

ADMINISTRATIVE PROCEEDING
BEFORE THE
MARYLAND SECURITIES COMMISSIONER

In the Matter of: *
RBS Financial Products, Inc. *
Respondent *

Securities Docket No. 2016-0070

* * * * *

CONSENT ORDER

WHEREAS, the Securities Division of the Maryland Attorney General’s Office (“Securities Division”) has conducted an investigation (the “Investigation”) of RBS Financial Products, Inc. (“RBSFP”) and its affiliates regarding their creation, pooling, structuring, sponsorship, arranging, forming, packaging, marketing, underwriting, sale or issuance of residential mortgage-backed securities (“RMBS”) between January 1, 2003 and January 1, 2009, including, but not limited to, those identified in Annex 1 attached hereto; and

WHEREAS, the Investigation included representations, disclosures, or non-disclosures to RMBS investors about, or made in connection with the RMBS activities set forth above, where the representation, disclosure, or non-disclosure involves information about or obtained during the process of originating, acquiring, securitizing, underwriting, or servicing residential mortgage loans in RMBS, including, but not limited to, those identified in Annex 1; and

WHEREAS, the Investigation did not include: (i) conduct relating to the origination of residential mortgages, except representations, disclosures, or non-disclosures to investors in RMBS about the origination of, or about information obtained in the course of originating, such loans; (ii) representations or nondisclosures made in connection with the trading of RMBS, except to the extent that the representations, disclosures, or non-disclosures are in the offering materials for underlying RMBS; or (iii) the servicing of residential mortgage loans,

except representations or nondisclosures to investors in RMBS about servicing, or information obtained in the course of servicing, such loans; and

WHEREAS, based on the Investigation, the Securities Division believes that there are potential legal claims by the Securities Division against RBSFP for violations of the Maryland Securities Act, Title 11, Corps. & Ass'ns., Md. Code Ann. (2014 Repl. Vol & Supp. 2020) (the "Securities Act"); and

WHEREAS, RBSFP has reached a Settlement Agreement with the Securities Division; and

WHEREAS, RBSFP has agreed to make certain payments in accordance with the terms of this Order; and

WHEREAS, RBSFP elects to waive permanently any right to a hearing and appeal under § 11-704 of the Maryland Securities Act with respect to this Order; and

WHEREAS, RBSFP admits the jurisdiction of the Maryland Securities Commissioner (the "Securities Commissioner") in this matter for the purposes of settlement only; and

WHEREAS, solely for the purpose of terminating the Investigation and in settlement of the issues contained in this Order, and without admitting or denying any statement of fact or conclusions of law made herein by the Securities Commissioner of Maryland, RBSFP, as the appropriate settling entity, consents to the entry of this Order; and

NOW, THEREFORE, the Securities Commissioner has determined that it is in the public interest and appropriate for the protection of investors, **IT IS HEREBY ORDERED:**

I. FINDINGS OF FACT

Introduction

1. Between 2006 and 2007, RBS Financial Products Inc. f/k/a Greenwich Capital Financial Products, Inc., RBS Securities Inc. f/k/a Greenwich Capital Markets, Inc., RBS Acceptance Inc. f/k/a Greenwich Capital Acceptance, Inc., and Financial Asset Securities Corp. (collectively, “RBS”), purchased and securitized tens of thousands of mortgage loans into residential mortgage-backed securities (“RMBS”).

2. RMBS are asset-backed securities for which the underlying collateral is one or more pools of residential mortgage loans. Investors in RMBS are entitled to a share of the cash flows generated by these loan pools – primarily, the principal and interest payments made by mortgage borrowers. If a sufficient number of borrowers defaults and fails to make scheduled loan payments, depending on the deal structure and payment rules, some RMBS investors may not receive certain payments on the securities, which may also decline in value.

3. RBS often offered RMBS certificates to investors pursuant to publicly filed registration documents, including prospectuses and prospectus supplements (“Offering Documents”). The Offering Documents explain the structure of the RMBS offering, describe the lending standards – known as underwriting guidelines – used by mortgage lenders to originate the underlying mortgage loans, and provide, *inter alia*, various data and representations and warranties regarding the characteristics of the loans.

4. Specifically, in connection with the marketing and sale to investors of RMBS, the Offering Documents contained statements about the underlying mortgage loans and the diligence RBS performed during the securitization process.

5. To date, the loan pools backing RMBS sponsored or underwritten by RBS have suffered billions of dollars of collateral losses. As a result, some Maryland investors have experienced shortfalls in principal and interest payments, as well as declines in the market value of their certificates.

