level disclosure requirements with an eye toward facilitating SEC-registered offerings." More information is available here: <https://www.sec.gov/newsroom/speeches-statements/clayton-rmbs-asset-disclosure> and SIFMA's response to this call for information is available here: https://www.sifma.org/wp-content/uploads/2020/09/Joint_Trades_SEC_RMBS_Disclosures_May2020.pdf.

⁷ SIFMA has published a series of blog posts on the Basel Endgame framework. Part 1 is available here: <https://www.sifma.org/resources/news/understanding-the-current-regulatory-capital-requirements-applicable-to-us-banks/>.

⁸ See, e.g., Statement from SIFMA on Basel Endgame, available here: <https://www.sifma.org/resources/news/sifma-statement-on-proposed-rule-to-implement-the-basel-iii-endgame-in-the-u-s/>

Conclusion

We support the FSB's retrospective review of the impact of the vast amount of regulatory reform the securitization markets have undergone in the last 15 years. Indeed, every regulator should periodically review its rules to ensure they are having their intended effect and should also consider interconnections between regulations both while developing and after they issue new rules. Given that such a critical component of reform in the U.S. is incomplete, it is premature to draw conclusions before major changes to the U.S. prudential framework are finalized. In the interim, we do believe there are areas such as disclosure reforms that could be added to the analysis. FSB should extend the timeline of this effort until such time as the impact of the Basel Endgame reforms are more fully understood.

Please contact Chris Killian (ckillian@sifma.org) to discuss our views further.

Sincerely,

A handwritten signature in blue ink that reads "Chris Killian". The signature is fluid and cursive, with the first name "Chris" and last name "Killian" clearly distinguishable.

Chris Killian
Managing Director
Securitization and Credit