

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10951 / June 24, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20372**

**In the Matter of**

**Gateway One Lending &  
Finance, LLC**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Gateway One Lending & Finance, LLC (“Gateway” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds that:

## Summary

1. From approximately July 2014 until December 2016 (the “Relevant Period”), Gateway gave investors false and misleading information about the performance of auto loans that were securitized in asset-backed securities offerings. Gateway was an auto loan originator, securitizer, and servicer, and raised more than \$2 billion from investors during the Relevant Period through the securitization of interests in pools of auto loans it originated. Investors in the securitizations obtained the right to a steady stream of income over time and the opportunity to benefit if the loans performed well. They also took on risk that they would lose money if borrowers on the auto loans defaulted and the collateral underlying the loans was insufficient to make investors whole. To assess these benefits and risks, investors relied on performance data that Gateway provided.

2. However, for six of the securitizations it sponsored during the Relevant Period, Gateway gave investors, as well as the securitizations’ underwriters and ratings agencies, false and misleading data about the past performance of its auto loans. Specifically, Gateway understated the historic losses it set forth in its offering documents by excluding expenses from its calculations, including expenses necessary to repossess and remarket vehicles after a borrower defaulted. Gateway also excluded these expenses when it provided illustrations of the securitizations’ performance going forward. Because the figures Gateway provided were inaccurate, investors could not properly assess the risks of the securities they purchased and collectively paid millions of dollars more than they otherwise would have. In addition, these investors ultimately suffered millions of dollars of losses that, due at least in part to Gateway’s misstatements, they did not anticipate.

## Respondent

3. **Gateway One Lending & Finance, LLC**, is a Delaware limited liability company based in Anaheim, California. Gateway stopped sponsoring auto loan-backed securitizations in late 2016 and ceased servicing auto loans in December 2019. Gateway is not registered with the Commission and is a wholly owned subsidiary of TCF National Bank, N.A., now known as The Huntington National Bank. On June 9, 2021, TCF National Bank, N.A. merged into The Huntington National Bank, a national banking association based in Columbus, Ohio, and a wholly owned subsidiary of Huntington Bancshares Incorporated, a publicly traded financial holding company based in Columbus, Ohio.

## Facts

4. Gateway was in the business of originating and servicing auto loans. It securitized many of the loans it originated in a series of six auto loan-backed securities offerings it sponsored between 2014 and 2016: TCF 2014-1, TCF 2015-1, TCF 2015-DP1, TCF 2015-2, TCF 2016-DP1, and TCF 2016-1 (the “Gateway Securitization Offerings”). In total, Gateway sold securities for more than \$2 billion in the Gateway Securitization Offerings and generated substantial profits from these sales.

## Gateway's False and Misleading Statements

5. When offering its securitizations, Gateway made false and misleading statements about the past performance of its loans. Loan performance in securitizations in the auto-loan industry is measured by cumulative net loss ("CNL"), which is a critical metric that investors and others use in their assessments. CNL is supposed to reflect the total net loss borne by investors in the securitization, and investors use it to make decisions about whether to invest in a loan pool and what price to pay.

6. At the time of each of the Gateway Securitization Offerings, Gateway provided extensive data on the past performance of loans Gateway originated over a period of years. The performance information took various forms, including detailed loan and summary loss information for Gateway's managed portfolio of loans. Gateway provided this past performance data and information (collectively the "Historic CNL") to its underwriters, credit ratings agencies, and prospective investors. Gateway was solely responsible for the accuracy and completeness of the Historic CNL.

7. Gateway provided the Historic CNL so that its underwriters, credit ratings agencies, and investors could model CNL for each of the Gateway Securitization Offerings to determine likely future performance. Gateway also calculated and presented to investors and prospective investors its projected CNL and yields for the securitization, which were based on the Historic CNL. The Historic CNL, and projected CNL derived from that data, were critical to investors who used this information to model cash flows, default risk, and ultimately the returns they could expect to receive if they invested.

8. The offering documents for each of the Gateway Securitization Offerings defined CNL as: "a fraction (expressed as a percentage), the numerator of which is the Aggregate Monthly Net Losses...and the denominator of which is the Initial Pool Balance." The offering documents specified that CNL was to be calculated "net of the liquidation expenses." Liquidation expenses included expenses such as repossession and remarketing costs incurred to resell vehicles serving as collateral for defaulted loans. These liquidation expenses generally represent a large portion of the losses suffered by investors in auto loan-backed securitization offerings and can account for as much as 20% of the total CNL.

9. However, Gateway calculated and reported the Historic CNL without subtracting liquidation expenses from net losses and yields. Gateway's practice of excluding the expenses from Historic CNL was inconsistent with the definitions in the offering documents. It also departed from the standard practice in the auto loan-backed securitization market, according to which sponsors generally calculate and report Historic CNL including liquidation expenses if investors bear those expenses under the terms of the deal. Gateway did not disclose the fact that its Historic CNL failed to include liquidation expenses, even though investors bore those costs, and Gateway did not provide any historical data about the excluded expenses to potential investors.

10. Because the Historic CNL excluded liquidation expenses, the data Gateway provided was false and misleading. In addition, since the Historic CNL was a critical component

of projected CNL and projected yields, excluding liquidation expenses from the calculations caused Gateway to materially understate the projected CNL and overstate the projected yields it provided to potential investors in each of the Gateway Securitization Offerings.

