Government Finance Officers Association (GFOA)
National Association of State Treasurers (NAST)
Bond Dealers of America (BDA)
Education Finance Council (EFC)
National Association of Bond Lawyers (NABL)
National Association of Municipal Advisors (NAMA)
National Association of Health and Educational Facilities Finance Authorities (NAHEFFA)
National Council of State Housing Authorities (NCSHA)
Securities Industry and Financial Markets Association (SIFMA)

March 27, 2023

Vanessa A. Countryman
Secretary
Securities and Exchange Commission (SEC)
100 F Street, NE
Washington, DC 20549-1090

RE: Prohibition Against Conflicts of Interest in Certain Securitizations
[Release No. 33-11151; File No. S7-01-23]

Ms. Countryman,

On behalf of issuers of municipal securities and other market participants our organizations collectively represent, we write to you in response to the U.S. Securities and Exchange Commission's ("SEC's") supplemental proposed rule on Prohibition Against Conflicts of Interest in Certain Securitizations (Release No. 33-11151), dated January 25, 2023. Members of our organizations represent nearly all aspects of the municipal securities market, including municipal securities issuers ("issuers"), broker-dealers, municipal advisors, and legal counsel.

We appreciate the SEC's continued work to implement provisions of the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and ensure the municipal securities market remains transparent and resilient through financial turmoil. We do not, however, understand the need for the broad inclusion of municipal securities and their issuers in the proposed rule now before the SEC. We are particularly concerned about the proposal's impact on issuers— state and local governmental entities— which mostly access the municipal market to finance critical infrastructure and community resources. These issuers may now face unnecessary liability, cost, and compliance burdens if the proposal is enacted as drafted. As such, we maintain our position, previously outlined in prior rulemaking processes, that municipal securities should be broadly excluded from the definition of asset-backed securities ("ABS"), and that issuers should be excluded from this proposal's definition of "securitization participants" and "ABS sponsors." [1, 2]

We seek to answer some of the specific questions included in the proposal release (see Appendix A) but wish to start by making a few broad points in support of our position:

- **Exclude municipal securities and their issuers from key definitions of the proposal:** The SEC has not provided evidence that a need for the proposal to include municipal securities and their issuers exists. In its proposal, the SEC indicates that it does not "have data on the extent [to which conduct the proposal aims to prohibit exists] following the financial crisis of 2007-2009." Several unique features of the municipal securities market further illustrate that 1) the abusive behavior the proposal seeks to prohibit is unlikely to occur in the municipal securities market; 2) municipal securities should be excluded from the definition of ABS, and 3) issuers should be excluded from the proposal's definitions of "securitization participant" and "ABS sponsor."

    - **Municipal securities issuers are mission driven and without a profit motive that the SEC is concerned about:** Issuers are ultimately accountable to their electorate. As issuers, state and local governments and other entities generally access the municipal market to raise capital for infrastructure; provide affordable mission-driven finance for other public works such as affordable housing, hospitals, educational institutions, higher education loans; or other general services for the public. As investors of public funds, governments focus on principal preservation and modest growth within a state regulatory structure that largely restricts and avoids engaging in speculative behavior, as discussed below in more detail. Municipal securities issuers are not driven by a profit motive to engage in such behavior.

    - **Debt issuance functions and investment functions are separate:** It remains unclear exactly which municipal securities would fall under the proposal's definition of ABS and what constitutes an affiliate or subsidiary of a municipal securities issuer for the purposes of this proposal. We speculate that most of the impacted transactions would be conduit financings for projects such as affordable housing and student loans, other pooled financings offered to entities from an issuer (e.g. "bond banks"), and offerings that securitize municipal revenues or other sources of income. These financings are usually handled by specialized agencies within states that exist for this sole or limited purpose. The inclusion of single asset conduit issuers and transactions in these definitions, as implied in footnote 31 of the proposal, would be particularly onerous to the municipal market. These agencies' investment practices are generally limited to actions necessary to carry out the function of these financings. Broader investment operations are carried out by other agencies within the state or local government that are largely separate from these issuer agencies in a way that would limit or prohibit the communication of information that could lead to conflicted transactions.

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[1] See letter from Government Finance Officers Association (GFOA) et. al. to the SEC on "File Numbers S7-24-10 and S7-26-10," dated November 15, 2010. Web access: https://www.sec.gov/comments/s7-24-10/s72410-37.pdf

[2] See letter from National Association of Bond Lawyers (NABL) to the SEC on "File Nos. S7-24-10 and S7-26-10." Web access: https://www.nabl.org/resources/response-sec-proposals-abs-2010/

- **Existing safeguards render application of the proposed rule to municipal securities and issuers redundant, potentially costly, and unnecessarily burdensome:** Perhaps most importantly, municipal and state entities have existing safeguards in place that already offer sufficient safeguards to investors. Strict investment policies, oftentimes set by statute and centered on preservation of principal or moderate growth, limit the ability of state and local governments as investors to engage in speculative investments; state sunshine laws and existing disclosure practices already offer transparency in the municipal securities market; and existing tax law relating to tax-exempt securities already limits the ability of investors to engage in certain adversarial investments against a large portion of the municipal securities market.

