SUPPORTING STATEMENT FOR FINAL RULE RELATING TO *PROHIBITION AGAINST CONFLICTS OF INTEREST IN CERTAIN SECURITIZATIONS*

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995 ("PRA").[1]

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

On November 27, 2023, the Securities and Exchange Commission ("Commission") adopted new Rule 192 to implement Section 27B of the Securities Act of 1933 ("Securities Act") as mandated by Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). The rule prohibits, for a specified period of time and subject to certain exceptions, an underwriter, placement agent, initial purchaser, or sponsor of an asset-backed security (including a synthetic asset-backed security), or certain affiliates or subsidiaries of any such entity, from engaging in any transaction that would involve or result in certain material conflicts of interest between such entity and an investor in the relevant asset-backed security.

As required by Section 27B, the rule provides exceptions to the prohibition for risk-mitigating hedging activities, liquidity commitments, and bona fide market-making activities.

Certain provisions of the rule contain "collection of information" requirements within the meaning of the PRA. The title for the affected collection of information is "Securities Act Rule 192" (OMB Control No.: 3235-0807).

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

As adopted, Rule 192 applies to any underwriter, placement agent, initial purchaser, or sponsor[2] of an asset-backed security ("ABS") and any affiliate or subsidiary of any such entity that acts in coordination with such entity or that has access to, or receives information about, the relevant ABS or the asset pool underlying or referenced by the relevant ABS prior to the first

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[1] 44 U.S.C. §3501, *et seq*.

[2] As defined in the rule, the term "sponsor" means: any person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the entity that issues the asset-backed security; or any person with a contractual right to direct or cause the direction of the structure, design, or assembly of an asset-backed security or the composition of the pool of assets underlying or referenced by the asset-backed security, other than a person who acts solely pursuant to such person's contractual rights as a holder of a long position in the asset-backed security. Notwithstanding the provisions of this definition, a person that performs only administrative, legal, due diligence, custodial, or ministerial acts related to the structure, design, assembly, or ongoing administration of an asset-backed security or the composition of the pool of assets underlying or referenced by the asset-backed security will not be a sponsor. Furthermore, the United States or an agency of the United States will not be a sponsor for purposes of the rule with respect to an asset-backed security that is fully insured or fully guaranteed as to the timely payment of principal and interest by the United States.

closing of the sale of the relevant ABS (such entities, "securitization participants"). The rule applies to ABS as defined in Section 3(a)(79) of the Securities Exchange Act of 1934, synthetic ABS, and hybrid cash and synthetic ABS.

The final rule is designed to prevent the sale of ABS that are tainted by material conflicts of interest by prohibiting securitization participants from engaging in certain transactions that could incentivize a securitization participant to structure an ABS in a way that would put the securitization participant's interests ahead of those of ABS investors.

As required by Section 27B, the rule provides exceptions to the prohibition for risk-mitigating hedging activities, liquidity commitments, and bona fide market-making activities of a securitization participant. The rule specifies certain conditions that must be satisfied for a securitization participant to rely on these exceptions. With respect to the risk-mitigating hedging activities and bona fide market-making activities exceptions, one of these conditions is that the securitization participant establish, and implement, maintain, and enforce, an internal compliance program that is reasonably designed to ensure the securitization participant's compliance with the conditions of the relevant exception, including reasonably designed written policies and procedures. Accordingly, securitization participants will be required to either prepare new policies and procedures or update existing ones in order to rely on these exceptions. As adopted, these written policies and procedures requirements will help prevent evasion of the final rule and discourage practices that resulted in the misconduct that Section 27B was enacted to prohibit.

If a securitization participant is a regulated entity, the collection of such information (*i.e.*, policies and procedures) required by Rule 192 will provide important information to staff in the Commission's examination and oversight program, and if such securitization participant is also subject to oversight by a self-regulatory organization, this collection of information should provide important compliance information to the relevant self-regulatory organization in connection with its oversight of the securitization participant.[3]

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The rule will not require the filing of information with the Commission. The Commission notes that it does not prohibit securitization participants from using any kind of information technology to facilitate the collection and/or preparation of the information required by the rule.

4. DUPLICATION OF INFORMATION

We are not aware of any rules that conflict with or substantially duplicate the final rule.

[3] We recognize that not all securitization participants that will rely on the risk-mitigating hedging activities exception or the bona fide market-making activities exception (*e.g.*, municipal entities that are sponsors of municipal ABS) would be subject to the Commission's examination and oversight programs (or, if applicable, those of the relevant self-regulatory organization).

5. REDUCING THE BURDEN ON SMALL ENTITIES

The final rule will affect some small entities—such as municipal entities, small broker-dealers, and registered investment advisers ("RIAs") that advise hedge funds—that will be "sponsors" for purposes of the final rule. The Commission performed a Final Regulatory Flexibility Act Analysis ("FRFA"). As part of the FRFA, the Commission estimated that there are approximately 166 to 187 small entities that could be impacted by the final rule.

