

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84829 / December 17, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4002 / December 17, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18932

In the Matter of

**SANTANDER CONSUMER
USA HOLDINGS INC.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, 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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Santander Consumer USA Holdings Inc. (“SCUSA” 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 21C of the Securities Exchange Act of 1934, 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. SCUSA is a public consumer finance company that purchases and securitizes subprime automobile loans in the form of retail installment contracts (RICs). More than 75% of the RICs that SCUSA purchases are considered subprime, which means that they may carry higher credit risk and at times are more likely to default than loans issued to borrowers with higher credit scores. By volume, SCUSA issues more subprime securitizations than any other issuer.

2. For at least eight reporting periods, SCUSA failed to calculate and report its incurred credit loss allowance in conformity with Generally Accepted Accounting Principles ("GAAP"). Credit loss allowance reflects whether SCUSA has sufficiently reserved for credit losses on higher risk loans, including subprime loans. SCUSA's method of assessing impairment for a large category of these loans that had previously been restructured, and its lack of segregation of those loans for evaluation, was not in conformity with GAAP. In addition, SCUSA used an incorrect discount rate and made errors in calculating the accretion of that discount, which also impacted its reporting of the impairment of these assets.

3. SCUSA made these errors for years—beginning before its initial public offering in January 2014 and continuing through most of 2016. As a result of these and other errors, SCUSA restated its financial statements twice during this period. The errors largely resulted from SCUSA's flawed internal accounting controls, which took years for it to remediate. As a result of this conduct, SCUSA violated the reporting, books and records, and internal accounting controls provisions of the federal securities laws.

Respondent

4. SCUSA is a Delaware corporation headquartered in Dallas, Texas, that originates, securitizes, and services automobile loans and leases through a wholly-owned subsidiary. SCUSA's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act, and it trades on the New York Stock Exchange under the ticker symbol SC. SCUSA conducted an initial public offering in January 2014 and has filed periodic reports since that time.

Facts

5. SCUSA purchases RICs from auto dealerships across the United States. SCUSA purchases many of the RICs at a discount to the amount financed. SCUSA typically then securitizes these loans, but the loans remain classified as assets on SCUSA's balance sheet since SCUSA controls and consolidates the securitization trusts. As a result, SCUSA investors can assess the general performance of SCUSA loans by reviewing the value of these assets on SCUSA's balance sheet and the related credit loss allowance.

6. SCUSA's errors in calculating its credit loss allowance, as detailed below, led SCUSA to restate its financial statements two separate times in one year. The errors impacted every periodic report and earnings release filed by SCUSA from the time of its initial public offering in January 2014 until it filed its second restatement in late 2016. SCUSA's financial statements contained errors that were material for both quantitative and qualitative factors.

Failure to Appropriately Segregate and Account for Impairment of Troubled Loans

7. Approximately 40% of SCUSA's credit loss allowance has consistently been attributable to "troubled debt restructuring" loans ("TDRs"). Generally, a TDR is a loan in which the creditor has granted a concession to the borrower for an economic or legal reason related to the borrower's financial difficulties. Because SCUSA's business is primarily lending to higher credit risk subprime borrowers, a significant number of SCUSA's loans become TDRs.

8. However, both before and after it became a public company, SCUSA incorrectly calculated its credit loss allowance for TDRs under GAAP. TDRs are, by definition, impaired loans and, accordingly, should be evaluated to ensure that the credit loss allowance accurately captures the credit losses on these loans. Accounting Standards Codification ("ASC") 310, *Receivables*, requires that TDRs be segregated and evaluated for impairment separately from the rest of the loan portfolio using a discounted cash flow method. However, as a result of delays in developing a model to identify TDR loans, SCUSA instead improperly grouped TDRs with the rest of its loan assets, and collectively evaluated the entire group for impairment. Although SCUSA knew it was using the wrong approach, it continued this improper accounting until the third quarter of 2015.