RBS's Loan-Level Diligence Process at Acquisition

6. RBS purchased pools of loans from third-party originators. The originators' underwriting guidelines were described in the Offering Documents, in varying forms, as "primarily intended to evaluate the prospective borrower's credit standing and ability to repay the loan, as well as the value and adequacy of the proposed mortgaged property as collateral." After purchasing mortgage loans from third-party originators, RBS packaged the loans into pools that served as collateral for the RMBS it issued.

7. According to RBS's written policies and procedures, RBS performed diligence in connection with its RMBS offerings in order: "(a) to determine that the product meets the approved underwriting guidelines, and (b) determine whether there are significant concentrations of risk in the product that were not disclosed..." among other reasons. Other documents prepared by RBS stated that the goals of due diligence were to confirm that loans "generally comply with the lender's underwriting guidelines by checking income and asset documentation, credit reports and credit scores, calculating debt to income ratios, and determining that the credit risk is adequately assessed," and to determine that the loans "comply with Federal, state, and local laws..."

8. RBS generally conducted loan-level diligence at the time that it purchased loans from a third-party originator. RBS typically retained one or more third-party diligence vendors, such as the Clayton Group, Inc., to assist in these reviews. In many instances, RBS's diligence vendors reviewed a sample of the mortgage loans in pools for potential purchase. The diligence

vendors typically provided RBS with diligence reports that summarized their findings and assigned grades to each sampled loan. Based on the results of its diligence, RBS could refuse to purchase certain loans for various reasons, including, *inter alia*, that loans did not conform to applicable underwriting guidelines and lacked compensating factors, did not comply with applicable laws, or were based on appraisals that were not sufficiently supported.

RBS's Representations to Investors

9. The Offering Documents for RMBS sponsored or underwritten by RBS included, in varying forms, statements that the mortgage loans were “originated generally in accordance with” the originator’s underwriting guidelines, and that exceptions would be made on a “case-by-case basis...where compensating factors exist.” The Offering Documents further stated that such exceptions would be made “from time to time and in the ordinary course of business,” and disclosed that “[l]oans originated with exceptions may result in a higher number of delinquencies and loss severities than loans originated in strict compliance with the designated underwriting guidelines.”

10. The Offering Documents often contained statements, in varying forms, with respect to stated-income loans, that “the stated income is reasonable for the borrower’s employment and that the stated assets are consistent with the borrower’s income.”

11. The Offering Documents further contained statements, in varying forms, that each mortgage loan was originated “in compliance with applicable federal, state and local laws and regulations.”

12. The Offering Documents also included statements regarding the valuation of the mortgaged properties and the resulting loan-to-value (“LTV”) ratios, such as the weighted-average LTV and maximum LTV at origination of the securitized loans.

13. In addition, the Offering Documents typically stated that loans acquired by RBS for securitization were “subject to due diligence,” often described as including a “thorough credit and compliance review with loan level testing,” and stated that “the depositor will not include any loan in a trust fund if anything has come to the depositor’s attention that would cause it to believe that the representations and warranties of the related seller regarding that loan will not be accurate and complete in all material respects....”

The Actual Quality of the Mortgage Loans

14. At times, RBS’s credit and compliance diligence vendors identified a number of loans as diligence exceptions because, in their view, they did not comply with underwriting guidelines and lacked adequate compensating factors or did not comply with applicable laws and regulations. Loans were also identified as diligence exceptions because of missing documents or other curable issues, or because of additional criteria specified by RBS for the review. In some instances, RBS disagreed with the vendor’s view. Certain of these loans were included in RMBS securitizations.

15. Additionally, some valuation diligence reports reflected variances between the appraised value of the mortgaged properties and the values obtained through other measures, such as automated valuation models (“AVMs”), broker-price opinions (“BPOs”), and drive-by reviews. In some instances, the LTVs calculated using AVM or BPO valuations exceeded the maximum LTV stated in the Offering Documents, which was calculated using the lower of the appraised value or the purchase price. Certain of these loans were included in RMBS securitizations.

16. RBS often purchased and securitized loans that were not part of the diligence sample without additional loan-file review. The Offering Documents did not include a description of the diligence reports prepared by RBS’s vendors, and did not state the size of the diligence

sample or the number of loans with diligence exceptions or valuation variances identified during their reviews.

17. At times, RBS agreed with originators to limit the number of loan files it could review during its due diligence. Although RBS typically reserved the right to request additional loan-level diligence or not complete the loan purchase, in practice it rarely did so. These agreements with originators were not disclosed in the Offering Documents.

