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August 1, 2000

The Honorable Elizabeth McCaul
Superintendent of Banks
State of New York
Banking Department
Two Rector Street
New York, New York 10006

Dear Superintendent McCaul:

The Bond Market Association (the "Association")1 is responding on behalf of its members to the proposal of the New York State Banking Department (the "Department"), encouraging the adoption by underwriters of Due Diligence Best Practices (the "Best Practices") in order to combat abusive lending practices in the subprime market place.

Our objective is to provide the Department with a collective industry response to your recent correspondence with various investment banks. We understand that some member firms may prepare separate, individual responses. Given our members' prominent role as underwriters of subprime and other securitizations, we are well equipped to comment on proposed due diligence best practices applicable to the issuance of those securities. The Association strongly supports the Department's policy goal of eliminating abusive and predatory subprime lending practices. For the reasons discussed in greater detail below, however, the Association does not believe that adoption or endorsement of the specific Best Practices recommended by the Department as they would apply to underwriters of mortgage-backed securities would be an effective or desirable policy response to such lending practices in the subprime mortgage origination markets. We encourage the Department to reconsider this approach. In addition, we would like to explore more feasible approaches in which the Department and the Association could work together on this important policy goal.

I. Introduction and Executive Summary

The Association agrees with the Department that subprime lending serves important needs for low- and moderate-income borrowers with blemished credit histories. Without the availability of subprime financing, millions of Americans would be unable to obtain credit for purchasing homes, refinancing mortgage debt, consolidating credit card and other consumer debt and achieving other important and socially desirable purposes. We also agree with the Department that a robust secondary market for subprime loans is essential to ensure the necessary liquidity to reduce the cost and increase the availability of subprime loans. Further, we appreciate the Department's concern that the needs of borrowers who may be served by responsible subprime lenders instead may be compromised by those who engage in abusive or predatory practices.

An underwriter's due diligence obligations, however, are to ensure full and fair disclosure of material information to the purchasers of mortgage-backed securities in the primary markets. Accordingly, any initiatives undertaken to achieve the laudable policy goal of minimizing or even eliminating predatory and abusive lending practices, in our view, should (a) appropriately target those constituencies that are closest to, and thus capable of exerting control over, the direct extension of consumer credit; (b) only impose those duties and responsibilities upon underwriters of mortgage-backed securities that are consistent with the underwriters' role in the securities markets, and that are capable of effective implementation; and (c) not unnecessarily disrupt or encumber the overall efficiency of the primary or secondary mortgage-backed securities market.

The Association believes that "quality control" guidelines of the nature set forth in the Best Practices are more appropriately the obligations of the wholesalers and lenders in the subprime markets. It is these entities that have the direct relationships with the borrowers and mortgage brokers necessary to ensure compliance. As underwriters, Association members may elect to review loan origination practices via statistical sampling of default rates, prepayment rates and other factors at confidence rates that are customary for the securities markets and consistent with well established standards of materiality. Association members, however, do not believe that underwriters of mortgage-backed securities should be responsible for either monitoring a wholesaler's, a lender's or a mortgage broker's compliance with state or federal consumer credit laws on a loan-by-loan basis, or undertaking a statistical review of a lender's or wholesaler's portfolio of subprime loans to ensure virtually 100% compliance with those laws.

Notwithstanding our opposition to the adoption of the Best Practices proposal, we believe that the Department's efforts are an important step in the ongoing dialogue among policy makers, the primary lending industry and the capital markets concerning how best to address subprime lending abuses. The Association welcomes further constructive dialogue and continuing cooperation with the Department and other agencies to seek feasible approaches that will enable secondary market participants to assist in addressing these problems.

