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The Credit Crisis, The Law Enforcement Response, and Special Considerations in Internal Investigations of Subprime Debt Portfolios and Credit Default Swaps

The recent meltdown of the subprime mortgage market and the ensuing credit crisis have led to one of the most severe economic storms since the Great Depression. Whereas the savings-and-loan crisis of the 1980s and early 1990s caused losses of nearly $300 billion, mainly in the United States, the International Monetary Fund has warned that the aggregate potential losses from U.S. loans and securitized assets could reach $1.4 trillion. As the American public grows ever angrier, law enforcement pressure will ratchet up and many financial institutions may have no choice but to self-investigate their roles in the collapse of the American financial system, lest law enforcement authorities do it for them.[1]

This bulletin reviews the history of the financial debacle, summarizes the law enforcement response to date, and identifies special challenges in conducting internal investigations related to the credit crisis, especially investigations of subprime debt portfolios and credit default swaps.

The Origins of a Financial Market Meltdown and Global Economic Crisis

Several combustible elements combined to produce a financial conflagration. The first was the popularization of subprime mortgage loans. A decade ago, only five percent of mortgage loan originations were subprime; by 2005, that figure had increased to approximately 20 percent. A subprime borrower is "one who has a high debt-to-income ratio, an impaired or minimal credit history, or other characteristics that are correlated with a high probability of default relative to borrowers with good credit history." Although a single, commonly-accepted definition of "subprime mortgage loan" does not exist, some observers have characterized three categories of home mortgage loans as subprime: "1) loans to borrowers with low credit rating scores and/or poor mortgage payment histories; 2) so-called "Alt-A" mortgage loans made to borrowers whose credit scores might qualify them for prime mortgage interest rates, but who cannot or choose not to fully document the necessary asset and/or income information to obtain such rates; and 3) high loan-to-value ("LTV") ratio refinance mortgages, generally originated to borrowers with relatively good credit scores." Many of the subprime loans were adjustable-rate mortgages ("ARMs"), an even riskier option for borrowers since their monthly payments were tied to interest rates. The size of the subprime market is staggering, with $1.3 trillion in subprime loans outstanding and over $600 billion in new subprime loans that originated in 2006 alone.[2]

Second, to compensate for the obvious risk, mortgage lenders extended credit to subprime borrowers at a premium above the mortgage rate offered to those with good credit ("prime" borrowers). Lenders then sold these high interest rate loans to third parties who "pooled" mortgages with similar characteristics and packaged them into bonds subsequently sold to investors in the form of mortgage-backed securities ("MBSs"). Thereafter, some of these third parties pooled and securitized the MBSs to create collateralized debt obligations ("CDOs").[3]

Third, in late 2006 and early 2007, increases in interest rates caused the adjustable rates on subprime mortgages to likewise climb, subprime borrowers began to fall behind in their mortgage payments, and home value appreciation slowed and then reversed course. In a cascading series of failures at every level, subprime borrowers began defaulting on mortgage payments, their homes were foreclosed upon and often sold for less than the outstanding mortgage balance, and thinly-capitalized mortgage lenders began to fail. The distress sales and lack of credit dried up real estate transactions and further drove down real estate prices, which in turn devalued the subprime debt obligations that backed MBSs and CDOs that, in one form or another, had leached their way into the assets of just about every major financial institution in the United States, many in Europe and even the Bank of China.[4] In a globalized economy, mortgage defaults in Miami cause bank losses in Berlin.

Finally, many financial institutions had purchased insurance-like protection in the form of credit default swaps ("CDSs") against loss of value in their subprime portfolios, many of which were highly leveraged. This in turn created a giant, unregulated credit swaps market estimated at $54.6 trillion, several times the Gross Domestic Product of the United States. However, many CDS issuers were simply overwhelmed by the devaluation of the subprime portfolios covered by their CDSs. This left many financial institutions exposed without any protection (or else the cost of such protection became prohibitive) against the devaluation of their leveraged, subprime-backed asset portfolios.[5] The combined impact of leverage and loss of CDS protection was roughly analogous to the effect on a forest fire of sudden and sustained gusts of 50 mile-an-hour winds.

