

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION

_____		)	
SECURITIES AND EXCHANGE COMMISSION,		)	
		)	
Plaintiff,		)	
		)	
v.		)	No. _____
		)	
RADIUS CAPITAL CORP. and		)	
ROBERT A. DIGIORGIO,		)	
		)	
Defendants.		)	
_____		)	

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

The Securities and Exchange Commission ("Commission") alleges as follows for its complaint against Radius Capital Corp. ("Radius") and Robert A. DiGiorgio ("DiGiorgio"):

**SUMMARY**

1. This action arises out of fraud by Radius and DiGiorgio in connection with the sale of mortgage-backed securities ("MBS") guaranteed by the Government National Mortgage Association ("Ginnie Mae"). DiGiorgio was the President and Chief Executive Officer of Radius, a California corporation that made high-interest mortgage loans to low-income borrowers in Florida, California, and other states. Radius then issued mortgage-backed securities based on pools of its mortgage loans. Between December 2005 and October 2006 Radius issued and sold at least 15 mortgage-backed securities with a total principal amount of over \$23 million, generating approximately \$1 million

for Radius and DiGiorgio. In connection with the offer and sale of these securities, Radius and DiGiorgio repeatedly made materially false statements to Ginnie Mae and to the investing public.

2. To induce Ginnie Mae to guarantee the Radius securities, Radius and DiGiorgio (collectively "Defendants") falsely stated in writing to Ginnie Mae on numerous occasions that the mortgage loans backing the Radius securities were or would be insured by the Federal Housing Administration ("FHA"). In reliance on Defendants' assurances that the mortgages were eligible for FHA insurance, Ginnie Mae guaranteed the Radius mortgage-backed securities ("Radius MBS").

3. Defendant's false assurances were also included in the prospectuses provided to potential purchasers and the investment community. The prospectus accompanying each of the Radius mortgage-backed securities stated that the underlying mortgage loans were federally insured.

4. Defendants' assurances to Ginnie Mae and to the investing public were untrue. Each of the 15 Radius mortgage-backed securities was backed by multiple mortgage loans that were not and could not have been FHA insured. In fact, approximately 70% of the loans in the mortgage pools backing these securities were not insured. Most of these loans fell far below FHA requirements and could never have been insured by FHA.

5. Many of the mortgages backing Radius' securities quickly fell into default. In October 2006 Radius correspondingly defaulted on its pass-through payments to the investors holding its securities. As a result, Ginnie Mae was forced to assume Radius'

obligations. Ginnie Mae was required to pay investors the remaining principal balance on each uninsured loan that was in default, thereby incurring several million dollars in losses. Ginnie Mae remains exposed to millions of dollars in additional losses as other uninsured Radius loans fall into default in the future. Additionally, investors holding the Radius securities have lost interest income due to the unexpectedly high rate of prepayment of principal as the Radius loans have fallen into default.

6. In Radius' application for approval to issue Ginnie Mae-guaranteed securities, DiGiorgio stated that only FHA-insured mortgages would be included in the mortgage pools supporting Radius securities. Nevertheless, DiGiorgio repeatedly directed Radius employees to ignore FHA underwriting guidelines when evaluating loan applications, and he personally approved low-quality, improperly documented, or fraudulent loans that were clearly ineligible for FHA insurance. DiGiorgio determined which loans were included in the loan pools backing the Radius securities and knew that many of these loans did not meet FHA requirements. Similarly, DiGiorgio was directly involved in and responsible for Radius' false statements to Ginnie Mae and to investors, and he knew these statements were untrue.

7. Radius and DiGiorgio violated the antifraud provisions of the federal securities laws by making materially false statements to Ginnie Mae and to investors, and unless restrained they are likely to violate the securities laws in the future. The Commission requests that the Court (i) enjoin Defendants from future violations, (ii) enjoin Defendants from participating in any offer or sale of mortgage-backed securities issued by Radius or by any entity owned or controlled by Radius or DiGiorgio, (iii) order

disgorgement of the profits from the sale of the 15 Radius mortgage-backed securities, and (iv) impose civil penalties.

### **JURISDICTION AND VENUE**

8. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Sections 21 and 27 of the Exchange Act, 15 U.S.C. §§ 78u and 78aa.

9. Venue is proper in the Middle District of Florida pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. §§ 78u and 78aa, because defendant DiGiorgio resides and transacts business in this district and because many of the acts and transactions constituting the alleged violations occurred in this district. Radius maintained offices in Ft. Myers and Tampa, and many of the mortgage loans backing the Radius securities were made to residents of this district.

10. In connection with the conduct alleged in this complaint, Defendants directly or indirectly made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation and communication in interstate commerce, and the mails.

### **DEFENDANTS**

11. Radius Capital Corp., which at times did businesses as Home Mortgage of America and Home Realty of America, was incorporated in 1995 in California and operated as a mortgage lender and issuer of mortgage-backed securities. Radius, which had offices in California and Florida, began issuing mortgage-backed securities

guaranteed by Ginnie Mae in 2002. Radius is currently listed as "suspended" by the Secretary of State of California.

