



May 9, 2025

VIA ELECTRONIC MAIL

Kayla M. Roberts
Acting Chief, Office of Structured Finance
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Request for Rule 192 No Action Relief

Dear Acting Chief Roberts:

SIFMA, SFA, LSTA, CREFC, and the Bank Policy Institute (collectively, the “Associations”) are seeking no action relief from the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) regarding compliance with paragraph (a)(3)(iii) of Rule 192 (the “Rule 192” or the “Rule”) under the Securities Act of 1933, as amended (the “Securities Act”). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Rule.

In particular, we respectfully request that the Staff not recommend enforcement action to the Commission for any transaction under paragraph (a)(3)(iii) of Rule 192 where the applicable Securitization Participant has adopted the policies and procedures described in “Requested Relief” below. This no action relief will benefit market participants, including our respective members (our “Members”), by providing a clear path to compliance with paragraph (a)(3)(iii) of Rule 192, consistent with the Commission’s goals.

BACKGROUND

On November 27, 2023, the Commission adopted final Rule 192 prohibiting certain conflicts of interest in securitization transactions, as mandated by Congress to implement the prohibition in Securities Act Section 27B¹ which was added by Section 621 of the Dodd-Frank

¹ 15 U.S.C. 77z-2a.

Act.² In general, Rule 192 prohibits a Securitization Participant with respect to an Asset-Backed Security (“ABS”) from directly or indirectly engaging in any Conflicted Transaction during the applicable prohibition period. The Rule defines a Conflicted Transaction in paragraph (a)(3) as follows:

(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;

(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; or³

(iii) The purchase or sale of any financial instrument (other than the relevant asset-backed security) or entry into a transaction that is substantially the economic equivalent of a transaction described in paragraph (a)(3)(i) or (a)(3)(ii) of this section, other than, for the avoidance of doubt, any transaction that only hedges general interest rate or currency exchange risk.

Paragraph (a)(3)(iii) is a broad catch-all provision intended to capture transactions that are economic equivalents of the short sale and credit default swap transactions prohibited under paragraphs (a)(3)(i) and (a)(3)(ii). In the Rule 192 adopting release (the “Adopting Release”) which was published in the Federal Register on December 7, 2023,⁴ the Commission noted that paragraph (a)(3)(iii) was intended to prohibit Securitization Participants from entering into transactions that short or buy credit protection on a pool of assets with characteristics that replicate the idiosyncratic credit performance of the asset pool supporting the relevant ABS. Accordingly, whether any individual transaction could be a Conflicted Transaction under paragraph (a)(3)(iii) would necessarily have to be a facts and circumstances determination made by the Securitization Participant. In practice, our Members have been unable to create compliance programs that would be able to demonstrate and monitor compliance with paragraph (a)(3)(iii). Specifically, the types of transactions and potentially covered situations under paragraph (a)(3)(iii) are (x) virtually limitless, (y) categorically uncertain and (z) may be indistinct from transactions free of relevant conflicts. Financial institutions could be Securitization Participants for hundreds of securitizations in any given year. In any given securitization transaction there can be multiple, if not hundreds or thousands, of individual underlying assets and/or obligors and, conversely, for any given ABS there could be a vast number of secondary transactions (or combinations of transactions) that could

² Sec. 621, Public Law 111-203, 124 Stat. 1376, 1632.

³ Although we are including paragraphs (a)(3)(i) and (a)(3)(ii) in the Background section for completeness and because they are referenced in paragraph (a)(3)(iii), we are not requesting any specific relief with respect to paragraphs (a)(3)(i) and (a)(3)(ii).

⁴ See Prohibition Against Conflicts of Interest in Certain Securitizations, 88 Fed. Reg. 85396 (Dec. 7, 2023).

look similar. Also, financial institutions could have many trading desks across the globe that are able to trade the assets and/or obligors underlying these securitizations without having any connection to the issuance of the relevant ABS. It is not possible to have a compliance program that can (x) monitor the underlying assets and/or obligors across hundreds of securitization transactions, (y) monitor trading activity of those trading desks, which could potentially enter into thousands of transactions in any given year, and (z) determine if that normal trading activity could be within the scope of paragraph (a)(3)(iii) by being the “economic equivalent” of paragraph (a)(3)(i) or paragraph (a)(3)(ii). The potential permutations are limitless and it is therefore impossible to develop a system that looks across the number and breadths of all trading desks to determine if their trading activity in the aggregate would constitute a potential paragraph (a)(3)(iii) transaction.