9. In addition, under GAAP, a registrant must separately disclose in the footnotes to its financial statements the amount of TDR impairment. Prior to its first restatement, SCUSA did not disclose that it failed to separately analyze its TDR portfolio for the purpose of calculating its credit loss allowance. Instead, SCUSA disclosed in the footnotes to its financial statements that it had assessed TDRs for impairment based on the present value of expected future cash flows.

Additional GAAP Failures

Discount Rate

10. For each period until its second restatement, SCUSA also used an improper discount rate in the discounted cash flow calculation for TDR impairment. Under GAAP, a creditor is required to measure a TDR's impairment based on the loan's discounted future cash flows using the loan's original effective interest rate, which is the original contractual rate paid by a borrower adjusted for the effect of certain loan fees and costs. However, rather than considering these adjustments, SCUSA used the original contract rate of the loan to calculate impairment. This was a clear error impacting the TDR impairment, but SCUSA did not identify and remedy it until late 2016.

Accretion

11. When SCUSA purchases a RIC, any discount to face value of the loan it receives on the purchase is accreted, or recognized as income over time as the loan performs. SCUSA failed to properly accrete and analyze these discounts in several ways. These errors resulted in SCUSA overstating the carrying value of its receivables for each of its 2013, 2014, and 2015 fiscal years. In addition, because the impairment amount of a TDR is determined as the difference by which the carrying value of the receivable exceeds the present value of the future cash flows, these errors also caused SCUSA to misstate its TDR impairment.

12. SCUSA made three separate types of errors when calculating the amount of accretion. First, SCUSA improperly accreted amounts attributable to discounts that it received when it purchased auto loan receivables from dealers. Contrary to GAAP guidance contained in ASC 310, SCUSA did not properly accrete the discount over the average life of the loan pool. This error resulted in SCUSA overstating interest income on the income statement and depleting the deferred discount on its balance sheet more quickly than it should have.

13. Second, SCUSA erred in anticipating the amount of prepayments that would impact its accretion. Contrary to GAAP, SCUSA included loans that were expected to charge off due to default as being prepayments for purposes of calculating its prepayment assumptions. In addition, SCUSA improperly grouped all loans in a single pool for purposes of estimating prepayments, rather than segmenting loans based on credit characteristics and then separately estimating prepayments on each pool as required under ASC 310. SCUSA used its improperly determined prepayment assumptions when determining the rate of accretion.

14. Finally, SCUSA improperly accounted for the charge-off of unaccreted discount on loans deemed uncollectable by accreting the discounts to the income statement as interest income, rather than as a reduction of the provision for loan loss. As a result of this error, both interest income and the provision for loan losses were overstated on the income statement. Although this treatment was clearly improper under GAAP, SCUSA did not identify and remedy it until its second restatement.

Ineffective ICFR

15. In SCUSA's Form 10-K for the year ended December 31, 2014, the first annual report it filed after its initial public offering, SCUSA claimed to have effective internal control over financial reporting (ICFR). However, SCUSA actually had multiple problems in its ICFR related to each of the specific errors described above as well as its overall control environment. In both of its restatements, SCUSA acknowledged these issues and concluded that its ICFR was not effective due to several material weaknesses. SCUSA did not remediate most of its material weaknesses for years after they were identified.

Violations

16. As a result of the conduct described above, SCUSA violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder, which require every issuer

of a security registered pursuant to Section 12 of the Exchange Act file with the Commission information, documents, and annual, current, and quarterly reports as the Commission may require, and mandate that periodic and current reports contain such further material information as may be necessary to make the required statements not misleading.

17. As a result of the conduct described above, SCUSA violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

18. As a result of the conduct described above, SCUSA violated Sections 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent SCUSA cease and desist from committing or causing any violations and any future violations Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. SCUSA shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$1,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

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 SCUSA as a 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 Laura Metcalfe, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

D. 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.

By the Commission.

Brent J. Fields
Secretary