The resulting overall uncertainty about the value of financial institution assets and therefore the solvency of the institutions themselves metastasized into fear and then panic. Major financial institutions began to pull back from lending even to each other, which contributed to the spectacular collapse of Bear Stearns (and its Federal Reserve-orchestrated sale to JP Morgan Chase) in March. Within a few months, other Wall Street firms began to topple. The Federal Reserve, in a move that has since drawn significant criticism, rejected a Bear Stearns-style rescue of Lehman Brothers, whose subsequent bankruptcy further roiled the markets. Merrill Lynch sold itself to Bank of America. The United States government seized control of Fannie Mae and Freddie Mac, the nation's two largest mortgage finance companies who combined own or implicitly guarantee over half of the nation's $12 trillion in mortgages. Contributing to the credit crisis inferno were failures in the market for auction-rate securities, whose interest rates are set at weekly or monthly auctions.[6]

The Federal Reserve took control of American International Group ("AIG") in a bailout initially set at $85 billion but whose ultimate cost will likely be far greater. With the market in turmoil, the Securities and Exchange Commission ("SEC") temporarily banned short selling in financial securities, another move that has since been criticized as doing more harm than good. In the biggest bank failure in U.S. history, Washington Mutual was seized by federal regulators and bought by JPMorgan Chase.

As the crisis intensified, the federal government resorted to dramatic systemic measures. On October 3, Congress, on its second try, passed "bailout" legislation that, among other measures, provided $700 billion to address the credit crisis, although no one really knows exactly how that money will be spent. In just two days, from October 7-8, the Federal Reserve announced both a half point lending rate cut in coordination with other central banks and a plan to buy unsecured commercial paper in an effort to jump-start the credit markets which were frozen to the point that major corporations were unable to borrow for longer than one day at a time. The stock markets reacted to these initiatives by crashing but then posted the biggest one-day gain since the 1930s after aggressive moves by governments to inject capital into struggling banks and implement other emergency measures.[7]

The Law Enforcement Response

According to SEC Chairman Christopher Cox, "Financial institutions in every regulated sector have been damaged, and every one of those investment banks, traditional banks, and thrifts has been vulnerable to the effects of this toxic mortgage contagion." With tax dollars on the line and reputations at stake, criminal and regulatory investigations are in a surge. The following are among the more significant regulatory and criminal investigations and proceedings resulting from the crisis.[8]

(i) The SEC

Even before the latest round of financial institution failures, the SEC had over two dozen investigations related to the subprime debt market, including one joint investigation with the Department of Justice into whether a leading insurance company's financial-products division intentionally overstated the value of CDSs. The SEC has been aggressively investigating whether mortgage lenders properly accounted for the subprime loans in their portfolios and established appropriate loan loss reserves; whether financial institutions adequately disclosed the risk profiles of their mortgage-backed assets, appropriately valued their portfolios and made adequate risk disclosures to investors; and whether broker-dealers made false representations and/or put investors into unsuitable mortgage-backed investments. More recently, the SEC sent subpoenas to over 50 hedge funds suspected of spreading rumors about Lehman Brothers, and ordered over two dozen hedge funds to provide information about potential abusive short selling during the market crisis in September 2008.[9]

The SEC investigations have already produced historic settlements. In August 2008, the SEC and state regulators entered into settlement agreements on behalf of investors with Merrill Lynch, Wachovia, UBS and Citigroup. According to SEC Chairman Christopher Cox, these agreements, when finalized, "will be the largest settlements in the history of the SEC." In an effort to end probes by the SEC, New York Attorney General and others, banks have also agreed to buy back massive amounts of dollars of auction-rate securities. In one stunning example, Bank of America will pay a $50 million civil penalty and buy back $4.5 billion of the securities.[10]