18. Finally, RBS performed post-securitization reviews of certain loans that defaulted shortly after securitization. These reviews identified a number of loans that appeared to breach the representations and warranties contained in the Offering Documents. Based on these reviews, RBS in some instances requested that the loan seller or loan originator repurchase certain loans.

II. CONCLUSIONS OF LAW

19. The Commissioner has jurisdiction over this matter pursuant to §11-801 of the Securities Act.

20. As explained in the foregoing facts, RBSFP made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in violation of §11-301(2) of the Securities Act.

III. ORDER

21. This Order concludes the Investigation and any other action that the Commissioner could commence under applicable Maryland law and on behalf of Maryland as it relates to the substance of the Statement of Facts and Conclusions of Law herein, provided however, that

excluded from and not covered by this paragraph are any claims by the Commissioner arising from or relating to RBSFP's failure to comply with the undertakings contained herein.

22. The Securities Division and RBSFP enter into this Consent Order without adjudication or finding of any issue of fact or law.

A. PAYMENT

23. RBSFP shall pay a total amount of \$18,175,000 to the State of Maryland to resolve potential legal claims in connection with the Investigation. Payment shall be made by electronic funds transfer within thirty (30) days of receiving written payment processing instructions from the State of Maryland, Office of the Attorney General. The payment to the State of Maryland shall be made to the Maryland Attorney General, which shall hold the monies and distribute them as directed by the Maryland Attorney General for restitution to certain investors, including state and local governmental entities, and for costs incurred in connection with restitution, with any remaining funds to be credited to the Mortgage Loan Servicing Practices Settlement Fund to be used in accordance with Maryland law. The State of Maryland agrees that no portion of the funds in this paragraph is received as a civil penalty or fine.

B. JURISDICTION RETAINED, CONSTRUCTION AND DEFAULT

24. Jurisdiction shall be retained by the Securities Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

25. If RBSFP fails to materially comply with any term of this Consent Order, the Securities Commissioner may institute administrative or judicial proceedings against RBSFP to seek to enforce this Consent Order, to sanction RBSFP for violating an Order

of the Securities Commissioner or for making a misrepresentation of material fact upon which this Order was based, and may take any other action authorized under the Securities Act or under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner or the court finds that RBSFP has violated this Consent Order or made any material misrepresentations in their dealings with the Division, the Division may also seek other sanctions for the potential violations that initiated this matter. Solely for the purpose of determining those sanctions, the Statement of Facts and violations of the Securities Act set forth in this Order shall be deemed admitted, and may be introduced into evidence against RBSFP.

26. In the event that judicial intervention in this matter is sought by the Securities Commissioner or RBSFP, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to Section 11-702 of the Securities Act. RBSFP agrees that that Court will have personal jurisdiction over RBSFP for the purposes of this matter, and that venue will be properly in that Court.

27. The terms of this Consent Order may only be vacated or modified by a subsequent order issued by the Securities Commissioner, by agreement with RBSFP except as to any non-substantive matters.

28. This Order is entered solely for the purpose of resolving the referenced Investigation, and is not intended to be used for any other purpose. For any person or entity not a party to the Order, this Order does not limit or create any private rights or remedies against RBSFP, limit or create liability of RBSFP, or limit or create defenses of RBSFP, to any claims.

29. This Order is not intended to disqualify RBSFP (or any RBS affiliate) or any current

or former employees from any business that they otherwise are qualified or licensed to perform under applicable state or federal law, and this Order is not intended to subject RBSFP, or any RBS affiliate, to any disqualifications, or form the basis for any statutory or discretionary disqualifications, contained in the federal securities laws (including but not limited to Section 3(a)(39) of the Securities Exchange Act of 1934 and Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D under the Securities Act of 1933), the federal commodities laws (including Section 8a of the Commodity Exchange Act), and the rules and regulations of self-regulatory organizations or various states' or U.S. Territories' (including Washington, D.C.) laws, including any disqualification from relying upon registration exemptions or safe harbor provisions in addition to those expressly noted herein.

30. This Order is not intended to state or imply willful, reckless, or fraudulent conduct by RBSFP, or its affiliates, directors, officers, employees, associated persons, or agents.

31. RBSFP enters into this Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commissioner or any member, officer, employee, agent, or representative of the Commissioner to induce RBSFP to enter into this Order.

32. This Order shall be binding upon RBSFP and its successors and assigns with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

DATE OF THIS ORDER:

SO ORDERED:

**Commissioner's Signature is
On File w/Original Documents**

December 21, 2020

Melanie Senter Lubin
Securities Commissioner

CONSENTED TO:
RBS Financial Products, Inc.

BY:

DATED:

Lisa Brower
Director and Assistant Secretary
RBS Financial Products, Inc.
