



---

MORTGAGE BANKERS ASSOCIATION

March 27, 2023

Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**RE: Request for Public Comment Regarding Proposed Rule 192  
“Conflicts of Interest Relating to Certain Securitizations”  
File Number S7-01-23**

Dear Ms. Countryman:

The Mortgage Bankers Association (MBA)<sup>1</sup> appreciates the opportunity to comment on proposed Rule 192 (the “Proposed Rule”)<sup>2</sup> under the Securities Act of 1933 (the “Securities Act”). When adopted in its final form by the Securities and Exchange Commission (the “Commission”), Rule 192 will implement Section 27B of the Securities Act (“Section 27B”)<sup>3</sup>, which prohibits certain material conflicts of interest in securitizations, subject to the exceptions set forth therein.

## OVERVIEW

Section 27B generally provides, with some exceptions, that a securitization participant (i.e., underwriter, placement agent, sponsor, etc.) of an asset-backed security cannot engage in any transaction that would result in a material conflict of interest with respect to any investor in such transaction.<sup>4</sup> Section 27B further requires the Commission to implement rules for the

---

<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

<sup>2</sup> 88 Fed. Reg. 9678

<sup>3</sup> Section 27B was added to the Securities Act by Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

<sup>4</sup> 15 U.S.C. 77z-2a(a)

purpose of implementing this prohibition.<sup>5</sup>

MBA appreciates the need for the Commission to curb transactions that represent a “bet” against a securitization and present material conflicts of interest between certain securitization participants and investors. The Proposed Rule, however, is flawed in several respects and presents a significant risk to the efficiency of our securitization market and the crucial role it serves in providing liquidity to the overall financial system. Securitization is a vital component of commercial and residential mortgage lending as it provides access to much needed capital and the ability to effectively manage risk. The Proposed Rule, as written, is overly broad and could inadvertently stifle the securitization markets and access to capital.

## **COMMENTS**

### **Definition of Sponsor:**

- **Servicers and special servicers should not be considered sponsors and it is recommended that the definition of “sponsor” be revised to reflect this concept.** The current definition of sponsor does not clearly and explicitly exclude servicers and special servicers. The definition of sponsor states that an entity that directs or causes the direction of the design of an asset-backed security is a sponsor and that servicers should fall within the exclusion in the definition of “sponsor” if they only perform activities “relating to the ongoing management and administration of the entity that issues the ABS.”<sup>6</sup> Servicers and Special Servicers engage in a variety of activities, including the administration of mortgage loans and in the case of special servicers, negotiating modifications of the mortgage loans. These activities do not constitute direction of the design of the asset-backed security and the Proposed Rule should be explicit in excluding them.
- **B piece buyers in Commercial Mortgage Backed Securities (“CMBS”) are investors and should not be considered sponsors. It is recommended that the definition of “sponsor” be revised to reflect this concept.** B piece buyers are investors that purchase subordinate securities and take the first loss position in a securitization. While the Proposed Rule does state generally that it is not intended to apply to persons that direct in connection with acquiring a long position in the asset-backed security<sup>7</sup>, this concept should be clearly stated in the Proposed Rule.

MBA also supports the comments and recommendations with respect to these concerns outlined in the letter submitted by the Commercial Real Estate Finance Council regarding the Proposed Rule (CREFC Letter).

---

<sup>5</sup> 15 U.S.C. 77z-2a(b)

<sup>6</sup> 88 Fed. Reg. at 9686

<sup>7</sup> See id.

### Definition of Conflicted Transaction:

- **Mortgage insurance-linked notes (MILNs), which are reinsurance-based note structures with an insurable interest and significant risk retention, should not be viewed as a conflicted transaction as defined in the Proposed Rule.** Much like a policyholder buys an insurance policy to cover a particular risk in the event of a loss, an insurer buys reinsurance to protect itself against losses under the original insurance policy. Like in any reinsurance arrangement, the mortgage insurer in an MILN has an insurable interest in the underlying policy claims and remains directly responsible for its insurance policy and related regulatory obligations, notwithstanding the reinsurance. The Commission should clarify that MILNs do not constitute conflicted transactions and further will not be viewed as a circumvention of the prohibitions in paragraph (a)(1) of the Proposed Rule.
- **As written, the proposed rule will likely create detrimental limitations on Credit Risk Transfer (“CRT”) transactions which financial institutions use to effectively manage their credit risk.** Further, the proposed rule only provides an exception to CRT transactions executed by Fannie Mae and Freddie Mac (“the GSEs”), based on the fact that they are currently in conservatorship. Under the proposed rule, CRT transactions should not be prohibited or limited solely to the GSEs. The Commission should clarify that CRT transactions including MILN are not conflicted transactions allowing market participants to maintain their ability to manage their risk.

MBA also supports the comments and recommendations with respect to these concerns outlined in the letter submitted by the Securities Industry and Financial Markets Association regarding the Proposed Rule, and the letter submitted by the following Mortgage Insurance Companies – Arch Mortgage Insurance Company, Enact Mortgage Insurance Corporation, Essent Guaranty, Inc., Mortgage Guaranty Insurance Corporation, National Mortgage Insurance Corporation, Radian Guaranty Inc. - regarding the Proposed Rule (the “MI Letter”).

### Synthetic Asset-Backed Securities

- **The Proposed Rule does not define the term “synthetic asset-backed securities” and does not provide specific guidance regarding whether any particular products are synthetic ABS.** The Commission should clarify, or expressly state, that mortgage insurance-linked notes (MILNs) are not synthetic ABS. MILNs are not designed to create exposure to mortgage loans for securitization, but rather provide reinsurance via the capital markets on insurance policies written in the ordinary course of a U.S. regulated insurance business.

MBA also fully supports the comments and recommendations with respect to this concern outlined in the MI Letter.

**MBA Response to Proposed Rule 192 “Conflicts of Interest Relating to Certain Securitizations”**

March 27, 2023

**Page 4 of 4**

MBA appreciates the opportunity to provide feedback on the Proposed Rule and we urge the Commission to carefully review the comments submitted and make revisions that appropriately narrow the rule’s scope in order to avoid negative impacts to the liquidity and risk management needs of financial institutions. If the Staff of the Commission have any questions or would like to discuss any of the recommendations proposed above, please feel free to contact Stephanie Milner ([smilner@mba.org](mailto:smilner@mba.org)) or Sasha Hewlett ([shewlett@mba.org](mailto:shewlett@mba.org)).

Sincerely,



Mike Flood  
Senior Vice President  
Commercial /Multifamily Policy & Member Engagement  
Mortgage Bankers Association



Pete Mills  
Senior Vice President  
Residential Policy & Member Engagement  
Mortgage Bankers Association