While the individuals working on a transaction for an Underwriter, Placement Agent, Initial Purchaser or Sponsor of the relevant ABS (each such group of individuals being an “ABS Deal Team”)⁵ would have the necessary information to determine whether another transaction would be a Conflicted Transaction, other individuals employed by such Securitization Participant act in a capacity unrelated to the structuring and issuance of the relevant ABS or the selection of the underlying assets supporting the relevant ABS (any such group of individuals being “Non-Deal Team Employees”)⁶ and would not be expected to have the necessary information to make such determinations. Typically, access to information is restricted by “need to know” policies and procedures designed to segment the flow of information between employees. Therefore, the Non-Deal Team Employees generally would not have access to the information that would make them aware that they could be entering into a potential Conflicted Transaction under paragraph (a)(3)(iii) of Rule 192 or make the facts and circumstances determination about whether or not such transaction actually is the substantial economic equivalent of a transaction described in paragraph (a)(3)(i) or (a)(3)(ii) of Rule 192. Conversely, the ABS Deal Team generally cannot inform or advise the Non-Deal Team Employees about the possibility of entering into a Conflicted Transaction under paragraph (a)(3)(iii) of Rule 192. Therefore, a compliance program based on these “need to know” policies would facilitate the ability of Securitization Participants to protect against non-compliance with paragraph (a)(3)(iii) of Rule 192 because such policies would use existing systems to prevent the type of coordination or sharing of information that could be used to violate Rule 192.

REQUESTED RELIEF

We request that the Staff not recommend enforcement action against a Securitization Participant under paragraph (a)(3)(iii) under Rule 192 with respect to any transaction related to an ABS entered into by a Non-Deal Team Employee where:

- (a) The Securitization Participant has written policies and procedures in place reasonably designed to:

⁵ These are the employees of the Securitization Participant who are involved in structuring and selling the relevant ABS.

⁶ These are all the other employees of the Securitization Participant excluding the ABS Deal Team.

- i. Prevent the coordination of ABS Deal Teams with Non-Deal Team Employees in connection with the relevant ABS; and
 - ii. Prevent access to, and receipt of, Restricted ABS Information (as defined below) by Non-Deal Team Employees from ABS Deal Teams; and
- (b) The Non-Deal Team Employees did not engage in such coordination with ABS Deal Teams and there was no access to, or receipt of, Restricted ABS Information by Non-Deal Team Employees from ABS Deal Teams; and
- (c) Even if such individuals were in technical compliance with parts (a) and (b) above, they were not part of a plan or scheme to evade the prohibition in paragraph (a)(1) of Rule 192.

As used above, “Restricted ABS Information” means, with respect to an ABS, nonpublic information about the ABS or the asset pool supporting the ABS.

The relief described in this section is the “Requested Relief”.

DISCUSSION

We believe that the Requested Relief will benefit Securitization Participants, including our Members, by providing them with clarity to facilitate compliance with paragraph (a)(3)(iii) of Rule 192. Without the Requested Relief, Securitization Participants would be in a constant state of uncertainty as to whether an innocent transaction conducted by an unconflicted transactor could inadvertently trigger a violation of Rule 192.

We believe that the Requested Relief is consistent with the intent of Congress and the spirit of Rule 192. In its discussion of the definition of Sponsor in the Adopting Release, the Commission stated the scope of such definition was “necessary to capture the relevant securitization participants that would have the incentive and ability to engage in conflicted transactions as a result of their ability to structure, design, or assemble an ABS or its underlying or referenced asset pool.”⁷ Furthermore, Rule 192 itself carves out Affiliates and Subsidiaries of an Underwriter, Placement Agent, Initial Purchaser, or Sponsor from the definition of Securitization Participant if such Affiliate or Subsidiary neither acts in coordination with an Underwriter, Placement Agent, Initial Purchaser, or Sponsor nor has access to, or receives, information about a covered ABS or the asset pool underlying or referenced by the relevant ABS prior to the date of first closing of the sale of the covered ABS. The Commission further explained in the Adopting Release:

By revising the definition of “securitization participant” in this way, the final rule aims to capture the range of affiliates and subsidiaries with the opportunity and incentive to engage in conflicted transactions without frustrating market participants’ ability to meet their obligations under other Federal- and State-level laws that require the use of information barriers or other such firewalls. Rather than an information barrier exception potentially becoming a “check-the-box”

⁷ 88 Fed. Reg. at 85411.

exercise, securitization participants will be incentivized to regularly assess their compliance programs to confirm the presence and effectiveness of their information barriers or other firewalls to prevent a potential violation of Rule 192. Moreover, this approach addresses commenters' concerns with respect to additional compliance burdens for securitization participants by not requiring that they either create new or recalibrate existing information barriers to satisfy a prescriptive set of conditions for Rule 192 compliance. The final rule is designed to provide securitization participants with the flexibility to use information barriers or other mechanisms to prevent coordination or sharing of information with an affiliate or subsidiary, while still achieving the objective of prohibiting securitization participants from engaging in conflicted transactions.⁸

Just like the Rule 192 carve-out for Affiliates and Subsidiaries, the Requested Relief would capture the range of individuals with the opportunity and incentive to engage in conflicted transactions.