- **The municipal market has not had sufficient time to fully understand the impact of this broad proposal:** Sixty days is not enough time for the municipal securities market to fully understand the potential impacts that such a broadly defined proposal may have on our critical market, including issues like the interplay between municipal securities and municipal tender option bonds. While the definition of ABS has evolved through SEC rulemaking endeavors since the enactment of Dodd-Frank, it remains unclear to what extent this proposal's definition of ABS would include securities issued in our market. The proposal itself estimates that, in calendar year 2021, there was a total $104 billion in municipal ABS issuance across 1,928 deals, and 478 unique municipal entities that sponsored municipal ABS. These statistics indicate that, if in effect in 2021, the proposal would have impacted more than 21 percent of long-term issuance in the municipal market for that year.[3] A rule with such widespread consequence to this market warrants substantially more discussion with its participants. This proposal crosses many areas of expertise in public finance and diverse financing structures used by issuers. As such, representatives from all facets of the issuer community should have a discussion with appropriate SEC staff, so that all parties understand how the proposal could impact state and local governments that issue debt. Additionally, municipal market participants will continue to consider the impact of the proposal as they fully analyze and assess the impacts this proposal could have on a significant portion of the municipal securities market. As such, our organizations may collectively or individually provide additional comments to the SEC as we gain a greater understanding of the proposal's impact.

The beneficiaries of municipal securities transactions are the constituents of the issuer who benefit from their state's or community's access to lower borrowing costs. Conduit financings, in particular, benefit millions of constituents through lower student loan borrowing costs, increased access to affordable housing, lower-cost financing for higher education, health care facilities, clean drinking water systems, and greater infrastructure cost savings through economies of scales offered in pooled municipal financings. Any chilling effect to these markets posed by this proposal would ultimately be felt by these constituents in the form of higher borrowing rates or decreased investment in public infrastructure.

Given the uncertainty this proposal risks injecting into the critical municipal securities market and the unknown full extent of its potential negative consequences, we reiterate that municipal securities and their issuers should be broadly exempted from this proposed rule. At a minimum, the SEC should consider halting the proposal until these impacts can be better examined and understood.

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[3] Total issues in the municipal market totaled $483 billion in calendar year 2021 according to SIFMA. Web access: https://www.sifma.org/resources/research/fixed-income-chart/

We thank you for your time and attention on this important matter. We would welcome the opportunity to have issuers and other market participants meet with appropriate SEC staff to discuss the impacts the proposal could have on the municipal securities market and, most importantly, to state and local governments. Please do not hesitate to reach out to the respective contacts, details listed below, at each of our organizations.

Sincerely,

- Government Finance Officers Association (GFOA), Emily Swenson Brock, 202-393-8467
- National Association of State Treasurers (NAST), Dillon Gibbons, 916-290-3741
- Bond Dealers of America (BDA), Michael Decker, 202-603-5663
- Education Finance Council (EFC), Gail daMota, 202-552-8505
- National Association of Bond Lawyers (NABL), Brian Egan, 202-503-3290
- National Association of Municipal Advisors (NAMA), Susan Gaffney, 703-395-4896
- National Association of Health and Educational Facilities Finance Authorities (NAHEFFA), Chuck Samuels, 202-434-7311
- National Council of State Housing Agencies (NCSHA), Garth Rieman, 202-624-7710
- Securities Industry and Financial Markets Association (SIFMA), Leslie Norwood, 212-313-1130

Appendix A:

Answers to Specific Proposal Questions

- **[Q.2] Municipal market participants are not widely knowledgeable on when their securities constitute an ABS.** It remains unclear exactly when a municipal security would constitute an ABS for the purposes of this proposal.

- **[Q.6] Municipal securities should be excluded from the definition of ABS.** For the reasons on which we elaborate above, we maintain that municipal securities should be broadly excluded from the definition of ABS. The municipal market lacks the abusive behavior the proposal seeks to prohibit, and the absence of such an exclusion would inject confusion across the municipal securities market as it seeks to conform to rules that are wholly unnecessary and provide no additional investor protection. Furthermore, existing tax law relating to tax-exempt securities already limits the ability of investors to engage in certain adversarial investments against a large portion of the municipal securities market.

- **[Q.9, Q.15, Q.16, Q.28] At a minimum, issuers of municipal securities should be excluded from the definitions of "securitization participants" and "ABS sponsor."** While the municipal market at large would be impacted by the inclusion of municipal securities in the definition of ABS for the purposes of this proposal, municipal issuers would particularly face confusion and unnecessary burdens as a result of their inclusion in the definitions of both the terms "securitization participants" and "ABS sponsor." For the reasons on which we have elaborated above, municipal issuers should be broadly exempted from both definitions.

- **[Q.58] We have not seen evidence that the abusive behavior the proposal seeks to prohibit exists in the municipal market.** Absent such evidence, we maintain that municipal securities and their issuers should be exempt from the proposal.

- **[Q.60] We remain highly concerned that, absent an exclusion of municipal securities and issuers from the rule, the addition of compliance program requirements would further place unnecessary burdens on municipal issuers.**

- **[Q.100] Downstream impacts of applying the rule to municipal securities would be felt by constituents.** As discussed above, the impact of any chilling effect of the proposal to the municipal securities market would ultimately be borne by constituents in the form of higher borrowing rates for affordable mortgages, student loans, and potentially a decrease in state and local investment in public infrastructure.

- **[Q.103] Costs and benefits of applying the rule to municipal securities likely differ from other securities.** As outlined above, unique features of the municipal securities markets make the application of the rule to the municipal securities market largely unnecessary and redundant in a way that would likely afford minimal to no benefit to the investor community. More time is needed to fully understand how the costs of any necessary compliance measure may differ between taxable and tax-exempt securities, the latter of which is typically seen in the municipal market.