

SEC STAFF NO-ACTION RELIEF SIMPLIFIES COMPLIANCE WITH ABS CONFLICTS OF INTEREST RULE

On May 16, 2025, the Staff of the Division of Corporation Finance of the Securities and Exchange Commission ("**SEC**") issued a no-action letter (the "**Rule 192 Letter**", [available here](#)) that relieves some of the compliance concerns around the "substantially the economic equivalent of a [conflicted] transaction" prong of Rule 192(a)(3)(iii) (the "**Catch-All Provision**") under the Securities Act of 1933, as amended. It does this by recognizing an alternative compliance approach based on information access restrictions.

This no-action relief responds to a joint request letter from industry groups whose members had been encountering practical difficulties in developing policies and procedures related to the Catch-All Provision. The request letter acknowledges that many industry participants already have "need to know" policies and procedures for information barriers in place. In addition, the request letter argues that the requested relief is consistent with the treatment of affiliates and subsidiaries that do not obtain information about a relevant asset-backed security or its underlying assets. Securitization participants will want to consider reviewing and updating their policies and procedures to take advantage of the relief offered by the Rule 192 Letter.

BACKGROUND

The SEC adopted Rule 192 to implement Section 27B of the Securities Act of 1933, which was added by Section 621 of the Dodd-Frank Act, to prohibit conflicts of interest in transactions involving certain asset-backed securities or synthetic

Key Takeaways

- Securitization participants will be required to comply with Rule 192 with respect to any ABS the first closing of the sale of which occurs on or after June 9, 2025.
- The Rule 192 Letter provides no-action relief to securitization participants who meet specified conditions.
- Securitization participants will want to consider whether they may need to revise their "need to know" policies and procedures to qualify for this no-action relief.

asset-backed securities (collectively, "**ABS**").¹ This rule was intended to prohibit firms from designing, underwriting and selling ABSs in which they had accumulated short positions, though the final rule's application was significantly broader. Securitization participants² will be required to comply with Rule 192 with respect to any ABS the first closing of the sale of which occurs on or after June 9, 2025.

Rule 192 generally prohibits a securitization participant from directly or indirectly engaging in any conflicted transaction during the applicable prohibition period.³ Rule 192 defines a "**conflicted transaction**" to mean a transaction:

- that falls into one of three categories described below; and
- with respect to which there is a substantial likelihood that a reasonable investor would consider the transaction important to the investor's investment decision.

The three relevant categories of transactions for purposes of Rule 192 are:

- a short sale of the relevant ABS;
- the purchase of a credit default swap or other credit derivative pursuant to which the securitization participant would be entitled to receive payments upon the occurrence of specified credit events in respect of the relevant ABS; or
- the purchase or sale of any financial instrument (other than the relevant ABS) or entry into a transaction that is substantially the economic equivalent of a transaction that falls into one of the above two categories (excluding any transaction that only hedges general interest rate or currency exchange risk).

The SEC noted in its adopting release for Rule 192 that the third category of transactions (the Catch-All Provision) is intended to prohibit securitization participants from entering into transactions that short or buy credit protection on a pool of assets with characteristics that replicate the idiosyncratic credit performance of the asset pool supporting the relevant ABS.

NEED FOR AN ALTERNATIVE COMPLIANCE APPROACH

Industry groups, including SIFMA, SFA, LSTA, CREFC, and BPI, have reported that their members have been unable to develop policies and procedures that could effectively demonstrate and monitor compliance with the Catch-All Provision because the types of transactions and situations that could violate this clause are

¹ Prohibition Against Conflicts of Interest in Certain Securitizations, 88 Fed. Reg. 85396 (Dec. 7, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-12-07/pdf/2023-26430.pdf> (the "**Adopting Release**").

² The term "**securitization participant**" is defined in Rule 192(c) to include: (i) an underwriter, placement agent, initial purchaser, or sponsor of an asset backed security or (ii) any affiliate or subsidiary of any such person who (A) acts in coordination with any such person or (B) 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 closing of the sale of the relevant ABS.

³ The "**prohibition period**" described in Rule 192(a)(1) begins on the date on which a person reaches an agreement that such person will become a securitization participant with respect to the relevant ABS. It ends on the date that is one year after the date of the first closing of the sale of such ABS.

"virtually limitless."⁴ To facilitate compliance, these groups proposed an alternative approach involving information access restrictions (*described below in more detail*). The Rule 192 Letter allows securitization participants to rely on the proposed alternative to achieve compliance regarding the third category of transactions.

TERMS OF NO-ACTION RELIEF

The Rule 192 Letter states that the SEC's Division of Corporation Finance will not recommend enforcement action to the SEC with respect to a transaction that may be subject to the Catch-All Provision when all of the following conditions are satisfied:

- the person entering into the transaction is a Non-Deal Team Employee;
- the securitization participant has written policies and procedures in place reasonably designed to: (a) prevent the coordination of ABS Deal Teams with Non-Deal Team Employees in connection with the relevant ABS; and (b) prevent access to, and receipt of, nonpublic information about the relevant ABS or the asset pool supporting the relevant ABS ("**Restricted ABS Information**") by Non-Deal Team Employees from ABS Deal Teams;
- the Non-Deal Team Employees did not engage in such coordination with ABS Deal Teams and there was no access to, or receipt of, Restricted ABS Information by Non-Deal Team Employees from ABS Deal Teams; and
- no such individuals were part of a plan or scheme to evade the prohibition in Rule 192(a)(1).

For these purposes:

- the "**ABS Deal Team**" includes the individuals working on an ABS transaction for an underwriter, placement agent, initial purchaser or sponsor of the relevant ABS (i.e., those employees of the securitization participant who are involved in structuring and selling the relevant ABS); and
- a "**Non-Deal Team Employee**" is any other individual employed by a securitization participant who acts in a capacity unrelated to the structuring and issuance of the relevant ABS or the selection of the underlying assets supporting the relevant ABS.

The relief provided by the Rule 192 Letter is based on the understanding that when all four of the conditions are met, it would be unlikely that a transaction would constitute a conflicted transaction as contemplated by the Catch-All Provision.

⁴ See Letter to Kayla M. Roberts, Acting Chief, Office of Structured Finance, SEC, dated May 9, 2025 (*available at <https://www.sec.gov/files/corpfina-no-action/sifma-et-al-rule-192-no-action-request-letter-050925.pdf>*); Letter to Mark T. Uyeda, Acting Chairman, SEC, dated March 17, 2025 (*available at <https://www.sifma.org/wp-content/uploads/2025/03/192-Request-JointTrades-2025-03-17-FINAL.pdf>*).

RECOMMENDED NEXT STEPS

To take advantage of the Rule 192 Letter, securitization participants will need to review their "need to know" policies and procedures and ensure that they are reasonably designed to:

- clearly establish which employees are ABS Deal Team members with respect to any relevant ABS; and
- prevent access to, and receipt of, Restricted ABS Information by Non-Deal Team Employees from ABS Deal Teams.

Such a review should confirm that relevant policies and procedures clearly align with the definitions for ABS Deal Team and Restricted ABS Information as contemplated by the Rule 192 Letter. Some securitization participants, particularly those with customer-facing trading operations, may already have broad experience with setting up information barriers, in which case complying with the no-action relief may be relatively simple. Other securitization participants may need to adopt revised or supplemental written policies and procedures that specifically prevent coordination of ABS Deal Teams with Non-Deal Team Employees in connection with any relevant ABS, including developing information barriers to constrain the dissemination of Restricted ABS Information to Non-Deal Team Employees.

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