

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CV 10528

BLACKMOSS INVESTMENTS INC.,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiff,

vs.

ACA CAPITAL HOLDINGS, INC. and
ALAN S. ROSEMAN,

Defendants.

Civil Action No.

CLASS ACTION COMPLAINT
FOR VIOLATIONS OF
FEDERAL SECURITIES LAWS

JUDGE SWEET

FILED
U.S. DISTRICT COURT
2007 NOV 21 PM 2:49
S.D. OF N.Y.

PLAINTIFF'S CLASS ACTION COMPLAINT

Plaintiff makes the following allegations, except as to allegations specifically pertaining to Plaintiff and Plaintiff's counsel, based upon the investigation undertaken by Plaintiff's counsel (which included analysis of publicly available news articles and reports, public filings, securities analysts' reports and advisories about ACA Capital Holdings, Inc. ("ACA Capital" or the "Company"), press releases and other public statements issued by the Company, and media reports about the Company) and believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a Class consisting of all persons other than Defendants who purchased the common stock of ACA Capital pursuant and/or traceable to the Company's initial public offering on or about November 10, 2006 (the "IPO" or the "Offering") seeking to pursue remedies under the Securities Act of 1933 (the "Securities Act").

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 11, 12(a)(2) and 15 of the Securities Act [15 U.S.C. §§77k, 77l(a)(2) and 77o].

3. This Court has jurisdiction of this action pursuant to Section 22 of the Securities Act [15 U.S.C. §77v] and 28 U.S.C. §§1331 and 1337.

4. Venue is properly laid in this District pursuant to Section 22 of the Securities Act and 28 U.S.C. §1391(b) and (c). The acts and conduct complained of herein occurred in substantial part in this District.

5. In connection with the acts and conduct alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the

mails and telephonic communications and the facilities of the New York Stock Exchange (“NYSE”), a national securities exchange.

PARTIES

6. Plaintiff Blackmoss Investment Inc. purchased ACA Capital common stock, as set forth in the certification attached hereto and incorporated herein by reference, pursuant and/or traceable to the Company’s IPO, and was damaged thereby.

7. Defendant ACA Capital is a holding company that provides financial guaranty insurance products to participants in the global credit derivative, structured finance capital, and municipal finance capital markets.

8. Defendant Alan S. Roseman (“Roseman”) served as President and Chief Executive officer of ACA Capital. Roseman signed the Registration Statement.

PLAINTIFF’S CLASS ACTION ALLEGATIONS

9. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of itself and all persons other than defendants who purchased the common stock of ACA Capital pursuant and/or traceable to the Company’s IPO. Excluded from the Class are defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which defendants have a controlling interest or which is related to or affiliated with defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

10. The members of the Class are so numerous that joinder of all members is impracticable. ACA Capital sold more than 6.8 million shares of common stock in the IPO. The precise number of Class members is unknown to Plaintiff at this time but is believed to be in the thousands. In addition, the names and addresses of the Class members can be ascertained from the books and records of ACA Capital or its transfer agent or the underwriters to the IPO. Notice can be

provided to such record owners by a combination of published notice and first-class mail, using techniques and a form of notice similar to those customarily used in class actions arising under the federal securities laws.

11. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained competent counsel experienced in class action litigation under the federal securities laws to further ensure such protection and intends to prosecute this action vigorously.

12. Plaintiff's claims are typical of the claims of the other members of the Class because Plaintiff's and all the Class members' damages arise from and were caused by the same false and misleading representations and omissions made by or chargeable to defendants. Plaintiff does not have any interests antagonistic to, or in conflict with, the Class.

13. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to seek redress for the wrongful conduct alleged. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

14. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) Whether the prospectus and registration statement issued by defendants to the investing public in connection with the IPO negligently omitted and/or misrepresented material facts about ACA Capital and its business; and

(c) The extent of injuries sustained by members of the Class and the appropriate measure of damages.

SUBSTANTIVE ALLEGATIONS

15. Defendant ACA Capital is a holding company that provides financial guaranty insurance products to participants in the global credit derivative, structured finance capital, and municipal finance capital markets. The Company also provides asset management services to specific segments of the structured finance capital markets.

16. On or about November 2, 2006, ACA Capital filed with the SEC a Form S-1/A Registration Statement (the "Registration Statement"), for the IPO.

17. On or about November 9, 2006, ACA Capital priced the IPO of 6,875,000 shares of newly issued common stock and 23,541 shares of existing common stock for \$13 per share generating gross proceeds of \$89.4 million. The Company's common stock commenced trading on the NYSE on November 10, 2006. In connection with the IPO, the Company's senior convertible preferred stock, convertible preferred stock and Series B senior convertible preferred stock all converted to common stock concurrently at their conversion ratios of 6,000:1 shares, 6,000:1 shares and 6:1 shares, respectively.

