June 29, 2007

Office of Attorney General Martha Coakley
Consumer Protection Division
Christopher K. Barry-Smith, Chief
c/o: Lois Martin, paralegal
One Ashburton Place
Boston MA 02108

Re: Request for Comments: M.G.L. 93A, 940 C.M.R. 8.00

I. INTRODUCTION

The Securities Industry and Financial Markets Association (SIFMA)[1] and the American Securitization Forum (ASF)[2] appreciate the opportunity to provide comments in connection with the Attorney General's contemplation of proposing amendments to the Mortgage Brokers and Mortgage Lenders Regulations, referenced above. Due to the importance of mortgage-backed investment vehicles in the securitization markets, SIFMA and ASF have been studying and discussing with their members initiatives undertaken by state and federal policymakers to address the widespread challenges confronting the current subprime mortgage industry. We fully support the Attorney General's efforts to address those challenges by attempting to address unfair or deceptive acts or practices in the provision of residential mortgage loans. We respectfully request that the Attorney General consider the following comments as she considers whether to issue proposed regulations and what the substance of those regulations would be.

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[1] SIFMA brings together the shared interests of more than 650 securities firms, banks, and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services, and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London. Its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

[2] ASF is a broad-based professional forum of over 350 organizations that are active participants in the U.S. securitization market. Among other roles, ASF members act as insurers, investors, financial intermediaries and professional advisers working on securitization transactions. ASF's mission includes building consensus, pursuing advocacy and delivering education on behalf of the securitization markets and its participants. This letter was developed principally in consultation with ASF's Subprime Mortgage Finance Task Force, with input from other ASF members and committees. Additional information about the ASF, its members and activities may be found at ASF's internet website, located at www.americansecuritization.com. ASF is an adjunct forum of SIFMA.

In submitting these comments, we recognize that many of our members would not be directly subject to the bulk of the Mortgage Brokers and Mortgage Lenders Regulations pertaining to loan origination, since they generally do not act as mortgage lenders or brokers that interact directly with consumers. However, a sensible response to the challenges in the subprime mortgage market, at both the federal or state level, is imperative for liquid, efficient, and well-functioning national mortgage securities markets. Those markets ensure that American homeowners (and future homeowners) have access to affordable mortgage loans. Thus, we believe that the consideration of our members' comments in your deliberations is critical.

II. BACKGROUND

The Attorney General seeks information in contemplation of proposing regulations to address certain perceived abuses in the mortgage lending and brokering businesses. The Attorney General is soliciting comments in the following six areas: (i) expanding the scope of the Mortgage Brokers and Mortgage Lenders Regulations to include purchase money mortgage loans; (ii) prohibiting mortgage lenders and brokers from processing or making a mortgage loan unless there is a reasonable belief that the borrower has the ability to repay the loan; (iii) limiting the ability to make or process no documentation or reduced documentation loans; (iv) imposing a fiduciary or different duty on mortgage brokers to borrowers on whose behalf they arrange or obtain mortgage loans; (v) imposing a suitability standard on lenders based on the borrower's financial condition, credit report, and other bona fide qualification criteria; and (vi) providing that borrowers can raise against the assignee or purchaser of mortgage loans claims and defenses that could have been raised against the broker or lender that originated the loan.

While we have specific concerns about each of the areas addressed in the Attorney General's notice, we have two global issues that we want to address. First, we believe that the Attorney General should distinguish between the sales and marketing of mortgage loans (with issues such as disclosure, fraud, and steering) on one hand, and the product types and transactional features of mortgage loans (such as documentation or underwriting requirements of particular loan products) on the other. In our view, the focus of the Attorney General's efforts should be on preventing unfair and deceptive lending practices, not prohibiting certain products or features that are not inherently unfair or deceptive. In the dynamic and ever changing mortgage market, we believe it is absolutely critical to empower the mortgage finance industry to innovate and provide flexible approaches to meet the credit needs of consumers.

As stated previously, we believe there is nothing inherently abusive about any of the products or features identified in the questions outlined above. Furthermore, we believe attempts to prescribe inflexibly the underwriting of loans will stifle innovation in the mortgage finance industry and have a material adverse impact on the availability of credit to underserved borrowers from whom lenders will shy away lest they be subjected after the fact to lawsuits and government investigations claiming wrongful lending. We encourage the Attorney General to focus its activities on the sales and marketing aspects of the identified topics rather than seek to impose *per se* liability.

