

Concept Paper

Proposal for having a Standardized Term Sheet for Securitization Transactions; Rationalization & Enhancement of Responsibilities of Securitization Trustees.

1. SEBI has notified SEBI (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008 (“SDI Regulations”). These regulations inter-alia specify disclosures requirements for public issuance and listing of Securitized Debt Instruments (SDIs) (both publicly issued and privately placed) and obligations of the parties involved in the transaction.
2. Schedule III of the SDI Regulations states that it shall be the duty of the trustee to ensure dissemination of adequate information to all investors of adequate, accurate, explicit and timely information fairly presented in a simple language. Further, Schedule V of the said Regulations requires comprehensive disclosures in case of public issue including details regarding asset pools, transactions & arrangements with originator, credit enhancer, underwriter, liquidity provider, securitised debt instruments, financial position, credit ratings and general affairs of the scheme or any other party to the securitisation or regulated activity.
3. The securitisation trustee plays a key role in securitisation transactions including:
 - Reporting and maintaining comprehensive records
 - Collection and payouts
 - Enforcement action where applicable
4. To build a robust and vibrant market in securitised debt instruments, it is proposed to further rationalize and clarify the roles & responsibilities of the securitisation trustees and explore some other associated aspects. Indicative Guidelines are appended at **Annexure [1]**.

5. In addition to existing disclosure requirements for securitized debt instruments, it is also necessary to have a standardised term sheet format for securitisation transactions (for both public issues and private placement).
A draft standardised securitisation term sheet is at **Annexure [2]**.

Annexure 1

Eligibility, Powers and Functions of Securitisation Trustee

Consideration of Application	<p>In addition to the requirements mentioned in the SDI Regulations, a securitisation trustee should comply with the following, namely, whether:</p> <ol style="list-style-type: none">1. It has in his employment minimum of two persons who have the experience in matters that are relevant to a securitisation trustee.2. It has in his employment at least one person who possesses the professional qualification in law from an institution recognised by the Government
Criteria for fit and proper person	<p>For the purpose of determining whether an applicant or the Securitisation trustee is a fit and proper person the Board may take into account the criteria specified in the schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.</p>
Eligibility	<p>In addition to the persons mentioned in the Regulation 4(2) of SDI Regulations, the following persons may also act as trustees of special purpose distinct entities (SPDE) without having to obtain registration from SEBI:</p> <ol style="list-style-type: none">1. a scheduled bank carrying on commercial activity; or2. a Public Financial Institution within the meaning of section 2 (72) of the Companies Act, 2013 and3. Any other person as may be specified by SEBI. <p>Provided further that the aforesaid persons and the SPDE in respect of which they are trustees shall comply with all other provisions of the SDI Regulations and any other as may be specified</p>

	by SEBI.
Capital Requirement	The capital requirement shall not be less than the net worth of two crore rupees.
Obligation before appointment as securitisation trustee	<ol style="list-style-type: none"> 1. Enters into a written agreement with the SPDE (before the opening of the subscription for issue of securitized debt instruments.) 2. Agreement shall inter alia contain details that the securitisation trustee has agreed to act as such under the trust deed for securing an issue of securitized debt instruments for the SPDE and the time limit within which the security for the securitized debt instruments shall be created.
Duties	<p>It shall be the duty of every securitisation trustee to:</p> <ol style="list-style-type: none"> 1. Call for periodic reports from the sellers of the receivables or the assignors; 2. Take possession of trust property in accordance with the provisions of the trust deed; 3. Supervise the implementation of the conditions regarding creation of security for the securitized debt instruments; 4. Enforce security in the interest of the investors; 5. Do such acts as are necessary in the event the security becomes enforceable; 6. Carry out such acts as are necessary for the protection of the investors and to do all things necessary in order to resolve their grievances 7. Ascertain and satisfy itself that the securitized debt instruments