(ii) The Department of Justice ("DOJ")

By the end of September 2008, the Federal Bureau of Investigation ("FBI") had reported 26 ongoing corporate fraud investigations, as well as preliminary fraud investigations into Fannie Mae, Freddie Mac, Lehman Brothers and AIG. The corporate fraud investigations include a joint investigation with the SEC of 14 corporations involved in subprime lending as part of the FBI's "Subprime Mortgage Industry Fraud Initiative." This investigation's scope is far-reaching, from fraud by mortgage lenders, to misrepresentations by the investment banks that bundled the loans into securities, to insider trading by executives of financial institutions.[11]

In May 2008, the U.S. Attorney's Office for the Eastern District of New York ("EDNY") announced the creation of a task force to investigate potential mortgage fraud by brokers, securities fraud, insider trading and accounting fraud. In June, the U.S. Attorney's Office unsealed an indictment charging two former senior hedge fund portfolio managers of Bear Stearns with conspiracy, securities fraud and wire fraud. In addition, one of the two defendants was charged with insider trading. The indictment, the first to target senior executives of Wall Street investment banks, stems from the collapse of Bear Stearns' two largest subprime-related hedge funds, resulting in losses to investors totaling more than $1 billion. In September, the same office announced the indictment of two former Credit Suisse brokers for securities fraud, wire fraud and conspiracy in connection with the sale of CDOs. Significantly, however, the DOJ has declined to set up a national task force as it did in the Enron matter.[12]

Other United States Attorney's Offices' subprime debt-related investigations include the circumstances surrounding the highly publicized failure of two huge hedge funds; potential accounting fraud and false statements by current and former executives of a mortgage company; and whether the nation's largest mortgage lender misrepresented its financial condition and the soundness of its loans in securities filings.[13]

Apart from the indictments in the EDNY, most of the indictments to date by the DOJ have concerned only local or regional mortgage fraud rings involving speculators, loan officers or brokers. The federal offenses charged include substantive and conspiracy charges involving bank, wire and mail fraud, money laundering, and filing of false statements to a financial institution. In June, for example, the DOJ announced a "national takedown of mortgage fraud schemes," charging 406 defendants in more than 50 judicial districts across the United States as part of its "Operation Malicious Mortgage." The investigations focus primarily on three types of mortgage fraud schemes: lending fraud, foreclosure rescue scams and mortgage-related bankruptcy schemes.[14]

(iii) The New York State Attorney General

The New York State Attorney General ("NYAG") has been especially active, investigating whether Wall Street banks withheld crucial information about the risks posed by investments linked to subprime mortgage-related loans. The inquiry focuses on how the banks bundled billions of dollars of "exception loans" and other subprime-related debt into complex securities. The NYAG has subpoenaed several banks, underwriters of MBS, mortgage consultants and the three major credit-rating agencies. In June, the NYAG announced an agreement with those agencies, Moody's Investors Service, Standard & Poor's and Fitch Ratings, to "dramatically increase the independence of the ratings agencies" and increase transparency in the MBS market. Under the agreement, the credit-rating agencies will "fundamentally alter how they are compensated by investment banks for providing ratings on loan pools." Further, the credit-rating agencies must require that investment banks provide due diligence data on loan pools prior to the issuance of ratings.[15]

Pending and future criminal and regulatory investigations of financial institutions will likely focus on securities fraud in connection with misrepresentations in financial filings and other public disclosures by financial institutions about their financial condition; bank fraud or appraisal fraud; insider trading; falsified accounting for asset-backed securities in financial statements; possible collusion between credit rating agencies and investment banks or other financial institutions; and failures to maintain adequate internal controls.

