

## **Standard & Poor's Addresses South Carolina High-Cost and Consumer Home Loans Act**

NEW YORK, Jan. 8, 2004

### **BODY:**

Standard & Poor's Ratings Services announced today that it has reviewed the South Carolina High-Cost and Consumer Home Loans Act (the Act) that is to become effective Jan. 1, 2004. Based on its review, Standard & Poor's will rate structured finance transactions that include South Carolina loans governed by the Act in accordance with its criteria set forth below.

The Act categorizes loans as "consumer home loans" and "high-cost home loans." A "consumer home loan" is defined as a loan that is (i) incurred by the borrower primarily for personal, family, or household purposes, and (ii) is secured by a mortgage on real estate upon which is located or is to be located a structure designed principally for occupancy of from one to four families and that is or is to be occupied by the borrower as the borrower's principal dwelling. A "high-cost home loan" is defined as a loan, other than an open-end credit plan or a reverse mortgage transaction, that (i) exceeds either the annual percentage rate threshold or the points and fees threshold set forth in the Act, (ii) is secured by either a residential manufactured home, as defined in the Act, which is to be occupied by the borrower as the borrower's principal dwelling, or a mortgage on real estate upon which there is located or is to be located a structure designed principally for occupancy of from one to four families and which is or is to be occupied by the borrower as the borrower's principal dwelling, (iii) does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association, and (iv) is incurred by the borrower primarily for personal, family, or household purposes.

For lenders that choose to make loans covered by the Act, the Act prohibits certain practices and sets forth certain rules to which a lender must adhere. Consumer home loans and high-cost home loans that fail to comply with the Act's requirements would violate the Act. These violations could result in liability for the originator of the consumer home loan or high-cost home loan. The Act does not explicitly provide for liability for purchasers or assignees of either consumer home loans or high-cost home loans that violate the Act. However, the Act provides that if a court should find, as a matter of law, that either a consumer home loan or a high-cost home loan violated the Act at the time it was made, the court may, in an individual action, refuse to enforce the loan or part of the loan, enforce the remainder of the loan without the unlawful term or part (or limit the application of the unlawful term or part to avoid an unlawful result), rewrite or modify the loan to eliminate an unlawful term, part, or result and enforce the new loan, or award monetary damages of not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge or not more than double the amount of excess loan finance charge or other charges or fees actually received by the creditor or paid by the borrower to a third party. In addition, the court may award an amount required to recover costs, including reasonable attorney fees.

For loans governed by a predatory lending statute, Standard & Poor's evaluates the impact the statute may have on the availability of funds to pay investors of its rated securities. In its review of the Act, Standard & Poor's followed its general approach set forth in its article on evaluating predatory lending statutes (For a discussion of Standard & Poor's general approach to evaluating predatory lending statutes, see "Evaluating Predatory Lending Laws: Standard & Poor's Explains Its Approach," published on RatingsDirect on April 15, 2003).

In evaluating rated transactions that include South Carolina originated loans, Standard & Poor's will follow the analyses outlined below.

First, for Standard & Poor's to rate transactions that include these loans, Standard & Poor's will continue to rely on the representation and warranty that the loans in the rated pool were originated in compliance with all applicable laws, including, but not limited to, all applicable anti-predatory and abusive lending laws (Compliance Representation). Standard & Poor's will require the Compliance Representation to be provided by a creditworthy entity with sufficient financial strength to repurchase loans that are in breach of this representation at a purchase price that would make the securitization issuer whole, including any costs and damages incurred by the issuer in connection with such loan.

Second, with regard to loans included in a securitized pool, Standard & Poor's will require sellers to demonstrate that their existing compliance procedures are effective to identify which loans are high-cost home loans and consumer home loans under the Act and determine that these loans do not violate the Act.

Standard & Poor's regularly reviews its criteria to keep current with changes in the law in the area of predatory lending. These criteria are not stagnant, but evolve over time. Standard & Poor's will continue to publish its criteria to keep market participants informed of any new approaches in this area.

Members of the media may contact Adam Tempkin, Media Relations Manager, at 212-438-7530 or [adam\\_tempkin@standardandpoors.com](mailto:adam_tempkin@standardandpoors.com).

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