Second, we respectfully request that the Attorney General consider the prior actions of the Commonwealth's legislature and its banking department with respect to the topics noted above. Interestingly, the Massachusetts legislature previously has addressed almost all of those issues when it enacted Chapter 268 of the Acts of 2004, *An Act Prohibiting Certain Practices in Home Mortgage Lending*. That law: (i) applies to both purchase money loans and refinance loans in various capacities; (ii) imposes an ability to repay requirement with regard to "high cost home loans"; (iii) prohibits knowingly refinancing a "home loan" within 60 months unless the refinancing is in the borrower's interest; and (iv) imposes assignee liability for violations of the prohibitions on high cost home loans. Thus, the Massachusetts legislature examined those issues and imposed certain requirements on all home loans, and others only on high cost home loans. The legislature did not establish a "suitability" standard, and it did not impose a fiduciary duty on the broker. However, the legislature did impose a reasonable ability to repay requirement on high cost home loans and a borrower's interest requirement on most refinancings.

In addition, the federal banking agencies (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration) issued their Interagency Guidance on Nontraditional Mortgage Product Risks on October 4, 2006. Quickly thereafter, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) distributed substantially similar guidance to state agencies that regulate residential "mortgage brokers and mortgage companies." Upon that pronouncement, states immediately began adopting, through various processes, the CSBS/AARMR master nontraditional mortgage guidance without modification. Massachusetts issued a final bulletin replicating the CSBS/AARMR guidance on January 8, 2007. In addition, the federal banking agencies released today their final guidance on certain aspects of subprime lending, and we expect CSBS and AARMR to modify their master state version to account for those changes. The nontraditional mortgage guidance and the final subprime lending guidance address many of the questions the Attorney General has raised, including a borrower's ability to repay and reduced documentation underwriting. Importantly, the federal banking agencies and the Massachusetts Division of Banks recognized the need for flexibility in providing and underwriting mortgage credit, and issued the standards in the form of guidance, rather than as strict regulations. In all, Massachusetts comprehensively regulates residential mortgage lending, by addressing both purchase money and refinancing loans, as well as high cost and non-high cost loans, and imposes strong underwriting standards and assignee liability. We ask the Attorney General to evaluate the impact of the federal and state guidance documents before adding regulations on the same topics. The question is particularly acute considering that the other applicable laws and guidelines on the same topics do not contain outright prohibitions or requirements, but take a more nuanced approach based on a layering of risk factors and a search for mitigating factors.

III. COMMENTS ON ATTORNEY GENERAL'S QUESTIONS

A. Enlarging the Scope of the Mortgage Brokers and Mortgage Lenders Regulations

The Attorney General's request for comments asks whether the scope of the existing mortgage broker and lender regulations should be expanded to include purchase money mortgage loans, as well as mortgage transactions that refinance an existing loan.

We do not believe it is necessary, or ultimately beneficial, for the Attorney General to expand the Mortgage Brokers and Mortgage Lenders Regulations to apply to purchase money mortgages. First, the Massachusetts Department of Banks' subprime mortgage regulations already address purchase money loans. Those regulations (209 C.M.R. 32.32, 40.05) apply broadly to banks, savings and loan associations, savings banks, credit unions, and all other nonbank creditors, including mortgage lenders licensed under the Massachusetts Licensing of Mortgage Lenders and Brokers Act. Those regulations generally impose additional disclosure requirements for high cost home loans (including both refinance and purchase money loans) and prohibit those loans from containing certain terms considered particularly onerous for borrowers under high cost subprime loans.

The result of those regulations has been to curtail the availability of Massachusetts high cost loans. The additional compliance burden and liability have simply forced Massachusetts mortgage lenders and their investors to move away from that space, and generally to originate only loans that are not subject to those regulations. Investors in the secondary mortgage market are not willing to unduly risk their capital. This has been illustrated in every market where policymakers have imposed onerous requirements, particularly those with the potential for extensive or uncapped assignee liability – the secondary market will not finance loans under those conditions because investors will not buy those loans, and thus lenders will not make them. Further expanding the coverage of those mortgage regulations – out of the high-cost arena and into the more affordable subprime arena – would simply serve to further reduce the credit available to subprime borrowers, many of whom are likely to be low-income households without alternate means to secure credit.