12. Robert A. DiGiorgio, who resides in Cape Coral, Florida, was the founder and owner of Radius. From 1995 through at least October 2006, DiGiorgio was President and Chief Executive Officer of Radius. DiGiorgio worked primarily from offices in Florida.

### **DEFENDANTS' FRAUD**

#### **A. Ginnie Mae Guarantees Only Securities Backed By Insured Loans**

13. Ginnie Mae was created by Congress in 1968 to enhance the secondary market for residential mortgage loans. Ginnie Mae guarantees the payment of principal and interest on securities backed by home loans made by private lenders but insured by FHA, the Veterans Administration, or certain other federal agencies.

14. Mortgage-backed securities are created when private mortgage lenders securitize a pool of mortgage loans and sell interests in that pool. In the Ginnie Mae program, an approved lender gathers a pool of federally-insured loans, identifies and describes the loans to Ginnie Mae, and certifies that the loans satisfy the requirements for obtaining Ginnie Mae's guarantee. The proposed issuer must certify, among other things, that the loans are eligible to be insured by FHA, VA or certain other government agencies. If the information provided by the applicant satisfies Ginnie Mae's requirements, the pool of loans is offered to the public in the form of a mortgage-backed security guaranteed as to both principal and interest by Ginnie Mae. Ginnie Mae only

guarantees securities issued by others. Ginnie Mae does not buy or sell pooled loans or issue securities.

15. After a mortgaged-backed security guaranteed by Ginnie Mae is sold to investors, the homeowners' monthly payments of principal and interest are passed-through from the lender/issuer to investors. If a borrower defaults, the issuer must either make the monthly payments itself or remove the loan from the pool by prepaying the remaining principal balance to the investors. If the issuer defaults on these obligations, Ginnie Mae must pay investors the remaining principal balance on loans already in default and on any underlying loan that falls into default during the remaining term of the loans. Ginnie Mae also assumes the obligation to pass monthly payments from non-defaulting borrowers through to the investors. If the defaulting loans are insured, as the governing statute and regulations require, Ginnie Mae can seek reimbursement from the insurer. But if defaulting loans are in fact uninsured, as in this case, Ginnie Mae can suffer substantial losses.

**B. Defendants Stated That The Underlying Loans Were Insured**

16. In Radius' application to become an issuer of securities guaranteed by Ginnie Mae, DiGiorgio agreed to "issue and administer Ginnie Mae mortgage-backed securities and service pooled mortgages in accordance with Section 306(g) of the National Housing Act" and Ginnie Mae regulations. Both Section 306(g) and the Ginnie Mae regulations provide that Ginnie Mae may guarantee only securities backed by federally-insured loans.

17. The fifteen mortgage-backed securities at issue in the Complaint were issued and sold by Radius during the period December 1, 2005 through October 2006. Prior to issuing each of these securities, Radius sought Ginnie Mae's guarantee by signing Ginnie Mae contracting documents, including a Schedule of Subscribers and GNMA Guaranty Agreement (Form 11705) ("Guaranty Agreement"). Each Guaranty Agreement stated that Radius "covenants and warrants that each of the Mortgages is eligible under section 306(g) of the National Housing Act . . . . to back the Securities." As part of each application Radius also signed a Schedule of Pooled Mortgages (Form 11706) indicating that the proposed security was backed solely by FHA loans. This document also listed a FHA case number for each underlying loan.

18. Based on Radius' representations, Ginnie Mae agreed to guarantee the Radius securities. A prospectus was then issued for each security and distributed to potential investors. Each prospectus stated that Radius represented that the underlying mortgages were "insured by the Federal Housing Administration ('FHA') or another federal agency. The prospectus also identified the specific mortgage pool backing the security.

19. The fifteen Radius mortgage-backed securities addressed in this complaint are identified below by issue date, signature date, loan pool number, and the aggregate principal amount of the loans in the pool:

<u>Issue Date</u>	<u>Signed</u>	<u>Pool No.</u>	<u>Pool Amount</u>
12/1/05	12/23/05	599209	\$1,106,687
12/1/05	12/23/05	599210	\$1,859,980
1/1/06	1/25/06	599211	\$1,180,456
2/1/06	2/22/06	599212	\$1,744,751
2/1/06	2/22/06	599213	\$1,166,928

3/1/06	3/24/06	599214	\$1,564,662
4/1/06	4/19/06	599215	\$1,124,217
5/1/06	5/12/06	599216	\$1,407,083
6/1/06	6/19/06	599217	\$1,102,153
7/1/06	7/21/06	599218	\$1,964,031
7/1/06	7/21/06	599219	\$1,634,358
8/1/06	8/17/06	599220	\$1,887,127
9/1/06	9/1/06	599221	\$1,200,138
09/01/06	9/15/06	599222	\$1,829,908
10/01/06	10/02/06	599223	<u>\$2,704,451</u>
			\$23,476,930

20. Radius sold these securities to investors for approximately \$1 million above the total pool amount.

**C. Defendants' Statements Regarding Insurance Were Untrue**

21. Defendants' assertions that the Radius securities were backed solely by federally-insured loans were untrue. Each of the fifteen loan pools included many loans that were not insured. Of the 154 loans underlying these securities, more than 100 were not insured.

