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# State of New Hampshire

## Department of State Bureau of Securities Regulation

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### **April 22, 2010 State Securities Bureau Report Overview— FRM Matter Letter of Transmittal**

The State Bureau of Securities Regulation (BSR) respectfully offers this report reviewing its prior involvement with and current investigation of the matter of Financial Resources Mortgage (FRM). The BSR releases this report at this time for two main reasons. First, the BSR's review and investigation of this matter have required a high level of its resources since November, 2009. Not only have resources and staff been devoted to its investigation, but the BSR has also been tasked to participate in a review by the Office of Attorney General (OAG). The BSR has taken its review as far as possible, and the report concludes the FRM matter is not within its jurisdiction at this time. Second, the BSR recommended a legislative inquiry late last year into this matter and is aware such an inquiry is imminent. It is hoped a report will help the committee in its deliberations. The BSR will fully cooperate with the legislative inquiry and towards that end has assembled this report to aid the process.

In November, 2009, the State Bank Commissioner publicly stated the state regulatory oversight of the failed entity known as FRM is a state securities concern and that the State Bank Department's (SBD) jurisdiction in this instance is narrow, saying the SBD's authority concerns only four residential mortgages. At that time, the SBD referred FRM-related inquiries and complaints to the BSR, an office of ten full-time individuals. As a consequence of the Bank Commissioner's claim and in the interest of giving this matter thorough consideration, the BSR during the past several months has conducted its own review of the FRM matter and offers for public consideration the following report. It is important to note the BSR did not engage in this review with the intent of "investigating" any agency. However, in order to clarify its regulatory role in relation to FRM and its related businesses, it was necessary for the BSR to understand the role played by the SBD as well as the OAG.

The report shows that current law, RSA Chapter 421-B, does not allow for any regulation over mortgage business. Furthermore, there is judicial support for the proposition that the state securities laws were not intended to cover any singular or joint regulatory oversight of a mortgage entity. FRM was a Ponzi scheme, and the fraudulent use of funds purportedly existed in one account. This account should have been more thoroughly examined/audited. Furthermore, warning signs of malfeasance existed, as evidenced by the SBD-publicly released audits of FRM.

Among other conclusions, the report shows the following factors: first, the BSR received one complaint regarding FRM—which was received by the then-Securities Director and now Bank Commissioner and the BSR did not take action at that relevant time to act on the complaint. The complaint was acted upon during 2001-2003, during which time it was withdrawn by the complainant's attorney. During this relevant time period, the BSR reached the conclusion that FRM had engaged in non-registered securities practices and issued a

cease and desist enforcement order against FRM. Furthermore, the BSR reached the conclusion that FRM had insufficient capital to continue its operations and notified the OAG to secure FRM's assets, i.e., initiate an asset freeze of the company. Second, left to its own statutory directives at that time, the BSR initiated a less advantageous course of a staged rescission process and ordered FRM not to engage in any securities activities on a going-forward basis. Third, information sharing between state agencies is currently inadequate, as evidenced by the resistance of the SBD to share audits with the BSR at all relevant times. Fourth, as the attached report demonstrates, the State's mortgage statutes need further modification and should be made clear as to regulatory intent. Fifth, the legislature may wish to consider adopting new public policy considerations as to what sort of financial regulatory scheme the State deems is in the best interest of the citizens of New Hampshire at this time—and the following report offers eleven suggested legislative changes for financial services reform.

The report also shows the SBD's prior interpretation of its jurisdiction as well as records released by it for public review indicate it did not undertake adequate regulatory enforcement oversight of its licensee, FRM—particularly during the months leading up to the closing of FRM and related entities. Over a period of years, the SBD reviewed residential and commercial mortgages at FRM, found over 70 violations, received 15 or more complaints, concluded that in several instances residential mortgages had been mischaracterized as commercial mortgages, and issued two SBD Show Cause Orders that were never completed. Of concern to the BSR is that over a period of more than ten years as FRM's regulator, the only time the SBD claimed FRM involved a state securities matter was after it had publicly identified FRM as a fraudulent enterprise. A review of available records suggests regulatory inertia. The SBD, working with the OAG, should have moved to close FRM before November, 2009.

By virtue of the fact that the SBD released audits of FRM earlier this year, there is no reason now that it should not make available all remaining FRM-related records for public and state agency inspection—the SBD has still not made all its records available to the BSR. Furthermore, by already releasing audit records regarding this matter, the SBD has de facto waived privilege and there is no remaining discernable reason for a privilege claim over an entity now bankrupt—over which the State no longer exercises any licensing or regulatory jurisdiction.

In addition, a review of the record of FRM shows the OAG is not now a disinterested party to this proceeding. Furthermore, while an appropriate role of the OAG is to protect the interests of the State, that role may at times conflict with the role of a regulatory agency like the BSR, whose explicit statutory mandate is to act in the public interest rather than to consider the impact of possible claims against the state (RSA 541-B).

The FRM matter indicates a lack of coordinated regulation in the State and the need for substantive financial regulatory reform. Inadequate financial protection may be construed as an economic development concern, as deficient regulatory controls may in some instances impact the ability of the State to attract entrepreneurial capital. The report offers several legislative initiatives for consideration, including establishing an Office of Inspector General.

Although its workload during the past several months has been impacted by this matter, the BSR believes it is staffed adequately for the nature of its regulatory jurisdiction. In 2001, upon the departure of its prior Director, the Department was behind in its work-load and had only two attorneys, including the Director. The Securities Bureau now has four full-time attorneys

(a fifth attorney has been hired), and its track record regarding regulatory enforcement has received national recognition. By virtue of the SBD's claim of limited jurisdiction and referring complainants of FRM to the BSR as well as hours of questioning of BSR staff by the OAG, the BSR would like to conclude its role in this matter and offer its findings to an appropriate reporting authority, such as the duly appointed joint House-Senate FRM Review Committee.

A review by the legislature concerning this matter is absolutely necessary. The state of New Hampshire owes that to its citizens, particularly those who were harmed by FRM. Having offered this view, the BSR believes the State needs to undertake a candid, full assessment of this matter, including identifying the inadequacies in the State's financial regulatory scheme. The BSR is ready to review its findings and record in a public forum and work with any legislator to bring full transparency to this matter.

Lastly, the attached appendices contain a synopsis of all the documents and records made available to the BSR concerning FRM as well as FRM-related information the BSR has in its possession. Appendix A, or the records and documents reviewed at the SBD by BSR personnel, have been redacted per order of the SBD. As discussed above, there is no reason for this material not to be made available for review, but the release of such information is not now a prerogative of the BSR and it is respectful of although in disagreement with a stated privilege.

Respectfully Submitted,

Mark Connolly  
Director, NH Bureau of Securities Regulation

attachment

**REPORT OF THE BUREAU OF  
SECURITIES REGULATION'S REVIEW  
OF FINANCIAL RESOURCES  
MORTGAGE, INC. AND RELATED  
MATTERS**

## CONTENTS

|  |    |
|--|----|
| Executive Summary.....   | 1  |
| Part I – Summary of the Bureau’s Involvement.....  | 9  |
| Part II – Legal Analysis and Conclusions.....  | 13 |
| Part III – Suggested Legislative and Administrative Changes.....   | 16 |
| Conclusion.....  | 22 |
| Appendix A – Report of Review of Financial Resources and CL&M Files in the Possession of<br>NH Banking Department .....  |    |
| Appendix B – Decision Trees Regarding Application of RSA 397-A   |    |
| Appendix C – October 30, 2009 Letter of Attorney Denis Maloney   |    |
| Appendix D – Report of Review of Financial Resources and Assistance of the Lakes Region,<br>Financial Resources Mortgage & T. Gary Coyne in Possession of the Bureau of Securities<br>Regulation |    |
| Appendix E – Timeline of BSR Attempts to Obtain Information from the Banking Department  |    |
| Appendix F – Expert Opinion of Joseph C. Long  |    |
| Appendix G - Report of Documents Reviewed at Gallagher, Callahan & Gartell PC  |    |

## EXECUTIVE SUMMARY

### INTRODUCTION

This review (Securities Bureau FRM Review) completes a five-month investigation initiated on November 10, 2009 by the New Hampshire Bureau of Securities Regulation (“BSR”), shortly after the closing of Financial Resources Mortgage, Inc. (“FRM”), a state-licensed mortgage banker and broker since 1997. The collapse of FRM and related businesses had a significant impact on hundreds of individuals in this and other states who may now be facing the loss of tens of millions of dollars.

When first notified last November by the state Banking Department (“SBD”), the Bureau was uncertain how this matter involved the sale of securities as the vast majority of transactions involved loans secured by mortgages on real property. However, in the interest of thorough review and based upon jurisdictional claims advanced publicly by the state Banking Commissioner, the BSR contacted federal securities regulators as well as initiated an in-depth analysis of its records related to FRM, all from 2000-2007 (these records, including all BSR records post-2007, are available for public inspection). Moreover, the BSR attempted to review records in the possession of FRM’s licensing authority, the SBD. To date, the BSR has been provided limited access to such records, and a claim of confidentiality and privacy has been advanced. Other records have been used in assessing this matter, including those provided by the law firm of Gallagher, Callahan, and Gartrell, who acted as counsel to FRM, as well as information provided by individuals referred to the BSR.

The BSR’s review shows it conducted an investigation starting in 2000 that resulted in redemption of funds invested for several investors in a predecessor firm to FRM; this redemption took place in January 2007. This investigation was based on the sole formal complaint received by the BSR regarding FRM. During this period, the BSR sought but did not receive the assistance of the office of the Attorney General (“OAG”) and the SBD. There was a delay between a hearing on the matter in 2003 and final resolution in 2007. Absent a freezing of assets, as requested of the OAG in June, 2003, the resulting lengthy administrative hearing process provided the best possible result for the investors involved. The BSR’s hearings officer made the decision not to issue an order because he believed full rescission as requested by the BSR could not be accomplished as FRM was inadequately capitalized—as was reported in June, 2003 to the OAG-- and current law does not allow for a series of “partial rescissions,” as proposed by counsel for FRM.

The record will also show that the BSR’s current investigation has not revealed any substantive state securities issues, and that FRM and Scott Farah are in violation of the prior Consent Order issued by the BSR. New Hampshire law contains a unique provision at RSA 421-B:17, II(d) that reflects a clear legislative intent to exclude the kinds of mortgage transactions seen in this case from the state’s securities laws. This is supported by the opinion of Professor Joseph C. Long, considered to be the country’s leading expert on state securities law. Professor Long’s expert opinion details how the exemption in RSA 421-B:17, II(d) provides a transactional exemption for whole mortgages sold by persons who are not the issuers of the mortgages. The logical result

of this, according to Professor Long, is that the securities laws were never intended to apply to whole mortgages sold by the initial issuers of the mortgages. In addition, Professor Long notes that historically BSR has not regulated loans secured by real property. Because of its distinctive legal and regulatory framework, which contrasts with federal law, the BSR at this time simply does not regulate the issuance of mortgages and notes or participations in such loans.

A review of the record also suggests the SBD did not exercise its regulatory authority to the fullest extent. Furthermore, the SBD has withheld records and is now exercising a confidentiality claim without a reasonable basis. A privilege claim of confidentiality concerning a failed state-licensed mortgage company is not warranted and does not allow the public to judge what actually occurred. The state needs unfettered access to all the state regulatory records concerning FRM—the names of citizens can be redacted for privacy purposes—so a full assessment can be made of the matter and the state can consider possible financial services regulatory reforms.

A review of the record also suggests the OAG could have initiated legal action against FRM much earlier than it did. In addition, the OAG has been involved with FRM the last several years, in part by receiving and forwarding complaints regarding FRM to the SBD, by investigating at least one complaint related to FRM, and by reviewing requests for assistance from the SBD and the BSR. Lastly, the OAG has publicly stated regarding this matter that the state “has not identified anything that would suggest liability, but we are always mindful of that, since one of our responsibilities is to defend the state against such suits.” By virtue of its involvement in FRM and its stated role in protecting the state’s interests, OAG is not a disinterested party—nor is the BSR and SBD. This suggests a complete review of this matter by an impartial body is warranted.

The BSR offers this review at this time for two reasons. First, because the OAG has identified its review of the matter as not being an investigation but as a “review,” the BSR believes it is not interfering with the OAG’s jurisdiction to complete its review on behalf of the Governor and Executive Council. Accordingly, the BSR has made all its records regarding FRM available for state and general public review. Second, the BSR reports to the Secretary of State, who holds a dual role as both an executive branch and a legislative branch officer. This review is intended to be a summary provided for the benefit of both branches of government.

Finally, the state’s response to the FRM situation should be about the people who have been defrauded as well as addressing how such fraud happened. This is the second Ponzi scheme uncovered in the state in the past three years that has harmed many investors, the other being a non-depository trust company, the so-called Noble Trust Company case. A failure by state government to thoroughly address what happened concerning FRM as well as Noble Trust could ultimately be framed as an economic development concern, as the flow of capital into the state may be affected if New Hampshire is viewed as having a deficient regulatory climate. It has been the belief of the BSR that the state’s current statutory guidance in financial regulation is deficient, and this review also offers suggested legislative changes.

## **BACKGROUND INFORMATION ON THE BUREAU OF SECURITIES REGULATION**

The BSR is an agency within the Secretary of State's office charged with enforcing RSA 421-B, the New Hampshire Uniform Securities Act. The BSR has five primary functions that serve to protect New Hampshire securities investors: enforcement, licensing of firms and individuals, examinations of firms and individuals, registration of securities, and investor education. The BSR is recognized by state and federal regulators as being a leader in all five areas.

With a staff encompassing a director, four attorneys (we are considering the hiring of a fifth attorney), two examiners, two legal interns, five support staff, and a part-time contract employee, the BSR has a balanced and effective team with a demonstrated record of success during the last eight years in applying and enforcing the state's securities laws. By way of comparison, the State of Wisconsin, which has a population of over 5.5 million people, has a securities staff size of fourteen; in Nebraska, a state of 1.7 million in population, its securities staff has ten people. The BSR has consistently provided timely handling of complaints, investigations, licensing, registration, and examination. While there was some backlog encountered as a result of pending files and cases held over from the prior administration during 2001-2002, the current BSR leadership proactively addressed the issue and established a pattern of quick response time in the handling of all files. In 2009, a new and advanced database – the STAR System – was implemented that has allowed the BSR to handle files even more quickly and effectively.

Since 2004, the BSR has generated almost \$190 million in revenue for the state net of expenses from licensing and registration activities, with average yearly revenue of \$31 million during the last six fiscal years. During the period from 2002 to 2009, the BSR has taken enforcement actions that have resulted in \$55 million in fines and restitution to New Hampshire investors. Actions taken by the BSR affected approximately 30,000 investors during that period.

The BSR has taken enforcement actions against some of the largest securities firms in the world, as well as against local operations that have violated the securities laws. Enforcement actions since 2002 include: Merrill Lynch, Tyco, MFS, Pennichuck, American Express/Ameriprise Financial, Morgan Stanley, ING, and UBS-- all have been cases of national as well as local impact. In 2002, the BSR was able to impose a fine of \$5 million against Tyco International Ltd. for fraud and corporate governance violations, at that time the second largest fine exacted by a national or state regulator against one firm. This case was unique in that New Hampshire was at the forefront in taking action over issues of deficient corporate governance, even before the landmark Sarbanes-Oxley Act took effect. In 2004, the BSR worked with the SEC and the state of New York in a case against MFS; it was one of the largest market-timing fraud cases ever brought against a mutual fund company in this country. That same year, the BSR worked with the SEC in an investigation of New Hampshire-based Pennichuck Corporation to provide restitution to shareholders and establish corporate governance standards under Sarbanes-Oxley. In 2006, the BSR worked with the New York Attorney General's office in a case that resulted in the restitution of \$2,775,000 to the New Hampshire deferred compensation program and industry-wide changes in disclosure requirements to members of retirement programs. Most recently, the BSR reached a settlement with UBS that resulted in the return of \$20 million to NHHELCO, a non-profit corporation that has for years been the leading provider of student loans to college students in New Hampshire. In 2007, the BSR's extensive enforcement activities



resulted in recognition by the North American Securities Administrators Association (NASAA) with the National Enforcement of the Year Award.

As a regulator that has been demonstrably an activist in its approach to protecting New Hampshire's investors and insuring the integrity of New Hampshire's capital markets, the BSR is particularly concerned that the matter of FRM should be dealt with honestly, openly, and with a view to insuring that the state's resources are marshaled appropriately to provide effective protection to the citizens of New Hampshire. Unfortunately, this report suggests that certain agencies, particularly the OAG and SBR, did not rise to the challenge when presented with information that clearly demonstrated significant regulatory and other violations at FRM. Only one government agency, either federal or state – the BSR – actually took enforcement action against FRM and provided any kind of relief to people who were harmed by the activities of Scott Farah. The records of that action are in the public domain for anyone to see.