II. General Description of the Purpose and Function of Due Diligence in the Securities Offering Process

The basic purpose of due diligence in the context of a securities offering is to enable an underwriter generally to familiarize itself with the business and activities of an issuer, to identify issues or problems with the issuer that may materially affect either the performance of the securities or the validity of the securities offering and, ultimately, to provide the underwriter with a reasonable basis for concluding that a registration statement or offering document is complete and accurate in all material respects. Such due diligence is performed with a view toward ensuring full and fair disclosure to the investors in the securities being offered, promoting efficiency and transparency of the markets in which the securities will be traded, preserving the underwriter's business reputation and customer relationships and shielding it from potential securities law liability.

The Association believes that it is fundamentally important to emphasize that the purpose of due diligence is not to protect the underlying borrowers or clients of the issuer, or to enforce or ensure compliance with applicable federal, state and local consumer credit laws or regulations by the issuer and the third party originators from which an issuer may acquire loans. The Association is concerned that the Department's proposals inappropriately seek to convert the due diligence process into a mechanism for enforcing consumer protection. We believe that this goal is better addressed by others in the market or by the government, rather than attempting to expand an underwriter's due diligence role beyond providing full and fair disclosure to investors in the securities markets, insulating underwriters from legal liability and preserving an underwriter's business reputation and customer relationships.

From a purely legal perspective, the goal of a due diligence investigation is to ensure the underwriter that it has "reasonable grounds to believe" that: (a) any material facts stated in the relevant prospectus or securities registration statement are true, and (b) those documents do not omit to state any material facts required to be stated therein or necessary to make the statements therein not misleading. See Securities Act of 1933, §11(b)(3), 15 U.S.C. §77k(b)(3), and Securities Act of 1933, §12(a)(2), 15 U.S.C. §77l(a)(2). By performing a "reasonable investigation" of the disclosures made in the securities offering documents, and by exercising "reasonable care," an underwriter can protect itself from civil liability in the event that material information in those documents are later found to be untrue or misleading. Id. See 2 A.A. Sommer, Jr. (ed.), FEDERAL SECURITIES ACT OF 1933 (Matthew Bender's Securities Regulation Series), §§7A.02[1][d] & 7A.03[3][f][ii] (2000).

The foregoing standards confirm that the purpose of a "due diligence" investigation is not to judge the business purpose of an offering of securities or its likely impact on the public good, but to help ensure the accuracy of the information contained in the disclosure documents upon which investors will rely when making their decisions about whether or not to purchase those securities. "Underwriters . . . only need to reasonably attempt to verify and believe the accuracy of the information in the prospectus." In re Software Toolworks, Inc. Securities Litigation, [1991-92 Transfer Binder] Fed. Sec. L. Rep. (CCH) 96,631 (N.D. Cal. 1992) at p. 92,968. Accord, Weinberger v. Jackson [1990-92 Transfer binder] Fed. Sec. L. Rep. (CCH) 95,693 (N.D. Cal. 1990) at p. 98,255. See A.A. Sommer, Jr., FEDERAL SECURITIES LAW OF 1933, supra, §7A.03[3][f][ii].

Due diligence is a qualitative, subjective and judgmental exercise. What constitutes an appropriate standard of "reasonable investigation" is defined under the federal securities laws in "prudent man" terms. It is not possible to specify the precise scope, depth and details of what should be included as part of the "reasonable investigation" needed to satisfy this standard in any given situation - particularly given the tremendous variability of facts and circumstances that characterize individual securities issuers and offerings. The Department's proposals would seek to establish a level of certainty and precision in performing the due diligence function that is neither practical nor possible, given this variability and the purpose and subjective nature of the review that is conducted.

