Please note that the comments expressed herein are solely my personal views

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**- 17 CFR Part 230**
**- File No. S7-38-11**
**- Prohibition against Conflicts of Interest in Certain Securitizations**

Dear Sir.

Thank you for giving us the opportunity to comment on your Proposed Rule: Prohibition against Conflicts of Interest in Certain Securitizations.

The Securities and Exchange Commission (SEC) is proposing a new rule under the Securities Act of 1933 (Securities Act) to implement the prohibition under Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) on material conflicts of interest in connection with certain securitizations. Proposed Rule 127B under the Securities Act would prohibit certain persons who create and distribute an asset-backed security (ABS), including a synthetic ABS, from engaging in transactions, within one year after the date of the first closing of the sale of the ABS, that would involve or result in a material conflict of interest with respect to any investor in the ABS. The proposed rule also would provide exceptions from this prohibition for certain risk-mitigating hedging activities, liquidity commitments, and bona fide market-making.

I fully support your proposed § 230.127B, which closely tracks the statutory language under Dodd-Frank. The proposed rule will benefit investors by better aligning securitization participants' incentives with those of investors in the ABS. In particular, I agree with SEC Chairman Mary L. Schapiro that: "This proposed rule is designed to ensure that those who create and sell asset-backed securities cannot profit by betting against those same securities at the expense of those who buy them".[1] I would like to comment on your interpretation of "material conflict of interest" and on exceptions for certain risk-mitigating hedging activities.

[1] See SEC Press Release, 19 September 2011.

Material conflict of interest

I agree with your decision to clarify the scope of material conflicts of interest through interpretive guidance rather that through a detailed definition in the proposed rule. This will allow you to be more flexible in your determinations in order to target an appropriate level of inclusiveness over time, whilst also permitting the many natural conflicts of interest that are an inherent part of the securitization process.

The proposed two-part test, which is based on the concept of "short transactions" and what a "reasonable investor" would consider, is very sensible. Securitization participants have a duty to monitor conflicts of interest, and a short transaction clearly creates indefensible conflicts of interest, whether intentionally or not. Furthermore, the "reasonable investor" test is a well-established part of securities law, in which markets and participants have significant experience.

Section IV of the Proposed Rule raises the possibility of using information barriers and disclosures in lieu of a complete prohibition under proposed § 230.127B(a). I would advise against this. Although I am generally in favour of using information barriers and disclosure to mitigate conflicts of interest, I would suggest that short transactions should be absolutely prohibited[2] in the context of the Proposed Rule: we must presume that a material conflict of interest situation where a securitization participant engages in a transaction through which it benefits when the related ABS fails or performs adversely cannot be justified.

Risk-mitigating hedging activities

I agree with proposed § 230.127B(b)(1) concerning excepted risk-mitigating hedging activities. Such activities should be prohibited by the proposed rule. However, this is a complex area involving some subjectivity in determining whether activities are risk-mitigating, trading or speculative in nature. In order to improve transparency here I would recommend that you should define "risk-mitigating hedging activities", or at least provide interpretive guidance thereon. For example, I would propose that genuine risk-mitigating hedging activities should:

- maximise hedge effectiveness
- produce an unbiased result
- achieve planned offsetting[3]

These criteria should ensure that the hedging activities are closely aligned with genuine risk-mitigation and risk management techniques.

In response to your specific requests for comment I would add the following:

18. Yes, you should define the term "synthetic asset-backed securities" for completeness. I would suggest a wording incorporating part of your reference to synthetic securitisations in footnote 53 of the Proposed Rule would be sufficient in this regard.

[2] Absent an exemption under proposed § 230.127B(b) Excepted activity.
[3] I.e. deliberate and not accidental.

19. No, I am not convinced that any such definition or interpretation of "synthetic ABS" should include any combination of securities that produces an economic result equivalent to an ABS, whether or not collateralized or having features meeting the specific requirements of the definition of ABS. This would potentially expand the scope of the Proposed Rule beyond that intended under Dodd-Frank.
22. No, there clearly is not a point in time prior to "one year after the date of the first closing of the sale of the asset-backed security" at which the prohibition in Section 27B was not intended to apply. The statutory wording "***at any time*** for a period ending on the date that is one year after the date of the first closing of the sale of the asset-backed security" (my emphasis) clearly implies this.
23. No. Please see my answer to question 22 above.
26. Yes, the application of the proposed interpretation to conflicts of interest between securitization participants and investors in ABS would be reasonable, appropriate, and consistent with Dodd-Frank.
32. I agree with the proposed interpretation of the term "material conflict of interest" in the context of the proposed rule. Given my comments above, I do not believe that there would be any unintended chilling effect on securitization transactions resulting from potential uncertainty associated with not defining material conflict of interest. In particular, the definition of "short transactions" is quite clear.
37. For completeness, I would suggest that contractual assurance should normally be appropriate.
42. I would recommend that you should alter the wording suggested here to "fees or other forms of remuneration, including benefits or imputed benefits, or the promise of future business, fees or other forms of remuneration, including benefits or imputed benefits".
47. There is a difference between "positions or holdings" and "actual risks created by actual positions" and "actual exposures". I agree with the quote, which is referenced in footnote 91 of the Proposed Rule, that: "firms must hedge actual risks created by actual positions that left them with actual exposures". This would ensure that firms do not inappropriately profit from "risk-mitigating hedging activities" by overhedging "positions or holdings" that are already hedged by offsetting positions or other risk mitigations already implicitly, or explicitly in place.

Yours faithfully

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