B. Borrower's Ability to Repay a Loan

The Attorney General then requests comments on the merits or drawbacks of a regulation that would prohibit mortgage brokers and lenders from processing or making mortgage loans unless they reasonably believe that the borrower can repay the loan. SIFMA and ASF believe that the consideration of a borrower's ability to repay is an important aspect of the underwriting process. However, we do not believe that regulators or legislators should prescribe inflexible underwriting standards.

Underwriting a loan is a very complex task that requires a lender to assign weights to a variety of factors. Individual institutions should have the freedom to weigh these various factors as they see fit. Lenders should be able to use their own knowledge, judgment, and experience in determining whether a particular borrower will be able to repay a particular loan. One important factor in the determination of a borrower's ability to repay a loan is the payment history of that borrower for previous loans, which may or may not correlate with credit scores or income levels. Furthermore, borrowers may have a variety of intentions when taking out a mortgage loan – they may plan to stay in their house forever; they may plan to move in a short time (for example, if they have a temporary employment contract); or they may be purchasing the property as an investment. Different loan products may be more appropriate for each of those situations. The lender and the borrower are in the best position to understand the borrower's intentions and the appropriate means of financing those intentions. It is also important to keep in mind that a prudent lender will not make a loan unless it believes the borrower will repay that loan; delinquencies and foreclosures do not benefit anyone – borrowers, lenders, secondary market participants, or investors in mortgage-backed securities. No hard standard or grouping of quantified underwriting criteria can successfully avoid all bad loans and equally ensure that all worthy loan applications are funded. A straitjacket, such as a regulatory ability to repay standard, will inevitably prevent experienced underwriters from making appropriate credit decisions.

Similarly, borrowers (even those with the same credit score) may have vastly different circumstances when considered as a whole, and a lender's flexibility to consider all a borrower's circumstances is critical to the predictive purposes of the underwriting process. Borrowers may, for example, have reason to expect their financial situation to improve in the near future, like a college or graduate school student who waits tables at night and currently has a relatively limited income, but who expects to obtain a high-paying job in the very near future. That person may not qualify for a traditional 30-year, fixed-rate mortgage under strict, inflexible standards, but may be entirely capable of repaying a loan that suits his or her particular situation, such as a loan with a lower initial payment with an expectation of increased payment amounts in the future. This variety of borrower circumstances and intentions requires flexibility in loan products and underwriting guidelines, and that an underwriter's determinations be based upon specific facts and circumstances so that borrowers like those can get a mortgage.

The U.S. mortgage market has been able to increase homeownership to unprecedented levels in the last 10 years because it is flexible and adaptable to changing conditions and borrower needs in its predictive underwriting analysis. Useful and streamlined disclosures to borrowers are essential in helping them make informed borrowing decisions. SIFMA and ASF believe that borrowers should have their choices clearly disclosed to them. However, rigid underwriting guidelines such as an ability to repay standard imposed by regulators will reduce the ability of lenders to react to dynamic market conditions, impair their predictive models, and reduce the availability of loans to deserving borrowers.

C. Limiting "No Doc" or Limited Documentation Loans

The Attorney General asks whether restrictions on "no documentation" or limited documentation loans are warranted to avoid unfair or deceptive commercial conduct. SIFMA and ASF do not support outright bans or limitations on the types of mortgage products and features that lenders

may offer to consumers, subprime or otherwise. Consumers are best served by having a variety of mortgage options from which to choose. While deceptive marketing practices or misrepresentations about loan products or features are unfair, a loan product with particular underwriting features cannot, in itself, be unfair or deceptive.

SIFMA believes that there is nothing inherently unfair or deceptive about a lender's election not to require a borrower to fully document their income. This is in sharp contrast to a situation where the broker or lender inflates or fabricates, or encourages a borrower to inflate or fabricate, the source or amount of a potential borrower's income. Such an affirmative act clearly could be characterized as unfair or deceptive, and may even constitute fraud. We strongly support vigorous enforcement of laws prohibiting fraud by any person in connection with a mortgage transaction. However, electing not to verify a prospective borrower's claims is quite different.

The federal banking agencies and the Massachusetts Division of Banks addressed reduced documentation in their nontraditional mortgage guidance, and the federal agencies addressed it in their subprime mortgage guidance. Those agencies recognized the importance of allowing lenders to consider mitigating factors that may minimize the need for documentation.