III. Description of Existing Due Diligence Policies and Practices in Securitization Transactions

A. Lender Due Diligence

Presently, there is a wide range of guidance available to the lending industry from government agencies, government sponsored enterprises and industry trade organizations concerning due diligence practices in the residential mortgage financing sector. With respect to federal consumer credit law compliance, for example, the respective banking agencies have prepared, regularly update and publicly distribute handbooks used by bank examiners to audit the regulatory compliance operations of the lenders they supervise. These manuals include detailed checklists for compliance with the Real Estate Settlement Procedures Act, the Truth in Lending Act, the Equal Credit Opportunity Act and the Fair Housing Act, among other laws. Freddie Mac makes available on its website voluminous "Best Practices" procedures that it recommends for use by its sellers, including, without limitation, (i) Wholesale Originations Best Practices, which, among other items, provides guidance on how to evaluate the viability of mortgage brokers and loan correspondents and the quality of mortgages, (ii) Quality Control Best Practices and (iii) Fraud Prevention Best Practices. HUD also has issued a detailed guide on how to establish and implement a meaningful quality control program to test for compliance with the requirements of the Federal Housing Administration ("FHA") for FHA-insured loans, which is a useful guide for all types of residential mortgage loans. The Mortgage Bankers Association of America, a leading trade group for the mortgage lending industry, recently issued its own recommended "best practices" for mortgage lenders. There already exist in the marketplace sophisticated audit tools produced by federal agencies and instrumentalities to facilitate a lender's compliance with legal and contractual requirements and production of originations in accordance with prescribed eligibility criteria.

B. Loan Purchaser/Underwriter Due Diligence

There is ample incentive for market participants to conduct due diligence of issuers and their affiliates and the underlying pooled mortgage loans. For example, as your letter notes, purchasers of mortgage loans already are subject to certain federal consumer credit laws, a material violation of which could result in monetary liability as well as, in certain cases, an impairment of the mortgage asset. Trustees in securitizations already have been sued as assignees of allegedly illegal subprime loans. In addition, high delinquency rates or prepayment rates on the pooled loans impact the subordination level, marketability and the value of the related securities. Indeed, last year Moody's Investor Services downgraded several securities backed by subprime mortgage pools for poor collateral performance. Poor underwriting standards at origination and weak appraisals were common in many of the downgraded pools.2 Clearly, underwriters who bring securities to market do not benefit from such a downgrading.

Virtually all underwriters already have developed and follow their own policies and procedures for conducting due diligence in connection with subprime and other securitization transactions. Due diligence practices encompass an evaluation of both the originators of loans as well as the characteristics of the assets that support payment on the related securities. This is not to say, however, that a common recognition of the need for due diligence equates to an industry-wide standard for conducting a due diligence investigation.

Many variables influence the nature and the scope of the due diligence that an underwriter will perform. One key factor is the type of credit enhancement that will support the securities, such as an insurance policy by an AAA rated bond insurer or over-collateralization through a senior/subordinate structure. Another essential element is the credit rating of the securities. In either case, the focus is on the stability of the cash flow, not necessarily from the perspective of whether individual borrowers will pay or have the ability to pay the underlying mortgage loans, but instead whether the securities will pay in accordance with their prescribed terms. Other relevant factors may include the nature and timing of the transaction; the nature and characteristics of the issuer and the assets included in the securitization; the degree of familiarity and previous experience the underwriter has with the particular asset type, and with the originator(s), servicer(s) and other participants involved in a particular transaction; the role of the underwriter as the sole or lead manager of the underwriting syndicate or as co-manager; and a host of other situation-specific factors.

Based on the variables present in a securitization transaction, due diligence may encompass one or more of the following factors, among others:

A determination that the issuers have sufficient experience, financial capacity and demonstrated integrity to produce loans that satisfy applicable eligibility criteria and fulfill the requirements of the securitization documents through various background checks such as financial statements, references, credit reports and licenses.

A determination that the issuers have policies and procedures in place to evaluate material conformity with eligibility criteria in originating, documenting and securitizing loans, including: Underwriting policies and procedures, such as methods used to assess the value of assets/collateral and the credit standing and payment capacity of borrowers/obligors thereon; and

Compliance policies and procedures pertaining to applicable federal and state laws and regulations, particularly with respect to legal violations that may affect the enforceability of the loans and appropriate licensing of the originator and servicer of the assets.

