



March 23, 2023

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

Re: Prohibition Against Conflicts of Interest in Certain Securitizations, File No. S7-01-23

Dear Ms. Countryman:

On behalf of our nearly 38 million members and all older Americans nationwide, AARP appreciates the opportunity to submit its views in response to the Securities and Exchange Commission's (SEC) request for public comment on the Prohibition Against Conflicts of Interest in Certain Securitizations.¹

AARP works hard every day to help American workers save and effectively plan for retirement. We firmly believe that all financial professionals should act in the best interest of savers, putting the client's best interest first. We applaud the Commission for its work on conflicts of interest regarding certain securitization. While we agree that this area requires unique rules, AARP would like to take this opportunity to reiterate the broad importance of Regulation BI, including the need for rigorous enforcement, in ensuring the protection of all investors, especially older Americans, in interactions with their financial advisers.

The proposal prohibits underwriters, placement agents, initial purchasers or sponsors, or any affiliate or subsidiary (collectively "securitization participants") who sponsor or underwrite asset-backed-securities (ABS) from engaging in transactions where there is a material conflict of interest. The proposal would apply to certain short sales, derivatives, and financial instruments that profited from adverse developments in the ABS during a one-year period. The proposal seeks to prevent ABS that are "tainted by material conflicts of interest."

The proposal has benefited greatly from the earlier round of comment letters and the staff's understanding of changes in the market since that time.² The proposal, for example, has included prohibitions on certain material conflicts rather than relying on "information barriers." We agree with this approach. Information barriers would, as we understand them, allow units within the firm to engage in conflicted transactions if sufficiently walled off from the securitization

¹ Securities Act Release No. 11151 (Jan. 25, 2023).

² Prohibition Against Conflicts of Interest in Certain Securitizations, Exchange Act Release No. 65355 (Sept. 19, 2011).

participants. This would necessitate the implementation of a complex system designed to physically separate employees and curtail the flow of information.

We believe that such an approach could, among other things, raise concerns over enforceability and accountability. The implementation of such barriers may be difficult to monitor, particularly with respect to restrictions on the flow of information within a firm. The difficulty can be seen from several recent actions brought by the Commission against firms for the failure to identify and monitor certain “off channel” communications by employees.³ We believe an outright prohibition on conflicted transactions would more closely reflect the intent of Congress and raise fewer issues of accountability and enforceability.

The proposal also provides an exception for risk-mitigating hedging activities. The proposal would impose limits on the types of transactions eligible for the exception and require the implementation of policies and procedures “reasonably designed” to ensure compliance. Specifically, the policies would need to ensure that relevant transactions were identified, documented, and monitored. We agree that exceptions for hedging transactions, to the extent narrowly drawn and clearly defined, are appropriate.

The Commission should consider including additional mechanisms designed to promote the effectiveness of the policies and procedures. The SEC could provide increased incentives to identify relevant transactions by, for example, providing that transactions not properly identified and documented were ineligible for the exception. The SEC could also require certification of the effectiveness of the policies and procedures by the chief compliance officer or other officer responsible for ensuring proper implementation.

We reiterate our appreciation for the opportunity to provide feedback on this important issue. If you have any questions, please feel free to contact Sarah Mysiewicz of our Government Affairs office at [REDACTED].

Sincerely,



David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

³ The SEC has brought actions for inadequate monitoring of text messaging and other forms of encrypted communications by employees. <https://www.sec.gov/news/press-release/2022-174> (addressing “pervasive off-channel communications”).