

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 56 No. 18 October 25, 2023

CONFLICTS OF INTEREST IN ASSET-BACKED SECURITIZATION: AN ANALYSIS OF PROPOSED RULE 192

On January 25, 2023, the SEC issued proposed Rule 192 (Conflicts of Interest Relating to Certain Securitizations). Proposed Rule 192 would implement the Dodd-Frank Act's prohibition of material conflicts of interest between securitization participants and investors. This article reviews Proposed Rule 192 and discusses some of the concerns and suggestions expressed by market participants in their comment letters. While the timing of the SEC's next step is uncertain, a final rule (or a re-proposed rule) could be forthcoming before the end of 2023.

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On January 25, 2023, the Securities and Exchange Commission (the "Commission") released proposed Rule 192 (Conflicts of Interest Relating to Certain Securitizations) (the "Proposed Rule"). In this article, we discuss the Proposed Rule's provisions, definitions, and exceptions. We also highlight the reaction of certain market participants as expressed in comment letters submitted to the Commission.¹

¹ To date, the Commission has received almost 200 comment letters on the Proposed Rule. This article does not purport to summarize or survey all of those letters. Rather, this article focuses primarily on the comment letters submitted by the Securities Industry and Financial Markets Association ("SIFMA"), the Structured Finance Association ("SFA"), The Loan Syndications and Trading Association ("LSTA"), and the American Bar Association ("ABA").

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This article is organized by addressing questions that are important to practitioners as they anticipate the Commission's implementation of a final rule:

- What is Proposed Rule 192?
- When Does the Proposed Rule Take Effect?
- What Transactions are Prohibited?
- Who is Covered?
- What are the Exceptions?
- What is the Compliance Period?
- What Happens Next?

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