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Department of Justice Sues Bank of America for Defrauding Investors in Connection
with Sale of Over \$850 Million of Residential Mortgage-Backed Securities

Attorney General Eric Holder and U.S. Attorney for the Western District of North Carolina Anne M. Tompkins announced today that the United States has filed a civil lawsuit against Bank of America Corporation and certain of its affiliates, including Merrill Lynch, Pierce, Fenner & Smith f/k/a/ Banc of America Securities, LLC, Bank of America, N.A., and Banc of America Mortgages Securities, Inc. (collectively “Bank of America”). The complaint alleges that Bank of America lied to investors about the relative riskiness of the mortgage loans backing the residential mortgage-backed securities (RMBS), made false statements after intentionally not performing proper due diligence and filled the securitization with a disproportionate amount of risky mortgages originated through third party mortgage brokers.

This announcement is part of the ongoing efforts of President Obama’s Financial Fraud Enforcement Task Force’s RMBS Working Group and is accompanied by an announcement by the Securities and Exchange Commission (SEC) that it has filed civil charges in federal court in Charlotte, N.C. against Bank of America for defrauding investors.

“Today's filing marks the latest step forward in the Justice Department’s ongoing efforts to hold accountable those who engage in fraudulent or irresponsible conduct,” said Attorney General Eric Holder. “As this action proves, President Obama’s Financial Fraud Enforcement Task Force will continue to take an aggressive approach to combating financial fraud and uncovering abuses in the residential mortgage-backed securities market. As we proceed with this case, and pursue a range of additional investigations, we will continue to use every tool, resource, and appropriate authority to ensure stability, accountability, and – above all – justice for those who have been victimized.”

“This is the RMBS Working Group’s most recent legal enforcement targeting misconduct in the RMBS market, but it will not be our last,” said Associate Attorney General Tony West. “Combating financial fraud is a top priority for the Department of Justice. By filing this lawsuit today, we reaffirm an important principle – that everyone must play by the same set of rules, and no institution is too big or too powerful to escape appropriate enforcement. It is also a testament to the cooperation and coordination among the Working Group’s members, as the Justice Department and the SEC brought to bear their collective expertise and resources to build these cases against Bank of America.”

“Bank of America’s reckless and fraudulent origination and securitization practices in the lead-up to the financial crisis caused significant losses to investors,” U.S. Attorney Tompkins said. “Now, Bank of America will have to face the consequences of its actions. We have made a commitment to the American people to hold financial institutions accountable for practices that violated the law and wreaked havoc on the financial system, and my office takes that commitment very seriously. Our investigation into Bank of America’s mortgage and securitization practices continues.”

“I applaud Attorney General Holder for taking this important step toward holding Bank of America accountable for packaging and selling toxic loans to investors and brokers, a key cause of the housing collapse that crashed our economy and still plagues communities to this day,” said New York Attorney General Eric Schneiderman. “As a Co-Chair of the Working Group, I look forward to further action to address the causes and consequences of the financial crisis. The housing crisis in New York is far from over,

and actions like these are necessary to ensure that homeowners are protected from similar conduct by banks and lenders in the future.”

A residential mortgage-backed security is a bond backed by of a pool of residential mortgage loans that were packaged together and sold in different tranches (or risk-levels) to investors.

The civil complaint filed today in U.S. District Court in Charlotte alleges that Bank of America defrauded investors, including federally insured financial institutions, who purchased more than \$850 million in RMBS from Bank of America Mortgage Securities 2008-A (BOAMS 2008-A) securitization. The government’s civil complaint also seeks civil penalties from Bank of America under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). According to the complaint, in or about January 2008, Bank of America sold BOAMS 2008-A RMBS certificates to investors by knowingly and willfully making materially false and misleading statements and by failing to disclose important facts about the mortgages collateralizing the RMBS, including Bank of America’s failure to conduct loan level due diligence in the offering documents filed with the U.S. Securities and Exchange Commission (SEC). These misstatements and omissions concerned the quality and safety of the mortgages collateralizing the BOAMS 2008-A securitization, how it originated those mortgages and the likelihood that the “prime” loans would perform as expected.

