



Securities Law Newsletter

IMH Secured Loan Fund Update

ALF Investigation

The Alcala Law Firm represents several investors who purchased units in the IMH Secured Loan Fund at the recommendation of their stockbroker. These customers are alleging that the liquidity and safety of the fund was misrepresented and that the recommendation to invest in the fund was unsuitable. These claims are currently being arbitrated before the Financial Industry Regulatory Authority (FINRA). The damages being sought include rescission, return of principal, lost interest, legal costs and, in appropriate cases, punitive damages. For more information about FINRA arbitration, see page 4 of this newsletter.

Was IMH Secured Loan Fund a Suitable Investment for You?

Stockbrokers and investment advisors who acted as selling agents for IMH may be liable to their customers if: (1) the advisor misled the customer into believing that IMH was a conservative fixed-income investment; and (2) the recommendation to invest in IMH was unsuitable for that particular customer.

The majority of securities claims revolve around the issue of suitability. Before making an investment recommendation, a financial advisor must make a reasonable inquiry into the customer's particular financial situation, including their financial status, tax status and investment objectives. An investment is unsuitable when it is contrary to the customer's financial needs and objectives.

Although each situation is different, some of the factors that would make a recommendation to invest in IMH unsuitable include:

- (a) IMH was a solicited investment recommended by a stockbroker or investment advisor;
- (b) the financial condition of IMH and the risks of investing were misrepresented;
- (c) the customer is an unsophisticated investor;
- (d) the customer had a conservative or moderately conservative investment objective and a low risk tolerance;
- (e) the investment comprised a large percentage of the customer's portfolio or their entire portfolio was concentrated in unsuitable and illiquid investments recommended by their financial professional; and
- (f) the customer is unable to bear the financial risks.

Before recommending any investment, particularly risky and speculative private placements, financial advisors have a fiduciary duty to adequately disclose the risks involved and also exercise due diligence in determining whether such investments are suitable for the customer.

Please visit our website at www.alcala-law.com/imh if you have any questions regarding a potentially unsuitable IMH investment.

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FREQUENTLY ASKED QUESTIONS

1. When can I sell my IMH stock?

IMH ownership units were converted into Class B and C shares of stock in IMH Financial Corporation. The shares currently cannot be publicly traded. The next opportunity for investors to sell their units may be as part of an initial public offering (IPO). If IMH is able to conduct an Initial Public Offering (IPO), only holders of Class C shares will be able to sell their shares immediately after the IPO. Class B shareholders will be able to sell their shares over a 6 to 12-month period following a successful IPO.

2. How much is my IMH stock worth?

Each IMH unit was originally priced at \$10,000 per unit. The last reported book value for the IMH units was \$4,406.86 per unit, as of December 31, 2009. Since there is no public market for the IMH stock at this time, the current value of the stock is uncertain. In its filings with the SEC, IMH management has indicated that the initial IPO price will be set at a discount to the book value per share price.

3. Can I file a securities arbitration claim and also participate in the class action?

Yes. Investors can file a securities arbitration claim against the stockbroker who recommended IMH to them and also simultaneously participate in a class action lawsuit against IMH and its management.

IMH Secured Loan Fund Update IMH Class Action

On June 7, 2010, an IMH Secured Loan Fund Unitholder, filed a proposed class action lawsuit captioned, *Charlotte Wood, on behalf of herself and all others similarly situated v. IMH Secured Loan Fund, LLC, IMH Financial Corporation, Investors Mortgage Holdings, Inc., IMH Holdings, LLC, IMH Management Services, LLC, Shane Albers, William Meris and Steven Darak* (the "IMH Defendants"), before the United States District Court for the District of Arizona (the "Wood Action").

In summary, the Wood Complaint alleged that the Conversion Transaction was: (1) being effectuated pursuant to a false and misleading Consent Solicitation and other false statements by the IMH Defendants, and (2) that the Conversion Transaction was both procedurally and substantively unfair to IMH Unitholders. Therefore, the complaint alleged, the Conversion Transaction is a breach of both the IMH Defendants common law fiduciary obligations to the Unitholders and their

duties under the Fund's Operating Agreement.

On June 9, 2010, the IMH Defendants announced that they had obtained a sufficient number of votes to move forward with the Conversion Transaction, although the vote had not been certified. According to the preliminary results reported by IMH, 64.67% of the total membership interests submitted a vote with 57.48% of the net votes being cast in favor of the Conversion Transaction. On June 10, 2010, the IMH Defendants further announced that they were voluntarily dismissing the action entitled, *IMH Secured Loan Fund, LLC v. David I. Kurtz, an individual, on behalf of himself, and all other persons similarly situated*, Case No. 2:10-01071-ROS (the "Kurtz Action"), which they had filed before the Arizona court, alleging that certain Unitholders were trying to interfere with the vote.

On June 14, 2010, the "Committee to Protect IMH Secured Fund," filed an action and injunction motion similar to the Wood Action, before Vice Chancellor Leo Strine in the Chancery Court for the State of Delaware. Thereafter, the Vice

Chancellor Strine held a short telephonic hearing indicating that he was denying any application for injunctive relief, but that any harm to the Unitholders as a consequence of the Conversion Transaction and the attendant vote could be compensated for by monetary damages. Wood re-filed her action before Vice Chancellor Strine to continue her action for damages on behalf of the Unitholders. In addition to the Wood action, there were three other cases pending against IMH.

