



## **Bofi Holding, Inc.**

**BUY**

(BOFI – \$21.35 intraday)

Price Target: \$35

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### **We FOIA"ed" The FOIAs – Our Review Of 128 Pages Does Not Change Our View**

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#### **OUR CALL**

Given all the debate around BOFI's alleged undisclosed SEC investigation we thought it would be timely to review the entire matter. We recently obtained copies of all the FOIA requests during 2015-2016 and a copy of what believe is the redacted original Erhart Whistleblower Complaint (from another government agency). We have provided a full review of the 128 pages of FOIA documents received, but will review our conclusions first.

**Conclusion 1:** There is one investor that made repeated requests for information regarding a potential investigation. This investor specifically asked on April 11, 2015, "why the SEC chose not to investigate Bofi Holding in response to whistleblower tips..." far before any of Mr. Erhart's allegations were made public. While the timing of the request is interesting, it is even more interesting that the investor acknowledged there was no investigation in the FOIA request to the SEC.

**Conclusion 2:** Our first FOIA was specifically meant to identify whether the SEC was obtaining documents from Bofi. If there was an investigation and supporting materials were being supplied by Bofi, the SEC would be required under FOIA to say there are documents being withheld. They did not.

**Conclusion 3:** Our second FOIA request was intended to get the language the SEC used to block records from being provided to others.

"We are withholding records that may be responsive to your request..." "This exemption protects from disclosure records compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities."

"It is the general policy of the Commission to conduct its investigations on a non-public basis. Thus, subject to the provision of FOIA, the Commission does not disclose the existence or non-existence of an investigation or information gathered unless made a matter of public record in proceedings brought before the Commission or in the courts. **Accordingly, the assertion of this exemption should not be construed as an indication by the Commission or its staff that any violations of law have occurred with respect to any person, entity, or security.**"

We understand why some may choose to speculate that Bofi has seen an investigation. In our long experience with FOIA's we have seen numerous times that these "red flags" are false positives. We have discussed these issues with others that have seen these types of SEC responses, which resulted in absolutely nothing. We note that in 2015 there were 16,207 FOIA requests to the SEC. Of these requests 1,245 were fully denied based on exemptions and 547 were partially denied. The same exemption used for Bofi is used quite routinely by the SEC. The SEC used this exemption 759 times last year for all U.S. registrants. That would be a lot of false positives if you believe there are investigations every time you get a denial response from the SEC.

**Conclusion 4:** We believe this entire battle is most likely related to the original records supplied by Mr. Erhart's alleged Whistleblower complaint. The SEC cannot disclose alleged whistleblower materials and would likely use the exemption noted above.



We also received recently a response from another FOIA request to a different government agency. The response provided is what we believe to be Mr. Erhart's original alleged "Whistleblower Complaint." The document is redacted but the language of the complaint is incredibly similar to Mr. Erhart's lawsuit. In this document the Complaint specifically identifies that the alleged whistleblower complaint had been provided to the SEC and the OCC. We believe this provides additional evidence that the SEC is sitting on these materials since they have not provided them to anyone.

We note that in Mr. Erhart's own lawsuit, he acknowledged that he filed complaints with the DOL, OSHA, and SEC and had exhausted his administrative remedies.

**Overall Conclusion:** We are not asleep at the wheel. We are continuing to investigate and research. Of course there cannot be 100% certainty for an outside observer who is not privy to non-public SEC actions or information.

We believe the mosaic of information gives a strong argument there is not a SEC investigation into Bofi because:

- 1) The SEC response relied upon by shorts is actually a quite common SEC response to FOIA requests. It would be easy to get a lot false positives on alleged SEC Investigations if not careful.
- 2) There are two cases that directly point towards no investigations. Mr. Erhart's own court records acknowledged that he exhausted his regulatory remedies and an investor FOIA request specifically wanted to know why the SEC had not investigated an SEC Whistleblower tip.
- 3) There is good evidence to suggest the SEC is blocking access to the alleged Whistleblower records by Mr. Erhart, which simply cannot be shared publicly.
- 4) There has not been any written correspondence or documents required by Bofi to be submitted to the SEC other than the normal annual SEC comment letters.
- 5) We doubt that any CEO or CFO would in their right minds discuss publicly that they have no issues with the SEC and OCC if there was any risk of such. Clearly the SEC and OCC would receive that information and the management team would have bigger issues pretty quickly.