Special Considerations in Internal Investigations Resulting from the Credit Crisis

Internal investigations arising from the credit crisis may have a range of objectives, including identifying and addressing possible civil or criminal liabilities, wrongdoing or negligence by officers or employees, damages claims against other institutions, and how such losses occurred. Aside from a backdrop of a severe financial crisis and superheated pressure on law enforcement agencies to bring enforcement actions and/or indictments, in many respects, conducting a credit-crisis related investigation poses the same challenges as other internal investigations. However, special challenges exist, including:

- expert assistance is especially important at the outset, as complex financial and accounting issues will be interwoven with any factual setting involving subprime debt or CDSs; any expert should be vetted carefully for positional or actual conflicts arising from previous work done in valuing MBSs or CDOs for financial institutions;

- special focus must be given, and expertise brought to bear on, the due diligence, if any, done by lenders, underwriters and financial institutions on the underlying mortgages, since knowledge – or even conscious avoidance of knowledge – of mortgage payment arrearages and foreclosures will likely be a key determinant of whether the institution may have violated the law and/or have civil liability exposure;

- to the extent the issue concerns CDSs, expertise in the complex International Swaps and Derivatives Associations ("ISDA") forms used in CDS transactions and knowledge of how monoline insurers operate will be essential;

- construction of tight chronologies based on documentary and electronically-stored evidence of a financial institution's due diligence review, trading decisions, supervisory approval, hedging or CDS strategy, and initial notice of lower subprime mortgage portfolio values are more essential than ever;

- prompt decision-making and execution in conducting financial institution employee interviews since, with the instability and chaos generated by the credit crisis, many employees with relevant knowledge may be leaving their institutions, either voluntarily or involuntarily; and

- prompt collection of documents and strict enforcement of a company's document retention policies.

Regardless of whether the $700 billion rescue plan and the Federal Reserve initiatives are successful, law enforcement pressure will not abate.

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1 James R. Hagerty, *Realtors Forecast Falling Home Prices – Traditionally Upbeat Group Says Nationwide Drop Would be First Since 1930s, Citing Tighter Credit From Mortgage Lenders*, WALL ST. J., Apr. 12, 2007, at D1; International Monetary Fund, *Global Financial Stability Report: Financial Stress and Deleveraging, Macrofinancial Implications and Policy*; at xiii, 16 (Oct. 2008), *available at* http://www.imf.org/external/pubs/ft/gfsr/2008/01/pdf/text.pdf.

2 Kenneth C. Johnston *et al.*, *The Subprime Morass: Past, Present, and Future*, 12 N.C. BANKING INST. 125, 126 (2008); Dr. Faten Sabry & Dr. Thomas Schopflocher, *The Subprime Meltdown: A Primer*, NERA Economic Consulting, NERA INSIGHTS SERIES, June 21, 2007, at 1-2; Loan-to-value ratio refers to the amount of the loan compared to the value of the mortgaged property; Final Report of Michael J. Missal, Bankr. Ct. Examiner, *In Re: New Century TRS Holdings, Inc.*, No. 07-10416, 2008 WL 850030, at 23 (Bankr. D. Del. Feb. 29, 2008); Fed. Res. Bd., Consumer Handbook on Adjustable-Rate Mortgages (2007),http://www.federalreserve.gov/pubs/arms/arms_english.htm (last visited Oct. 1, 2008).

3 Sabry & Schopflocher, *supra* note 2, at 2; 4-5 ("According to the Mortgage Bankers Association, there were nearly $2.5 trillion in total mortgage originations in the US in 2006, of which $1.9 trillion was securitized into MBS. About 25 percent of the MBS issued in 2006 were subprime loans. In 2006, 63 percent of all subprime and Alt-A loans were securitized."); David B. Bayless, *Prime Time for Subprime Plan*, GENERAL COUNSEL CALIFORNIA MAGAZINE (Apr. 15, 2008), *available at* http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1208169992605. *See also* Alistair Barr, *Subprime Shakeout Could Hurt CDOs*, Marketwatch, Mar. 13, 2007, http://www.marketwatch.com/news/story/subprime-mortgage-shakeout-cdos-may/story.aspx?guid=%7B620D90CA-3A9E-4A21-9591-E772D59E5CF3%7D.

4 *See* Bayless, *supra* note 3; *See also* Marcus Walker *et al.*, *U.S. Slump Takes Toll Across Globe*, WALL ST. J., Apr. 3, 2008, at A1; Tamsyn Parker, *How the Financial Dominoes Tumbled*, N.Z. HERALD, Sept. 20, 2008 at C5, ("Sub-prime mortgage backed securities were discovered in portfolios of banks and hedge funds around the world, from BNP Paribas in France to Bank of China.").

5 The U.S. Gross Domestic Product was $13.78 trillion in 2007. https://www.cia.gov/library/publications/the-world-factbook/geos/us.html (last visited Oct. 13, 2008); "Credit default swaps are insurance-like contracts that promise to cover losses on certain securities in the event of a default. They typically apply to municipal bonds, corporate debt and mortgage securities and are sold by banks, hedge funds and others. The buyer of the credit default insurance pays premiums over a period of time in return for peace of mind, knowing that losses will be covered if a default happens. It's supposed to work similarly to someone taking out home insurance to protect against losses from fire and theft. Except that it doesn't. Banks and insurance companies are regulated; the credit swaps market is not. As a result, contracts can be traded - or swapped - from investor to investor without anyone overseeing the trades to ensure the buyer has the resources to cover the losses if the security defaults ... All of this makes it tough for banks to value the insurance contracts and the securities on their books." Janet Morrissey, *Credit Default Swaps: The Next Crisis?*, TIME MAG. (Mar. 17, 2008), *available at* http://www.time.com/time/business/article/0,8599,1723152,00.html; A monoline bond insurer, such as MBIA or Ambac Financial Group, Inc., is an insurance company that guarantees the scheduled interest and principal payments on its insured bonds and does not write any other line of insurance. Association of Financial

Guaranty Insurers, http://www.afgi.org/facts-gloss.htm (last visited Sept. 28, 2008); Floyd Norris, *Off the Charts Out of the Shadows and Into the Harsh Light*, N.Y. TIMES, Sept. 27, 2008, at C3 (describing the decline of the credit-default swap market to $54.6 trillion).

6 Recent bankruptcy filings also provide insight into the scale and scope of the fallout from the subprime debt crisis: "four of the top five largest bankruptcy filings in the United States in 2007, measured by the amount of the debtors' pre-petition assets, were made by subprime mortgage lenders, and the fifth was a prime mortgage lender. The aggregate total of pre-petition assets reported by these bankrupt mortgage lenders was in excess of $63 billion ..." *In Re: New Century TRS Holdings, Inc.*, 2008 WL 850030, at 38. (Bkrtcy.D.Del. Feb. 29, 2008); The Federal Reserve provided emergency funding to Bear Stearns, marking "the first time since the Great Depression that the Fed has lent in this fashion to any entity other than a bank." Kate Kelly et al., *Fed Races to Rescue Bear Stearns in Bid to Steady Financial System*, WALL ST. J., Mar. 15, 2008, at A1. Many of the subprime-based hedge funds, including two at issue in the Bear Stearns collapse, were highly leveraged, "in some cases borrowing as much as $20 for every dollar invested ..." Landon Thomas, Jr., *2 Face Fraud Charges in Bear Stearns Debacle*, N.Y. TIMES, June 20, 2008, at A1; Andrew Ross Sorkin, *Bids to Halt Financial Crisis Reshape Landscape of Wall St.*, N.Y. TIMES, Sept.15, 2008, at A1; Stephen Labaton and Edmund L. Andrews, *In Rescue to Stabilize Lending, U.S. Takes Over Mortgage Finance Titans*, N.Y. TIMES, Sept. 8, 2008, at A1; Stephen Labaton and Steven R. Weisman, *U.S. Weighs Takeover Plan for Two Mortgage Giants*, N.Y. TIMES, Jul. 11, 2008, at A1; Floyd Norris, *Auctions Yield Chaos for Bonds*, N.Y. TIMES, Feb. 20, 2008, at C0.

