CRE Finance Council®
The Voice of Commercial Real Estate Finance

July 5, 2023

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

VIA EMAIL to rule-comments@sec.gov

Re: Proposed Rule; Prohibition Against Conflicts of Interest in Certain Securitizations, Release No. 33-11151; File No. S7-01-23

Ladies and Gentlemen:

The Commercial Real Estate Finance Council ("CREFC") appreciates the opportunity to provide further commentary to the Securities and Exchange Commission (the "Commission") on proposed Rule 192 (the "Proposed Rule") to be promulgated pursuant to Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We refer to the related release herein as the "Proposing Release."[1] We also refer the Commission to our prior comment letter, dated March 27, 2023 (the "Prior Letter").

CREFC comprises over 400 institutional members representing U.S. commercial and multifamily real estate investors, lenders, and service providers – a market with over $5 trillion of commercial real estate ("CRE") debt outstanding. Our principal functions include setting market standards, supporting CRE-related debt liquidity, facilitating the free and open flow of market information, and education at all levels. One of our core missions is to foster the efficient and sustainable operation of CRE securitizations. To this end, we have worked closely with policymakers to educate and inform legislative and regulatory actions to help optimize market standards and regulations.

We appreciate meeting with the Commission staff on April 26 and are pleased to submit a brief follow-up to our Prior Letter. As stated in that letter, we believe CMBS and CRE CLO servicers and special servicers ***should not*** be considered sponsors. These entities only perform activities "relating to the ongoing management and administration of the entity that issues the ABS" and as such, as stated in the Proposing Release, should not be considered sponsors.[2] In

[1] Proposed Rule; Prohibition Against Conflicts of Interest in Certain Securitizations, Release No. 33-11151; File No. S7-01-23, 88 Fed. Reg. 9678 (Feb. 14, 2023).
[2] The relevant text from the Proposing Release is as follows (emphasis added):

our Prior Letter, we had proposed a revision to clause (ii)(C) of the definition of "sponsor" to expressly provide for this exclusion. We propose below an alternative revision:

> (C) Notwithstanding paragraphs (ii)(A) and (ii)(B) of this definition, a person that performs only **activities relating to (1)** administrative, legal, due diligence, custodial, or ministerial acts related to the structure, design, or assembly of an asset-backed security or the composition of the pool of assets underlying the asset-backed security **or (2) the ongoing administration of the entity that issues the asset-backed security or the ongoing servicing of its related assets** will not be a sponsor for purposes of this rule.

We continue to believe that the other revisions proposed in our Prior Letter should also be implemented in order to align the Proposed Rule with the intentions expressed in the Proposing Release.

To restate those revisions:

(1) Investors (such as B-piece buyers) that act solely in connection with the acquisition of a long position, should not be considered sponsors.

(2) The exercise of contractual rights granted to, or performance of contractual obligations by, a sponsor or any other securitization participant should not be considered a conflicted transaction.

We greatly appreciate the Commission's continued consideration of our comments regarding the Proposing Release. If the Staff of the Commission has any questions or would like to discuss the above recommendations, or any of the recommendations made in our Prior Letter, please feel free to contact Sairah Burki at [redacted].

Sincerely,

Lisa Pendergast
Executive Director
CRE Finance Council

For example, we believe that the activities customarily performed by accountants, attorneys, and credit rating agencies with respect to the creation and sale of an ABS, and the activities customarily performed by trustees, custodians, paying agents, calculation agents, and other contractual service providers relating to the **ongoing management and administration of the entity that issues the ABS**, are the sorts of activities that would typically fall within the exclusion from the definition of the proposed definition of the term "sponsor." This exclusion should address the concerns of a commenter that the persons defined to be subject to the prohibition of the re-proposed rule should not inadvertently include trustees, servicers, law firms, accountants, and diligence providers. (Proposing Release, 88 Fed. Reg. at 9686)