

SEC Charges Bank of America With Fraud in RMBS Offering

 sec.gov/news/press-release/2013-148

FOR IMMEDIATE RELEASE

2013-148

Washington D.C., Aug. 6, 2013 —

The Securities and Exchange Commission today charged Bank of America and two subsidiaries with defrauding investors in an offering of residential mortgage-backed securities (RMBS) by failing to disclose key risks and misrepresenting facts about the underlying mortgages.

The SEC alleges that Bank of America failed to tell investors that more than 70 percent of the mortgages backing the offering – called BOAMS 2008-A – originated through the bank’s “wholesale” channel of mortgage brokers unaffiliated with Bank of America entities. Bank of America knew that such wholesale channel loans – described by Bank of America’s then-CEO as “toxic waste” – presented vastly greater risks of severe delinquencies, early defaults, underwriting defects, and prepayment. These risks all directly impact the returns to RMBS investors, however Bank of America only selectively disclosed the percentage of wholesale channel loans to a limited group of institutional investors. Bank of America never disclosed this material information to all investors and never filed it publicly as required under the federal securities laws.

“In its own words, Bank of America ‘shifted the risk’ of loss from its own books to unsuspecting investors, and then ignored its responsibility to make a full and accurate disclosure to all investors equally,” said George S. Canellos, Co-Director of the SEC’s Division of Enforcement. “This is one in a long line of RMBS-related enforcement actions brought by the SEC to hold entities accountable for wrongdoing connected to the financial crisis.”

The Department of Justice today announced a parallel civil action against Bank of America for violations of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

According to the SEC’s complaint filed in U.S. District Court for the Western District of North Carolina, Bank of America along with Banc of America Securities LLC (now Merrill Lynch, Pierce, Fenner & Smith) and Bank of America Mortgage Securities (BOAMS) conducted the \$855 million RMBS offering in 2008. BOAMS 2008-A was offered and sold as a “prime” securitization appropriate for the most conservative RMBS investors.

The SEC alleges that Bank of America deceived investors about the underlying risks as well as the underwriting quality of the mortgages, misrepresenting that the mortgage loans backing BOAMS 2008-A were underwritten in conformity with the bank's own guidelines. These mortgage loans, however, were riddled with ineligible appraisals, unsupported statements of income, misrepresentations regarding owner occupancy, and evidence of mortgage fraud. The key ratios of debt-to-income and original-combined-loan-to-value were routinely miscalculated, and then the materially inaccurate ratios were provided to the investing public.

According to the SEC's complaint, a disproportionate concentration of high-risk wholesale loans and the inclusion of a material number of loans failing to comply with internal underwriting guidelines resulted in BOAMS 2008-A suffering an 8.05 percent cumulative net loss rate through June 2013 – the greatest loss rate of any comparable BOAMS securitization. This resulted in losses of nearly \$70 million with anticipated future losses of approximately \$50 million. Bank of America's repeated failures violated Sections 5(b)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933.

The SEC's investigation was conducted by Mark Eric Harrison and Lucy T. Graetz of the Enforcement Division's Structured and New Products Unit and the Atlanta Regional Office, under the supervision of Assistant Regional Director Aaron W. Lipson. The litigation will be led by Senior Trial Counsel Kristin B. Wilhelm, Regional Trial Counsel Graham Loomis, and Mr. Harrison. The Enforcement Division was assisted in its investigation by the SEC's Division of Corporation Finance, including Rolaine Bancroft, Michelle Stasny, Mary Kosterlitz and Jennifer Ours.

The SEC appreciates the assistance of the U.S. Attorney's Office for the Western District of North Carolina (DOJ). Today's actions were coordinated by the federal-state RMBS Working Group that is focused on investigating fraud and abuse in the RMBS market that helped lead to the financial crisis. For more information about the RMBS Working Group, visit www.stopfraud.gov.

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