Katten
Katten Muchin Rosenman LLP
CORPORATE & FINANCIAL
WEEKLY DIGEST

Corporate & Financial Weekly Digest

Posted at 11:02 AM on November 5, 2010 by Robert J. Wild

SEC Letter to Public Company CFOs Regarding Mortgage and Foreclosure-Related Activities or Exposures

Co-authored by James B. Anderson

The Securities and Exchange Commission has released a letter sent in late October by its Division of Corporation Finance to the chief financial officers of certain public companies to remind them of disclosure obligations in their upcoming Form 10-Qs and subsequent filings in light of continued concerns about potential risks and costs associated with mortgage- and foreclosure-related activities or exposures. The letter instructs companies to review their various mortgage-related representations and warranties made in sale agreements with purchasers of the mortgages or mortgage-backed securities and consider the implications on their accounting and disclosures. In addition, companies undertaking reviews of their loan documentation and foreclosure practices and which have suspended foreclosures pending completion of such reviews should consider their treatment of loss contingencies and disclosures.

Item 103 (Legal Proceedings) and Item 303 (Management's Discussion and Analysis of Financial Condition and Results of Operations) of Regulation S-K, as well as accounting rules regarding contingencies set forth in Accounting Standards Codification Subtopic 450-20 (SFAS 5), require public companies to provide clear and transparent disclosure regarding their obligations relating to representations and warranties made in connection with securitization activities and whole loan sales, including a roll forward of related reserves. In addition, companies are encouraged to discuss implications of any foreclosure review, including potential delays in completing foreclosures, if applicable. These disclosures may include increased risks and uncertainties, including litigation risks, potential defects in securitizations, impairments and liquidity, and should address the company's role as an originator, securitizer, servicer or investor, as applicable. The letter notes that some of these disclosure issues are not limited to financial institutions that sold or securitized mortgages or mortgage-backed securities, and instructs companies that engage in mortgage servicing, title insurance, mortgage insurance and other activities relating to residential mortgages to consider the impact of these and similar issues for their disclosures.

Click here for a copy of the SEC letter.

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC