

Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION—M.D. Fla.: Radius Capital enjoined from offering or selling MBS, (Apr. 21, 2015)

By Rodney F. Tonkovic, J.D.

Radius Capital Corp. and its founder and CEO Robert A. DiGiorgio have been ordered to pay nearly \$3 million in disgorgement and penalties. The district court previously found that Radius and DiGiorgio violated the federal securities laws by making misrepresentations to mortgage borrowers and Ginnie Mae over the course of a scheme involving 15 offerings of mortgage-backed securities. The court enjoined Radius and DiGiorgio from offering or selling MBS and ordered the payment of disgorgement and penalties ([*SEC v. Radius Capital Corp.*](#), April 20, 2015, Steele, J.).

Background. Radius was a mortgage lender and issuer of mortgage-backed securities. According to the Commission, in order to obtain guarantees from the Government National Mortgage Association (Ginnie Mae), Radius falsely represented that the loans backing fifteen of its MBS were eligible for FHA insurance. The majority of the loans, however, did not meet the FHA requirements, and Radius knew this. Ginnie Mae suffered over \$5 million in losses when the mortgages backing Radius' MBS defaulted.

The Commission brought an enforcement action alleging violations of the antifraud provisions of the securities laws. A jury found that DiGiorgio was liable on all claims and a default judgment was later entered against Radius, which did not answer the complaint. The court found that the SEC was entitled to disgorgement, pre-judgment interest, civil penalties, and injunctive relief.

Injunction. The court permanently enjoined DiGiorgio and Radius from violating the securities laws when dealing with MBS and from offering or selling MBS issued by Radius, DiGiorgio, or any entities under their control. The court found that the Commission established that DiGiorgio violated the securities laws and that there was a reasonable likelihood that the violations would be repeated. DiGiorgio urged that future

violations would be unlikely, but the court stated that the violations involved a high degree of scienter and, moreover, that DiGiorgio refused to accept that he did anything wrong.

Disgorgement. Next, the court ordered DiGiorgio and Radius, jointly and severally to disgorge \$1,427,095. This amount was made up of origination fees for 87 uninsured loans, impermissibly-retained mortgage insurance premiums for those loans, and MBS sales proceeds. The court also concluded that an award of prejudgment interest calculated pursuant to the IRS underpayment rate was appropriate.

Penalties. Finally, the court ordered the payment of a \$1,296,034.15 civil penalty. The court found that a penalty in the amount of the defendants' pecuniary gain, \$1,427,095, would be appropriate, but subtracted the proceeds of two sales that occurred outside of the five-year statute of limitations.

The case is [No. 2:11-cv-116](#).

Attorneys: H. Michael Semler for the SEC. Robert A. Digiorgio, pro se.

Companies: Radius Capital Corp.

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