## **FINDINGS**

Upon completion of its review, the BSR offers the following conclusions:

- The present banking and securities regulatory landscape is clearly delineated and provides for no regulatory oversight by the BSR of notes tied to mortgages in a primary offering. Private lending in New Hampshire is not illegal and the BSR does not oversee the capital raising and capital expenditure of licensed mortgage companies.
- The vast majority of transactions conducted by FRM and related businesses are not subject to the state's securities laws. The intent of the New Hampshire Legislature excludes mortgage loan origination from securities regulation. RSA 421-B does not currently provide for the licensing of persons who deal in mortgages, the examination of such persons, or the registration of notes secured by a mortgage offered on origination. Without a regulatory framework that would provide ongoing oversight of mortgages and mortgage companies, the BSR would not be in a position to adequately regulate them.
- The BSR did not have the authority to require examinations of FRM or any of its predecessor entities and related businesses. RSA 421-B:9 only authorizes the BSR to examine firms that are securities licensed or required to be licensed. FRM was never licensed by the BSR. The BSR's earlier action against Financial Resources and Assistance of the Lakes Region (FRA) did allege that FRA should have been licensed. However, there was never a formal decision on this matter. Rather, as part of the Consent Order with the BSR, FRA was ordered to cease and desist from activities that would require licensure. At that point, without contrary information, the BSR was reliant upon the information provided by FRA/FRM and its counsel and had no basis to conduct further examinations.
- In those instances where there are transactions subject to the state's securities laws, enforcement efforts undertaken at this point would not provide any additional protection for investors/lenders or secure the return of their investments as the company and related entities are in bankruptcy.
- While this matter is not properly within the jurisdiction of the BSR under the state's current securities laws, the BSR has been working with federal regulators to identify

ways to help defrauded individuals, as noted in Litigation Release No. 21482 of April 9, 2010 by the United States Securities and Exchange Commission. Federal regulators possess certain tools under the 1934 Securities and Exchange Act that have allowed them to initiate enforcement action in coordination with the criminal investigation of FRM and associated businesses and individuals. Such action will likely be helpful to lenders and investors and has the full support of the BSR.

- Scott Farah and FRM appear to have violated the Consent Order entered into with the BSR in January 2007 and may be subject to criminal prosecution by the OAG. Farah and FRM appear to have provided false information to the BSR with respect to its debt structure and may be subject to criminal prosecution by the OAG.
- The SBD had sufficient authority and ability at several points over the last five years to detect and address violations of the law by FRM and related entities through SBD's licensing and examination of the relevant entities. In particular, SBD's statutes give it the authority to investigate any fraud (RSA 397-A:14) and to seek liquidation of any business under the authority of the SBD that is operating in an unsafe or unauthorized manner (RSA 395:1). Thus, the SBD could have closed FRM upon the discovery that its operations presented a risk to the public. With sufficient cause, including over seventy identified violations and sixteen consumer complaints, the SBD failed to adequately exercise its regulatory prerogative. No complaints were referred to the BSR by the SBD or the OAG; in fact, only one formal complaint was ever filed with the BSR and that was when the current Banking Commissioner was Director of the BSR.<sup>1</sup> The complaint was withdrawn.
- Beginning on October 13, 2009, less than a month before the collapse of FRM, the SBD began to advance a theory that the interests of lenders who shared in a mortgage loan through FRM were "fractional interests" and thus subject to the securities laws. This interpretation had never been advanced before then and no referrals had previously been made to the BSR by the SBD, in spite of the numerous complaints received and examinations conducted by the SBD over the many years it licensed FRM.
- In spite of public statements that he had recused himself until November 2009 with regard to matters involving FRM, Commissioner Hildreth was directly involved on several occasions in investigations concerning FRM, and there is no written record at the BSR that he recused himself when he was its Director and relatives were investors and/or beneficial owners of FRM.
- The SBD was aware or should have been aware as early as February, 2009 that FRM was operating a Web site that raised serious questions of criminal and illegal loan activity but failed to act on the information or refer the information to the OAG. The BSR has reason to believe the OAG was aware of this information, yet no action was taken until after FRM was closed in November, 2009 (Appendix A).

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<sup>1</sup> In March, 2008 the BSR received an inquiry from a Bill Johnson regarding a loan brokered through FRM. The BSR contacted counsel for FRM and asked for a description of the loan to Mr. Johnson. Counsel for FRM indicated that the loan was funded by third-party investors and FRM only acted as a broker. The BSR then asked for copies of all loan documents. Paperwork was sent to the BSR for review. The BSR attempted to follow up with Mr. Johnson on several occasions, but received no reply. As a result, the file was closed without further action.

- In the spring of 2009, HB 610 was working its way through the New Hampshire Legislature. Counsel for FRM was preparing for anticipated changes in RSA 397-A, Licensing of Nondepository Mortgage Brokers and Bankers. RSA 397-A was being amended to come into compliance with the S.A.F.E. Act of 2008. The S.A.F.E. Act was passed in response to the mortgage crisis to strengthen consumer protection. The amendments to RSA 397-A went into effect in July 2009 and eliminated the four-loan exemption for private lenders, expanded the types of dwellings that could collateralize a mortgage loan, provided for SBD jurisdiction over loans secured by out-of-state real estate, and required more stringent licensing requirements for originators and bankers. In advising Farah and FRM, counsel recommended that Farah and his employees be licensed as mortgage originators, and that the private lenders be licensed as mortgage bankers. No licensing took place by the SBD. The SBD did not require licensing until October 2009.
- It has been public reported that approximately \$18-\$20 million in funds alone was reportedly collected by FRM during September-October 2009. Earlier action by the state, through the SBD and/or OAG, may have prevented many individuals from being defrauded.
- Through examinations, the SBD became aware that CL&M was operating as an unlicensed mortgage servicer but took no action against the firm for violations of the SBD's licensing statutes prior to November, 2009.
- Though the Banking Commissioner has asserted his agency's jurisdiction is "very narrow" and that his Department can only look at residential mortgage lending, the SBD did review commercial lending activity by FRM and thus should have been aware of the problems associated with this activity. Furthermore, by virtue of how FRM and CL&M pooled lender funds into a common account, there was in fact no distinction in the handling of so-called residential vs. commercial real estate activity at FRM. Regardless of the commercial or residential nature of the loans, it should have been apparent to the SBD that unethical and illegal activity was taking place there. Farah should have been licensed under a law passed in 2009 as a mortgage originator and CL&M as a mortgage servicer, but this did not occur.
- Given the difficulty the OAG has in acting as a completely disinterested party with regard to matters such as the state response to FRM, the creation of an Office of Inspector General may be an appropriate way to provide a truly disinterested party to determine state agency compliance with state law.
- In June 2003, the BSR recommended that the OAG "secure assets" on behalf of FRM investors. The OAG failed to do so at that time or at a later date, subsequently referring several complaints to the SBD. The legislature should consider re-adopting a consumer protection law, repealed in 2004, that requires the SBD to report to the OAG the disposition of complaints. The same law should also apply to the BSR and Insurance Department.
- On subsequent occasions, certain enforcement matters referred to the OAG by the BSR did not receive adequate response. For example, the BSR made another referral to the OAG in 2004 relating to an allegation of false information provided to the BSR, which if proven would have been a class B felony. The OAG contacted the BSR for more information in January 2006. Despite repeated calls to the OAG regarding the matter, the BSR received no response. Finally in January 2007, a written decision not to pursue

charges was sent by the OAG on 1/10/2007. A protocol of response should be adopted by the OAG. If a state agency with regulatory powers requests assistance from the OAG, there should be appropriate tracking of all the issues raised by the referring agency.

- Again in August of 2006, BSR staff met with members of the OAG regarding a company that continued to issue notes after a cease and desist order had been issued. (BSR staff also alerted the OAG that no order had been issued following the 2003 hearing on FRA – this was never addressed by the OAG.) A Staff Petition had been filed in December 2004, a Cease and Desist Order issued, and a hearing had been held on 2/1/2005. No decision was rendered on the hearing. The OAG was alerted of the illegally issued notes by the BSR and by complaints filed by investors with the Consumer Protection Bureau. Following the August 2006 meeting, the case was referred by the BSR to the OAG to determine if criminal charges were warranted and to determine the legal status of the BSR's order. Following the referral, the OAG did not speak with the hearing examiner until January 2008. The hearing officer understood the OAG to be pursuing the matter criminally. Concerned by the delay, the BSR sent a letter requesting a status on 10/30/2008. By letter dated 11/5/2008, the OAG indicated that no charges would be filed.
- There does not exist explicit direction to state agencies concerning the dissemination of information for the purposes of handling interdepartmental matters. In the instance of the SBD, its laws expressly state that “all records of investigations and reports of examinations by the banking department... shall be confidential communications.” Concerning FRM, the BSR four times requested access to state records held by the SBD—in 2001, 2003, 2009, and 2010—and was denied access. How records should be accessed between state agencies would appear to be a public policy question, with some degree of jurisdictional uniformity being a desired result.
- Attendant to the above-mentioned finding regarding information sharing between state agencies is the need to examine as well as further clarify the public's right to know in terms of state agency records. Transparency in the public arena is a necessary right to ensure open government. In the instance of FRM, it is difficult to discern how or why a confidentiality claim can be advanced regarding a failed mortgage corporation—one that allegedly was involved in a multi-state Ponzi scheme that defrauded hundreds of citizens. It would appear the legislature should reconsider a statute like RSA 383:10-b that allows a department head to have unilateral authority to decide what or if state records can be released without any statutory direction or control.
- RSA 397-A is subject to various--sometimes conflicting--interpretations that appeared to cause confusion. For example, the question of what is and is not covered by RSA 397-A led one compliance expert to revise her decision tree six times in less than a year as a result of discussions with the SBD and changes in the law (Appendix B). RSA 397-A should be examined by the legislature for clarification.
- Currently, the securities laws only authorize a hearings officer to order full rescission or restitution to aggrieved investors that are part of an enforcement action. The legislature may wish to consider authorizing hearings officers to structure rescission offers that provide for return of funds over a limited time period.
- Currently, state securities laws do not authorize the BSR to regularly examine unlicensed entities. The BSR should have administrative search warrant capabilities to ensure that unlicensed targets do not secret vital information.

