Press Release

SEC Adopts Rule to Prohibit Conflicts of Interest in Certain Securitizations

FOR IMMEDIATE RELEASE
2023-240

Washington D.C., Nov. 27, 2023 — The Securities and Exchange Commission today adopted Securities Act Rule 192 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. It prohibits a securitization participant, for a specified period of time, 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 the relevant ABS. Under new Rule 192, such transactions would be "conflicted transactions."

Consistent with the statute, Rule 192 provides exceptions for risk-mitigating hedging activities, liquidity commitments, and bona fide market-making activities of a securitization participant. These exceptions permit certain market activities, subject to satisfaction of the specified conditions, which will allow securitization participants to continue important risk management, liquidity commitment, and market-making activities.

"I am pleased to support this rule as it fulfills Congress's mandate to address conflicts of interests in the securitization market, a market which was at the center of the 2008 financial crisis," said SEC Chair Gary Gensler. "As directed by Congress, today's rule prohibits securitization participants — including those who sell or facilitate the sale of an asset-backed security — from engaging in transactions that involve or result in any material conflict of interest with investors in that ABS. Further, as required by Section 621 of the Dodd-Frank Act, the final rule provides exceptions for risk-mitigating hedging activities, bona fide market making, and certain liquidity commitments. Such a rule benefits investors and issuers alike."

Under new Rule 192, conflicted transactions include a short sale of the relevant ABS, 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, or a transaction that is substantially the economic equivalent of the aforementioned transactions, other than any transaction that only hedges general interest rate or currency exchange risk.

The adopting release is published on SEC.gov and will be published in the Federal Register. Rule 192 will become effective 60 days after publication in the Federal Register. Compliance with Rule 192 will be required with respect to any ABS the first closing of the sale of which occurs 18 months after the date of publication in the Federal Register.

###

Related Materials

- Rule Details