In an October 14th hearing before Vice Chancellor Strine, the Court consolidated the four cases which were pending against IMH. Plaintiffs now have 45 days to file a consolidated amended complaint.

IMH SECURED LOAN FUND'S "FUNDAMENTAL PHILOSOPHY":

RULE 1: DON'T LOSE THE MONEY.

RULE 2: DON'T LOSE THE MONEY.

RULE 3: DON'T FORGET RULE 1 AND RULE 2.

ABOUT THE ALCALA LAW FIRM

Alcala Law Firm's primary mission is to protect investors from unfair and deceptive practices. ALF has successfully resolved hundreds of securities disputes through litigation, mediation and arbitration. ALF routinely represents clients before the Financial Industry Regulatory Authority (FINRA), the National Association of Securities Dealers (NASD), the New York Stock Exchange (NYSE) and the American Arbitration Association.

ALF's clients include individuals, retirees, corporations, trusts, and charitable foundations who have financial disputes with their stockbrokers, investment advisors, banks and other financial professionals. ALF has helped investors recover investment losses due to account mismanagement, unsuitable or risky investments, excessive commissions or fees, churning, unauthorized transactions, securities fraud and other wrongful acts.

ALF handles cases throughout California and has relationships with attorneys nationwide. The firm's main office is located in San Mateo, California, approximately 10 miles from the San Francisco airport.



Accredited Investors

The Accredited Investor Rule Prior to July 21, 2010

Prior to July 21, 2010, many IMH investors who owned a home in California were able to qualify as "accredited investors" within the meaning of Regulation D which exempts private placements from federal securities registration requirements. Rule 501 of the Securities Act of 1933 defined an accredited investor as any person with a net worth (or joint net worth with a spouse) in excess of \$1,000,000 at the time of purchase.

The financial threshold for "accredited investors" was established under "Regulation D" which was adopted back in 1982. These requirements had not been updated since they were implemented 28 years ago. According to an analysis conducted by Businessweek, if adjusted for inflation, the accredited investor net worth requirement would increase from \$1 million to \$2.25 million and the income requirement would increase to \$449,000 (single) and

\$674,000 (married). It is estimated that there were approximately 1.5 million "accredited investors" back in 1982. By 2008, the estimated number of households that were "accredited" swelled to as much as 7.2 million.

With such a low barrier to entry, many small investors were allowed to unwittingly put their retirement savings at risk -- often lured by assurances from their stockbroker of high returns, safety and liquidity.

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2009

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2009. Effective as of July 21, 2010, an investor's primary residence will no longer be considered when attempting to qualify for the \$1 million minimum net-worth requirement for accredited investors under Rule 501(a)(5) of Regulation D.

Stockbroker Recommendations to Buy Private Placements Are Subject to the Suitability Rule

A customer's status as an accredited investor does not release a stockbroker from the suitability requirements.

Financial advisors or stockbrokers who sell private placements are subject to the rules and standards promulgated by the Financial Industry Regulatory Authority (FINRA). According to FINRA, stockbrokers who act as selling agents for private placements are required to conduct a due diligence investigation of the offering so that they understand the nature of the investment and its risks. Also, before recommending a private placement to a particular customer, the stockbroker must perform a suitability analysis by examining the customer's overall financial situation and investment objectives. Net worth alone should never be used to determine whether an investment is suitable.



The FINRA Arbitration Process

How does arbitration work?

Securities arbitration has evolved into a specialized field of law. A thorough knowledge of both securities law and securities industry practices is essential. Although arbitration is less formal than a courtroom trial, differences can be deceiving.

How long does arbitration take?

Brokerage firms are lodging vigorous defenses, and cases are taking longer to conclude. Aggressive preparation is the rule, rather than the exception. Due to the increase in arbitration filings, it now takes approximately 17 months to bring a case to conclusion.

How much does arbitration cost?

Arbitration fees vary depending upon the complexity and size of the case.

Attorney Fees: Most clients prefer a contingent fee arrangement, which means that the client only pays attorney fees if there is a recovery. However, clients remain responsible for costs and expenses. The Alcala Law Firm offers both contingent and hourly fee arrangements.

Filing Fees: Filing fees vary depending upon the amount in controversy. For instance, the FINRA filing fee is \$975.00 for an amount in controversy between \$50,000.01 - \$100,000.00 and \$1,425.00 for an amount in controversy between \$100,000.01 - \$500,000.00.

Other Costs: In a straightforward arbitration claim, typical expenses will include the arbitration forum fees; document production and photocopying costs; and exhibit preparation expenses. If there were a lot of transactions in the account, a profit and loss report is often required. In some instances, the services of an expert witness may be needed as well.

Please visit our website at www.alcala-law.com/imh if you have any questions regarding FINRA arbitration.



FURTHER INFORMATION

For further information, please visit us on the web at www.alcala-law.com/imh or contact us at the address below.

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