

June 3, 2008

The Honorable David Paterson
Governor
Office of the Governor
State Capitol
Albany, NY 12224

Dear Governor Paterson:

I am writing on the behalf of the Securities Industry and Financial Markets Association¹ (“SIFMA”) to express our concerns about the subprime lending and foreclosure proposals pending in the Assembly and Senate. While these proposals are based on the good intentions of assisting distressed borrowers, if enacted, without critical modifications, they would increase costs for both borrowers and lenders alike and negatively impact the already stressed credit markets. SIFMA has advocated for amendments to the Governor’s subprime legislation both in testimony before the Senate Banks Committee and in written submission to the Governor and Senate Committee. It is extremely important as the session comes to close that several problematic provisions, such as expanding the coverage of assignee liability to capture prime mortgages, extending the current lengthy foreclosure process by mandating court mediation, and creating a flawed 60-day notice requirement be readdressed.

Like the 1-year moratorium legislation, passed by the Assembly and introduced in the Senate, the practical effect of the foreclosure provisions of the Governor’s Program bill #44, introduced as S. 8143 by Senator Farley, may well be perceived to nullify the underlying mortgage contract securing a residential mortgage loan. SIFMA sees any attack on the sanctity of secured lending as ultimately hurtful to the very consumers whom the government hopes to help--both in the short run and long term. To that end SIFMA has submitted a “black lined” version of S. 8143, which includes a comprehensive list of changes. SIFMA strongly urges adoption of these recommendations. The following is a summary of SIFMA’s recommendations and the comprehensive changes are attached.

Non-conventional home loans - The legislation creates a new category of loans, referred to as “non-conventional”, that are subject to the stricter substantive restrictions, including

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.

assignee liability, to which high cost loans already are subject under existing New York law. The new “non-conventional” category attempts to capture what is commonly referred to as subprime loans and relies on a quantitative test to make this determination. We believe that the formula, which is derived from the federal Home Mortgage Disclosure Act, will unfairly capture a significant number of prime mortgage loans. This is important because the imposition of assignee liability will cause private industry to withdraw from the market to make, buy or securitize “non-conventional” home loans, which will significantly impact those seeking to purchase their first home, to refinance their existing home, and anyone else seeking a covered mortgage. Loans that are accompanied by assignee liability are simply not originated, in general practice – and we do not believe the drafters of this bill intended to shut down the market for prime jumbo, or prime ARM loans, for example. For these reasons, assignee liability provisions for non-conventional loans should be removed.

Required prior notices to borrowers - The first section of the legislation details the required 60-day notice prior to commencing foreclosure process. SIFMA recommends that the notice should encourage borrowers who are interested in working out a mutually agreeable resolution to make the recommended contacts, be limited to one time in a 12 month period, require the borrower reside in the home during the 60 day period, and not apply to borrowers who provided inaccurate financial information or received a 60 day moratorium on foreclosure in same year.

Mandatory settlement Conference - The legislation expands an already complex and lengthy foreclosure process by requiring a mandatory settlement conference before a judge, where no clear standards will apply, and will serve to further burden an already strained court system. SIFMA recommends that some limitations to the process be included, such as the ability for the Court to wave the conference if the conference is not held within the 60 day period, if it appears the conference will not result in a settlement, or if the borrower has abandoned the mortgaged property.

Registration of loan servicers – The legislation requires loan servicers to register with the New York Banking Department, much like mortgage brokers and mortgage lenders are required to be licensed. We are not opposed to this registration per se. SIFMA recommends that the legislation grant some lead time by enacting an effective date that realistically reflects the Department's reasonable capacity to process the applications for registration in an expeditious way. We note, however, that it routinely takes 9 months or more for mortgage lenders to obtain licensing in New York--which is three times longer than the process in most other states.

This legislation also imposes new legal requirements for all mortgage loans. Of particular note is a provision that obligates lenders and servicers to comply with federal law or face state law penalties. Such a provision creates the possibility of double damages for the same violations and creates the very real possibility of disputes regarding the meaning of federal laws.

In conclusion, we believe that the proposed loan servicing provisions will undermine the initiation of loss mitigation efforts by loan servicers and the sanctity of the security instrument

for loan holders. The extension of the state's existing high cost loan provisions to subprime loans, particularly the imposition of assignee liability, is likely to impede if not eliminate the restoration of a subprime loan market in New York. We thank you for consideration of our views and remain available to provide any additional information that may be helpful to you. Please contact Robert Reid, Weingarten, Reid & McNally at 518-465-7330 or Nancy Donohoe Lancia, State Government Affairs, SIFMA, 212-313-1233 with your questions and comments.

Sincerely,

A handwritten signature in cursive script, reading "Nancy Donohoe Lancia".

Nancy Donohoe Lancia
Managing Director
State Government Affairs