It is undisputed that borrowers should be fully informed of the terms and features of contracts they are considering, including whether a lower-rate loan may be available if the borrower is willing and able to fully document his or her income. SIFMA and ASF understand that mortgage fraud, by unscrupulous brokers and even by borrowers, is particularly problematic in the stated income/reduced documentation segment of the mortgage industry. Once again, however, loans with those underwriting features are not inherently unfair or deceptive, and we believe banning those loans is not an appropriate solution. Instead, addressing and prosecuting mortgage fraud, as well as providing uniform and clear borrower disclosures, would help to solve the problems about which the Attorney General and Massachusetts consumers are concerned.

1. Form of Further Restrictions, If Warranted

The Attorney General asked the public what form of further restrictions on “no doc” or “low doc” loans are warranted. As explained above, SIFMA and ASF do not believe further restrictions or prohibitions against loans with those underwriting features are warranted in the name of avoiding unfair or deceptive commercial conduct.

2. Requiring Verification of Source and Amount of Income

The Attorney General further asked whether a mortgage broker or lender that wishes to process or make a no-documentation or limited documentation loan should be required first to verify, by a signed document, the borrower’s actual income and source of income, among other information. The Attorney General’s question does not specify what type of signed verification of the borrower’s actual income and source of income it is considering. However, SIFMA and ASF members would oppose any type of regulation of loans with reduced documentation underwriting features that would essentially prohibit those loans or put them out of the reach of many borrowers.

3. Prohibiting No Documentation or Limited Documentation Loans If Employment or Income Is Not “Reasonable”

The Attorney General then asked whether the public would support a regulation further identifying, as an unfair or deceptive act or practice, a lender making a no documentation or limited documentation loan when the borrower’s employment or income is not reasonable in light of the borrower’s financial or other circumstances. SIFMA and ASF agree that a lender should consider whether a borrower’s claimed employment and income are reasonable (in the lender’s opinion) as a part of a prudent underwriting process. However, we do not believe that a statutory or regulatory requirement of reasonability, with its attendant penalties or liability, is the appropriate method by which to encourage this practice.

A reasonability requirement is inherently subjective – what is reasonable will differ from situation to situation. If a lender believes a borrower's income and employment to be reasonable and decides to make a loan, but that borrower happens to fall into delinquency, a borrower or regulator may question that judgment after the fact, and claim that the borrower's income or employment claims were in hindsight not reasonable after all. In essence, a lender could be held responsible for borrower fraud (of which it had no knowledge or reason to suspect), for changed circumstances beyond the lender's control, or simply for the fact that its judgment (though reasonable at the time) turned out to be incorrect in that particular instance.

Laws and regulations must be clear and understandable at the outset – at the point of compliance – and should not leave lenders guessing at what a regulator or court might determine is reasonable after the fact. Judgments of reasonability should rest with the lender, not the law. A lender must be free to use its experience, knowledge, and available tools to guide its judgments on the reasonability of an underwriting decision. Regulators should not attempt to define or impose what is reasonable for substantiating a borrower's employment or income.

D. Fiduciary or Similar Duty for Mortgage Brokers

The Attorney General asked whether mortgage brokers should owe a fiduciary or other duty to borrowers on whose behalf they arrange or obtain mortgage loans. We are reticent to take a formal position on this issue, because it does not directly affect the overwhelming majority of our members. At the same time, it is possible that claims by borrowers under Chapter 93A against mortgage brokers could somehow result in collateral claims against lenders and purchasers. In any event, whether or the extent to which a mortgage broker owes a duty of care to the potential borrower has been the subject of legal controversy for several years, both at the federal and state level. That controversy is exacerbated due to the unique position of mortgage brokers, who enter into contractual relationships with both lenders and potential borrowers. In all circumstances, the duty of care that one person owes to another is a matter of state common law, statutory enactments, or the individual contract between the parties. While a breach of a duty that exists under one or more of those authorities could arguably be the basis for a claim under a state's unfair and deceptive practices statute (like Chapter 93A), Chapter 93A should not be the vehicle for a regulator to establish or define that duty of care. Doing so would certainly raise many questions. For instance, why would the Attorney General's regulations under Chapter 93A establish a fiduciary or other duty of care between a mortgage broker and a potential borrower, but not establish such a duty under Chapter 93A in other broker relationships?

SIFMA and ASF support efforts by state legislatures and regulatory agencies to improve the oversight of mortgage brokers, such as creating a national registration and database that would allow lenders more easily to track "bad actors" in the broker community. In addition, our respective members strongly support informative disclosures from brokers to consumers regarding the nature of the transaction, including details regarding broker compensation that may result from the loan's consummation. These measures will more directly and effectively address any misunderstandings about a mortgage broker's role in the transaction, and will discourage broker foul play.