18. Shortly thereafter, the Prospectus with respect to the IPO (the "Prospectus"), which forms part of the Registration Statement, became effective and, including the exercise of the over-allotment, more than 6.8 million shares of ACA Capital's common stock were sold to the public at \$13.00 per share, thereby raising more than \$89 million.

19. The Registration Statement and Prospectus contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and was not prepared in accordance with the rules and regulations governing its preparation.

20. The Registration Statement positively described ACA Capital's business stating in pertinent part as follows:

ACA Capital is a holding company engaged in the business of providing financial guaranty insurance products to participants in the global credit derivatives markets, structured finance capital markets and municipal finance capital markets. We also provide asset management services to specific segments of the structured finance capital markets. We participate in our target markets both as a provider of credit protection through the sale of financial guaranty insurance products, for risk-based revenues, and as an asset manager, for fee-based revenues. We conduct our financial guaranty insurance businesses through ACA Financial Guaranty Corporation, our "A" rated, regulated insurance subsidiary. We conduct our asset management business through ACA Management, L.L.C., a subsidiary of ACA Financial Guaranty. As of June 30, 2006, we had insured credit exposure of \$31.4 billion and our assets under management for third parties were \$12.1 billion. For the six months ended June 30, 2006, we had total revenues of \$215.3 million and net income of \$26.2 million. As of June 30, 2006, our stockholders' equity was \$412.7 million.

21. The Registration Statement positively described the Company's collateralized debt obligations ("CDO") asset management business stating in pertinent part as follows:

We serve as an asset manager of collateralized debt obligations, or CDOs. A CDO is a securitization of fixed income assets such as bonds, loans, asset backed securities, or ABS, and credit default swaps, or credit swaps. To grow our assets under management, we sponsor CDOs that acquire pools of fixed-income assets that we select and manage. CDO assets are funded by the issuance of various liabilities with credit profiles ranging from "AAA" rated debt to non-rated equity. Our CDOs have a diverse worldwide institutional investor base that includes banks, money managers, non-bank financial institutions, hedge funds, pension funds and insurance companies.

Our CDO Asset Management revenues consist of asset management fees and risk-based revenue in the form of return on our equity investments in our CDOs. Typically, we invest in some portion of the equity of our managed CDOs, currently between 5% to 25% of the total equity offered. These investments increase the marketability of our CDOs by aligning our interests as asset manager with those of our CDO investors and thereby maximizing our CDO assets under management. In 2005 and the first six months of 2006, we invested a total of \$16.0 million and \$2.9 million, respectively, in the equity of our CDOs while increasing our assets under management by \$2.1 billion and \$2.2 billion, respectively. We completed our first

CDO in January 2002 and, as of June 30, 2006, we had closed 17 CDO transactions and have grown our CDO assets under management from \$2.4 billion as of year-end 2002 to \$12.1 billion as of June 30, 2006. At June 30, 2006, our weighted average asset management fee was 0.21% per annum on CDO assets under our management. Based on our knowledge of the market, we believe we are one of the largest global CDO managers as ranked by assets under management.

22. The statements referenced above in ¶¶20 and 21 were inaccurate statements of material fact because they failed to disclose that the Company's CDO assets were materially impaired and overvalued.

23. Under applicable SEC rules and regulations governing the preparation of the Registration Statement and Prospectus, the Prospectus was required to disclose that the assets in the Company's CDO assets were materially impaired and overvalued.

24. At the time of the filing of this Complaint, ACA Capital stock trades for \$0.89 per share, well below the IPO price of \$13.00 per share.

COUNT I

Violations of Section 11 of the Securities Act Against All Defendants

25. Plaintiff repeats and realleges each and every allegation contained above.

26. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all defendants.

27. The Registration Statement for the IPO was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

28. ACA Capital is the registrant for the IPO. The defendants named herein were responsible for the contents and dissemination of the Registration Statement and the Prospectus.

29. As issuer of the shares, ACA Capital is strictly liable to Plaintiff and the Class for the misstatements and omissions.

30. None of the defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and the Prospectus were true and without omissions of any material facts and were not misleading.

31. By reasons of the conduct herein alleged, each defendant violated, and/or controlled a person who violated, Section 11 of the Securities Act.

32. Plaintiff acquired ACA Capital shares pursuant to the Registration Statement.

33. Plaintiff and the Class have sustained damages. The value of ACA Capital common stock has declined substantially subsequent to and due to defendants' violations.