#### **Detailed Review of the BOFI SEC FOIA History:**

- Feb 13, 2015 – An investor requested "Looking for information regarding: Investigations."

**CH Comment:** Interesting that this investor asked this question at this point in time, which we suspect was directly after Erhart filed his alleged Whistleblower Complaints with the SEC and OCC, but far before any mention of this was made publicly available.

**SEC's Response:** The investor received the typical Annual filing SEC review comment and response letters. There is nothing to be concerned about.

- March 11, 2015 – The same investor again asked for "any and all documents involving correspondence between the SEC and the Office of the Currency regarding BOFI."

**CH Comment:** Again we find it interesting that this same investor requested at this point in time information between these two agencies. **This was likely after there were communications between Mr. Erhart and both agencies, but before any information would have been publicly available.**

**SEC's Response:** "...did not locate or identify any information responsive to your request."



- March 20, 2015 – The same investor requested “any documents pertaining to current, ongoing, and closed SEC investigations of BOFI...”

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- March 31, 2015 – An industry analyst makes first FOIA request with a wide net of requests.

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- April 9, 2015 – The same investor requested “all documents related to SEC investigations (including MOUs) regarding Bofi Holding.”

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- April 11, 2015 – The same investor requested “documents related to whistleblower tips submitted to the SEC regarding Bofi Holding between Sep 2014 and present” and “.. any internal SEC documents that include information as to why the SEC chose not to investigate Bofi holding in response to whistleblower tips that were submitted...”

**CH Comment:** This request is incredibly interesting. So long before anyone had heard of Mr. Erhart’s allegations, someone not only requested documents for whistleblower tips, but apparently knew that the SEC “chose not to investigate” such tips. **How did they know that at that point in time? Mr. Erhart’s communications with the regulatory agencies certainly were not public record.**

**SEC’s Response:** “Please be advised that we can neither confirm nor deny the existence of any records responsive to your request. If such records were to exist, they would be protected from release....”

**CH Comment:** Clearly the SEC is not going to expose alleged whistleblowers.

- May 14, 2015 – A new investor for the first time requests “all investigative records regarding BOFI...”

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- June 3, 2015 – The original investor above again requests “all investigative records concerning Bofi Holding, including any MOUs.”

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- July 28, 2015 – The original investor again requests “any and all documentation pertaining to current open or closed SEC investigations regarding Bofi...” The SEC’s response is dated August 6, 2015.

**SEC Response:** This is the first response where the SEC says they are “withholding records that may be responsive to your request...” “This exemption protects from disclosure records compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement activities.”

“It is the general policy of the Commission to conduct its investigations on a non-public basis. Thus, subject to the provision of FOIA, the Commission does not disclose the existence or non-existence of an investigation or information gathered unless made a matter of public record in proceedings brought before the Commission or in the courts. **Accordingly, the assertion of this**



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**exemption should not be construed as an indication by the Commission or its staff that any violations of law have occurred with respect to any person, entity, or security.”**

- September 16, 2015 – Same investor requests “any documents in the possession of the SEC pertaining to the SEC Enforcement Division investigations of Bofi Holding (ticker: BOFI)...”

**SEC’s Response:** Same as July 28, 2015.

- January 8, 2016 – Same investor requests “any documents response to the claim that the SEC has investigated accounting fraud or other violations of securities laws by Bofi...”

**SEC’s Response:** Same as July 28, 2015.

- January 28, 2016 – The industry analyst’s 2<sup>nd</sup> FOIA with a wide net of requests.

**SEC’s Response:** February 4, 2016 – Interesting that the SEC says “did not locate or identify any information responsive to your request.”

- March 15, 2016 – The original investor is back requesting “all documents pertaining to SEC Enforcement division investigations regarding BOFI...” for dates “1/1/16 through Current.”

