



Responding to the Subprime Lending Crisis

Dramatic losses from subprime mortgages have drawn increasing attention from federal and state regulators and law enforcement agencies. Mortgage brokers and lenders, banks, issuers and underwriters all face the prospect of intense scrutiny of their respective roles in promoting or funding subprime loans, or marketing securities backed by such loans. Troutman Sanders provides the full range of skilled counseling and advocacy for potential, incipient and serious issues arising from subprime loans and mortgage-backed securities.

Problems for Industry

The Law Enforcement Powers

Federal authorities investigating subprime and securitized mortgages draw on extensive national banking and securities laws and regulations, and wire and mail fraud statutes. State Attorneys General rely on wide-reaching consumer protection statutes, such as New York's Martin Act, that allow them to pursue injunctive remedies, monetary penalties and criminal sanctions for these and similar practices.

Mortgage Brokers

Current investigations are focusing on loan-initiation practices, particularly whether brokers or real estate agents inflated appraisals or falsified financial statements and other documents to qualify marginal or unqualified buyers. Investigators are also examining whether agents or brokers employed straw buyers to conceal the true risk of the loans, and whether brokers sufficiently disclosed of the risks of subprime loans to the borrowers.

Lenders

Lenders' relationships with brokers and appraisers are being closely examined. Even in the absence of willful collaboration, some state statutes may expose lenders to potential civil liability if they have failed to exercise sufficient due diligence in scrutinizing the practices of their business partners. A pattern of fraudulent conduct by brokers or appraisers could expose the lender to a charge that it was on notice and therefore culpable under civil consumer protection laws; and federal authorities will investigate whether the lender's conduct included actual knowledge.

Banks

Federal and state regulators have launched inquiries into relationships between banks and their mortgage affiliates and subsidiaries. Failure to exercise sufficient oversight may lead to regulatory findings of a departure from sound banking practices, with attendant civil penalties and other sanctions.

Issuers and Underwriters

Mortgage-backed securities have been popular investment instruments, but as the defaults and foreclosures on subprime loans escalate, federal and state regulators are probing the adequacy of disclosures of risks associated with the underlying mortgages to investors and credit rating agencies. “Due diligence” mortgage analysts will also be a focus of the authorities’ examination of those disclosures. Issuers may find themselves simultaneously defending against enforcement actions by regulators and suing mortgage brokers for misleading practices.

How Troutman Sanders Can Help?

Securities Investigation and Enforcement

Troutman Sanders partners include a number of former federal and state prosecutors and veterans of prominent corporate fraud cases such as Worldcom. We have represented financial industry clients before the SEC, the Department of Justice, U.S. Attorneys and state Attorneys General around the nation. Prior government service affords invaluable insights not merely for the people, but also the processes by which enforcement decisions are made inside the government. That inside knowledge allows us to craft the most effective strategy for a successful resolution.

Financial Institution Representation

The Firm counsels and represents financial institutions of every type and size, from money-center banks, to community banks, to specialized financial businesses. Our services include routine regulatory advice, compliance counseling and timely representation where potential exposure appears.

Securities Litigation

Troutman’s attorneys have successfully defended a multitude of derivative actions and other strike suits. We have a proven record of designing cost-effective litigation strategies to bring such actions to a speedy and satisfactory conclusion.

Complex Litigation

Troutman Sanders litigators have extensive experience in complex civil cases in federal and state trial and appellate courts nationwide, including defense of class actions, multi-jurisdictional claims, and demands for temporary restraining orders to secure assets.