

SEC Proposes Rule to Prohibit Conflicts of Interest in Certain Securitizations

FOR IMMEDIATE RELEASE

2023-17

Washington D.C., Jan. 25, 2023 — The Securities and Exchange Commission today proposed a rule to implement Section 27B of the Securities Act of 1933, a provision added by Section 621 of the Dodd-Frank Act. The rule is intended to prevent the sale of asset-backed securities (ABS) that are tainted by material conflicts of interest. Specifically, the rule would prohibit securitization participants from engaging in certain transactions that could incentivize a securitization participant to structure an ABS in a way that would put the securitization participant's interests ahead of those of ABS investors. The Commission originally proposed a rule to implement Section 27B in September 2011.

"I am pleased to support this re-proposed rule as it fulfills Congress's mandate to address conflicts of interests in the securitization market, which contributed to the 2008 financial crisis," said SEC Chair Gary Gensler. "This re-proposed rule is designed to help address conflicts of interest arising with market participants taking positions against investors' interests. Further, as required by Section 621 of the Dodd-Frank Act, the re-proposed rule provides exceptions for risk-mitigating hedging activities, bona fide market making, and certain liquidity commitments. These changes, taken together, would benefit investors and our markets."

If adopted, new Securities Act Rule 192 would prohibit an underwriter, placement agent, initial purchaser, or sponsor of an ABS, including affiliates or subsidiaries of those entities, from engaging, directly or indirectly, in any transaction that would involve or result in any material conflict of interest between the securitization participant and an investor in such ABS. Under the proposed rule, such transactions would be "conflicted transactions." They include, for example, a short sale of the ABS or the purchase of a credit default swap or other credit derivative that entitles the securitization participant to receive payments upon the occurrence of specified credit events in respect of the ABS. The prohibition on conflicted transactions would commence on the date on which a person has reached, or has taken substantial steps to reach, an agreement that such person will become a securitization participant with respect to an ABS, and it would end one year after the date of the first closing of the sale of the relevant ABS.

The proposed rule would provide certain exceptions for risk-mitigating hedging activities, bona fide market-making activities, and certain commitments by a securitization participant to provide liquidity for the relevant ABS. The proposed exceptions would focus on distinguishing the characteristics of such activities from speculative trading. The proposed exceptions would also seek to avoid disrupting current liquidity commitment, market-making, and balance sheet management activities.

The public comment period will remain open for 60 days following publication of the proposing release on the SEC's website or 30 days following publication of the proposing release in the Federal Register, whichever period is longer.

###

Related Materials

- [Proposed Rule](#)
- [Fact Sheet](#)