- The failure of FRM and its attendant harm is prima facie evidence the state needs to establish a minimum level of commercial mortgage regulation. If the state determines at this time it does not possess the political and/or budgetary will to regulate commercial mortgages, it would seem prudent to expressly give the state the authority to examine commercial mortgage entities and define by statute positive net capital rules for such entities.

### **State Banking Department Information**

Unfortunately, the BSR is unable to provide supporting evidence from its review of SBD files as the SBD continues to insist records it possesses be withheld from the public until such time as the Banking Commissioner deems that “the ends of justice and the public advantage will be subserved by the publication thereof” (New Hampshire RSA 383:10-b). Under the restrictive confidentiality provisions in the SBD statutes, the BSR is not even authorized to provide this information to senior legislative and executive branch leaders, such as the Speaker of the House, the Senate President, the Governor, and the Attorney General. The BSR believes “the ends of justice and the public advantage” would undoubtedly be served by the release of this information to the public. FRM and its associated businesses are now defunct firms that have no interest in preserving confidentiality. Moreover, release of the documents in the possession of the SBD would likely assist defrauded investors who have every right to be made aware of the full extent of FRM’s regulatory history (Appendix A).

## **PART I – SUMMARY OF THE BUREAU’S INVOLVEMENT**

### **Background – Prior Investigation by Securities Bureau**

The BSR’s involvement with FRM has two parts. The first part was from 2000 to 2007, when a New Hampshire investor Represented by Attorney Steven Latici filed a complaint with the BSR in March of 2000. The complaint was filed against Gary Coyne (“Coyne”), Scott Farah (“Farah”) and Financial Resources of the Lakes Region (“FRA”). Then Director of the Bureau, Peter Hildreth, purportedly recused himself in the early part of 2001 when it was learned a brother had invested with FRA and held shares of the company. The complaint was withdrawn in 2001 after the investor settled her legal claims against Farah and FRA. The settlement document with FRA included a provision that the investor would withdraw her complaint with the BSR. Further, the investor made a verbal request to the BSR that she not be involved with any proceeding initiated by the BSR. The substance of her complaint was that she invested funds in a series of unsecured promissory notes based upon representations the funds would be placed into mortgages. She claimed that in actuality the funds were loaned to a risky real estate investment group and placed in the general account of FRA and used for its general operating expenses. Due to a change in BSR personnel in 2000 and the resulting backlog, the complaint was not fully addressed by the BSR until the winter of 2001. From 2001 to 2003 the BSR endeavored to fully investigate the complaint and embarked upon an extensive review and document production.

FRA and Farah were represented by Attorney Denis Maloney. The BSR interviewed the relevant parties and reviewed documents produced by both Coyne and FRA. In the course of its investigation, the BSR discovered FRA utilized funds acquired from stockholders and promissory note holders to run its business. By 2003, FRA was in debt to these stakeholders in the amount of several million dollars. An administrative hearing was held in 2003. During the course of further investigation, the BSR conducted a limited examination of FRM. This examination required FRM’s consent. The case was concluded with a Consent Order in January 2007 wherein Farah and FRA were ordered to cease and desist, redeem all investor money plus interest, report to the BSR any further securities of FRA held by stakeholders, and pay a fine to the state in the amount of \$20,000. The BSR concluded that the stocks and promissory notes were unregistered and unlicensed securities transactions in violation of RSA 421-B, the New Hampshire Uniform Securities Act (“the Act”).

In the course of its investigation, the BSR encountered several road blocks. After several requests, the BSR could not gain access to information held at the SBD. The requests were made to the SBD so the BSR could fully understand what was taking place on the mortgage side of the business. The BSR believes its requests were denied by the SBD based upon certain bank confidentiality laws currently in place. Further, in 2003, prior to its hearing, the BSR sought an asset freeze through the OAG pursuant to RSA 421-B:23 which required the OAG file such a request with the Merrimack County Superior Court. The request was not acted upon. The Bureau conveyed to the OAG that an asset freeze proceeding under RSA 421-B:23 would have been the best course of action because FRA was deeply in debt and unable to offer all stakeholders their money back simultaneously in a rescission under 421-B:25. The BSR’s administrative authority was only to demand payment. The BSR could not force simultaneous reimbursement for investors; nor could the BSR levy against or liquidate assets for the benefit of investors. At the

time of the request, the BSR did not have the statutory authority to file for the asset freeze with the Merrimack County Superior Court. That authority was subsequently amended and took effect in August, 2003; however, by that time, the administrative hearing process had already commenced. Furthermore, legislative intent was that the BSR should use such state authority whenever possible in concert with the OAG.

On October 13, 2009, the SBD copied the BSR concerning a letter to FRM that questioned the legality of a Web site operated by it. An inquiry by a lender to the SBD during February 2009 raised questions about the same Web site (Appendix A). On October 30, 2009, Denis Maloney, attorney for FRM, submitted a letter to the BSR advising his client's activities did not come under the jurisdiction of the BSR. (Appendix C).

### **Current FRM Investigation**

In November 2009, the Bureau became aware that FRM had closed down under suspicious circumstances. (Subsequent to the BSR's earlier involvement with the Company, FRA had gone through a name change). The BSR's subsequent investigation also included Farah, CL&M, Donald Dodge ("Dodge"), Dodge Financial ("DF"), Gould and Burke ("G&B"), and Greatland Project Development Inc. ("GPDI"). CL&M was a mortgage servicing company subject to licensing by SBD, but never actually licensed. From 2005 to November 2009, Farah, Dodge, CL&M, FRM, GPDI and DF, were engaged in taking private money from lenders to make mortgage loans to borrowers who could not obtain traditional bank financing. The BSR was unaware of the existence of Dodge, CL&M, DF and GPDI until sometime after November 10<sup>th</sup>, 2009, when the BSR received a call regarding FRM's closure from its attorney, Denis Maloney. As a result of its investigation of this new matter, the BSR has learned that Farah sought private lender financing and brokered and originated mortgages with private lenders with the lenders receiving a direct note and mortgage or an assignment of the note and mortgage or an assignment of a participating interest in the note and mortgage through a trust entity. These loan transactions were consummated through real estate closings conducted by the Gould & Burke law firm of Meredith, NH. The law firm was located in the same building as FRM and CL&M. In most cases, the assignments were contemporaneous with the closings and part of one transaction between the borrower and the lender. This loan structure resembles "table funding." RSA 397-A:1, XXIV defines table funding as follows:

"a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of a loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction". (Emphasis added.)

The loans were for ongoing commercial and residential real estate projects of varying degree from the renovation or building of a single-family residence to a multi-unit subdivision or condominium development. Information regarding these various projects was made available by FRM to prospective lenders which could include site plans, appraisals, credit reports, tax returns, government approvals and terms of the loan. In many cases, the properties were over-valued and over-mortgaged. However, many of these transactions were recorded in the registry with the exception of transactions that occurred within about six months of FRM's demise, during which

time period FRM was collapsing under the weight of debt. In these later transactions, no closings took place.

Finally, a smaller part of the FRM and CL&M activity involved the issuance of unsecured promissory notes and the pooling of investor money such as for the following deals, starting in 2008: Tek-Vet Technologies (“Tek-Vet”), Earth Protection Systems (“EPS”) and Chad Vose. The information collected by the BSR indicates Farah was intricately involved in collecting money for some non-mortgage related business. The Tek-Vet money was for the start of a cattle monitoring business. The EPS money was for a start-up business that manufactured earth erosion prevention equipment, and Chad Vose is a business in Texas that buys and sells mortgages. In the Tek-Vet and EPS ventures, a promissory note was issued in exchange for investor money with the promise of interest earned on the investment.

### **Information Gathering**

FRM closed its doors on November 6<sup>th</sup>, 2009, and the BSR commenced an investigation on November 10<sup>th</sup> after it was notified by the SBD and Attorney Denis Maloney. Numerous complaints were forwarded to the BSR from the SBD, which took the position that the notes and mortgages were securities and not within its jurisdiction. The BSR interviewed all complainants over the phone or in person. The complainants delivered copies of documents to the BSR they had received as a result of mortgage closings and transactions. The BSR received some information and calls from borrowers, but most information was received from lenders who had money tied up and who lost money in these mortgage deals. The BSR also copied and received documents from the courts and civil lawyers involved with the FRM bankruptcy and litigation surrounding the various real estate deals. In addition, the BSR sought and received information from federal securities regulators. The BSR reviewed SBD records to which it was allowed access, including audit reports and SBD violations established since 2000. Finally, the BSR collaborated with and shared information with many other government agencies, including the United States Securities and Exchange Commission, the United States Postal Service, the United States Attorney’s Office, and the OAG.

The BSR was unable to obtain some information, and this report is generated based upon the information available at the time. Due to Freedom of Information Act requirements, the BSR was unable to obtain statements made by Dodge, Farah and others to law enforcement due to the ongoing investigation. The BSR was also unable to obtain information seized by federal authorities following the closure of FRM and CL&M in November, 2009. The BSR believes that information includes accounting and closing information and files related to the various mortgage deals.

### **Access to Banking Department Records**

While first told the BSR would be granted access under the same Access Request letter submitted to the SBD on November 12<sup>th</sup>, 2009, the SBD subsequently began to demand more restrictions on the provision and use of the documents in its possession. An initial review of documents in the possession of the SBD during December, 2009 ended when the SBD refused to provide copies of documents until the BSR entered into a more restrictive Memorandum of



Understanding (MOU). This began a long series of negotiations to agree to an MOU that would give the BSR meaningful access to SBD-held documents.

After continued objections from the Banking Commissioner to a proposed MOU, the BSR issued a subpoena in January 2010 seeking access to all documents in the possession of the SBD relating to Financial Resources. Ultimately, on February 8, 2010, the SBD agreed to an MOU with the BSR, the OAG, and the Insurance Department, at which point the BSR withdrew its subpoena. At the February 8<sup>th</sup> meeting of the Attorney General, Secretary of State, the Banking Department, and the Securities Bureau, the Bank Commissioner stated he did not have records in his office relating to securities violations. It was agreed by representatives of the OAG that the BSR would be granted access to all FRM documents, including emails, at the SBD.

The following week, the BSR once again gained access to SBD documents. Certain omissions from the files caused the BSR to question whether the files were complete and represented all files in the possession of the SBD related to FRM, Scott Farah, CL&M, Inc., and Donald Dodge, president of CL&M. As part of an extensive exchange of emails, both the SBD and the OAG were unable to confirm whether full access had been accorded to the BSR, as agreed to in the MOU. On March 9, 2010, the SBD declined to provide further access to its files. (Appendix E)

## **PART II – LEGAL ANALYSIS AND CONCLUSIONS**

## Synopsis of the Bureau's Authority

### New Hampshire Law

Entities or persons that engage in mortgage origination, brokering, and banking are not subject to the regulation of the BSR. While initially the BSR's focus in trying to identify a securities aspect to FRM was the United States Supreme Court case of Reves v. Ernst & Young, 494 U.S. 56, 110 S.Ct. 945 (1990), further research made it apparent that the analysis should be centered on New Hampshire's unique securities statute. The Reves standard, uses a complex analysis, including factors such as the existence of a regulatory scheme and the expectations of the lenders, to determine whether a promissory note is a security. However, New Hampshire's securities law is unlike any other law, state or federal. It has a significant distinction. In the words of the United States District Court for the District of New Hampshire, "although the New Hampshire Act is similar to the uniform Securities Act, 'New Hampshire law contains numerous variations, omissions and additional matter...' Baldwin v. Kulch Associates, Inc., 39 F.Supp.2d 111, 116 (D.N.H. 1998), citing 7B Uniform Laws Annotated 513 (1985). Notes tied to mortgages and sold at origination are not securities by virtue of RSA 421-B:17, II(d). RSA 421-B:17, II(d) is a transactional exemption that alleviates the need for registration of notes tied to mortgages when the distribution is made by a non-issuer of the note and mortgage in a secondary market. The borrowers for the FRM and CL&M transactions are issuers of the notes and mortgages. Since the exemption only mentions non-issuers and not issuers, the New Hampshire Legislature intended to exclude issuer transactions from securities regulation. The New Hampshire Legislature could not have intended that the non-issuer transaction be exempt from registration while the issuer transaction is not because it is the secondary market for mortgages which creates the most risk for the general public (Appendix F). The New Hampshire Legislature could not have intended that a note tied to a mortgage sold in a primary offering be registered as a security, and the people who sell them licensed as securities brokers. If that were true, any primary offering of a note and mortgage would have to be registered as a security and the salesman licensed as a securities broker. Further, participations in commercial mortgages originated in a primary market are not securities when the participant holds a collateralized note with a return through the payment of principal and interest rather than through the profits of any business.

Therefore, the Bureau concludes that the New Hampshire Legislature did not intend for these mortgage transactions to be subject to the fraud, registration and licensing requirements contained in RSA 421-B. The notes tied to mortgages issued by the borrowers in the FRM and CL&M transactions were delivered directly to the lenders in a table-funded closing or assigned to the lenders in a simultaneous transaction through Dodge or the Dodge entities, and through trust vehicles established by Dodge. It is likely the assignments are not secondary market sales of the notes and mortgages since the value for the exchange was passed at the closing and the assignments were part of the original transaction. In fact, often the lender's name or trust name appeared on the HUD-1 as Lender.

New Hampshire RSA 397-A and 397-B et. seq. establish that the SBD regulates mortgage servicing companies and mortgage brokers, originators and bankers. FRM was licensed by and subject to the regulation of the SBD as a mortgage broker and banker. FRM was subject to its authority under 397-A, including licensing authority, audit function, and maintenance of

appropriate financial integrity. CL&M was not licensed by the SBD, but according to RSA 397-B was subject to SBD regulation by virtue of the residential loans that it serviced while unlicensed. Banking fraud authority under 397-A is broad and sweeping. The Commissioner can take enforcement authority when he finds mortgage fraud in a regulated entity. On the other hand, RSA 421-B does not currently provide for the licensing of persons who deal in mortgages, the examination of such persons, or the registration of notes secured by a mortgage offered in origination. There is strict bank confidentiality in mortgage transactions. The BSR is not allowed to examine them. And while the BSR does have the authority to examine issuer-dealers that are licensed or required to be licensed under RSA 421-B, there was never any determination that FRA or FRM was required to be licensed as an issuer-dealer. Therefore, the BSR does not supervise the capital raising and capital expenditure of licensed mortgage companies and can only become aware of securities violations in those situations when it is notified. Without a regulatory framework that would provide ongoing oversight of mortgages and mortgage companies, the BSR would not be in a position to adequately regulate them. In contrast, state banking statutes do provide for comprehensive regulatory oversight for entities such as FRM. Under RSA 397-A and 397-B, the SBD had the requisite authority to license lenders, Farah, FRM and CL&M; conduct examinations; and take enforcement action against the firms for violations of the statutes. From the period of 2001 to 2009, the SBD conducted six examinations of FRM. On two occasions SBD examinations found that CL&M, Inc. was operating as an unlicensed mortgage servicer under 397-B. If the SBD had required CL&M to become licensed, the firm would also have been subject to regular examinations. In addition to the licensing laws, the SBD had full authority to investigate any kind of fraud under RSA 397-A:14 and to liquidate any unsafe institution subject to its authority under RSA 395. In light of this, adding regulatory oversight by the Bureau would merely be duplicative and overlapping.

#### Changes to RSA 397-A

RSA 397-A defines the jurisdiction of the SBD with respect to the origination, banking and brokering of mortgage loans. During 2009, HB 610 (designed to amend certain provisions of 397-A) was making its way through the New Hampshire Legislature. It passed and became law on July 31<sup>st</sup>, 2009. Key provisions of and changes to this law directly impacted the FRM mortgages to the point where Farah was being cautioned by his legal counsel in spring 2009 to consider licensing as loan originators both himself and his employees, and to license as mortgage bankers the various private lenders involved in these transactions. No origination or banking licensing took place.

The changes being made to RSA 397-A were required by the federal S.A.F.E. Mortgage Act enacted in 2008 following the mortgage crisis to strengthen consumer protection. The amendments eliminated a one-to-four loan exemption for mortgage loans originated by private lenders. RSA 397-A:4, II. The law expanded the types of real property that could collateralize a covered mortgage, and required more stringent licensing requirements. It added a fraud section, RSA 397-A:2, VI, that is sweeping and comprehensive, and that appears to cover fraud committed in either commercial or residential transactions. Under RSA 397-A:3, II, licensing for loan originators became a requirement. RSA 397-A was expanded to provide for SBD jurisdiction over New Hampshire loans secured by out-of-state property.

The various changes proposed and enacted caused individuals working with the law to inquire with the SBD about its applicability and there was confusion over the types of real estate deals the amended act covered. Further, in February 2009, a private lender notified the SBD that a web site constructed by FRM advertised for lenders on properties thought to be already sold. It appears the web site advertised for lenders on some 397-A covered loans. The SBD did not determine that the web site was illegal under 397-A until the fall of 2009 when it demanded that FRM remove it.