The Commission considered a variety of alternatives to achieve the final rule's purpose to prevent the sale of ABS that are tainted by material conflicts of interest by prohibiting securitization participants from engaging in certain transactions that could incentivize a securitization participant to structure an ABS in a way that would put the securitization participant's interests ahead of those of ABS investors. The Commission did not adopt additional alternative approaches for small entities in this rulemaking because it does not believe it would be appropriate to establish alternative compliance requirements or exempt small entities from the scope of the rule, given that investors should be protected from securitization participants that are small entities betting against the relevant ABS in the same way that they will be for larger entities. Similarly, applying different standards and legal requirements based on the size of an entity would dimmish investor protection, create unnecessary complexity, and likely result in additional costs associated with ascertaining whether a particular securitization participant is eligible to claim an exception from the rule or avail itself of such different standards and legal requirements. The final rule, however, does include a delayed implementation period for all entities.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

The policies and procedures requirements in the exceptions for risk-mitigating hedging activities and bona fide market-making activities are intended to ensure that securitization participants relying on those exceptions are in compliance with the applicable conditions to such exceptions. Failure to impose the policies and procedures requirements could give rise to evasion and reduce the efficacy of the rule.

7. SPECIAL CIRCUMSTANCES

There are no special circumstances in connection with this rule.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The rule results from the requirements of Section 27B of the Securities Act as added by the Dodd-Frank Act. In January 2023, the Commission issued a proposing release *Prohibition Against Conflicts of Interest in Certain Securitizations*,[4] which solicited comment on the proposal and the "collection of information" requirements and associated paperwork burdens of

[4] *See* Release No. 33-11151 (Jan. 25, 2023) [88 FR 9678 (Feb. 14, 2023)]. In Sept. 2011, the Commission proposed a rule designed to implement Section 27B, but no further action was taken on that proposal. *See Prohibition against Conflicts of Interest in Certain Securitizations*, Release No. 34-65355 (Sept. 19, 2011) [76 FR 60320 (Sept. 28, 2011)].

the proposed rule. Comments on the Commission's releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings, and informal exchanges. The Commission considers all comments received.

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. CONFIDENTIALITY

The collection of information is not required to be filed with the Commission or otherwise made publicly available but will not be confidential.

11. SENSITIVE QUESTIONS

No information of a sensitive nature (*e.g.*, personally identifiable information) will be required under the rule. The Commission does not collect the required policies and procedures. Therefore, a privacy act assessment is not required for this collection of information.

12. and 13. ESTIMATES OF HOUR AND COST BURDENS

The final rule requires a securitization participant to implement, maintain, and enforce written policies and procedures when it relies on the risk-mitigating hedging activities exception or the bona fide market-making activities exception. Specifically, when a securitization participant relies on the risk-mitigating hedging activities exception it is required to have established, and to implement, maintain, and enforce, an internal compliance program that is reasonably designed to ensure the securitization participant's compliance with the other requirements of the exception, including reasonably designed written policies and procedures regarding the risk-mitigating hedging activities that provide for the specific risk and risk-mitigating hedging activity to be identified, documented, and monitored. Similarly, when a securitization participant relies on the bona fide market-making activities exception it is required to have established, and to implement, maintain, and enforce, an internal compliance program that is reasonably designed to ensure the securitization participant's compliance with the other requirements of the exception, including reasonably designed written policies and procedures that demonstrate a process for prompt mitigation of the risks of its market-making positions and holdings. Accordingly, securitization participants will be required to either prepare new policies and procedures or update existing ones in order to rely on these exceptions.[5] As adopted, these written policies and procedures requirements will help prevent evasion of the final rule and discourage practices that resulted in the misconduct that Section 27B was enacted to prohibit.

[5] We estimate that only a subset of securitization participants (*e.g.*, broker-dealers) will rely on the bona fide market-making activities exception and that, while amending their written policies and procedures to address the more broadly applicable risk-mitigating hedging activities exception, such securitization participants will also amend their written policies and procedures to address the bona fide market-making activities exception.

As stated below in PRA Table 1, we estimate that there are a total of 1,277 securitization participants, all of whom could rely on the risk-mitigating hedging activities exception, and 156 securitization participants who could rely on the bona fide market-making activities exception. For the purposes of this analysis, as described below, we have made assumptions regarding actions respondents are expected to take to implement, manage, and ensure compliance with the final rule.

PRA Table 1: Estimated Number of Securitization Participants[1]

Private-label ABS sponsors	420
Municipal ABS sponsors[2]	516
Sponsors related to government-backed securities	185
Unique underwriters, placement agents, and initial purchasers that are not included in the categories above	156
Total	**1,277**

[1] The securitization participant estimates are derived from data in the Green Street Asset-Backed Alert Database, the Green Street Commercial Mortgage Alert Database, the Mergent Municipal Bond Securities Database, and information on www.ginniemae.gov and https://capitalmarkets.freddiemac.com/mbs/products/dealer-groups. To account for recent market variability, these estimates represent a two-year average of the data available from such sources for calendar year 2021 and calendar year 2022.

[2] This estimate includes municipal advisors, municipal issuers, and issuers of securitizations of municipal securities that may be sponsors for purposes of the final rule but are not municipal issuers.

