

penalty, and \$6.62 million prejudgment interest; and Merrill and BOAMS consented to permanent injunctions against violations of Securities Act §5(b)(1).

With respect to the Securities Act §17(a)(2) and (3), the SEC alleged that BANA, BOAMS and Merrill (1) underwrote a prime RMBS ("BOAMS 2008-A") and failed to comply with its representation that each underlying mortgage complied with Respondents' underwriting guidelines; (2) did not disclose the percentage of loans collateralizing BOAMS 2008-A that were originated by third-party mortgage brokers ("wholesale channel loans") and the risks attendant with such loans (specifically, that wholesale channel loans were more likely to have material underwriting errors, become delinquent, fail early in the life of the loan, or to prepay); and (3) provided investors and rating agencies with documents that materially misrepresented material facts about debt to income and original combined loan-to-value ratios for the loans underlying BOAMS 2008-A.

With respect to Securities Act §5(b)(1), the SEC alleged that BAS and BOAMS disclosed data, including preliminary loan tapes, which reflected the percentage of wholesale channel loans collateralizing BOAMS 2008-A to certain, but not all, investors and that BAS and BOAMS did not file this data with the SEC.

Rule 506(d) and (e) under Regulation D under the Securities Act require that issuers of Rule 506 private placement offerings include disclosures of prior "bad acts" by covered persons (including but not limited to directors, officers, promoters, and solicitors) which resulted in a conviction or administrative sanction for securities fraud or other violations of specified laws before September 23, 2013.

1. On December 7, 2010, the SEC issued an administrative and cease-and-desist order (the "2010 Order") finding that BAS willfully violated Securities Exchange Act of 1934, as amended (the "Exchange Act") §15(c)(1)(A) when certain employees participated in improper bidding practices involving the temporary investment of municipal securities proceeds during the 1998-2002 period. The 2010 Order censured BAS, and ordered BAS to (1) cease and desist from committing or causing such violations and future violations, and (2) pay \$36,096,442 disgorgement and prejudgment interest. BAS consented to the order without admitting or denying the SEC's findings.

2. On January 25, 2011, the SEC issued an order (the "2011 Order") finding that (1) between February 2003 and February 2005, Merrill market makers executing institutional customer orders for securities sometimes shared information concerning those trades with traders on a Merrill securities proprietary trading desk; (2) at times, the traders used that information to place trades for Merrill after execution of the institutional customer order; (3) the foregoing was improper and contrary to Merrill's confidentiality representations to its customers; (4) there were instances between 2002 and 2007 when Merrill charged institutional and high net worth customers undisclosed mark-ups and mark-downs on riskless securities principal trades for which Merrill had agreed to charge the customer only a commission equivalent fee; (5) in doing so, Merrill acted improperly and contrary to its customer agreement; (6) from 2002-2007, Merrill failed in many instances to make records of its agreements with institutional customers to guarantee an execution price, which agreements were part of the terms and conditions of the institutional customer orders; (7) as a result of its conduct, Merrill willfully violated Exchange Act (i) §15(c)(1)(A) by effecting transactions in securities by means of manipulative, deceptive or other fraudulent devices or contrivances, and (ii) §15(g) by failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information; (8) under Exchange Act §15(b)(4)(E), Merrill failed reasonably to supervise its traders with a view toward preventing them from violating the federal securities laws; and (9) Merrill willfully violated Exchange Act §17(a) and Rule 17a-3(A)(6) by failing to record certain terms and conditions of customer orders. Merrill neither admitted nor denied the findings in the 2011 Order.

The 2011 Order (1) required that Merrill cease and desist from committing or causing any violations and any future violations of Exchange Act §§15(c)(1)(A), 15(g) and 17(a) and Rule 17a-3(A)(6) thereunder; (2) censured Merrill pursuant to Exchange Act §15(b)(4); and (3) required that Merrill pay a \$10 million civil monetary required pursuant to Exchange Act §§15(b)(4) and 21B.

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