ES161888

ANN WAGNER
2ND DISTRICT, MISSOURI

2350 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–2502
(202) 225–1621

301 SOVEREIGN COURT
SUITE 201
BALLWIN, MO 63011
(636) 779–5449

516 JEFFERSON STREET
WASHINGTON, MO 63090
(636) 231–1001

wagner.house.gov

Congress of the United States
House of Representatives

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March 24, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Chair Gensler,

We are writing to request that the Securities and Exchange Commission (the "Commission") revise the comment period for its Conflicts of Interest proposal[1] to at least 90 days post-publication in the Federal Register. This would allow the public adequate opportunity to respond to this complex rulemaking and avoid unnecessary and damaging unintended consequences.

As we noted in our letter to you dated April 13, 2022,

"Federal Agencies are required to allow the public a meaningful opportunity to participate in the regulator comment process via the Administrative Procedure Act. President Clinton's Executive Order no. 12,866 mandates that commenters must have sufficient time to submit their comments.[2] While the Administrative Procedure Act requires at least a 30-day period for commenting, Agencies may provide more time for particularly complex rulemakings. Additionally, if after the initial comment period the Agency decides it has not received sufficient high quality public input, it may reopen a comment period for further solicitation. The 30-day comment period is the lawful bare minimum for thoughtful rulemaking – the SEC should allow longer comment periods for complex or particularly impactful rulemaking."[3]

We are concerned that the Commission has ignored our previous request and is pressing ahead with rules that would have material impact on the financial markets. The latest example is the Commission's re-proposal of Dodd-Frank Section 621's "Conflict of Interest" rule. While the statutory language and the Congressional record reflect a desire to eliminate the prospect of issuers intentionally designing an asset-backed security to fail, the current proposal is much broader in its scope.

First, the proposal uses a sweeping definition of Covered Persons that seems to include many parties only tangentially associated with the structuring of a transaction – including "long-only" investors, servicers, insurance providers, and investors of equity tranches – and all their affiliates and subsidiaries.

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[1] https://www.sec.gov/rules/proposed/2023/33-11151.pdf.
[2] Exec. Order No. 12,866, 3 C.F.R. 638 (1993), reprinted in 5 U.S.C. § 601 note (Supp. 1993).
[3] https://www.sec.gov/comments/s7-03-22/s70322-20127548-288697.pdf.

It does not appear to us that this was the intent of the statute, and it is unclear what, if any, benefits this will bring to the market. We urge the Commission to take more time to analyze the cost-benefit of this approach before implementing it.

Additionally, the proposal's three-prong test for "conflicted transactions" may hinder basic interest-rate hedging programs. While the Commission's press release notes that prohibited transactions include short sales of the ABS and the purchase of a credit default swap or other credit derivatives,[4] the proposed rule also prohibits "other transactions in which a securitization participant would benefit from an actual or potential adverse performance in the deal or a decline in market value." Although the press release states that normal hedging and market making activities are permissible, we are skeptical given the potential impact of this prong on basic hedging strategies.

For this and other reasons, we continue to urge the Commission to allow public comment periods that are adequate to analyze and assess the many implications of rules that at times number in the hundreds of pages and pose hundreds of questions. It would be a negative outcome if Dodd-Frank provisions originally intended to strengthen the financial system weaken it because the public has not had adequate opportunity to present the Commission with its analysis of potential downstream effects of its regulations.

Thank you once again for your consideration.

Sincerely,

Ann Wagner
Chairman
Subcommittee on Capital Markets
House Committee on Financial Services

Bill Huizenga
Chairman
Subcommittee on Oversight and Investigations
House Committee on Financial Services

[4] https://www.sec.gov/newsroom/prohibiting-conflicts-certain-securitizations.