	<p>have been duly allotted to the investors and that amounts are distributed to PTC holders in accordance with the trust deed.</p> <ol style="list-style-type: none">8. Ensure on a continuous basis that the trust property is available and adequate at all times to pay the securitized debt instruments holders;9. Exercise due diligence to ensure compliance by the sellers/assignors, with the provisions of the Companies Act, the listing agreements (if applicable), the trust deed or other applicable laws;10. Take appropriate measures for protecting the interest of the investors as soon as any breach of the trust deed or law comes to his notice;11. Ascertain that the securitized debt instruments have been repaid or redeemed in accordance with the provisions and conditions under which they were offered to the investors;12. Inform the investors and SEBI immediately of any breach of trust deed or provision of any law;13. Communicate to the investors on [a suitable periodic basis] compliance by the Servicer with its obligations and action taken therefor.14. Carry out the following:<ol style="list-style-type: none">(a) discuss and finalise the reporting requirements with the servicer, keeping in mind the disclosure and requirements specified by SEBI and the risks identified in the transaction.(b) obtain reports regarding payments of the securitized debt
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	<p>instruments and the performance of the underlying pool;</p> <p>(c) report to investors as per the requirement of the transaction</p> <p>(d) obtain a certificate from the Sellers/Assignors auditors regarding the underlying pool assigned to the securitisation trust.</p> <p>15. Call a meeting of all the investors on:</p> <p>(a) a requisition in writing signed by at least one-tenth of investors in value for the time being outstanding;</p> <p>(b) the happening of any event, which constitutes a servicer default or which in the opinion of the securitisation trustees affects the interest of the investors</p> <p>16. Not relinquish responsibility as securitisation trustee in respect of the issue, unless and until another securitisation trustee is appointed in its place.</p> <p>17. Maintain the net worth requirements as specified in these regulations on a continuous basis and shall inform SEBI immediately in respect of any shortfall in the net worth and in such a case it shall not be entitled to undertake new assignments until it restores the net worth to the level of specified requirement within the time specified by SEBI.</p> <p>18. Inspect books of account, records, registers of the Assignors/Seller and the trust property to the extent necessary for discharging its obligations</p>
<p>Minimum system requirements</p>	<p>A securitisation trustee must have appropriate systems that permit the trustee to:</p> <ul style="list-style-type: none"> - Enter initial transaction information and subsequent collection reports - Generate cash flows, payment reports and meet all reporting

	<p>requirements required under SEBI / RBI guidelines</p> <ul style="list-style-type: none"> - Record investor information - Enter and maintain data for the SPDE, including cash flows, audited financials, taxation aspects etc. - Generate cheques / demand drafts / RTGS requests etc. for online payments - Sufficient access controls to ensure confidentiality of data - Sufficient backup and disaster recovery - Others as appropriate <p>Trustees may indicate to SEBI a time frame (not exceeding 12 months) for implementing such a system.</p>
<p>Appointment of compliance officer.</p>	<ol style="list-style-type: none"> 1. Every securitisation trustee shall appoint a compliance officer who shall be responsible for monitoring the compliance of the acts, rules and regulations, notifications, guidelines, instructions, etc., issued by SEBI or the Central Government and for redressal of investors' grievances. 2. A compliance officer shall be a member of Institute of Chartered Accountants of India/ Institute of Company Secretaries of India/ Institute of Cost and Works Accountants of India or any other professional body as may be specified by the Board. 3. The compliance officer shall report any non-compliance, of the requirements specified in the relevant securitisation transaction documents and listing agreement, if applicable, with respect to Securitized Debt Instruments and investors, by the body corporate to SEBI.
<p>Code of Conduct</p>	<p>As Specified in Schedule 1 Below</p>

SCHEDULE 1
CODE OF CONDUCT

1. A Securitisation Trustee shall make all efforts to protect the interest of investors.
2. A Securitisation Trustee shall fulfil its obligations in a prompt, ethical and professional manner.
3. A Securitisation Trustee shall take all reasonable steps to establish the true and full identity of each of its clients, and of each client's financial situation and maintain record of the same.
4. A Securitisation Trustee shall ensure that any change in registration status/any penal action taken by Board or any material change in financial position which may adversely affect the interests of clients/PTC holders is promptly informed to the clients and any business remaining outstanding is transferred to another registered intermediary in accordance with any instructions of the affected clients.
5. A Securitisation Trustee shall avoid conflict of interest and make adequate disclosure of its interest.
6. A Securitisation Trustee shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about its clients which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.
7. A Securitisation Trustee shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as securitisation trustee which would impair its ability to render fair, objective and unbiased services.
8. A Securitisation Trustee shall not indulge in any unfair competition, which is likely to harm the interests of other trustees or investors or is likely to place such other Securitisation trustees in a disadvantageous position while competing for or executing any assignment nor shall it wean away the clients of another trustee on assurance of lower fees.

