# FIDC

## Finance Industry Development Council

*(A body incorporated as a Self Regulatory Organization for Registered NBFCs)*

**101/103, Sunflower, 1st Floor, Rajawadi Road No.2, Ghatkopar (East), Mumbai – 400 077 (India)**

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December 04, 2017

**Shri Upender Gupta,**
Commissioner, GST,
The Working Group for GST,
(Banking, Financial and Insurance Sector)
New Delhi.

Respected Sir,

Re: **Securitization Transactions: Concerns of the NBFC Sector**

The source of funds (borrowings) for a Non-Banking Finance Company (NBFC) are Banks, Fixed Deposits, Money Market and Financial Institutions. The types of borrowings are:

a. Deposits from Public

b. Loans from Banks

c. Commercial Paper

d. Non-Convertible Debenture

e. Securitization

The borrowings can be either secured or unsecured. In the case of secured borrowings, NBFC offers loan/lease receivables as the security. The rate of interest and the period of borrowing (tenure), is an important determining factor for the NBFC to decide on any of the above borrowings.

Securitisation is an important source of funds as stated above. Under this transaction, the future instalments are discounted at the rate agreed with the Investors, who in general are Banks or a Consortium of Bankers, represented through a Trustee company. Thus, the Loan receivables are moved to a Trust, which

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issues Pass Through Certificates or PTC's to the investors as per the investments made.

Upon necessary documentation of the transaction between the Investor Trust and the NBFC, the identified receivables are stripped off the books of the NBFC at a discounted value to the Trust. The difference between the book value of the receivables and the discounted value received from the Investors is accounted as

income in our books over the tenure of the transaction. Such resultant value, otherwise called as "Excess interest spread"/Interest Only Strip" is nothing but the difference in value between the contracted rate of interest of the underlying loan documents of the NBFC and the contracted rate of interest between the NBFC and the Investors for acquiring the receivables. In case of most securitization transactions, the NBFC is required to offer credit enhancement (protection to the investors against NPAs arising in the pool) as mandated by the credit rating agencies.

It is therefore clear that securitization is a money transaction and one of the modes of obtaining funds by the NBFC for its business purposes. Further, securitization transactions are clearly governed by the RBI regulations and duly monitored.

**<u>Securitisation transactions - under earlier service tax regime</u>**: -

- Securitization was not subjected to tax, since the term "Service" as per Sec.65B(44)(a)(iii) - "Interpretations" - under Chapter-V of the Finance Act, 1994, clearly excluded "transactions in money".

- Further, para 2.8.9 of the Education Guide issued by CBEC in 2012 had also clarified that a secured debt was held to be transaction in money and not a 'service', extract of the same is reproduced below:

*"2.8.9 Would sale, purchase, acquisition or assignment of a secured debt like mortgage also constitute a transaction in money?*

> ***Ans*. Yes.** *However, if any service fee or processing fees or any other charges is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.”*

**Securitisation transactions - under GST regime**: -

Before advancing on the position of securitisation transactions under the current GST regime, the definitions provided for “Goods” and “Services” under GST law are reproduced below:

**Goods**

As per the Section 2(52) of CGST Act 2017, *“Goods means every kind of movable property other than* ***money*** *and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply”.*

**Services**

As per section 2(102) of CGST Act, 2017, “*Services means anything other than goods,* ***money*** *and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged”.*

Under Schedule-III of the GST Act, ***actionable claim*** is clearly excluded from the purview of GST.

**Our comments**

- From the above definitions “Goods” means to include every kind of movable property other than money and securities and the definition for “Services” means to include anything other than goods, money and securities.

- Further, securitization transaction may not fit within the definition of “Securities” as provided under Sec.2(101) of the CGST Act.

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- Securitization transactions are simple money transactions, wherein a secured debt is assigned to a Trust/Bank. Thus, it is very similar to actionable claims.

- While actionable claim is clearly excluded from the purview of GST under Schedule-III of the GST Act, same position needs to be extended to securitization transactions.

- Transfer of secured debt would involve transfer of receivables from one person to another and would amount to a transaction in money between two distinct persons, thus should not fall under the definition of 'Goods' as well as 'Services' under the GST Law.

- Though inference can be drawn from the Education Guide issued by CBEC in 2012 ***wherein secured debt was held to be transaction in money and not a 'service'***, absence of appropriate clarification from the Government may lead to unnecessary interpretations and litigations.

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***Suggested:***

Hence it will bring great relief for the NBFC business if the GST council through a Notification/Circular confirms the position about the non-applicability of GST on securitization transactions.

We hope that our above said concerns shall be given a favorable consideration.

Thanking you in anticipation

Warm Regards

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For **FINANCE INDUSTRY DEVELOPMENT COUNCIL**


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