We estimate that for each securitization participant relying on these exceptions, it would take approximately 80 hours to initially prepare new written policies and procedures[6] and approximately 10 hours annually to review and update those policies and procedures.[7] As a

[6] While some securitization participants may have policies and procedures in place related to hedging or market-making, we are estimating the same burden hour estimates for all securitization participants. Burden hour estimates for the preparation of new policies and procedures (80 hours) are derived from similar estimates for the documentation of policies and procedures by RIAs as required by Rule 206(4)-7 of the Advisers Act. *See Compliance Programs of Investment Companies and Investment Advisers*, Release No. IA-2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)] (taking into account industry participant comments specific to the 80-hour estimate). Because the final exceptions would require the drafting or updating of reasonably designed written policies and procedures regarding each requirement applicable to such exception, we believe 80 hours is an appropriate burden estimate.

[7] Burden hour estimates for the annual review of policies and procedures (10 hours) are derived from the same estimates for recently proposed Exchange Act Rule 17Ad-25(h). Rule 17Ad-25(h) requires updating current policies and procedures or establishing new policies and procedures to ensure ongoing compliance, which would impose an ongoing annual burden similar to the one imposed by the risk-mitigating hedging activities

result, we estimate that the annual burden for each securitization participant would be 33 hours.[8] Because these estimates are an average, the burden could be more or less for any particular securitization participant, and might vary depending on a variety of factors, such as the degree to which the participant uses the services of outside professionals or internal staff.

The following table summarizes the estimated paperwork burdens associated with the final rule.

PRA Table 2: Estimated Paperwork Burden of Final Rule 192

Final Rule 192	Estimated Burden Increase	Brief Explanation of Estimated Burden Increase
Require policies and procedures implementing, maintaining, and enforcing written policies and procedures reasonably designed to ensure compliance with the requirements of the applicable exceptions, including the identification, documentation, and monitoring of such activities.	An increase of 33 burden hours.	This is the estimated burden to initially prepare and subsequently review and update the policies and procedures.

Below we estimate the paperwork burden in hours and costs as a result of the new collection of information established by the final rule. These estimates represent the average burden for all securitization participants who could rely on the risk-mitigating hedging activities exception or the bona fide market-making activities exception, both large and small. In deriving our estimates, we recognize that the burdens would likely vary among individual securitization participants. We estimate the total annual burden of the final rule to be 42,141 burden hours. We calculated the burden estimate by multiplying the estimated number of securitization participants by the estimated average amount of time it would take a securitization participant to prepare and review and update the policies and procedures under the final rule. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. PRA Table 3 sets forth the percentage estimate for the burden allocation for the new

exception here. *See Clearing Agency Governance and Conflicts of Interest*, Release No. 34-95431 (Aug. 8, 2022) [87 FR 51812 (Aug. 23, 2022)].

[8] These estimates represent a three-year average. In deriving our estimate, the burden hour estimates for the preparation of new policies and procedures (80 hours) were added to the ongoing estimates for the annual review of policies and procedures (10 hours) for the following two years resulting in a 100 hour burden over three years, or approximately 33 hours per year. Some securitization participants may experience costs in excess of this average in the first year of compliance with the amendments and some securitization participants may experience less than the average costs. Averages also may not align with the actual number of estimated burden hours in any given year.

collection of information. We also estimate that the average cost of retaining outside professionals is $600 per hour.[9]

PRA Table 3. Estimated Burden Allocation for the Collection of Information

Collection of Information	Internal	Outside Professionals
Prohibition Against Conflicts of Interest in Certain Securitizations	75%	25%

The following PRA Table 4 summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the final rule.

PRA Table 4. Requested Paperwork Burden for the New Collection of Information

	Requested Paperwork Burden		
Collection of Information	**Securitization Participants (A)**	**Burden Hours (A) x 33 x (0.75)**	**Cost Burden (A) x 33 x (0.25) x $600**
Prohibition Against Conflicts of Interest in Certain Securitizations	1,277	31,606	$6,321,150

14. COSTS TO FEDERAL GOVERNMENT

The Federal government will not incur a cost in connection with the collection of this information.

15. REASON FOR CHANGE IN BURDEN

The rule will impose new policies and procedures requirements as a condition to reliance on the exceptions for risk-mitigating hedging activities and bona fide market-making activities. As discussed above, the policies and procedures requirements are intended to enhance the benefits of the rule. Reliance on these exceptions is voluntary, and compliance with this information collection is mandatory only if a securitization participant chooses to rely on one or more of these exceptions. For purposes of the PRA, the Commission estimates the total internal annual burden of the rule to be 31,606 burden hours and the total annual cost burden of the rule to be $6,321,150 for the services of outside professionals.

[9] We recognize that the costs of retaining outside professionals (*e.g.*, compliance professionals and outside counsel) might vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $600 per hour, consistent with other recent rulemakings.

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collection is not planned for statistical purposes.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

The information collection does not involve forms or schedules that would be required to display the OMB approval expiration date.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

There are no exceptions to certification for the PRA submissions.

B. STATISTICAL METHODS

The information collection does not employ statistical methods.