- 9.** A Securitisation Trustee shall share information available with it regarding client companies, with registered credit rating agencies.
- 10.** A Securitisation Trustee shall provide clients and investors with adequate and appropriate information about its business, including contact details, services available to clients, and the identity and status of employees and others acting on its behalf with whom the client may have to contact.
- 11.** A Securitisation Trustee shall endeavour to ensure that—

 - (a) inquiries from investors are adequately dealt with;
 - (b) grievances of are redressed in a timely and appropriate manner;
 - (c) where a complaint is not remedied promptly, the investor is advised of any further steps which may be available under the regulatory system
- 12.** A Securitisation Trustee shall maintain required level of knowledge and competency and abide by the provisions of the Act, regulations and circulars and guidelines. The securitisation trustee shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003.
- 13.** A Securitisation Trustee or any of its directors, partners or manager having the management of the whole or substantially the whole of affairs of the business, shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading.
- 14.** A Securitisation Trustee shall ensure that the Board is promptly informed about any action, legal proceeding, etc., initiated against it in respect of any material breach or non-compliance by it, of any law, rules, regulations, directions of the Board or of any other regulatory body.
- 15.** (a) A Securitisation Trustee or any of his employees shall not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non-real-time unless a disclosure of his interest including long or short position in the said security has been made, while rendering such advice.

(b) In case, an employee of the Securitisation Trustee is rendering such advice, the Securitisation trustee shall ensure that he discloses his interest, the interest of his dependent family members and that of the employer, including their long or short position in the said security, while rendering such advice.

- 16.** A Securitisation Trustee shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).
- 17.** A Securitisation Trustee shall ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.
- 18.** A Securitisation Trustee shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients, the investors and other registered entities from financial loss arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.
- 19.** A Securitisation Trustee shall be responsible for the acts or omissions of its employees and agents in respect to the conduct of its business.
- 20.** A Securitisation Trustee shall provide adequate freedom and powers to its compliance officer for the effective discharge of its duties.
- 21.** A Securitisation Trustee shall ensure that the senior management, particularly decision makers have access to all relevant information about the business on a timely basis.
- 22.** A Securitisation Trustee shall ensure that good corporate policies and corporate governance is in place.
- 23.** A Securitisation Trustee shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate conduct for its employees and officers in the carrying out of their duties. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance of conflict of interests, disclosure of shareholdings and interests, etc.
- 24.** A Securitisation Trustee shall not be party to—

- (i) creation of false market;
- (ii) price rigging or manipulation;
- (iii) passing of unpublished price sensitive information in respect of securities which are listed and proposed to be listed in any stock exchange to any person or intermediary.

25. A securitisation trustee shall ensure that the Seller/Assignor/Service (as appropriate) fulfils the following obligations:

- a. to keep proper books of account open for inspection by the Securitisation Trustee.
- b. to furnish whatever required information to the Securitisation Trustee including copies of reports, balance sheets, profit and loss accounts etc.
- c. to keep charged property/security adequately insured and in proper condition.
- d. to permit the Securitisation Trustee to enter and inspect the state and condition of charged assets.
- e. to pay all taxes, cesses, insurance premia with respect to charged property/security, on time.
- f. to comply with all guidelines/directions issued by any regulatory authority, with respect to the securitisation transaction.
- g. to inform the Securitisation Trustee about any change in nature and conduct of business by itself before such change.
- h. to keep the Securitisation Trustee informed of all orders, directions, notices, of court/Tribunal affecting or likely to affect the assigned assets.
- i. to inform the Securitisation Trustee of any major change in composition of its Board of Directors.
- j. to submit any such information, as required by the Securitisation Trustee.
- k. to pay fee or commission of the Securitisation Trustee.

