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SMALL BUSINESS AND ENTREPRENEURSHIP

March 27, 2023

Mr. Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549-1090

Re: Prohibition Against Conflicts of Interest in Certain Securitizations

Dear Chairman Gensler,

I write today to request that the Securities and Exchange Commission allow the public adequate opportunity to respond to complex rulemakings in order to avoid unnecessary and damaging unintended consequences.

Unfortunately, the Commission continues to press ahead with rules that would have material impact on the financial markets.

The latest such example is the Commission's re-proposal of Dodd-Frank Section 621's "Conflict of Interest" rule. While the statutory language and the Congressional record reflect a desire to eliminate the prospect of issuers intentionally designing an asset-backed security (ABS) to fail, the current proposal is much broader in its scope.

The proposal uses a sweeping definition of Covered Persons that seems to include many parties only tangentially associated with the structuring of a transaction – even "long-only" investors, servicers, insurance providers, and investors of equity tranches – and all their affiliates and subsidiaries. It does not appear to us that this was the intent of the statute, and it is unclear what, if any, benefits this will bring to the market. Certainly, more time to analyze the cost-benefit of this approach is warranted.

Additionally, the proposal offers a three-prong test for "conflicted transactions," the third of which appears to make even basic interest-rate hedging programs difficult. In its press release the Commission notes that prohibited transactions "include, for example, a short sale of the ABS or 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.[1]" But in the proposed rule the Commission also includes a prohibition against "other transactions in which a securitization participant would benefit from an actual or potential adverse performance in the deal or a decline in market value."

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[1] https://www.sec.gov/newsroom/prohibiting-conflicts-certain-securitizations

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In light of the recent volatility in the banking sector, I feel that the comment deadline will not provide sufficient time to perform the level of analysis to review the potential implications of the far-reaching changes under the proposed rule. Therefore, I urge the Commission to allow public comment periods that are adequate to analyze and assess the many implications of rules that at times number in the hundreds of pages and pose hundreds of questions. It would be a terrible outcome if Dodd-Frank provisions intended to strengthen the financial system actually weaken it because the public has not had adequate opportunity to present the Commission with its analysis of potential downstream effects of its regulations.

Thank you once again for your consideration.

Sincerely,

John Kennedy

John Kennedy
U.S. Senator