March 24, 2023

By Email

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission 100 F Street, N.E.
Washington, D.C. 205499–1090 rule-comments@sec.gov

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

Ms. Countryman:

The market maker exemption affords market makers the ability to participate in certain activities that would otherwise be prohibited under existing regulations. One instance is that market makers are allowed to engage in hedging activities that relate to securitized assets, which, if done by other market participants, could create conflicts of interest.

An issue with the market maker exemption is that it can lead to conflicts of interest that are created by market makers engaging in activities such as hedging against the performance of securitized assets. Another concern is that market makers could take advantage of their exemption and gain an unfair edge over other market participants. For example, a market maker could use its exemption to build up a sizable position in a particular securitization, giving it significant influence over the pricing of securitized assets.

These worries are not theoretical, as there have been instances in the past where market makers have used their exemption to engage in activities that were not in the best interests of investors. For instance, in the Abacus 2007-AC1 securitization, a market maker was involved in structuring the transaction in a manner that benefited a hedge fund client at the expense of other investors.

After a thorough examination of the proposed rule File Number # S7-01-23, I hold the view that adopting it's market maker exemptions would adversely impact individual investors and leave room for manipulative hedge funds to operate as they see fit.

The exemptions granted for risk-mitigating hedging activities, bona fide market making, and liquidity commitments create distortions in the market that favor hedge funds and market makers who have a history of violating regulations. These exemptions also contribute to the financial instability of the United States, which can ultimately lead to political instability. Granting market makers exemptions effectively gives them sovereignty and systematic bias/privilege against ordinary market participants, which is further entrenched by legal smoothing over. Market makers need to be held accountable rather than being granted exemptions; otherwise, the market will be unfairly tilted towards a harmful form of consolidation, and there will be no genuine market making, only manipulated market conditions.

The proposed rule does not sufficiently safeguard household investors by limiting the information available to them. This lack of transparency could make it harder for them to make well-informed investment decisions, which could result in losses.

Manipulative hedge funds could take advantage of the proposed rule. These funds have a track record of manipulative behavior in the securities market, and the exemption would provide them with a new avenue to engage in such practices. By restricting the exemption to accredited investors, hedge funds could establish fake accredited investor accounts to carry out manipulative behavior beyond regulatory oversight.

In summary, I oppose any market maker exemptions being adopted in rule S7-01-23, as they would only serve to further distort and manipulate the financial market in favor of a handful of market makers and hedge funds that already have an outsize influence over the market.

Michael Calibri

Registered Voter