



Securities Industry Association

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September 25, 2002

The Honorable Gifford Miller
The Council of the City of New York
New York, NY 10007

Re: Intro. 67-A

Dear Speaker Miller:

On behalf of the membership of the Securities Industry Association¹, we commend the City Council for its leadership and effort to curtail predatory lending practices by unscrupulous financial entities located in New York City. However, we believe Intro. 67-A as adopted by the City Council Consumer Affairs Committee on September 4, 2002 would not achieve the Council's desired policy goal. Instead, Intro. 67-A would threaten to result in the decreased availability and increased cost of residential mortgage financing for New Yorkers who might not have access to traditional sources of credit. We strongly believe this bill could severely impair the secondary mortgage market, which might set a precedent for the City to begin regulating national markets by virtue of the securities industry's concentrated presence in New York City. Therefore, we respectfully urge the City Council not to adopt Intro. 67-A.

While we appreciate the improvements to the revised version of Intro.67-A, our fundamental concerns still remain. Intro.67-A continues to make no distinction between persons who engage in predatory lending and those who purchase or securitize loans that are subsequently determined to have predatory characteristics. The bill sets forth disproportional penalties that are disincentives for our member firms to justify participating in the subprime market. It is unreasonable for secondary market participants to face potential penalties for the actions of lenders over which they have no control. As The Bond Market Association has stated before, and which we reiterate today, the secondary market participants may have absolutely no connection with the loan origination, yet these firms would be held accountable for the judgments of others, regardless of whether securities firms knew what those judgments were or whether it would have agreed with them.

Within the definition of "predatory lender", the bill still requires subjective determinations from secondary market participants regarding the appropriateness of particular loans, which could increase the

¹ The Securities Industry Association brings together the shared interests of nearly 700 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80-million investors directly and indirectly through corporate, thrift, and pension plans.

risk of liability. The bill does provide for a “safe harbor” but in order for the “safe harbor” to trigger, firms must conduct a random sampling of 10% or 5% of the loans to be purchased or securitized. These arbitrary sampling levels would increase underwriting costs and offer no more assurance the loans contained in the pool were not made using what some might consider predatory tactics.

We are aware of disturbing reports of borrowers becoming financially crippled by unaffordable mortgage arrangements and appreciate your demand for action. However, we remain concerned that the unintended consequence of the proposed policy response in Intro. 67-A would be to diminish the availability of necessary credit to subprime borrowers by significantly increasing both the potential liability to which secondary market participants would be exposed and the costs associated with securitizing New York subprime mortgage loans. Therefore, SIA respectfully urges the City Council to withdraw Intro. 67-A and refer it back to the Consumer Affairs Committee for further review. If your staff has any questions, please have them contact James Chin, SIA Director of State Government Affairs at 212-720-0617.

Thank you,

A handwritten signature in blue ink that reads "Keith Utsey". The signature is written in a cursive, flowing style.

Keith Utsey
Vice President and Managing Director/Counsel
State Government Affairs