

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available  
From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### Extension:

Rule 154, SEC File No. 270-438, OMB Control No. 3235-0495.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 (17 CFR 230.154) under the Securities Act of 1933 (15 U.S.C. 77a) (the "Securities Act") permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address ("householding") to satisfy the applicable prospectus delivery requirements.<sup>1</sup> The purpose of rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the shared address, addresses the prospectus to the investors as a group or to each of the investors individually, and the investors consent to the delivery of a single prospectus. The rule applies to prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth

<sup>1</sup> The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. See Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) (15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b)); see also rule 174 under the Securities Act (17 CFR 230.174) (regarding the prospectus delivery obligation of dealers); rule 15c2-8 under the Securities Exchange Act of 1934 (17 CFR 240.15c2-8) (prospectus delivery obligations of brokers and dealers).

in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.<sup>2</sup> The rule requires issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers, relying on rule 154 for the householding of prospectuses relating to open-end management investment companies that are registered under the Investment Company Act of 1940 ("mutual funds") must explain to investors who have provided written or implied consent how they can revoke their consent.<sup>3</sup> Preparing and sending the notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and, in the case of issuers that are mutual funds, providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of prospectuses are able to do so.

Although rule 154 is not limited to mutual funds, the Commission believes that it is used mainly by mutual funds and by broker-dealers that deliver mutual fund prospectuses. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

The Commission estimates that, as of March 2012, there are approximately 1,700 mutual funds, approximately 400 of which engage in direct marketing and therefore deliver their own prospectuses. Of the approximately 400 mutual funds that engage in direct marketing, the Commission estimates that approximately half of these mutual funds (200) (i) do not send the implied consent notice requirement because

<sup>2</sup> Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding. Implied consent is not permitted in such a situation. See rule 154(b)(4).

<sup>3</sup> See rule 154(c).

they obtain affirmative written consent to household prospectuses in the fund's account opening documentation; or (ii) do not take advantage of the householding provision because of electronic delivery options which lessen the economic and operational benefits of rule 154 when compared with the costs of compliance. Therefore, the Commission estimates that each direct-marketed fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 4,000 hours. Of the 400 mutual funds that engage in direct marketing, the Commission estimates that approximately seventy-five percent (300) of these funds will each spend 1 hour complying with the annual explanation of the right to revoke requirement of the rule, for a total of 300 hours. The Commission estimates that there are approximately 280 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 5,600 hours. Each broker-dealer will also spend 1 hour complying with the annual explanation of the right to revoke requirement, for a total of 280 hours. Therefore, the total number of respondents for rule 154 is 580 (300 mutual funds plus 280 broker-dealers), and the estimated total hour burden is approximately 10,180 hours (4,300 hours for mutual funds plus 5,880 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. Responses to the collections of information will not be kept confidential. The rule does not require these records be retained for any specific period of time. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503,

or by sending an email to: *Shagufta\_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA\_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 20, 2012.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-30174; 812-14068]

### ReconTrust Company, N.A., et al.; Notice of Application and Temporary Order

August 20, 2012.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

*Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against ReconTrust Company, N.A. ("ReconTrust") on August 20, 2012 by the United States District Court for the Western District of Washington (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants have requested a permanent order.

*Applicants:* ReconTrust, BofA Advisors, LLC ("BofA Advisors"), BofA Distributors, Inc. ("BofA Distributors"), Bank of America Capital Advisors LLC ("BACA"), KECALP Inc. ("KECALP"), and Merrill Lynch Global Private Equity Inc. ("MLGPE") (collectively, other than ReconTrust, the "Fund Servicing Applicants," and, together with ReconTrust, the "Applicants").<sup>1</sup>

*Filing Date:* The application was filed on August 15, 2012, and amended on August 20, 2012.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which ReconTrust is an affiliated person or may become an affiliated person in the future (together with the Applicants, the "Covered Persons").

a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 14, 2012, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants, ReconTrust, 1800 Tapo Canyon Road, Simi Valley, CA 93063; BofA Advisors, BofA Distributors and BACA, 100 Federal Street, Boston, MA 02110; and KECALP and MLGPE, 767 Fifth Avenue, 7th Floor, New York, NY 10153.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Senior Counsel, at (202) 551-6868, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. Each of the Applicants is a direct or indirect wholly-owned subsidiary of Bank of America Corporation ("BAC"). ReconTrust is a chartered national trust bank that, among other things, acts as foreclosure trustee responsible for conducting nonjudicial foreclosures within several states, including the state of Washington until recently. ReconTrust is not registered as a broker-dealer under the Securities Exchange Act of 1934 or as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

2. BofA Advisors is a registered investment adviser that serves as investment adviser and subadviser to certain money market funds registered under the Act. BofA Distributors, a limited purpose broker-dealer registered with the Commission, serves as principal underwriter of some of the same money market funds. BACA is a registered investment adviser that serves

as investment adviser to certain closed-end investment companies also registered under the Act.

3. KECALP and MLGPE each serves as investment adviser to certain employees' securities companies within the meaning of section 2(a)(13) of the Act ("ESCs"). KECALP and MLGPE are registered as investment advisers under the Advisers Act.

4. On August 20, 2012, the United States District Court for the Western District of Washington entered the Injunction against ReconTrust, in a matter brought by the Attorney General of the State of Washington (the "AG").<sup>2</sup> The complaint filed by the AG ("Complaint")<sup>3</sup> alleged that ReconTrust failed to comply with the procedures of the Washington Deeds of Trust Act ("Deeds of Trust Act") in foreclosures it conducted since at least June 12, 2008. Denying any wrongdoing as alleged by the AG or otherwise, ReconTrust consented to the entry of the Injunction, which enjoined ReconTrust from doing business as a foreclosure trustee under deeds of trust with respect to property located in the State of Washington, except in certain circumstances.<sup>4</sup>

### Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from acting as a bank, or from engaging in or continuing any conduct or practice in connection with such activity, from acting, among other things, as an investment adviser or depositor of any registered investment company, or a principal underwriter for any registered open-end investment company, registered unit investment trust ("UIT") or registered face-amount certificate company. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(2) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that ReconTrust is, or may be considered to be, under common control with and therefore an affiliated person of each of

<sup>2</sup> *State of Washington v. ReconTrust Company*, N.A. No. 2:11-cv-1460 (W.D. Wash. August 20, 2012).

<sup>3</sup> The Complaint was initially filed in the State of Washington King County Superior Court in a civil action and the matter was later removed to the United States Western District Court of Washington.

<sup>4</sup> This Injunction will terminate three years after its entry. As described in the application, ReconTrust is required to take certain remedial actions to address the conduct that served as the basis for the Injunction.