### Legal Conclusions

New Hampshire law dictates the legal analysis encompassing how these notes and mortgages fit into the New Hampshire regulatory landscape. Presently, it appears the intent of the New Hampshire Legislature is not to treat as securities mortgage loans sold in the origination phase. These mortgages were not sold in a secondary transaction. Mortgage loans using private funding are not illegal and are not subject to the regulation of the BSR. Under 421-B, securities regulation on the state level does not touch upon mortgage lending unless and until such time as the note and mortgage is offered and sold in a secondary market by a general solicitation, not to the original lender, but to a subsequent purchaser. BSR's review has revealed only a very few instances where transactions probably could be considered securities, specifically with regard to investments made through FRM in Tek-Vet Technologies, Earth Protection Systems and Chad Vose. While recognizing the securities nature of the relatively small amount of investments in Tek-Vet, Earth Protection Systems and Chad Vose, the BSR must also acknowledge that any civil enforcement efforts taken at this point by it would not provide any protection for investors or secure the return of their investments. Federal regulators, however, have unique tools to allow them to freeze assets under federal law not yet subject to the jurisdiction of the Bankruptcy Court and thus offer further protection for investors. Such action is completely appropriate. However, given the regulatory framework covering the activities of FRM and CL&M and the absence of statutory authority of the BSR regarding mortgages, the fact that the SBD and OAG have already terminated the firms' business and the inability of the BSR to meaningfully participate in bringing relief to aggrieved lenders and investors, the BSR concludes that it is best to refer this matter to the OAG for a criminal investigation concerning the violation of the BSR's Cease and Desist order under date of January 24<sup>th</sup>, 2007--for providing false information to the BSR. The penalty for such violations is listed under RSA 421-B:24 as a class B felony for each violation.

## **PART III – SUGGESTED LEGISLATIVE AND ADMINISTRATIVE CHANGES**

The state regulatory response regarding the matter of FRM evidences shortcomings under current law as well as operational jurisdiction between agencies. This section outlines suggested changes in law as well as suggested changes in OAG operational protocols in terms of handling matters referred by regulatory agencies for review/enforcement action on behalf of the state.

(1) **Consumer Protection**—Current law for financial regulation does not require a reporting mechanism or feedback loop to allow the state to monitor and measure complaints and identify potential fraud. For example, it has been publicly reported that some sixteen complaints were received by the OAG/SBD (15) and the BSR (1) over a period of some nine years but there did not exist a comprehensive framework to take action on behalf of the state.

Before 2004, the SBD had explicit authority under RSA 383:10-d to report all complaints to the Consumer Protection Division of the OAG. The statute required that when a complaint was resolved or an investigation completed, the Bank Commissioner should send a report of his Department's investigation, including the facts and findings, to the Consumer Protection Division. Current law now reads, "The Commissioner shall have exclusive authority and jurisdiction to investigate conduct that is or may be an unfair or deceptive act or practice..."

Similarly, state securities laws (RSA 421-B: 21) and insurance laws (RSA 400-A: 16) do not require feedback or a reporting mechanism to the OAG regarding consumer complaints. It would seem to be in the interest of public protection to adopt language similar to that described for the SBD before its laws were changed in 2004 that, in effect, removed any reporting requirement to the OAG.

(2) **Information Sharing between State Agencies**—There does not exist explicit direction to state agencies concerning the dissemination of information for the purposes of handling interdepartmental regulatory matters. In the instance of the SBD, its laws expressly state that "all records of investigations and reports of examinations by the banking department...shall be confidential communications, shall not be subject to subpoena and shall not be made public, unless, in the judgment of the Commissioner, the ends of justice and the public advantage will be subserved by the publication thereof."

Concerning FRM, the BSR four times requested access to state records—in 2001, 2003, 2009, and 2010—held by that company's primary regulator that were not provided. When in December, 2009, the BSR provided an access request for documents—the same access request used by the BSR to enter FRM's premises the week of November 8<sup>th</sup>—it was instructed by the SBD that another access request, or MOU, would be necessary. This resulted in a lengthy negotiation between the two agencies, one that became mediated by the OAG.

A subpoena was issued by the BSR on January 15, 2010, in part because access to records was necessary to make a determination whether the BSR could take action against FRM and related entities or any secondary actors who may have committed securities fraud under RSA 421-B. At a meeting with the OAG, the SBD, and BSR on December 20<sup>th</sup>, it was stated by the BSR if an MOU could not be worked out in a few weeks time, it would issue a subpoena because it wished to work in concert, if possible, with federal regulators, who were indicating a federal court filing against FRM was possible. The BSR did not have any relevant state records at that time (nor were any federal records being made available to it); in order to initiate any regulatory filing against FRM, the BSR would have required full access to all state records.

In considering an MOU, part of the challenge revolved around how an agency like the BSR could use any records it believed was in its jurisdiction. For example, the banking statutes grant the Commissioner sweeping authority to keep records confidential. While the securities laws do contain limited confidentiality provisions, the administrative law process under RSA 421-B promotes public access to information. How records should be accessed between state agencies would appear to be a public policy question, with some degree of jurisdictional uniformity being a desired result. In general, it just does not appear efficient or prudent to have each state agency develop MOUs without statutory guidance for the purpose of document sharing. This is particularly true regarding an entity like FRM that is no longer licensed by the state. At one time, in some instances under banking law, it may have been necessary to invoke a confidentiality or privacy claim involving the records of a depository institution. However, the logic of applying such claim to a non-depository financial institution, like a mortgage company—particularly a failed mortgage company—does not seem reasonable. Furthermore, statutory language like that in RSA 383:10-b takes precedence over any MOU, so the legislature establishing a minimum level of document or record sharing guidance between state agencies would seem warranted.

**(3) Confidentiality and Privilege Claims by State Agencies**—Attendant to the above discussion regarding information sharing between state agencies is the need to examine and further clarify the public’s right to know in terms of state agency records. Transparency in the public arena is a necessary tool to ensure open government. In its January 29, 2010 opinion in the Professional Firefighters of New Hampshire v Local Government Center, 012910 NHSC, 2009-215, the New Hampshire Supreme Court affirmed “the public’s right of access to government proceedings and records shall not be unreasonably restricted...this right is embodied in the Right-to-Know Law, which was enacted ‘to ensure...the greatest possible public access to the actions, discussions and records of all public bodies.’” The Court’s opinion does recognize that the Right to Know Law does not always guarantee the public unfettered right of access to all governmental workings, as evidenced by statutory exceptions and exemptions. In some instances, the Court pointed out arguments can be made that the release of information could be construed as interfering with the workings of government. However, in the instance of FRM, it is difficult to discern how or why a confidentiality claim can be advanced regarding a failed mortgage corporation—one that allegedly was involved in a multi-state Ponzi scheme that defrauded hundreds of citizens.

Who or what needs to be protected in terms of a privilege claim appears moot in a circumstance like FRM. It would seem to be a legislative matter to address RSA 310:10-b in relation to RSA 91-A, the state’s Right to Know statute so as to establish how or when a privilege or confidentiality claim by the state should be imposed and how such claim has primacy in terms of the public’s right to know, particularly for those who have been economically harmed.

**(4) Regulation of Commercial Mortgages**—The failure of FRM and the attendant harm exacted by its alleged fraud is prima facie evidence the state needs to establish a minimum level of commercial mortgage regulation. At the outset, it would appear that RSA 397-A:5, Licensing of Nondepository First Mortgage Bankers and Brokers—License Applications; Requirements; Investigations, amended July 31, 2009, gives the state the requisite authority to regulate mortgage banking/brokering by a licensee who conducts both residential and commercial mortgage business. Such regulatory authority includes requiring an applicant to maintain a

minimum net worth—an amount determined by the SBD that arguably should reflect the dollar amount of loans originated. Furthermore, current law requires licensees to show balance sheets according to GAAP standards, cash flow statements, owner's equity, and note disclosures. In addition, net worth statements are required for investigative purposes.

This authority was not exercised with FRM. The public record shows the company repeatedly failed to evidence accurate or certified documents. Furthermore, it has been advanced by the SBD that it does not now possess regulatory authority for commercial mortgages and that its jurisdiction in this matter was narrow. However, an examination of the business process shows that loan amounts were commingled or pooled by FRM and its related entities. It is not accurate to draw the conclusion that FRM's regulatory scheme was narrow or in some cases nonexistent. Furthermore, SBD auditors in a June 11, 2007 audit report stated that FRM under RSA 397-A:17, I (f) "had made fraudulent misrepresentations...." And "the licensee is using 'commercial construction loan agreements' for primary residence loans." The auditors would have had to examine the so-called commercial debt instruments to make such a characterization. The fact that FRM originated both commercial and residential mortgages and commingled its mortgage funds, and the fact that FRM was licensed by the SBD should not result in a conclusion the state had insufficient regulatory oversight over FRM.