A review of the servicing policies and procedures of the servicer, including billing and collection methods, pursuit of delinquent accounts and realization on collateral.

A review of internal systems and controls.

A statistical review of objective performance standards in such areas as rejection rates, early payment defaults, delinquency and foreclosure rates, and loan repurchase requests.

A general review of an issuer's implementation of its own policies and procedures.

Ultimately, any or all of these variables may be relevant or irrelevant to the performance risk borne by the securities holders in a particular transaction. Even if a specific variable is relevant in a particular transaction, the variable is not necessarily material from a securities law perspective. High delinquency and default rates adversely affect the value and marketability of securities as well as the type and amount of collateral or credit enhancements backing the mortgage pools. Historically, underwriters have conducted meaningful due diligence in the manner they determined was appropriate both to protect securities holders and to maximize the value of the securities in the marketplace. Such due diligence complements the remedies available under the securitization documents for breaches of representations and warranties.

Moreover, the underwriter's responsibility to conduct due diligence for a subprime loan securitization should be evaluated in the context of the statements made in the prospectus about compliance with applicable law. Typically, the prospectus for a subprime loan securitization will state:

that the loan seller has represented and warranted that all loans were originated in compliance with applicable law,

that the loan seller is required to repurchase any loan that breaches that representation and warranty if the breach materially adversely affects the investors,

that risk factors include the fact that the loans are subject to consumer protection laws which, if violated, can result in losses, particularly with regard to HOEPA loans which may be subject to assignee liability,

what portion of the pool represents HOEPA loans, and

that losses resulting from consumer protection law violations may be borne by investors, if the loan seller fails to comply with its repurchase obligation.

Importantly, the prospectus typically does not state that all loans actually were originated in compliance with applicable law.

Under the typical disclosure, the mere existence of some level of consumer law violations would not result in liability under the Securities Act of 1933 for a material misstatement. This is because the prospectus does not promise that no consumer law violations occurred, rather, the prospectus warns that investors may be adversely affected by consumer law violations if they occurred and if the seller fails to repurchase the loans as required. In this context, in order for liability to arise under the Securities Act of 1933 there would have to be a material omission that causes the statements made to be misleading. Examples of a material omission might include that the loan seller did not have a reasonable basis for making its representation, or that the originator did not have policies and procedures in place that were reasonably designed to assure compliance with applicable law.

Accordingly, it is appropriate that the underwriter's due diligence should focus on matters such as the originator's general policies and procedures for underwriting, origination and quality control, as described above. Sample review of the loans themselves as to consumer law compliance should be made primarily for the purpose of checking the validity of the originator's policies and procedures. It should not be necessary for the underwriter to perform due diligence on a statistically relevant sample to re-underwrite the loans, or to ensure that the loans actually comply with consumer law in all respects.

Nevertheless, the specific manner in which due diligence is conducted by underwriters and the precise scope and depth of the review that is conducted are business judgments that each firm makes for itself, taking into account the range of facts and circumstances presented by a particular issuer and offering and the requirements of the securities laws. Within more general parameters for conducting an appropriate and effective due diligence review in this setting, it is important for underwriters to retain flexibility in carrying out the due diligence function.

IV. Analysis of Specific Department Recommended Due Diligence Best Practices

A basic problem with the Department's recommendations is that the level of detail and specificity they would require, as discussed above, would not permit sufficient flexibility to conduct a due diligence review that is appropriate in light of the facts and circumstances surrounding a particular offering and the primary purpose for which this review is designed.