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- April 15, 2016 – A third investor now makes similar request for “any documents relating to investigations of or criminal or administrative proceedings against Bofi..” This investor actually requested “Expedited Treatment.”

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- May 5, 2016 – The industry analyst’s 3<sup>rd</sup> FOIA request again with the wide net cast.

**CH Comment:** Finally receives the exemption notice that “withholding records that may be responsive to your request...”

- May 24, 2016 – Original investor back again requesting “copies of all formal correspondence between the SEC Division of Corporate Finance and BOFI ...”

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- June 14, 2016 – A fourth investor makes request regarding “investigation.”

**SEC’s Response:** “...did not locate or identify any information responsive to your request.”

- June 21, 2016 – A fifth investor makes a request.

**SEC’s Response:** This investor does receive the exemption notice that “withholding records that may be responsive to your request...”

- July 14, 2016 – We made our first FOIA request, specifically asking for “all correspondence sent by the SEC to BOFI or its subsidiaries...” We already knew others had received blocked FOIA responses, so we wanted to know was there any exchange of information between the Company and the SEC.

**SEC’s response on July 22, 2016:** They only located typical annual comment and response letters.



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**CH Comment:** We followed up with SEC to confirm there were no other documents that met our request.

We did inform the Company that we made our FOIA request.

This was not a wrong request as alleged by some.

- July 18, 2016 – Bofi made a FOIA request to receive all FOIA’s regarding Bofi and a number of employees and officers.

**SEC Response:** Bofi received 120 pages of documents.

- July 22, 2016 – We made our 2<sup>nd</sup> FOIA request specifically requesting “please identify if there have been or are any investigations or inquiries by the SEC into Bofi...”

**CH Comment:** This was specifically requested in an attempt to see the language that was most likely was sent to others and was not because we erred our first FOIA request.

**SEC’s Response July 27, 2016:** We received the same exempt language that was sent to others. Unlike short seller articles, we did not assume that there was an investigation into the Company. Discussions with other public company contacts that have seen similar type of FOIA language in the past discussed the boiler plate language exemption often used by the SEC. We also know from personal experience that many of these so called red flags are overly cautious language by the SEC that results in nothing. We further suspected that the SEC was actually sitting on materials supplied by Mr. Erhart that it was not legally allowed to disclose by the OCC and would use this exemption to protect such documents.

- July 25, 2016 –

**CH Comment:** The Company has alluded that they believed in a conspiracy of potential involvement by investors with Mr. Erhart and/or his attorney in its case against Mr. Erhart. We found in the SEC logs of FOIA requests one particular investor that began the entire SEC FOIA request search and repeatedly made requests. We wanted to know what that person specifically was asking for and what the SEC response was to see if there was any potential validity to management’s assertions.

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## STOCK OPPORTUNITY

We have a BUY rating on BOFI and with a \$35 price target, based on a forward multiple of 15.2x 2017 calendar EPS estimate of \$2.31. That valuation one year out is similar to where peers are trading today on 2016 EPS estimates. We believe this multiple is appropriate given Bofi’s high growth and the branchless model which has a significant cost advantage to peers and delivers a much higher ROE.

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## RISKS

We believe an investment in BOFI involves the following risks:

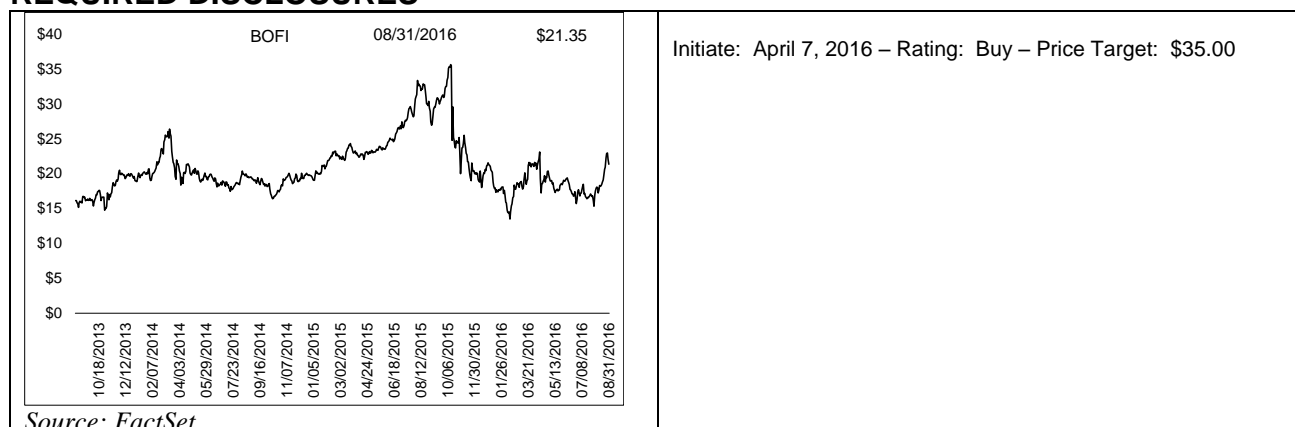
- **Legal:** The lawsuit filed could prove more adverse than expected and additional lawsuits could be filed.
- **Regulatory:** Capital requirements could be changed. The CFPB (Consumer Financial Protection Bureau), FDIC and OCC are always a risk in banking. Fannie and Freddie have not yet seen how they will be restructured post being put into conservatorship. BOFI sells a material amount of its mortgage loans to Fannie Mae and/or Freddie Mac. If changes are made that impact their ability to purchase loans, it would likely have a material impact on BOFI.



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- **Interest Rates:** A rapid rise in interest rates could negatively impact BOFI. Its deposits could reprice upwards faster than its loans and result in compressing its net interest margin. A flattening yield curve could also pressure BOFI's net interest margins.
  - **Macro-Economic Slowdown:** A significant economic downturn in the U.S. economy could result in an increase in non-performing loans as the result of higher unemployment, lower borrower incomes, or a decline in real estate values. BOFI is especially sensitive to the California economy given its concentrations of mortgages in the state. At June 30, 2015, approximately 66.4% of the mortgage portfolio was secured by real estate located in California.
  - **Competition:** BOFI faces strong competition from thousands of existing banks, other Internet focused financial institutions, internet based FinTech companies, and existing companies expanding into competing products. BOFI will need to continue to invest in innovation for product offerings, marketing, branding, distribution channels, and customer experiences on ease of use. Increasing competition or changes in BOFI's operations that impact its lower cost approach could harm its competitiveness.
  - **Underwriting:** BOFI has expanded into a number of loan categories where it has a limited experience underwriting across business cycles. Its underwriting could fail to predict losses as expected and result in adverse credit performance and negatively impact earnings results.
  - **Privacy:** BOFI collects, uses, and retains a significant amount of personal data for consumers and businesses. With numerous different states and federal regulations it is possible that BOFI may fail to satisfy a regulator(s) that it is complying with a requirement. Failure or perceived failure could harm its reputation.



## REQUIRED DISCLOSURES



### Ratings definitions:

**Buy** rated stocks generally have twelve month price targets that are more than 20% above the current price. **Hold** rated stocks generally have twelve month price targets near the current price. **Sell** rated stocks generally have no price target and we would sell the stock.

### Fundamental trend definitions:

**Improving** means growth rates of key business metrics are generally accelerating. **Stable** means growth rates of key business metrics are generally steady. **Mixed** means growth rates of some key business metrics are positive but others are negative. **Declining** means growth rates of key business metrics are generally decelerating.

### Ratings Distribution (6/30/2016)

Rating	% Of Companies Covered	% With Investment Banking Relationships
Buy	79%	12%
Hold	21%	4%
Sell	0%	0%
Total	100%	11%

**Information about valuation methods and risks can be found in the “STOCK OPPORTUNITY” and “RISKS” sections, respectively, of this report.**

CHLM makes a market in this security.

CHLM expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months.

Analysts receive no direct compensation in connection with the firm’s investment banking business. Analysts may be eligible for bonus compensation based on the overall profitability of the firm, which takes into account revenues from all of the firm’s business, including investment banking.

## OTHER DISCLOSURES

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