Wednesday, October 6, 2010

DODD-FRANK TITLE VI TO SECURITIES AND EXCHANGE COMMISSION.
ACTION: Request for comment.

Sec. 621 – Conflicts of Interest

The Securities & Exchange Commission must consider ensuring that their revised policies and activities explicitly, consistently, and regularly audit supervised institutions for conflicts of interest in securitizations sold by the firms. Such supervision could involve significant taxpayer expense. Alternatively, the SEC might consider simply adjusting the stakes for noncompliance at the individual-employee level where managers can be reasonably expected to know the details of their securitizations, back-to-front office operations, and other activities – and therefore can accept personal responsibility for compliance via certification that their activities have involved no conflicts of interest. For example, the numerous certifications required of municipal bond issuer management, investment bankers and advisers, and counsel at transaction closings assure (at least for high-volume / high-profile conduit-issue participants whose livelihoods depend on truthful certifications) that the principals comply with state and Federal regulations. Redistributing compliance risk toward the individual-employee level could yield cost-efficient enforcement by increasing the downside risk to anyone attempting to disguise conflicts of interest – without requiring additional taxpayer resources.

Regardless of how the Securities & Exchange Commission determines to move forward with the requirements of the Dodd-Frank Act, the SEC must make a meaningful effort to obtain experienced non-legal personnel, whether they be contract consultants or Federal employees, who have back-to-front office operational and strategic expertise and insight into how, where, and why securitization professionals might construct transactions with inherent conflicts of interest.

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