In connection with this inquiry, the Attorney General is seeking comments on the merits or drawbacks to a regulation identifying as an unfair or deceptive act or practice a mortgage broker's processing or arranging a loan that is not in the borrower's interests. SIFMA and ASF members would oppose the imposition of a borrower's interest standard for the reasons described above. In addition, similar to the "reasonable" standard for attempting to substantiate a borrower's income, determining what is in the borrower's best interests is inherently subjective and best assigned to the borrower, rather than the regulator. Imposing a regulatory standard upon mortgage brokers that a loan must be in the borrower's best interests would simply lead to an ex post facto decision by an official not privy to the transaction's circumstances as they presented themselves at origination (the only point at which a borrower and lender can make decisions about entering a transaction, without the benefit of hindsight). An imposed standard would subject lenders to unmanageable liability – any

borrower who entered delinquency could claim that their loan was not in their best interest, after having sought and entered the transaction willfully.

The borrower is best able to determine why he or she needs a mortgage loan, what his or her financial objectives are, and what is in his or her best interest, all of which may depend on any number of factors. For that reason, borrowers certainly must receive accurate, clear, and concise information regarding the loan's terms, and good faith estimates of the costs and fees associated with that loan (such as taxes and insurance), to make this decision about their best interests. However, due to the potential for unmanageable liability, rigid standards purporting to delineate what is in the best interests of a borrower will serve only to cut off some deserving borrowers from a beneficial loan, even when all parties act in good faith.

E. Borrower Suitability Standard

The Attorney General asks whether the public would support a regulation requiring lenders to take steps to ensure that the loans they provide to borrowers are suitable for the borrowers, in light of the borrowers' financial condition, credit record, and other bona fide qualification criteria. A requirement to ensure a loan is "suitable" for a borrower is similar to imposing a duty of care or a borrower's interest standard – it is a subjective concept that raises the specter of lender liability after the fact. It also takes choices away from the borrower, who is in the best position to decide what loan is suitable for his or her purposes. SIFMA and ASF members strongly believe that there is nothing unfair or deceptive about extending credit to borrowers on terms they have requested and about which they have been informed.

While lenders' underwriting standards are highly predictive (the large majority of loans, even subprime loans, do not default), it is impossible to know with certainty, at the time of loan consummation, whether or not that loan will be successful. Some degree of default is, however, inherent in the mortgage lending process. Unfortunately, some borrowers will not repay their loans. A borrower's financial situation may change in unforeseen ways after a loan is originated (they may suffer the loss of a spouse or a job, or go through a divorce), which could render them unable to maintain their loan. Subsequent events should not, however, change the nature of a "suitable" loan. A lender should not be liable for such a situation – but a suitability requirement could create just that problem. Liability for any loan that goes into default creates an intolerable level of uncertain potential liability. If faced with the possibility of civil liability for a loan that defaults or that otherwise is asserted to be "unsuitable" after the fact, lenders are likely to react in an overly conservative manner in providing credit products or terms. Besides the fact that a suitability standard is no guarantee that loans will not default, as a policy matter, do we really want to create a market in which the lender determines whether a borrower should obtain home equity financing for home renovations, as opposed to college tuition, medical emergencies, or even a vacation?

Massachusetts already has enacted a broad prohibition against refinancing home loans unless the refinancing is in the borrower's interest. That prohibition is accompanied by an admonition that the borrower's interest must be "narrowly construed," an extensive list of factors that must be considered, and a set of regulations requiring "sound underwriting practices" and imposing documentation requirements. Thus, the need for an additional suitability standard is unclear. A more appropriate and effective approach to protect consumers and ensure fairness in mortgage lending would be the creation of more streamlined, concise, and understandable disclosures so that borrowers can make good choices for themselves.

F. Assignee Liability Provisions

In the last category of questions, the Attorney General asked whether there is support for a regulation allowing borrowers to raise, against the assignee or purchaser of mortgage loans, claims and defenses that the borrowers could raise against the broker or lender that originated the loan. The Attorney General also asks whether there is support for a regulation imposing assignee liability for all

loans, or only for certain types of loans (for instance, "subprime" loans, which would reach loans beyond "high cost" loans).