22. For most of the uninsured loans, Radius never even applied for insurance. A home buyer seeking a FHA-insured loan ordinarily pays a mortgage insurance premium at closing. The lender is required to forward that premium to FHA. FHA cannot insure a loan until it receives this premium payment. In connection with most of the uninsured loans at issue here, Radius collected the premium payment from the borrower but never submitted the payment to FHA.

23. Even if Radius had applied for FHA insurance and properly submitted the borrowers' premiums, the uninsured loans could not have been insured because they failed to meet FHA's debt-to-income, credit history, employment history, and other

requirements. Many of these loan files also contained red flags indicative of fraud, including invalid social security numbers, inflated appraisals, falsified employment and income documentation, straw-man purchases, and violations of anti-flipping requirements.

**D. Defendants Knew The Loans Were Uninsured And Uninsurable**

24. DiGiorgio founded Radius and controlled the firm throughout its existence. He was intimately involved in every aspect of Radius' operations, communicated with Radius' underwriting employees on a daily basis, and had approval authority for every Radius loan. DiGiorgio personally originated many of the uninsured loans included in the pools backing Radius' securities.

25. Giorgio knew that pursuant to Ginnie Mae requirements all loans backing the Radius securities were to be insured. Giorgio also understood FHA's eligibility requirements. Radius had been approved as a FHA loan originator in 1997 and by 2005 had been handling FHA loans for eight years. Nevertheless, between December 2005 and October 2006, Radius employees acting at DiGiorgio's direction routinely made loans that did not meet FHA requirements even though the loans were to be used to back Radius' securities. When Radius employees declined to approve loan applications that failed to meet FHA's requirements, relied on incomplete or fraudulent documentation, or were otherwise grossly deficient, DiGiorgio overruled his own employees and ordered that the loans be approved anyway.

26. DiGiorgio knew that the loan pools backing the securities issued by Radius between December 1, 2005 and October 2006 included many loans that were not

insured by FHA and were not eligible for FHA insurance. DiGiorgio also knew that Radius' statements to Ginnie Mae that the underlying loans were FHA insured or eligible for FHA insurance were false. Likewise, he knew that the prospectuses falsely stated that the underlying loans were federally insured. As the company's President, CEO, and (from December 2005 through October 2006) its sole officer, director and owner, DiGiorgio directed, caused, and was responsible for each of these false statements. Radius and DiGiorgio made these misrepresentations with the intent to deceive Ginnie Mae and potential investors.

27. As a result of Radius' defaulted on its obligations to investors holding its securities, Ginnie Mae has incurred several million dollars in losses and will remain exposed to additional losses throughout the 30-year term of the underlying loans. Due to the accelerated prepayments caused by the high rate of borrower defaults, investors holding the Radius securities have lost interest income and will continue to suffer losses as future defaults trigger additional prepayments.

**FIRST CLAIM FOR RELIEF**

**(Fraud in Violation of Section 17(a) of the Securities Act)**

28. Paragraphs 1 through 27 above are realleged and incorporated by reference herein.

29. By the conduct described in Paragraphs 1 through 7 and 16 through 27 above, Radius and DiGiorgio, directly or indirectly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) knowingly or with severe recklessness employed

devices, schemes, or artifices to defraud; (b) knowingly, recklessly, or negligently obtained money or property by means of untrue statements of material fact or omissions of material fact necessary to make the statements made not misleading; and (c) knowingly, recklessly, or negligently engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon the purchaser.

30. By reason of the foregoing, Radius and DiGiorgio violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

**SECOND CLAIM FOR RELIEF**

**(Fraud in Violation of Section 10(b) and Rule 10b-5 of the Exchange Act)**

31. Paragraphs 1 through 27 above are realleged and incorporated by reference herein.

32. By the conduct described in Paragraphs 1 through 7 and 16 through 27 above, Radius and DiGiorgio, directly or indirectly, in connection with the purchase or sale of a security, by use of a means or instrumentality of interstate commerce or the mails or the facilities of a national securities exchange, knowingly or with severe recklessness: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made not misleading; and (c) engaged in acts, practices and courses of business which operated as a fraud or deceit.

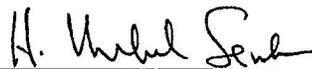
33. By reason of the foregoing, Radius and DiGiorgio violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

**RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that the Court:

- A. Permanently enjoin Radius and DiGiorgio from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5;
- B. Permanently enjoin Radius and DiGiorgio from offering or selling mortgage-backed securities issued by Radius or by any entity that Radius or DiGiorgio directly or indirectly owns or controls;
- C. Order Radius and DiGiorgio, on a joint and several basis, to disgorge all profits and ill-gotten gains obtained as a result of the violations alleged in this Complaint, with prejudgment interest;
- D. Order Radius and DiGiorgio to pay civil money penalties; and
- E. Grant such further relief as may be necessary and appropriate.

Dated: March 4, 2011



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