Annexure-2

Draft Terms and Conditions for Securitisation of _____

Originators	_____, _____ (each referred to as an “Originator” and collectively referred to as the “Originators”)
Trustee	[name of trustee]
Issuer	[name of SPDE]
Trust Property	Includes, inter-alia, Initial Contribution, all other contributions received by the Trustee including contributions received from the Investors towards subscription amounts for the securitized debt instruments issued by the Issuer, the Receivables.
Initial Contribution to the SPV	INR []
Transaction Size	INR []
Pool Principal on Settlement Date	INR []
Pool Cut Off Date	[date] [Specify future cut offs, if revolving in nature / purchase of future receivables]
Settlement Date	[date]
Payout Dates	As set out in Annexure 1
Transaction Structure	Each Originator proposes to sell the following assets to the Issuer on the Settlement Date: [nature of assets]

	<p>[description of assets]</p> <p>[amount]</p> <p>The aggregate of the assets shall be referred to as the “Total Pool”.</p> <p>Each sale will be by way of a legal “True Sale” involving the assignment of the Total Pool to the Issuer, assigning thereby all the rights, title and interest of the Originators in the Total Receivables.</p> <p>The assignment shall be to the end and intent that the Issuer shall thereafter be deemed to be the full and absolute legal and beneficial owner of the Total Pool.</p> <p>[specify if par / premium / discount deal]</p> <p>The Issuer intends to issue [] securitized debt instruments representing an undivided beneficial interest in the Issuer's property including the Pool.</p> <p>[specify if there are future sales]</p>
Receivables	[detailed description of the nature of the assets being sold]
Total Receivables	Mean the aggregate of all the Receivables.
Disclosure on key pool features and composition	LTV-based, tenure-based, ticket size based distribution etc
Collection Period	_____
Servicer	<p>_____, _____ (individually referred to as a “Servicer” and collectively referred to as the “Servicers”)</p> <ul style="list-style-type: none"> • Obligations of the Servicer(s) (including reporting obligations)

	<ul style="list-style-type: none"> • Events of default of the Servicer(s) • Right to change the Servicer(s)
Servicer Fee and Incentives	[]
Legal Counsel	<p>_____</p> <p>[specify whom the Counsel represents]</p>
Credit Enhancement for the Transaction	<ul style="list-style-type: none"> • Internal credit enhancement available for each class of securitized debt instruments, expressed in absolute amounts and as a proportion of the Pool Principal • External credit enhancement available for each class of securitized debt instruments, expressed in absolute amounts and as a proportion of the Pool Principal • Annexure that indicates how the above credit enhancement has been calculated, along with assumptions • Provider of credit enhancement
Utilisation process and conditions for utilization of Credit Enhancement	[]
Name of Designated bank (with which Cash Collateral and / or Collection and payment Account is maintained)	
Swap	Nature of the swap

	Swap counterparty, rating of the swap counterparty		
Refund / top up of Credit Enhancement	[]		
Clean-Up Call Option	[]		
Listed / unlisted	If listed: <ul style="list-style-type: none"> - Timing for listing - Conditions for remaining listed - Consequence of de-listing 		
Rating Agency(ies)	[]		
Series of securitized debt instruments	[specify seniority and subordination]		
Day count convention	[]		
	Series A1	Series A2	Series A3
	Securitized Debt Instruments	Securitized Debt Instruments	Securitized Debt Instruments
Seniority			
Notional			
Initial rating			
Final Maturity Date			
Expected Maturity Date			
Expected Yield			
Payment Schedule			

Expected payment schedule			
Promised payment schedule			
First Payout Date			
Portfolio Audit			
Eligibility Criteria for the Receivables	Regulatory requirements Investor requirements (concentration etc.)		
Minimum Holding Period, if any	Minimum Holding Period, if any, during which the receivables are held by the Originator		
Minimum Retention Requirement, if any	Continuing stake, if any, of Originator, if any, on the receivables		
Transaction Documents			
Applicable Law and Jurisdiction			
Waterfall Mechanism	Rules for cash flow to each investors and swap counterparty, and treatment of excess interest / residual cash flows and treatment , in case of prepayment of underlying loans or change in interest rate on loan		

Public Comments

Public comments on aforesaid proposals are solicited. Such comments may be e-mailed to Ms. Vandana Agarwal (vandanaa@sebi.gov.in) or Mr. Aditya Sarda (adityas@sebi.gov.in) on or before **August 28, 2014**.