A. Subjectivity

One concern relates to the subjective nature of the due diligence that the Department proposes. Certain of the due diligence standards and practices suggested would require underwriters to test or verify compliance with legal and regulatory standards applicable to loan originations that require judgments by lenders to whom those standards apply. Underwriters, given their specialized role in the capital raising process, do not possess the requisite experience or expertise to make such determinations. Moreover, it is extraordinarily difficult to test for compliance with laws and regulations that themselves require subjective judgments concerning a borrower's financial capacity or the lender's intent. For example, primary mortgage lenders have for years struggled with the Section 8 test under RESPA prohibiting the payment of kickbacks, but permitting the payment of reasonable value for services actually performed. We note that both federal and state governmental agencies, including the Department, also have grappled with this conundrum regarding the maximum fees that could be paid to a mortgage broker under RESPA. Similarly, over the last 5 years, the federal agencies have sought without success to clarify with precision to what extent a lender should be responsible under the fair lending laws to monitor and control the pricing practices of mortgage brokers.

Even if underwriters were to attempt to use due diligence to deter abusive lending practices, we believe that underwriters are not equipped to define with specificity what loan terms or lending practices should be prohibited or restricted. Recently, for example, the federal agencies have published for notice and comment requests for advice on how to define "predatory" lending practices and whether long standing interpretations by the Office of Thrift Supervision under the Alternative Mortgage Transactions Parity Act should be reconsidered because they unwittingly may have fostered abusive lending practices. In the area of comprehensive mortgage reform, we have witnessed over the last couple of years anguished debate on the relative merits and hardships of mortgage features including prepayment penalties, mandatory arbitration clauses, balloon loans, refinancing, flexible underwriting, and the financing of closing costs, among other items. There seems to be widespread agreement that, in some cases, such practices should be permitted and perhaps encouraged because of the benefits to consumers, and in other cases, restricted or prohibited because of the detriment to consumers. Reasonable people repeatedly disagree on where the line should be drawn. At this point, all that capital market participants can do is participate in this broader debate, along with other market participants, until the issues are crystallized, the policy judgments made and the rules finalized.

B. Methodology

Another concern relates to the methodology of due diligence. The Best Practices provide that due diligence should be based on the selection of statistically relevant samples that will provide a 95% confidence level based on both random sampling of all loans as well as a random sampling within one or more adverse selection categories. This language is similar to standards articulated by others for the design and implementation of an effective quality control plan for the primary lending industry. We do not disagree that such standards may be useful in an effective quality control plan for a party who may bear losses resulting from non-compliance. The questions are who should perform such quality control reviews and for what purpose.

Generally speaking, primary lenders conduct quality control reviews to test their compliance with the contracts or legal requirements to which they are subject. FHA, for example, requires the lenders who participate in HUD's mortgage insurance programs to conduct such reviews to determine compliance with FHA's eligibility criteria and ensure that the lenders do not put the FHA insurance fund at unreasonable risk for ineligible insured loans. Freddie Mac requires its approved sellers to conduct such reviews to ensure the sale to Freddie Mac of investment quality loans. In each case, the purpose of quality control is to lessen the risk of loss to the entity that imposed the requirements, and the quality control requirement is imposed on the party whose actions, errors or omissions are most likely to cause the loss. While there may be some merit to impose such standards on the originators that the Department regulates,3 we do not believe that the protection of the capital markets requires underwriters to conduct loan level origination due diligence at all, much less with the level of statistical confidence that the proposal contemplates. Such a level of scrutiny simply is not necessary to protect securities holders and ensure that an underwriter satisfies its legal responsibilities under the securities laws. Indeed, the primary regulator for the securities markets, the Securities Exchange Commission, has not sought to dictate the use of any particular due diligence standards.

C. Scope

The scope of the review is a third concern. The Best Practices recommend that underwriters review (a) individual loans in mortgage pools from both a credit and compliance perspective and (b) the originators from a broad perspective. With respect to a credit review, many underwriters prefer to rely on aggregate delinquency, default and loss data, coupled with a selective loan level review, to assure themselves of the credit quality of the mortgage pools. We do not believe that the Department should dictate how an underwriter should reach a comfort level with the credit quality of a mortgage pool. This analysis has nothing to do with the lawfulness of the underlying loans, except with respect to HOEPA loans.