First, according to the filed complaint, a material number of the mortgages in the BOAMS 2008-A collateral pool failed to materially adhere to Bank of America’s underwriting standards. Specifically, more than 40% of the 1,191 mortgages in the BOAMS 2008-A collateral pool did not substantially comply with Bank of America’s underwriting standards in place at the time they were originated and did not have sufficient documented compensating factors. As alleged in the complaint, Bank of America knew that specific loans in the BOAMS 2008-A collateral pool did not materially adhere or comply with Bank of America’s underwriting standards.

Second, Bank of America did not conduct any loan-level due diligence at the time of securitization. According to the complaint, this was a violation of Bank of America's own policies, procedures and prior practice, and was contrary to industry standards and investor expectations. Moreover, this decision allowed Bank of America to keep bad loans in the deal. According to the complaint, these bad loans had a range of glaring origination problems, such as overstated income, fake employment, inflated appraisals, wrong loan-to-value ratios, undisclosed debt, occupancy misrepresentation, mortgage fraud and other red flags wholly inconsistent with a purportedly prime securitization. As a result of this lack of due diligence, Bank of America had no basis to make many of the representations it made in the offering documents regarding the credit quality of the underlying mortgages.

Finally, Bank of America concealed important risks associated with the mortgages backing the BOAMS 2008-A securitization. For example, Bank of America originated more than 70% of the loans through third party mortgage brokers. These loans, known as "wholesale mortgages," were riskier than similar mortgages originated directly by Bank of America. More significantly, at the same time Bank of America was finalizing this deal, it was receiving a series of internal reports that showed an alarming and significant decrease in the quality and performance of its wholesale mortgages. According to the complaint, Bank of America did not disclose that important information or the associated risks to investors.

Investors in the BOAMS 2008-A certificates have already suffered millions of dollars in losses and it is estimated that total losses sustained by investors will exceed \$100 million.

FIRREA permits the Attorney General to commence civil actions to recover penalties from, among others, people who violate specified provisions of Title 18 of the United States Code, including 18 U.S.C. § 1001 (false statement to government) and 18 U.S.C. § 1014 (false statement to financial institution). In such actions, the civil penalties assessed may equal \$1.1 million per violation, or, for a continuing violation, up to \$1.1 million per day or \$5.5 million, whichever is less pursuant to (12 U.S.C. § 1833(a)(b)(1)-(2); see also 28 C.F.R. § 85.3. The statute further provides that the penalty can exceed these limits to

permit the recovery of the amount of monetary gain received from or the amount of monetary loss caused by the violations under 12 U.S.C. §1833a(b)(3).

Attorney Tompkins thanked the U.S. Securities and Exchange Commission, Division of Enforcement, Atlanta Regional Office for its significant cooperation. The case is being handled by Assistant United States Attorneys Daniel S. Ryan and Mark T. Odulio of the United States Attorney's Office in Charlotte.

The RMBS Working Group is a federal and state law enforcement effort focused on investigating fraud and abuse in the RMBS market that helped lead to the 2008 financial crisis. The RMBS Working Group brings together more than 200 attorneys, investigators, analysts and staff from dozens of state and federal agencies including the Department of Justice, ten U.S. Attorneys' Offices, the FBI, the SEC, the Department of Housing and Urban Development (HUD), HUD's Office of Inspector General, the Federal Housing Finance Agency's Office of Inspector General, the Office of the Special Inspector General for the Troubled Asset Relief Program, the Federal Reserve Board's Office of Inspector General, the Recovery Accountability and Transparency Board, the Financial Crimes Enforcement Network, and more than ten state Attorneys General offices around the country.

The RMBS Working Group is led by five co-chairs: Acting Assistant Attorney General for the Criminal Division Mythili Raman, Assistant Attorney General for the Civil Division Stuart Delery, Co-Director of the SEC's Division of Enforcement George Canellos, U.S. Attorney for the District of Colorado John Walsh and New York Attorney General Eric Schneiderman.