

SEC Charges Former Mortgage Lending Executives With Securities Fraud

Washington, D.C., Feb. 11, 2011 — The Securities and Exchange Commission today charged three former senior executives at IndyMac Bancorp with securities fraud for misleading investors about the mortgage lender's deteriorating financial condition.

The SEC alleges that former CEO Michael W. Perry and former CFOs A. Scott Keys and S. Blair Abernathy participated in the filing of false and misleading disclosures about the financial stability of IndyMac and its main subsidiary, IndyMac Bank F.S.B. The three executives regularly received internal reports about IndyMac's deteriorating capital and liquidity positions in 2007 and 2008, but failed to ensure adequate disclosure of that information to investors as IndyMac sold millions of dollars in new stock.

IndyMac Bank was a federally-chartered thrift institution regulated by the Office of Thrift Supervision (OTS) and headquartered in Pasadena, Calif. The OTS closed the bank on July 11, 2008, and placed it under Federal Deposit Insurance Corporation (FDIC) receivership. IndyMac filed for bankruptcy protection later that month.

"These corporate executives made false and misleading disclosures about IndyMac at a time when the company's financial condition was rapidly deteriorating. Truthful and accurate disclosure to investors is particularly critical during a time of crisis, and the federal securities laws do not become optional when the news is negative," said Lorin L. Reisner, Deputy Director of the SEC's Division of Enforcement.

According to the SEC's complaints filed in U.S. District Court for the Central District of California, Perry and Keys defrauded new and existing IndyMac shareholders by making false and misleading statements about IndyMac's financial condition in its 2007 annual report and in offering materials for the company's sale of \$100 million in new stock to investors. In early February 2008, IndyMac projected that it would return to profitability and continue to pay preferred dividends in 2008 without having to raise new capital. In late February 2008, Perry and Keys knew that contrary to the rosy projections released just two weeks earlier, IndyMac had begun raising new capital to protect IndyMac's capital and liquidity positions. Specifically, Perry and Keys regularly received information that IndyMac's financial condition was rapidly deteriorating and authorized new stock sales as a result. Yet they fraudulently failed to fully disclose IndyMac's precarious financial condition in the 2007 annual report and the offering documents for the new stock sales.

The SEC further alleges that Perry knew that rating downgrades in April 2008 on bonds held by IndyMac Bank had exacerbated its capital and liquidity positions to the extent that IndyMac had no choice but to suspend future preferred dividend payments by no later than May 2, 2008. This material information was not disclosed in IndyMac's ongoing stock offerings. Perry also failed to disclose in various SEC filings or a May 2008 earnings conference call that IndyMac would not have been "well-capitalized" at the end of its first quarter without departing from its traditional method for risk-weighting subprime assets and backdating an \$18 million capital contribution.

According to the SEC's complaint, Abernathy replaced Keys as IndyMac's CFO in April 2008. He similarly made false and misleading statements in the offering documents used in selling new IndyMac stock to investors despite regularly receiving internal reports about IndyMac's deteriorating capital and liquidity positions.

The SEC also alleges that in summer 2007 while serving as IndyMac's executive vice president in charge of specialty lending, Abernathy made false and misleading statements about the quality of the loans in six IndyMac offerings of residential mortgage-backed securities (RMBS) totaling \$2.5 billion. Abernathy received internal reports each month revealing that 12 to 18 percent of IndyMac's loans contained misrepresentations regarding important loan and borrower characteristics. However, the RMBS offering documents stated that nothing had come to IndyMac's attention that any loan included in the offering contained a misrepresentation. The SEC alleges that Abernathy failed to ensure that the quality of IndyMac's loans was accurately disclosed and failed to disclose that information had come to IndyMac's attention about loans containing misrepresentations.

Abernathy agreed to settle the SEC's charges without admitting or denying the allegations. He consented to the entry of an order that permanently restrains and enjoins him from violating Section 17(a)(2) and 17(a)(3) of the Securities Act and requires him to pay a \$100,000 penalty, \$25,000 in disgorgement, and prejudgment interest of \$1,592.26. Abernathy also consented to the issuance of an administrative order pursuant to Rule 102(e) of the SEC's Rules of Practice, suspending him from appearing or practicing before the SEC as an accountant. He has the right to apply for reinstatement after two years.

The SEC's complaint charges Perry and Keys with knowingly violating the antifraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and aiding and abetting IndyMac's violations of its periodic reporting requirements under Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder. Perry also is charged with aiding and abetting IndyMac's reporting violations under Exchange Act Rules 13a-11 and 13a-13. The SEC's complaint against Perry and Keys seeks permanent injunctive relief, an officer and director bar, disgorgement of ill-gotten gains with prejudgment interest, and a financial penalty.