With respect to the compliance review, we already have articulated our concern about the subjective nature of such a review. We also have concerns about testing on a loan level basis for such items as the accuracy and timing of disclosures, the reasonableness of or variations in points or fees charged to borrowers, or the completeness of ancillary credit documents. Similarly, with respect to the originators, it is not appropriate for underwriters to assume responsibility to conduct an in-depth, audit-style review of an originator's policies relating to such items as overages, sales practices and fair lending. In many circumstances, underwriters will not have direct access to or even a direct relationship with the originators of the mortgages, particularly where the assets have been purchased as part of a pool of mortgages in the secondary trading markets. A pool of mortgage loans involving a single issuer, for example, may involve scores of third party originators with whom the underwriters have absolutely no relationship. Given these circumstances, we do not believe the Best Practices suggest an appropriate scope of due diligence review that should be strictly imposed upon underwriters.

D. Legal Consequences

The Association's members have a fourth concern about the legal consequence of adopting the Best Practices. Should these Best Practices be adopted as proposed, they are likely to be characterized (by plaintiffs, in hindsight) as legally required standards of conduct in all situations, including in markets other than mortgage-backed securities. Thus, rather than minimizing legal exposure as suggested in the preamble, such exposure for underwriters may actually be elevated, particularly in circumstances where the Best Practices are not capable of being strictly or comprehensively observed. We are not persuaded that merely stressing that the practices are non-binding, and should not be construed as a recitation of existing law or as imposing any legal obligation on secondary market participants, will be sufficient to avoid this result.

Our concern is elevated by use of the term "best." If our members were to elect to adopt any of the proposed Best Practices, they would likely characterize those practices as recommendations that can be followed to manage or minimize legal exposures in conducting due diligence. Adequacy of due diligence should be evaluated on a facts and circumstances basis, rather than a "best practices" standard. Moreover, we are concerned that once the Department articulates a set of Best Practices that underwriters should follow, each state may follow the Department's lead and articulate its own set of best practices, leaving underwriters in the untenable position of choosing which of the many potential "best" practices it should follow under any given set of circumstances. For the reasons stated above, our members are concerned that the standards articulated by the Department are neither appropriate nor the relevant standard for the purpose for which our members conduct due diligence; namely, to provide full and fair disclosure to investors in mortgage-backed securities, to insulate underwriters from potential securities law liability and to preserve business reputation and customer relationships.

From a legal perspective, our members also are concerned that adoption of the Best Practices could lead to unfounded discrimination claims. Enhanced due diligence by underwriters, according to the Department, "will serve to ensure that securitizations do not fund abusive loans." In effect, the Department desires due diligence to serve as a filter to screen out abusive loans even in those circumstances where the origination of such loan was not "illegal." There is a concern that underwriters may face a legal claim resulting from the adoption of standards that may have the effect of restricting lending to subprime borrowers who meet a lender's creditworthiness standards from a safety and soundness perspective, but not a subjective judgment that the loan is suitable for the borrower. These are the types of value judgments that are more properly made by the government after suitable deliberation and public debate. One private person's view of suitability could be another's view of paternalism and discrimination.

E. Cost

A fifth concern is cost. As noted above, the scope of due diligence that the Best Practices would require involves detailed, loan level analysis of a mortgage pool that is not necessary to protect securities holders. The cost to comply with these voluntary standards could be substantial. Requirements that underwriters perform due diligence at this level of detail would increase the overhead cost of loan securitizations. Underwriters would also seek additional compensation for newly created legal risk and the potential liability they would face for failing to comply with added due diligence requirements. Increased due diligence costs and additional legal risk would both be priced into new securitization transactions by underwriters, who would be willing to pay less for loans from the primary market. Loan originators seeking to recoup losses would inevitably charge borrowers higher fees and interest rates and less credit would be available.