7 Edmund L. Andrews, Michael J. de la Merced and Mary Williams Walsh, *Fed in an $85 Billion Rescue of an Insurer Near Failure*, N.Y. TIMES, Sept. 17, 2008 at A1; Senate Testimony by Christopher Cox, Chairman of the SEC, Testimony Concerning Turmoil in U.S. Credit Markets before the Committee on Banking, Housing, and Urban Affairs, United States Senate, Sept. 23, 2008, http://banking.senate.gov/public/_files/COXTestimony92308.pdf; http://sec.gov/news/testimony/2008/ts092308cc.htm; Eric Dash and Andrew Ross Sorkin, *In Largest Bank Failure, U.S. Seizes, Then Sells*, N.Y. TIMES, Sept. 26, 2008 at A1; David M. Herszenhorn, *House Approves Bailout On Second Try*, N.Y. TIMES, Oct. 3, 2008, at A1; Edmund L. Andrews and Michael M. Grynbaum, *Fed Announces Plan to Buy Short-Term Debt*, N.Y. TIMES, Oct. 8, 2008, at A1; *Lifelines, Global Finance*, ECONOMIST, Oct. 11, 2008, at 93; Michael M. Grynbaum, *Stocks Soar by 11% After Aid to Banks*, N.Y. TIMES, Oct. 13, 2008, at A1.

8 *See* Cox, *supra* note 7; Eric Lichtblau, *F.B.I. Looks Into 4 Firms at Center of the Storm*, N.Y. TIMES, Sept.24, 2008, at C1.

9 *See* Amir Efrati et al., *Prosecutors Widen Probes Into Subprime*, WALL ST. J., Feb. 8, 2008, at C1; Randall Smith et al., *AIG Group Tied to Swaps Draws Focus of Probes*, WALL ST. J., June 13, 2008, at C1; Gretchen Morgenson, *Behind Biggest Insurer's Crisis, A Blind Eye to a Web of Risk*, N.Y. TIMES, Sept. 28, 2008, at A1; *see* Cox, *supra* note 7; Kara Scannell, *SEC Presses Hedge Funds*, WALL ST. J., Sept 25, 2008, at A3.

10 *See* Cox, *supra* note 7; Chad Bray and Mike Barris, *Crisis on Wall Street: BofA, RBC to Buy Back Auction-Rates*, WALL ST. J., Oct. 9, 2008, at C3.

11 *See* Lichtblau, *supra* note 8; State officials have also been pursuing subprime mortgage-related investigations, including those arising from alleged deceptive mortgage lending practices. The New York State Attorney General's Office, as well as prosecutors in California, Connecticut, Illinois, Massachusetts, New Hampshire and Ohio are currently engaged in investigations and/or civil actions. *See* Raymond Hernandez, *Countrywide Said to be Subject of Federal Criminal Inquiry*, N.Y. TIMES, Mar. 9, 2008, at A1; Press Release, FBI, Subprime Loans and More (Jan. 31, 2008), http://www.fbi.gov/page2/jan08/financial_fraud013108.html; Evan Perez & Kara Scannell, *FBI Launches Subprime Probe — Fourteen Companies Are Investigated For Possible Fraud*, N.Y. TIMES, Jan. 30, 2008, at A3; Press Release, New Hampshire Department of Justice, Mortgage Fraud Task Force Established (Jun. 5, 2008), http://doj.nh.gov/publications/nreleases/060508taskforce.html; Reuters, *California Sues Countrywide Over Lending*, N.Y. TIMES, June 26, 2008, at C11.

