March 17, 2025

VIA ELECTRONIC MAIL

Mark T. Uyeda
Acting Chairman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Industry Concerns about Compliance with Rule 192 "Conflicts of Interest Relating to Certain Securitizations"

Dear Chairman Uyeda:

SIFMA, SFA, LSTA, CREFC, and the Bank Policy Institute (collectively, the "Associations") appreciate the opportunity to request that the Securities and Exchange Commission (the "Commission") reconsider and delay the implementation of Rule 192 (the "Rule 192" or the "Rule") under the Securities Act of 1933 (the "Securities Act"), which was adopted on November 23, 2023.[1] This request is based on the significant challenges that our respective members, as detailed in the footnotes below, (our "Members") have faced while attempting to create Rule 192 compliance programs.

Our Members began working on their respective Rule 192 compliance programs immediately after Rule 192 was adopted.[2] However, as our Members worked through the issues, a number of difficulties under the Rule became clear, including the following:

- It is virtually impossible for our Members to develop Rule 192 compliance programs that result in compliance with clause (a)(3)(iii) of Rule 192. Clause (iii) is an extremely broad catch-all provision for transactions that are economic equivalents of the short sale and

[1] See List of Associations at the end of this letter.

[2] For example, SIFMA began work on its "Market Guide to Implementation of Rule 192" in December 2023 and published the first edition in May 2024. The current version is available here.

credit default swap transactions prohibited under clauses (i) and (ii). Our Members have found clause (iii) to be unclear and unworkable, and that the types of transactions and unique factual situations that could violate clause (iii) is potentially limitless. Some of our Members are evaluating the feasibility of compliance procedures that would track thousands of CUSIPs to flag and examine trades involving such CUSIPs, and those Members have found that even those procedures cannot systematically filter all potential conflicted transactions across their global institutions. This expensive and time-consuming exercise has, thus far, not uncovered any actual past transactions that would be conflicted transactions under Rule 192.

- The inconsistent alignment of Rule 192 with the Volcker Rule creates inefficiencies, overlaps, and compliance program design difficulties not recognized by the Commission during its consideration of the Rule:

    - While developing their compliance programs, our Members have consistently determined that the prohibitions on the short selling of and buying credit protection on asset-backed securities that are prohibited by clauses (a)(3)(i) and (a)(3)(ii) of Rule 192 are already prohibited by the Volcker Rule. It is unnecessarily burdensome for our Members to have to create specific Rule 192 compliance programs to address activity that is already prohibited.

    - The exceptions for risk-mitigating hedging activities and bona fide market-making activities are not entirely aligned with their counterparts in the Volcker Rule, negating any industry cost savings that were claimed in the Rule 192 adopting release. Even our Members with detailed Volcker Rule compliance policies have found that such policies often do not translate to the requirements of the Rule 192 exceptions. For example, the Volcker Rule exempts certain products, such as municipal, loan and GSE-bond trades, that are in-scope under Rule 192. New compliance programs will need to be developed for such products, adding cost and time that is not considered in the economic analysis of the Rule 192 adopting release.[3] Our Members are also having to address the serious problem arising from the fact that, unlike Volcker, Rule 192 does not have a "TOTUS" exemption for transactions outside the United States, so Rule 192 compliance procedures must be newly created and adopted for the non-US parts of their businesses.

    - Of course, Volcker applies only to banks and their affiliates. The entire universe of non-bank securitization participants have been required to create their compliance programs from scratch.

- The Rule 192 standard for determining whether a conflicted transaction is material is unworkable and impossible to translate into a compliance program. Rule 192 applies the "reasonable investor" materiality standard from *Basic v. Levinson*[4] to the prohibition on

[3] See, for example, Section IV.E of Prohibition Against Conflicts of Interest in Certain Securitizations, 88 Fed. Reg. 85396 (Dec. 7, 2023), https://www.govinfo.gov/content/pkg/FR-2023-12-07/pdf/2023-26430.pdf

[4] *See Basic v. Levinson*, 485 U.S. 224 (1988).

conflicted transactions. The *Basic v. Levinson* standard is a standard for what must be disclosed, not a standard for what should be prohibited, and our Members are having difficulties applying this standard outside of the context for which it was created. Materiality for a prohibition must be both narrower and better defined to be usable and helpful.

- Rule 192 does not have a clear compliance date. The Rule does not explain how our Members should handle the confusing fact that compliance is currently required, and that Rule 192 can potentially be violated today, for asset-backed securities that won't be sold until after June 9, 2025.

- Our Members are having difficulties understanding the applicability of the Rule to synthetic securitizations and other risk transfer transactions and structuring their compliance programs to allow for those transactions.

CONCLUSION

Because of these significant difficulties, we ask that the Commission pause the implementation of Rule 192 indefinitely and engage with the industry to determine what exemptive relief, guidance, or rule amendments may be appropriate to address the serious problems with the Rule and make it workable. As you noted in your statement on Rule 192 at the time of its adoption, "[i]f market participants are seeking to comply with the rule and find that there are circumstances that call for an exemption, guidance, or other relief, then the Commission or its staff should consider providing such relief."[5] Our Members have sought to comply with Rule 192 and have now come to a point where relief needs to be considered.

We note that since the adoption of Rule 192, the Trump Administration has issued several executive orders, including *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*[6] and *Regulatory Freeze Pending Review*.[7] These Executive Orders direct agencies to review regulations through a cost/benefit lens as well as to review pending rules before they are fully effective. We believe that this request is consistent with and furthers the goals of these executive orders.

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[5] Available at https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-securitizations-112723.

[6] Available at https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/. In *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative,*[6] the President's executive order asks all agency heads to review regulations that fall into certain classes, including "*(v) regulations that impose significant costs upon private parties that are not outweighed by public benefits*."

[7] Available at https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/. In *Regulatory Freeze Pending Review*,[7] the President's executive order requires that "*(3) Consistent with applicable law and subject to the exceptions described in paragraph 1, consider postponing for 60 days from the date of this memorandum the effective date for any rules that have been published in the Federal Register, or any rules that have been issued in any manner but have not taken effect, for the purpose of reviewing any questions of fact, law, and policy that the rules may raise. During this 60-day period, where appropriate and consistent with applicable law, consider opening a comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by the rules postponed under this memorandum, and consider reevaluating pending petitions involving such rules. As appropriate and consistent with applicable law, and where necessary to continue to review these questions of fact, law, and policy, consider further delaying, or publishing for notice and comment, proposed rules further delaying such rules beyond the 60-day period."*

The Associations greatly appreciate your consideration of the views set forth in this letter. We stand ready to assist the Commission in reconsidering Rule 192 and we would be grateful to have the opportunity to discuss these matters with the Commission and its staff.

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

Cc: Commissioner Hester M. Peirce
Commissioner Caroline A. Crenshaw
Kayla Roberts, Acting Chief, Office of Structured Finance

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.

The Loan Syndications and Trading Association (LSTA) 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.