F. Jurisdiction

Sixth, our members also respectfully question the Department's jurisdiction in this matter. The Banking Department has explicit legal authority to supervise the activities of mortgage lenders and mortgage brokers in New York State. The issuance of securities based on and backed by residential mortgage loans is subject to the supervision of the Securities and Exchange Commission, not the Department. We highlight this fact not to engage in a debate over whether the Department has the legal authority to monitor underwriters. Rather, we hope that the Department recognizes that the issuance and underwriting of mortgage-backed securities already is highly regulated by federal and state agencies which have the resources and expertise to interpret and enforce the explicit laws and regulations to which securities firms are subject. We recognize that the Department has similar resources and expertise to apply the laws that it administers to the entities to which those laws are subject. Our members believe that it is at the mortgage origination level where the perceived abusive lending problems occur. Consequently, we believe that the Department is more likely to achieve meaningful results if the "Best Practices" and other regulatory reforms were directed at those constituencies that are the closest to the perceived abusive lending practices.

G. Philosophy

Our last concern is a reiteration of our essential disagreement in philosophy. The Department's letter accompanying the Best Practices suggests that underwriters should use due diligence to protect consumers, as well as to protect themselves and securities holders. Underlying this suggestion is the unstated premise that somehow the capital markets share blame for abusive lending practices in the primary mortgage market simply because it provides the working capital with which subprime lenders operate their business. We disagree. The capital markets fund, at some level, virtually every industry sector in the country, providing the essential capital needed to finance and operate these businesses; yet we are unaware of any other industry sector where responsibility is imputed to the capital markets for the imprudent, inappropriate or even illegal practices of the underlying debt issuers. The fact of funding alone does not mean that underwriters act to perpetuate abusive lending practices by their customers, and mere funding imposes no special duty or responsibility on capital market participants to assure that their customers comply with applicable legal requirements and current social standards. Underwriters should not be asked to serve as private attorneys general with responsibility to police the practices of their institutional clients. That role is better left to the government.

V. Conclusion and Recommendations

The Association requests that the Department seriously reconsider the concept of recommended "Best Practices" to be adopted by underwriters. Simply put, underwriters are not required to assume these tasks to satisfy their legal obligations under the securities laws. We are prepared to assist the efforts of the Department and other state and federal regulatory bodies to combat abusive subprime lending practices that harm consumers, as well as the economic and reputational interests of primary and secondary market participants. However, for all of the foregoing reasons, we do not believe that the Department's recommendations constitute a desirable, appropriate or effective mechanism for achieving this goal.

The Association and its members would welcome an opportunity to continue a dialogue with the Department to identify other, more appropriate measures to counteract subprime lending abuses. For example, the Association believes that one effective and constructive step that market participants and regulatory bodies can take lies in providing better and more accessible consumer information, education and credit counseling throughout the loan origination process. We are willing to work with the Department and to support the initiatives of other regulators and lending industry organizations in this regard.

The Association appreciates the opportunity to comment on the Department's proposals. Should you have questions or wish to discuss any of the matters addressed herein in greater detail, please do not hesitate to contact the undersigned at (212) 440-9403.

Sincerely,

/S/

George P. Miller
Senior Vice President,
Deputy General Counsel

FOOTNOTES

1 The Bond Market Association represents securities firms and banks that underwrite, distribute and trade debt securities, both domestically and internationally. The Association's members include organizations that are active in the securitization and structured finance markets, and that participate in the repurchase agreement and securities lending markets, among others. This letter was prepared with the participation of the Association's Accounting Policy Committee, which is comprised of in-house accounting and financial management professionals at the Association's member firms. More information about the Association and its members may be found at its Internet website, located at http://www.bondmarkets.com .

2. Moody's, 1999 Year in Review and Outlook for 2000 Home Equity Asset-Backed Securities: The Market for Home Equity Residential Mortgage Proves Resilient, 5 (2000).

3. We are not aware of any state banking department that promulgates quality control or internal audit standards that licensed mortgage lenders must follow, much less loan purchasers or underwriters.