12 Amir Efrati, *Wall Street, Lenders Face Subprime Scrutiny*, WALL ST. J., May 5, 2008, at A4; *see* Press Release, U.S. Attorney's Office, EDNY, Two Senior Managers of Failed Bear Stearns Hedge Funds Indicted on Conspiracy and Fraud Charges (Jun. 19, 2008), http://www.usdoj.gov/usao/nye/pr/2008/2008jun19.html; ("The indictment alleges that by March 2007, the defendants believed that the Funds were in grave condition and at risk of collapse. However, rather than alerting the Funds' investors and creditors to the bleak prospects of the Funds and facilitating an orderly wind-down, the defendants made misrepresentations to stave off withdrawal of investor funds and increased margin calls from creditors in the ultimately futile hope that the Funds' prospects would improve and that the defendants' incomes and reputations would remain intact. The subsequent collapse of the Funds during the summer of 2007 resulted in losses to investors totaling more than $1 billion."). *See also* Thomas, Jr., *supra* note 6; see Press Release, U.S. Attorney's Office, EDNY, Two Former Credit Suisse Brokers Indicted...(Sept. 3, 2008), http://www.usdoj.gov/usao/nye/pr/2008/2008sep03.html; Attorney General Michael Mukasey opted to maintain the current approach to subprime mortgage-related investigations: utilize local prosecutor's offices around the country to oversee the various FBI investigations. Eric Lichtblau, *Mukasey Declines to Create a U.S. Task Force to Investigate Mortgage Fraud,* N.Y. TIMES, June 6, 2008, at C4.

13 Efrati, *supra* note 12; Hernandez, *supra* note 11.

14 *See, e.g.*, Press Release, U.S. Attorney's Office, SDNY, Leader of Foreclosure Rescue Scheme and Mortgage Broker Plead Guilty to Multimillion Dollar Mortgage Fraud (Jun. 3, 2008), http://www.usdoj.gov/usao/nys/pressreleases/June08/mcdowalllipkinpleaspr.pdf; Press Release, U.S. Attorney's Office, EDNY, Eleven Defendants Indicted in $14 Million Mortgage Fraud Scheme (May 21, 2008), http://www.usdoj.gov/usao/nye/pr/2008/2008may21.html.; Press Release, U.S. Attorney's Office, Eastern District of California, Two Defendants Indicted in Mortgage Fraud Scheme (Aug. 30, 2007), http://www.usdoj.gov/usao/cae/press_releases/docs/2007/08-30-07AhmadInd.pdf; Press Release, FBI, More Than 400 Defendants Charged for Roles in Mortgage Fraud Schemes as Part of Operation "Malicious Mortgage" (Jun. 19, 2008), http://www.fbi.gov/pressrel/pressrel08/mortgagefraud061908.htm ("*Lending fraud* frequently involves multiple loan transactions in which industry professionals construct mortgage transactions based on gross fraudulent misrepresentations about the borrower's financial status, such as overstating the borrower's income or assets, using false or fictitious employment records or inflating property values. *Foreclosure rescue scams* involve criminals who target legitimate homeowners in dire financial circumstances and fraudulently collect fees for foreclosure prevention services or obtain ownership interests in residential properties. Both of these fraudulent mortgage schemes may be furthered by filing bankruptcy petitions that automatically stay foreclosure.").

15 Vikas Bajaj & Jenny Anderson, *Inquiry Focuses on Withholding of Data on Loans*, N.Y. TIMES, Jan. 12, 2008, at A1; Press Release, Office of the New York State Attorney General, Attorney General Cuomo Announces Landmark Reform Agreements With the Nation's Three Principal Credit Rating Agencies (Jun. 5, 2008), http://www.oag.state.ny.us/press/2008/june/june5a_08.html; In early June of 2008, the SEC proposed similar changes to the credit-ratings industry. Kara Scannell & Aaron Lucchetti, *Credit Crunch: SEC Backs Changes in Rules on Ratings, Plan Would Bring Greater Disclosure; Key Firms Back It*, WALL ST. J., June 12, 2008, at C2.