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July 17, 2012

Via Electronic Delivery

To: The Honorable Josie Gonzales, Chair, San Bernardino County Board of Supervisors
        The Honorable Brad Mitzelfelt, Vice-Chairman, San Bernardino County Board of Supervisors
        The Honorable Janice Rutherford, Supervisor
        The Honorable Neil Derry, Supervisor
        The Honorable Gary Ovitt, Supervisor

From: Tim Cameron, SIFMA Managing Director, Asset Management Group

**RE: Attached Legal Analysis by Walter Dellinger, O'Melveny & Myers on Eminent
        Domain Proposal**

As you know, the Securities Industry and Financial Markets Association (SIFMA)[1] strongly opposes
the use of eminent domain to acquire mortgage loans. Last Friday, I testified at the special meeting
of the Homeownership Protection Program Joint Powers Authority. I argued that Mortgage
Resolution Partners' proposed use of eminent domain would do more harm than good, raise
significant legal and Constitutional concerns, and put the County at risk by delegating much of the
authority of the municipalities to a private party with a profit motive.

I want to elaborate on the legal and Constitutional problems we see with using eminent domain to
acquire mortgages. SIFMA asked renowned lawyer and Constitutional expert Walter Dellinger for
his perspective on this issue. Mr. Dellinger is a member of the Appellate Practice at O'Melveny &
Myers, LLP. Prior to entering private practice, he was Assistant Attorney General and head of the
Office of Legal Counsel from 1993 to 1996, and he served as acting Solicitor General for the 1996-
97 Term of the U.S. Supreme Court. A copy of his analysis is attached.

In the "Introduction and Summary" section, Mr. Dellinger and his colleagues Jonathan Hacker and
Matthew Close strongly state that the MRP proposal:

- Is subject to challenge as an impermissible "Taking" of private property under the U.S.
  Constitution and California Constitution on at least two grounds;

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[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of
hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial
industry, investor opportunity, capital formation, job creation and economic growth, while building trust and
confidence in the financial markets. SIFMA has offices in New York and in Washington, D.C. For more
information, visit http://www.sifma.org

- Could be challenged as a violation of the Contracts Clause of the U.S. Constitution;

- May impermissibly burden interstate commerce in violation of the U.S. Constitution's Commerce Clause;

- Appears to contravene the San Bernardino County Charter (which restricts the JPA's authority under the state "common powers" rule); and

- Exposes the JPA, its participating municipalities, and taxpayers to potentially enormous liability to existing note holders if courts recognize—as they likely will—the correct market value of performing loans.

They conclude that, "As currently conceived, **the MRP proposal suffers from multiple apparent legal and procedural defects, including defects arising under the U.S. Constitution and the California Constitution and under the laws of California and San Bernardino County governing the exercise of eminent domain authority. In light of these defects, we believe the MRP proposal is unlikely to survive a judicial challenge. At a minimum, it is almost certain to be tied up for years in litigation, exposing the government entities to enormous transaction costs, including potentially opposing counsel's fees if the challenge is successful**."

Mr. Dellinger's analysis confirms our belief that there is a strong basis on which to challenge the legality of using eminent domain in the mortgage context. We strongly urge San Bernardino County, the Cities of Fontana and Ontario, and JPA members to consider this analysis when deciding if and how to proceed.

We appreciate the opportunity to share our views, and we would be happy to answer any questions you may have.

cc: Mr. Jean-Rene Basle, County Counsel
        Mr. Gregory C. Devereaux, Chief Executive Officer, County of San Bernardino