COUNT II

Violations of Section 12(a)(2) of the Securities Act Against All Defendants

34. Plaintiff repeats and realleges each and every allegation contained above.

35. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf of the Class, against all defendants.

36. Defendants were sellers and offerors and/or solicitors of purchasers of the shares offered pursuant to the Prospectus.

37. The Prospectus contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein. Defendants' actions of solicitation included participating in the preparation of the false and misleading Prospectus and participating in road shows to market the IPO to investors.

38. Defendants owed to the purchasers of ACA Capital common stock, including Plaintiff and other class members, the duty to make a reasonable and diligent investigation of the statements contained in the IPO materials, including the Prospectus contained therein, to ensure that such

statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants in the exercise of reasonable care should have known of the misstatements and omissions contained in the IPO materials as set forth above.

39. Plaintiff and other members of the Class purchased or otherwise acquired ACA Capital common stock pursuant to and/or traceable to the defective Prospectus. Plaintiff did not know, or in the exercise of reasonable diligence could not have known, of the untruths and omissions contained in the Prospectus.

40. Plaintiff, individually and representatively, hereby offers to tender to defendants those securities which plaintiff and other Class members continue to own, on behalf of all members of the Class who continue to own such securities, in return for the consideration paid for those securities together with interest thereon. Class members who have sold their ACA Capital common stock are entitled to rescissory damages.

41. By reason of the conduct alleged herein, these defendants violated, and/or controlled a person who violated, §12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of the Class who hold ACA Capital common stock purchased in the IPO have the right to rescind and recover the consideration paid for their ACA Capital common stock and hereby elect to rescind and tender their ACA Capital common stock to the defendants sued herein. Plaintiff and Class members who have sold their ACA Capital common stock are entitled to rescissory damages.

COUNT III

Violations of Section 15 of the Securities Act Against Defendant Roseman

42. Plaintiff repeats and realleges each and every allegation contained above.

43. This Count is brought pursuant to Section 15 of the Securities Act against Defendant Roseman.

44. Defendant Roseman was a control person of ACA Capital by virtue of his position as a director and senior officer of ACA Capital.

45. Defendant Roseman was a culpable participant in the violations of Sections 11 and 12(a)(2) of the Securities Act alleged in Counts I and II above, based on his having signed the Registration Statement and having otherwise participated in the process which allowed the IPO to be successfully completed.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of itself and the Class, prays for judgment as follows:

A. declaring this action to be a plaintiff class action properly maintained pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

B. awarding plaintiff and other members of the Class damages together with interest thereon;

C. with respect to Count II, ordering that the IPO be rescinded;

D. awarding plaintiff and other members of the Class their costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs and disbursements; and

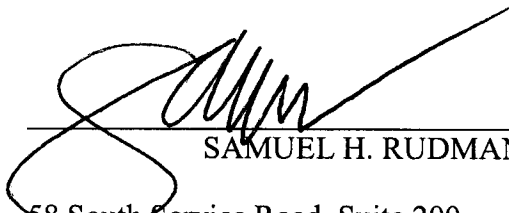
E. awarding plaintiff and other members of the Class such other and further relief as may be just and proper under the circumstances.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: November 21, 2007

COUGHLIN STOIA GELLER RUDMAN &
ROBBINS LLP
SAMUEL H. RUDMAN
DAVID A. ROSENFELD

A handwritten signature in black ink, appearing to read 'S. Rudman', is written over a horizontal line. The signature is stylized and cursive.

SAMUEL H. RUDMAN

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Attorneys for Plaintiff

CERTIFICATION OF BLACKMOSS INVESTMENTS INC.
IN SUPPORT OF CLASS ACTION COMPLAINT

Blackmoss Investments Inc. ("plaintiff") declares, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the complaint prepared by counsel in the above-captioned case and has authorized its filing.
2. Plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. During the proposed Class Period, plaintiff executed the following transactions in the stock of ACA Capital Holdings, Inc.: See Attachment A
5. In the past three years, plaintiff has sought to serve as a representative party on behalf of a class in actions filed under the federal securities laws entitled *Blackmoss Investments Inc. v. Gravity Co., Ltd.* and *In Re Odimo, Inc. Securities Litigation*.
6. Plaintiff will not accept payment for serving as a representative party on behalf of a class beyond plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th
day of November, 2007.

A handwritten signature in black ink, appearing to be 'D. J. ...', written over a horizontal line.

BLACKMOSS INVESTMENTS INC.

ATTACHMENT A

<u>Date</u>	<u>Action</u>	<u>Amount</u>	<u>Price</u>
November 10, 2006	Buy	1,000 shares	\$13.00
November 13, 2006	Sell	1,000 shares	\$12.70