11. When marketing the Gateway Securitizations, Gateway claimed that the Historic CNL showed that its “auto loan portfolio exhibits exceptional credit and loss performance.” Gateway also compared its Historic CNL to the CNL of a competitor in the auto loan-backed securitization market over the same period, purportedly showing that Gateway’s loans performed better. This marketing information was false and misleading since Gateway did not disclose that, unlike its competitor, Gateway failed to include liquidation expenses when calculating its CNL. Had Gateway depicted its CNL consistent with this competitor and industry practice, it would have underperformed relative to the competitor over several of the periods shown.

12. Gateway employees involved in the securitizations failed to recognize the false and misleading statements. Calculations to determine Historic CNL were drawn from an existing data point in the company’s system, originally designed years earlier to monitor losses on loans Gateway originated, and did not change when Gateway began using the calculations for the first Gateway Securitization Offering. As a result, multiple Gateway employees did not understand that the Historic CNL excluded liquidation expenses. Others did not understand that investors would bear those expenses pursuant to the definition of CNL in the offering documents.

13. Gateway’s presentation of false and misleading data caused investors in the Gateway Securitization Offerings to pay prices higher than they otherwise would have for their investments, resulting in Gateway collecting millions of dollars of additional revenue. Investors ultimately suffered millions of dollars of unanticipated losses.

### **Gateway’s False and Misleading Statements Are Revealed**

14. In preparation for Gateway’s final securitization in late 2016, certain of Gateway’s investors, ratings agencies and its underwriter questioned Gateway personnel about the CNL calculation in Gateway’s early securitizations. They raised these questions because actual performance of earlier securitizations lagged expectations.

15. Credit ratings agencies specifically questioned Gateway personnel about each component of the cumulative net losses and were surprised to discover that Gateway had excluded liquidation expenses from the Historic CNL, as well as Gateway’s projections of CNL and yields. The credit ratings agencies and underwriter told Gateway that the Historic CNL should have included liquidation expenses. Gateway, however, disagreed and declined to compensate investors.

16. The new information about Gateway’s approach to the calculation of the Historic CNL contributed to the decision by one of the credit ratings agencies to downgrade its ratings on some securities Gateway had sponsored. The December 14, 2016 announcement of the downgrade publicly revealed the fact that Gateway had excluded expenses from the Historic CNL for the first time.

17. Thereafter, for its seventh and final securitization, Gateway revised its disclosure in the offering documents to inform investors that the Historic CNL did not include liquidation expenses.

### **Violations**

18. As a result of the conduct described above, Respondent violated Section 17(a)(2) of the Securities Act, which prohibits, in the offer or sale of securities, obtaining money or property by means of any material misstatement or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

19. Also as a result of the conduct described above, Respondent violated Section 17(a)(3) of the Securities Act, which prohibits any person from directly or indirectly engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities.<sup>1</sup>

### **Disgorgement**

20. The disgorgement and prejudgment interest ordered in paragraph IV.B. is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

## **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent shall pay disgorgement, prejudgment interest, and civil monetary penalties totaling \$6,513,192.82 as follows:

- i. Respondent shall pay disgorgement of \$3,915,077 and prejudgment interest of \$998,115.82, consistent with the provisions of this Subsection B.
- ii. Respondent shall pay a civil monetary penalty in the amount of

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<sup>1</sup> No finding of scienter is required to establish a violation of Sections 17(a)(2) or 17(a)(3); negligence is sufficient. See *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

\$1,600,000, consistent with the provisions of this Subsection B.

- iii. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement and prejudgment interest described above for distribution to affected investors. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.
- iv. Within ten (10) days of entry of this Order, Respondent shall deposit the full amount of the disgorgement, prejudgment interest, and civil money penalties (the "Distribution Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Distribution Fund shall bear the name and the taxpayer identification number of the Distribution Fund. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.
- v. Respondent shall be responsible for administering the Distribution Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.
- vi. Respondent shall distribute from the Distribution Fund an amount representing the harm suffered by investors who directly or indirectly obtained certificate interests in the Gateway Securitization Offerings prior to December 14, 2016, pursuant to a disbursement calculation (the "Calculation") that will be determined based on the amount each investor

invested and the time they held the investment. The Calculation will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection B. The Calculation shall be subject to a *de minimis* threshold. No portion of the Distribution Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

- vii. Respondent shall, within ninety (90) days from the date of this Order, submit the Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection B.
- viii. Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum, (1) the name of each affected investor; (2) the net amount of the payment to be made, less any tax withholding; and (3) the amount of any *de minimus* threshold to be applied.
- ix. Respondent shall disburse all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xiv) of this Subsection B. Respondent shall notify the Commission staff of the date and the amount paid in the distribution.
- x. If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States

Treasury in accordance with Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final accounting provided for in Paragraph (xiii) of this Subsection B is submitted to the Commission staff.

- xi. Payment must be made in one of the following ways:
- 1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
  - 2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
  - 3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Gateway as the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Daniel Michael, Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281.

- xii. The Distribution Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§1.468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with the Distribution Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Distribution Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act ("FATCA"). Respondent may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.



- xiii. Within one hundred fifty (150) days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection B. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom a payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Distribution Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, should be sent to Daniel Michael, Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.
- xiv. The Commission staff may extend any of the procedural dates set forth in this Subsection B for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

By the Commission.

Vanessa A. Countryman  
Secretary