If in fact it is determined the state does not at this time possess the requisite regulatory power to regulate commercial mortgages per se, i.e., if an entity conducts so-called commercial mortgage activity, it would seem prudent to establish minimum private mortgage financial standards and controls and to expressly give the state the authority to examine commercial mortgage entities and statutorily establish net capital rules for such entities. In addition, the Legislature may wish to require that entities licensed to offer residential mortgages not be able to offer commercial mortgages under the same entity. Thus, for example, if a licensed mortgage banker wished to offer commercial mortgages, it could not do so under a common licensed entity and would have to establish a separate entity clearly designated as offering commercial mortgages. Lastly, if the Banking Commissioner continues to believe that he does not have the requisite authority under the state's mortgage regulation laws to deal with entities offering both residential and commercial mortgages, the BSR is willing to assume such a role—with appropriate staff—to regulate such entities.

**(5) Lobbyist Activity Before State Agencies**—Current law (RSA 15:1) states that registration as a lobbyist in New Hampshire is required when a person promotes or opposes, directly or indirectly, certain enumerated "actions" before state agencies. Such actions include legislation, contracts pending, procurement of goods or services or proposed administrative rules. Current law does not call for disclosing the subject matter of any discussion between lobbyists and state agency heads. Registration should be required regarding any person or entity hired to represent any matter or interest before a state agency and a full description of any discussion between lobbyists and agency heads should become part of the public record.

**(6) Completing Graham-Leach Bliley Banking-Securities Jurisdiction**—In January 2005, HB 716 was introduced at the request of the Bureau. This legislation was an effort by the Bureau to adopt major provisions of the Uniform Securities Act of 2002, which was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). As part of this legislation, the

Bureau sought to harmonize its definition of “banks” with the federal law and to adopt the narrower exemption from regulation of broker-dealers for bank activities found in federal law. Up to this point, banks were completely exempt from oversight for broker-dealer activities under New Hampshire law. The bill faced major objections by the banking lobby and the Banking Department concerning provisions that would have harmonized the Bureau’s oversight of securities activities within banking institutions with the federal Gramm-Leach-Bliley Act adopted by Congress in 1999. As a result, the Bureau was forced to withdraw these important provisions in order to get other important changes passed. Because of this, banks are still largely exempt from securities oversight of any kind. The Legislature may wish to strengthen functional regulation in New Hampshire to insure that securities activities occurring within entities supervised by the Banking Department are subject to proper securities regulation.

**(7) Establishing Department of Justice Regulatory Protocols**—There is a need for the OAG to establish reporting protocols for regulatory matters referred for state action. In the case of FRM, on June 17, 2003 the BSR followed up on a meeting held with the OAG on June 12<sup>th</sup> in which it advocated “the securing of assets”<sup>2</sup> for the investors of FRA. The BSR did so out of concern for the weak financial standing of the Company as well as a perception it was being mismanaged. The June 17<sup>th</sup> letter said, “I will wait to hear from you.” No response was made to the BSR’s request to freeze the assets of FRA, leaving the BSR in the position to have to seek an administrative remedy in the form of a hearing. A hearing was the least desirable course because a full rescission, which state law allows for, would likely have meant FRA would have been unable to pay out all investors, potentially financially harming them as a result. Understanding this fact as well as aware FRA’s counsel was attempting to settle the matter by paying out over time those investors wanting their funds back—as the BSR determined the investments sold to them were done so by an unlicensed entity--the hearing officer did not rule,<sup>3</sup> leaving the BSR to agree to a staged payment schedule for return of \$1 million to those investors who wanted their funds returned.

Subsequent to June, 2003, the OAG referred several complaints regarding FRM to the SBD. It would seem that the number of complaints as well as observed deficiencies, including inadequate financial statements and condition, by the SBD, all coming after the request by the BSR to freeze the assets of FRM, should have resulted in the state initiating enforcement action against the company long before it actually failed in November, 2009. This is particularly true given the complaint activity the SBD received during 2009.

There have been several instances when the BSR has referred cases to the OAG in which inadequate or no response has been given for such Bureau referrals. In one instance—regarding the conclusion of a civil action initiated against Pennichuck Corporation in 2004—the BSR referred an instance of misleading statements to the OAG for its review. One of the individuals involved in the referral was associated with FRM. The BSR received a Right to Know request by a member of the press for release of documents; however, it was and is the practice of the BSR

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<sup>2</sup> The Bureau was granted the right to secure assets through legislation, effective August, 2003, but it was clear through the legislative hearings process that it should do so jointly with the Attorney General and that it should use such authority unilaterally only in circumstances needing immediate action.

<sup>3</sup> The BSR did consult with the OAG about the administrative hearing process and what the BSR could do absent a judgment by a hearing officer; the OAG did not follow-up with (non-hearing) personnel to advise. The OAG has supervisory responsibility for the administrative hearing process.



not to make available documents that are being reviewed by another agency for possible enforcement action. In this instance, the BSR contacted the OAG, including meeting with the Attorney General to review the reason for the referral, but no response was offered other than a letter received under date January 27, 2006, indicating the matter was closed due to the statute of limitations.

Most recently, the BSR contacted the OAG regarding a recent concern regarding a potential pyramid scheme, which the BSR had previously shut down in 2001. During the late summer of 2009, the BSR was made aware that the operator of this enterprise was allegedly engaging in fraudulent securities actions. Beginning on September 1, 2009, the BSR made several attempts to get the OAG to freeze assets of this enterprise. It took repeated efforts, culminating in February, 2010, when the BSR was also asking for the OAG's assistance in gaining access to the SBD's records, that enforcement action was initiated by that office.

What would seem to be needed is a primary point of contact by the Attorney General's office with regulators who rely on it to take action on behalf of the state. If a case or file is referred to that office by a regulator, at minimum a response should be made in writing which details why or why not action will be taken, or what additional information the OAG may need to consider an enforcement action.

**(8) Establishing an Office of Inspector General**—A fall-out to the FRM matter is whether the time has come for the legislature to establish an Office of Inspector General (OIG) in state government. In addition to the federal government, several states have established such an office. An OIG function is a type of investigator authorized to examine the actions of government agencies in terms of ensuring that such agencies are operating in compliance with the statutory mandates of government; an OIG can discover the possibility of misconduct or non-compliance with law. Certainly, the OAG can play such a role, but the effectiveness of that role could be called into question in those instances where it has contemporaneous regulatory jurisdiction and is not by virtue of its reporting authority a disinterested source. In the case of FRM, the OAG has made the determination publicly that its involvement with FRM has not risen to a level where it cannot conduct its own investigation of the matter. This may be viewed by some as a fair conclusion, but nonetheless having a totally disinterested party involved in conducting a review or investigation regarding a matter such as FRM on behalf of the state--including a review of all records held by its agencies--would seem to be more appropriate.

**(9) Expanded Authority to Order Partial or Staged Rescission Offers**—Currently the N.H. Securities Act authorizes the Secretary of State or his designated hearings officer to order only full rescission or restitution to aggrieved investors that are part of an enforcement action. The legislature may wish to consider amending the statute, providing additional flexibility to the hearings officer to structure rescission offers that provide for return of funds over a limited time period.

**(10) Providing for Tighter Regulation of Unlicensed Entities that Sell Securities through the Use of Administrative Inspection Warrant Capabilities.** Currently, the Bureau does not have the authority to issue administrative inspection warrants. The Bureau does have the authority to issue subpoenas for information, but this requires the Bureau have a fairly specific

idea of what information it is looking for. In addition, the Bureau relies solely on the word of the target of the subpoena that they have provided all of the information sought. The legislature may wish to consider granting the Bureau administrative inspection warrant capabilities pursuant to RSA 595-B.

**(11) Providing BSR with Authority to Conduct Examinations after a Final Decision or Consent Order.** In general, RSA 421-B:9 authorizes the BSR to examine entities that are licensed or required to be licensed under RSA 421-B. Therefore, the BSR did not have statutory authority at any time to examine FRM or any of its predecessor firms. The BSR did secure agreement from FRA to be examined during the course of its investigation in 2006, but this examination occurred pursuant to an investigation and required the consent of FRA. The BSR and FRA reached agreement on a Consent Order in January 2007 that required FRA to cease and desist from any activities for which it would be required to be licensed. As a result, the BSR had no authority after the Consent Order to examine FRA or its successors.

The Legislature should consider giving the BSR authority to conduct examinations in two additional circumstances. First, examinations should be authorized where a hearing officer issues a decision finding violations of the securities laws. Second, the BSR should have authority to require future examinations as part of any consent orders, consent agreement, or other settlement agreements. This would insure that the BSR would have ongoing authority to examine parties subject to adverse findings to insure there are no further violations.

