

## MEMORANDUM

**To:** File No. S7-01-23

**From:** Office of Legislative and Intergovernmental Affairs  
U.S. Securities and Exchange Commission

**Re:** Discussion with Rep. Sherman re: Rule 621 Conflicts in Securitization

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On Tuesday, July 25, 2023, Chair Gary Gensler and his staff met with Congressman Brad Sherman and his staff. During the conversation, Rep. Sherman discussed the proposed rulemaking on Rule 621, Conflicts in Securitization (Release No. 33-11151; File No. S7-01-23) and provided the attached document entitled “Proposed Changes to Conflict of Interest Proposal.”

Commission participants:

- Gary Gensler, Chair
- Kevin Burris, Director, Office of Legislative and Intergovernmental Affairs

US House participants:

- Brad Sherman, Member of Congress
- Vilas Ramachandran, Office of Congressman Brad Sherman

## Proposed Changes to Conflict of Interest Proposal

(3) **Conflicted transaction.** For purposes of this section, a conflicted transaction means any of the following transactions with respect to which there is a substantial likelihood that a reasonable investor would consider the transaction important to the investor's investment decision, including a decision whether to retain the asset-backed security:

(i) A short sale of the relevant asset-backed security by a securitization participant;

(ii) The purchase of a credit default swap or other credit derivative pursuant to which the securitization participant would be entitled to receive payments upon the occurrence of specified credit events in respect of the relevant asset-backed security;

or

(iii) The purchase or sale of any financial instrument (other than the relevant asset-backed security) or entry into a transaction ~~through which the securitization participant would benefit from the actual, anticipated or potential:~~ that substantially replicates one or both of the types of transactions set forth in clause (i) or (ii) above by means of referencing the relevant asset-backed security or the asset pool underlying or referenced by the relevant asset-backed security;

provided that, for the avoidance of doubt, none of the following shall constitute a conflicted transaction:

(a) Any such transaction involving an account owned by a securitization participant that is managed by a third party with investment discretion, or advised by a securitization participant and sub advised by a third party with investment discretion, and the transaction-specific investment decision was not directed by the securitization participant; or

(b) Any such transaction with respect to any securitization participant that is not related to the credit risk of an asset-backed security or the underlying assets thereof, including without limitation transactions related to overall market movements (such as movements of market interest rates, currency exchange rates or home prices).