Holding subsequent buyers of loans responsible for the actions of brokers and originators could cause investors to shun mortgage securities as investments or demand a premium price for added uncertainty, thereby reducing the supply of capital to mortgage borrowers and raising the cost of credit. For example, the secondary mortgage market reacted adversely to expansive or unquantifiable assignee liability provisions in the federal Home Owners Equity Protection Act (HOEPA) and in Georgia (which the state subsequently changed). The Massachusetts high cost home loan statute and the Division of Banks' regulations already impose assignee liability for loans subject to those provisions, causing Standard & Poor's not to provide ratings for structured finance transactions that include those loans. Underlying the reluctance of the secondary markets to embrace assignee liability is NOT a tolerance for predatory lending, but a belief that assignees should not put their capital at risk for origination violations on loans they did not make.

Irrespective of the regulations issued by the Attorney General, we fail to see how a mortgagor could rely on Chapter 93A to sue an assignee with whom the mortgagor did not interact and had no privity of contract at the time the lender originated the loan. Absent a statutory foundation, we do not believe there is a legal basis to impute liability to an innocent assignee under Chapter 93A for the acts and omissions of a lender.

For these reasons, our members oppose the imposition of additional secondary market liability. As dialogue continues on mortgage lending generally, we urge deliberate and careful consideration of any proposal that would impose assignee liability – and the consequences such imposition could bring. Legal certainty and predictability are necessary for the operation of orderly and cost-efficient national markets; the current patchwork of inconsistent and conflicting federal and state laws will only serve to disrupt functional markets and raise the cost of lending to borrowers. Secondary market participants should not be held responsible for loan terms or originator actions they cannot identify or measure clearly.

IV. CONCLUSION

SIFMA and ASF members strongly believe that consumers should be provided clear disclosure allowing them to understand material terms, costs, and risks of loan products to help them select products and choose among payment options. Legal certainty in the primary contractual process is critical in large-scale securitization markets. The efficiency and liquidity gains that securitization provides to the housing finance economy depend on the basic assumption that the underlying agreement is valid and enforceable. For that reason, SIFMA and ASF support enhanced borrower education and information, and the Attorney General's authority to prohibit unfair or deceptive competitive practices is rightly directed to that end. In addition, the Attorney General should vigorously enforce Massachusetts laws protecting consumers against fraudulent or even unfair sales and marketing practices that lead to borrowers obtaining loans they do not understand or cannot afford.

As we mentioned above, subprime loan products (even loans underwritten based upon reduced borrower documentation) are not categorically unfair or inappropriate under all circumstances, and law makers and regulators certainly should not impose outright prohibitions on those products or features (or restrictions that effectively prohibit those products or features). While those actions are likely to adversely affect the availability of legitimate subprime mortgage credit in fairly quick order, one immediate, tragic, and likely outcome of restricting the availability of subprime mortgages may be that borrowers currently struggling to repay burdensome loans may be unable to refinance into manageable loans. In attempting to protect consumers and prohibit unfair practices, the Attorney General surely does not want to consider regulatory actions that may increase the foreclosure rates.

The mortgage lending and capital markets are quickly reacting to the recent challenges in the subprime mortgage economy. Investors are adjusting the prices they are willing to pay for securities backed by certain subprime mortgages, and lenders are tightening their underwriting standards. We anticipate and hope, too, that enforcement agencies will continue to pursue lenders, brokers, appraisers, and even borrowers who have used fraudulent or deceptive practices in the origination of mortgage loans. However, by drawing rigid regulatory lines based upon certain products or terms, or imposing subjective standards upon lenders or brokers that open the loans up for post hoc attack by regulators or judges, we believe the Attorney General will not have ensured protection for vulnerable borrowers, nor will it have ensured against defaults, even in the face of solid underwriting.

SIFMA and ASF appreciate this opportunity to provide their views for the Attorney General's consideration in proposing regulations, and urge the Attorney General to continue its deliberative process by considering the impact that unprecedented incursions into the underwriting process may have on the availability of mortgage credit to borrowers who may not qualify for the lowest-cost traditional loan products.

Sincerely,

Randolph C. Snook
Senior Managing Director and Executive Vice President
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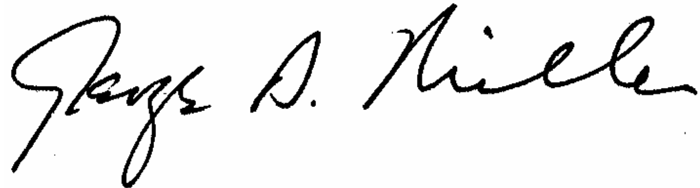

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