

March 15, 2012

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Prohibition against Conflicts of Interest in Certain Securitizations (File Number S7-38-11)**

Dear Ms. Murphy:

This letter is being submitted as a supplement to my earlier comment letter dated December 2, 2011 (“Comment Letter”) in connection with the Securities and Exchange Commission’s proposed Rule 127B, implementing Section 621 of the Dodd-Frank Act.

The primary purpose of this letter is to establish my standing to submit the Comment Letter. Section 553(c) of the Administrative Procedure Act (“APA”) mandates that under notice-and-comment rulemaking, “the agency shall give **interested persons** an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.”<sup>1</sup> Neither the APA nor the judiciary has explicitly defined the term “interested persons” under 5 U.S.C. § 553(c).

The phrase “interested person” does appear in a related provision, § 557(d), and case law relating to that provision is instructive to ascertain the bounds of the term in § 553(c).<sup>2</sup> The term “interested person” in § 557(d) has been found to mean any person whose interest in the matter is greater than the general interest that a member of the public as a whole may have.<sup>3</sup> Even so, the interest need not be monetary, and the scope of the term is intended to be wide and inclusive.<sup>4</sup> I am a securities investor and a mortgagor whose mortgage may have been securitized as part of an ABS reference pool. This should establish my standing as an “interested person.”

Secondly, the Commission should recognize that foreign governments and banks likely do not qualify as “interested persons” under § 553(c). The Commission has received numerous letters from Canadian, Japanese and European Union government officials, as well as dozens of non-U.S. banks on the proposed implementation of the Volcker Rule.<sup>5</sup> An analysis of the statutory

---

<sup>1</sup> 5 U.S.C. § 553(c) (2011) (emphasis added).

<sup>2</sup> A term appearing in several places in a statutory text is generally read the same way each time it appears. *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994).

<sup>3</sup> *Professional Air Traffic Controllers Organization v. FLRA*, 685 F.2d 547, 562 (D.C. Cir.1982).

<sup>4</sup> *Id.*

<sup>5</sup> Yalman Onaran, *Bank Lobby Widened Volcker Rule, Inciting Foreign Outrage*, Bloomberg, Feb. 23, 2011, available at <http://www.bloomberg.com/news/2012-02-23/banks-lobbied-to-widen-volcker-rule-before-inciting-foreigners-against-law.html>.

language and legislative history behind the term “interested persons” suggests that the Commission is required to disregard these comment letters.

No court case has clarified whether foreign actors qualify as “interested parties” under § 553(c). Where a statutory term is unclear, courts have relied on the applicable legislative history to resolve the ambiguity.<sup>6</sup> In this case, the legislative history suggests that § 553(c) was promulgated with a view towards the solicitation of comment only from American interests, and not from foreign parties.

The primary purpose of § 553(c) was to serve as the administrative analogue of the legislative process, through which the **American** public finds its representative voice:

In the matter of rule making the [Administrative Procedure Act] provides, for instance, this in substance: It requires the agency to give notice of its intention to make rules and regulations. It requires the agency to allow interested parties to appear and state their views and request that certain rules and regulations be adopted. That would be much like the hearings that we now have before our committees in the House.<sup>7</sup>

The Administrative Procedure Act was promulgated in June 1946, during a period of deep suspicion of foreign influence.<sup>8</sup> It is highly unlikely that the Congressional intent behind the passage of § 553(c) was to create avenues for foreign agents to influence American regulation by qualifying as “interested parties.” Thus, the Commission should, as a matter of law, either ignore or afford substantially less weight to comment letters by foreign parties addressing the Commission’s implementation of provisions of the Dodd-Frank Act.

Thank you for your attention to this matter.

Very truly yours,

/s/

Akshat Tewary, Esq.

Via Internet Submission

---

<sup>6</sup> *U.S. v. Great Northern Ry.*, 287 U.S. 144 (1932) (“In aid of the process of construction we are at liberty, if the meaning be uncertain, to have recourse to the legislative history of the measure and the statements by those in charge of it during its consideration by the Congress.”).

<sup>7</sup> Administrative Procedure Act: Legislative History 79th Congress, 1944-46 374 (Government Printing Office 1946) (statement of Rep. Gwynne).

<sup>8</sup> See William C. Banks & M.E. Bowman, *Executive Authority for National Security Surveillance*, 50 Am. U.L. Rev. 1, 29 n.205 (2001) (noting that after World War II, “things foreign became suspect” and that “[i]n the 1946 congressional election campaign, the Republicans, sensing the public's alarm over communism, rode the issue for all it was worth, declaring that the election amounted to a choice between ‘Republicanism or communism.’”).