The Requested Relief also would be consistent with the Commission's stated approach to accidental failures or breaches of barriers and access to information:

A securitization participant generally should consider the structure of its organization and the ways in which information is shared to assess what mechanisms should be employed to comply with Rule 192. If, for example, a securitization participant employs an information barrier, and the barrier fails, whether the affiliate or subsidiary is a securitization participant under Rule 192 will depend on the facts and circumstances. On one hand, if the failure was accidental, was quickly remedied upon discovery, and the affiliate did not use the information to influence the assets included in the ABS, then the affiliate would likely not be a securitization participant under Rule 192. On the other hand, even if the failure was accidental, but the access to information led to the affiliate using the information to influence the assets included in the ABS, then that affiliate would likely be a securitization participant for purposes of Rule 192. Additionally, if the affiliated entity did not meet the terms of the definition of affiliate and subsidiary, as adopted, at the time that it enters into the conflicted transaction (i.e., it did not act in coordination with the named securitization participant and did not have information (or access to information) about the ABS or the asset pool prior to closing), such affiliated entity would not then retroactively become a securitization participant upon the subsequent receipt of such information. For example, if an affiliate or subsidiary receives information—or has access to information—after having previously engaged in a conflicted transaction, whether the affiliate or subsidiary would then be a securitization participant under the final definition

⁸ 88 Fed. Reg. at 85417.

*depends on the facts and circumstances as they existed leading up to and at the time of the entry into the conflicted transaction.*⁹

CONCLUSION

We hereby request that the Staff not recommend enforcement action against a Securitization Participant under paragraph (a)(3)(iii) under Rule 192 with respect to any transaction related to an ABS entered into by a Non-Deal Team Employee if the applicable Securitization Participant has taken the steps described herein designed to make it unlikely that transactions would violate Rule 192's prohibition against engaging in Conflicted Transactions under paragraph (a)(3)(iii).

If you have any questions, please feel free to contact Chris Killian of SIFMA at 212-313-1126 (ckillian@sifma.org), David Dwyer of SFA at 646-589-4613 (david.dwyer@structuredfinance.org), Tess Virmani of LSTA at 212-880-3006 (tvirmani@lsta.org), Sairah Burki of CREFC at 703-201-4294 (SBurki@crefc.org), Brett Waxman of the Bank Policy Institute at 347.237.7368 (Brett.Waxman@bpi.com), or our outside counsel at Mayer Brown LLP: Stuart M. Litwin at 312-701-7373 (slitwin@mayerbrown.com) or Michelle M. Stasny at 202-263-3341 (mstasny@mayerbrown.com).

Sincerely,

SIFMA
SFA
LSTA
CREFC
Bank Policy Institute

⁹ 88 FR 85417, fn. 307.

List of Associations

SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

The Structured Finance Association (SFA) is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFA provides an inclusive network for securitization professionals to collaborate and, as industry leaders, to drive necessary changes, to be advocates for the securitization community, to share best practices and innovative ideas and to educate industry members through conferences and other programs. Further information can be found at www.structuredfinance.org.

LSTA, Inc. is a not-for-profit trade association that has been the leading advocate for the U.S. corporate lending market since 1995. The LSTA's mission is to promote a fair, orderly, efficient and growing corporate loan market while advancing and balancing the interests of all market participants. Our 600+ member institutions include commercial banks (ranging in size from GSIBs to community banks), investment banks, broker-dealers, asset managers, and institutional lenders, as well as law firms and market service providers. The LSTA undertakes a wide variety of activities in pursuit of its mission, including advocacy, thought leadership, data analytics, education, and standardization of documents, practices and operations. The LSTA's offerings are designed for the voluntary use by our members and benefit from the LSTA's ability to build a consensus of diverse stakeholders. For more information, please visit our website at www.lsta.org.

The CRE Finance Council (CREFC) is the trade association for the nearly \$6 trillion commercial real estate finance industry with a membership that includes approximately 400 companies and 19,000 individuals. Member firms include balance sheet and securitized lenders, loan and bond investors, private equity firms, servicers, rating agencies, and borrowers. For 30 years, CREFC has promoted liquidity, transparency, and efficiency in the commercial real estate finance markets, and acted as a legislative and regulatory advocate for the industry, playing a vital role in setting market standards and best practices, and providing education for market participants.

The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.