

October 20, 2023

Via Email to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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  
Release No. 33-11151 (File No. S7-01-23)

Dear Ms. Countryman:

This comment letter supplements the comment letter submitted on March 27, 2023<sup>1</sup> by the U.S. private mortgage insurance industry<sup>2</sup> in response to the request by the Securities and Exchange Commission (the “Commission”) for comments on proposed Rule 192 (the “Proposed Rule”) pursuant to Section 27B (“Section 27B”) of the Securities Act of 1933, as amended (the “Securities Act”), as set forth in Release No. 33-11151, dated January 25, 2023 (the “Release”).<sup>3</sup>

In our previous comment letter, we emphasized the importance of excluding mortgage insurance-linked notes (“MILNs”) from the undefined term “synthetic asset-back securities” in the Proposed Rule. Unlike synthetic securitizations which, as described in the Regulation AB Adopting Release, *are designed* to create exposure to an asset that is not transferred to or otherwise part of the asset pool, MILNs are not designed to create exposure to mortgage loans for securitization. They are designed to provide reinsurance on insurance policies written in the ordinary course of a U.S. regulated insurance business. MILNs are a way for private mortgage insurers to satisfy state insurance regulatory and GSE requirements and effectively transfer a portion of their insured risk to capital markets investors and thereby expand access to homeownership while protecting America’s taxpayers and placing private capital in a first loss position ahead of the GSEs.

In furtherance of the observations and recommendations made in our previous comment, we propose adding a new, limited safe-harbor to the list of excepted activities in paragraph (b) of the Proposed Rule to include the following new subparagraph (4):

(4) Private Mortgage Insurance.

The purchase or sale of any financial instrument under which the payments depend primarily on the performance of insurance against default on individual residential mortgages written by an insurance company subject to the supervision of the

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<sup>1</sup> Private mortgage insurance industry comment letter available at [www.sec.gov/comments/s7-01-23/s70123-20161715-330577.pdf](http://www.sec.gov/comments/s7-01-23/s70123-20161715-330577.pdf).

<sup>2</sup> The U.S. private mortgage insurance industry comprises the mortgage insurance company subsidiaries of Arch Capital Group Ltd., Enact Holdings Inc., Essent Group Ltd., MGIC Investment Corporation, NMI Holdings, Inc., and Radian Group Inc., all of whom are signatories to this letter.

<sup>3</sup> 88 Fed. Reg. 9678 (February 14, 2023).

insurance commission of any state of the United States or the District of Columbia or reinsurance thereof, if such insurance or reinsurance (i) requires the beneficiary of such insurance or reinsurance to have an insurable interest that is the subject of the insurance policy or reinsurance agreement and thereby carry the risk of loss with respect to that interest continuously throughout the duration of the insurance policy or reinsurance agreement, (ii) requires that loss to occur and to be proved, and that any payment or indemnification therefor be limited to the value of the insurable interest, (iii) is not traded, separately from the insured interest, on an organized market or over the counter.

Further, we propose the following language for inclusion in the adopting release for Rule 192, which would explain the addition of the exception:

We received comments on the Proposed Rule from private mortgage insurance companies, housing finance stakeholders, and federal policymakers seeking clarification that mortgage insurance-linked notes are not synthetic asset-backed securities. We understand that payments on mortgage insurance-linked notes are dependent upon a reinsurance contract reinsuring private mortgage insurance policies that are, in each case, issued by a licensed insurance company domiciled in the United States. We do not view mortgage insurance-linked note transactions with the foregoing characteristics as synthetic asset-backed securities within the meaning of Rule 192.

This narrowly tailored language would ensure that MILNs can continue to serve as an important risk management and capital management tool for private mortgage insurers who help to provide liquidity in the housing finance market while enabling access to low down payment mortgages for borrowers.

Thank you for the opportunity to submit this supplemental comment on the Proposed Rule. If it would be helpful to discuss our specific comments or general views on this issue, please contact Seth Appleton ([sappleton@usmi.org](mailto:sappleton@usmi.org)) and Kirk Willison ([kwillison@archmi.com](mailto:kwillison@archmi.com)).

Sincerely,

Arch Mortgage Insurance Company

Enact Mortgage Insurance Corporation

Essent Guaranty, Inc.

Mortgage Guaranty Insurance Corporation

National Mortgage Insurance Corporation

Radian Guaranty Inc.