## Conclusion

It is important to note the BSR did not engage in this review with the intent of “investigating” any agency. This is neither the proper role nor the desire of the BSR. Nor does the BSR seek to apportion blame. Regulatory oversight does not insure that all violations of the law will be uncovered and addressed. However, in order to clarify its regulatory role in relation to FRM and its related business, it was necessary for the BSR to understand the role played by the firm’s primary regulator – the SBD. This was simply a matter of understanding where the lines of regulatory delineation are drawn. In addition, in reviewing the BSR’s files, it became clear the

OAG did not provide requested assistance on several occasions, nor did it initiate its own actions after repeated complaints and inquiries. These issues must be addressed if state regulators are to provide the highest level of protection to New Hampshire's citizens.

The BSR believes its findings justify a truly thorough and objective investigation into these events by an impartial reviewer, such as the Legislature. Lenders, borrowers, investors, and consumers are entitled to open government as it relates to a regulatory system that failed to protect them from the abuses of Scott Farah, FRM, and associated businesses and individuals. Any review of the FRM debacle must result in corrective action that provides true protection for the people of New Hampshire.

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The BSR believes its findings justify a truly thorough and objective investigation into these events by an impartial reviewer, such as the Legislature. Lenders, borrowers, investors, and consumers are entitled to open government as it relates to a regulatory system that failed to protect them from the abuses of Scott Farah, FRM, and associated businesses and individuals. Any review of the FRM debacle must result in corrective action that provides true protection for the people of New Hampshire.

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## **APPENDIX A – REPORT OF REVIEW OF FINANCIAL RESOURCES AND CL&M FILES IN THE POSSESSION OF NH BANKING DEPARTMENT**

### **Introduction**

The Bureau of Securities Regulation (BSR) initially visited the state Banking Department (SBD) to review documents relating to Financial Resources Mortgage, Inc. (FRM) and CL&M, Inc., on December 14 & 15, 2009. Because of time constraints and limited space available at SBD, access to documents was limited. Additionally, copies of selected documents were not made at these or later visits. The primary objective of the BSR was to see if any securities were involved within these files and correspondence.

On February 8, 2010, a Memorandum of Understanding (MOU) was reached between the OAG, BSR, SBD, and the State Insurance Department concerning sharing of state records. (Attachment 1). The MOU is attached herein and addresses the use of so-called “confidential or privileged records”. In terms of FRM, the BSR understands this MOU term to include letters and other hard copies of correspondence between counsel and/or regulatory compliance advisors for FRM, Scott Farah, CL&M, Inc., Donald Dodge and the SBD. Also included in the term “confidential or privileged records” are emails and other electronic correspondence between counsel and/or regulatory compliance advisors for FRM, Scott Farah, CL&M, and Donald Dodge and the SBD; work papers supporting audits released by SBD and any show cause orders issued by the SBD against FRM; loan documents related to loans made by or through FRM, Scott Farah, CL&M or Donald Dodge; promissory notes related to loans made by or through FRM, Scott Farah, CL&M or Donald Dodge; all communications of Scott Farah and/or Attorney Maloney; records related to the role of accountants working on behalf of FRM; records related to the role of Gould & Burke, PLLC in relation to the activities of FRM and associated entities, especially closing documents; financial statements of FRM and all associated entities; HUD-1 statements given to borrowers by FRM, Scott Farah, CL&M or Donald Dodge; copies of all FRM Web site information in possession of SBD; and copies of all complaints made to SBD regarding FRM, Scott Farah, CL&M, or Donald Dodge as well as investigatory files related to these complaints. (Attachment 2).

Following the completion of the aforementioned MOU, the BSR returned to the SBD on February 11, 12, 16 and 17, 2010. This did not complete BSR’s review. Pursuant to a directive by the Secretary of State to further BSR’s review of FRM records held at the SBD, on February 24, 2010, Kevin Moquin (BSR staff attorney) sent an e-mail to SBD requesting additional time/dates to review documents. As of March 9, 2010, the SBD had not verified whether all documents and correspondence related to FRM, Scott Farah, CL&M or Donald Dodge have been made available for review; no additional review dates have been further authorized by the SBD. In addition, the BSR has asked directly several times whether it has been granted access to all information related to Financial Resources, Scott Farah, CL&M, and Donald Dodge in the possession of the Banking Department. The BSR has not been able to get a “yes” or “no” to that question. Rather, in an email dated March 9, 2010, the SBD stated, “Further access to Banking records based on the outstanding requests is being denied. Securities has already had ample opportunity to find information relative to its jurisdiction and its current requests are vague, do not meet the requirements of the MOU and are overly burdensome”.

The following notes and observations represent the BSR review of the SBD's records to date:

Commissioner Peter Hildreth

**REDACTED PER BANKING DEPARTMENT**



**REDACTED PER BANKING DEPARTMENT**

Key Complaints

**REDACTED PER BANKING DEPARTMENT**

List of Documents Reviewed

**REDACTED PER BANKING DEPARTMENT**

**REDACTED PER BANKING DEPARTMENT**

SBD Frank Marino Investigation File

**REDACTED PER BANKING DEPARTMENT**

FRM Financials and Bank Statements

**REDACTED PER BANKING DEPARTMENT**

**REDACTED PER BANKING DEPARTMENT**

Review of FRM 2008 Ledger within the SBD Audit File

**REDACTED PER BANKING DEPARTMENT**

Review of FRM 2008 Checks within the SBD Audit File

**REDACTED PER BANKING DEPARTMENT**

Other FRM Financial Notes

**REDACTED PER BANKING DEPARTMENT**

Documentation on Enforcement/Discussion Issues at SBD

**REDACTED PER BANKING DEPARTMENT**



**REDACTED PER BANKING DEPARTMENT**

**Other Key Notes from Files**

**REDACTED PER BANKING DEPARTMENT**

**REDACTED PER BANKING DEPARTMENT**

Complaints after FRM closed down

**REDACTED PER BANKING DEPARTMENT**

Pensco Trust Company Information

**REDACTED PER BANKING DEPARTMENT**

FRAUD

**REDACTED PER BANKING DEPARTMENT**

**REDACTED PER BANKING DEPARTMENT**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into by, between and among the New Hampshire Banking Department, the New Hampshire Insurance Department, the Securities Division of the Secretary of State's Office and the Department of Justice (individually a "Party" and collectively the "Parties").

The Parties believe that mutual communication and cooperation between the Parties will result in effective oversight and regulation, including but not limited to appropriate investigations and enforcement actions, of individuals and entities who are or may be subject to the regulatory jurisdiction of the Parties. The Parties enter into this MOU to authorize sharing of information in order to maximize their effectiveness and avoid unnecessary duplication of effort and waste of public resources. This MOU will facilitate information sharing and the sharing of confidential or privileged records, strategic planning, and legal analysis (collectively "Confidential Information").

The Parties recognize that it is in their individual and common interest to share Confidential Information and otherwise encourage the free exchange of Confidential Information while maintaining intact all applicable privileges and confidentiality requirements under New Hampshire law and/or federal law, including but not limited to those contained in Title XXXV, Title XXXVII, XXXVIII, RSA 358-A and RSA ch.7, including, as applicable, the attorney-client privilege, work-product doctrine, enforcement privilege, deliberative process privilege and such other privileges provided for in statutes, rules or laws that may apply (collectively the "Privileges and Confidentialities").

Accordingly, the Parties have agreed through this MOU as follows:

1. Purpose. The purpose of this MOU is to promote cooperation among the Parties, and to facilitate effective and efficient use of public resources for regulatory and law enforcement purposes by facilitating communication of Confidential Information among the Parties without waiving any of the applicable Privileges and Confidentialities.
2. Authority. Pursuant to statute or rule, the Parties have the legal authority necessary to protect from disclosure and to otherwise preserve the Privileges and Confidentialities that apply to any Confidential Information received pursuant to this MOU.
3. Definitions.
  - a. *Requesting Party* means the Agency seeking information.
  - b. *Responding Party* means the Agency responding to a request for information.
4. Information Sharing. Requests for information shall be in writing. When submitting a request, the Requesting Party shall provide a description, including to the extent known, the names of individuals, entities, time period and general subject matter of the information requested. The Requesting Party agrees to limit its use of any information it receives under this MOU to functions directly related to the exercise of its applicable regulatory

authority. To the extent the documents sought by the Requesting Party are subject to a contractual confidentiality agreement or a court ordered confidentiality agreement, the Responding Party shall use its best efforts to obtain permission from the other contracting party or the appropriate court to release the documents to the Requesting Party. If the Responding Party is unable to obtain authority, but is able to provide the documents to the Requesting Party to view only, such documents shall be made available to the Requesting Party to view.

5. Use of Confidential Information. The Parties each expressly agree to limit its use of any Confidential Information it received under this MOU to functions directly related to the exercise of its appropriate statutory or regulatory authority. A Party or Parties shall immediately provide notice of any effort by a third party to compel disclosure of Confidential Information. The Parties shall take all reasonable steps to oppose disclosure of Confidential Information absent either the express consent to disclose from the Responding Party that has provided the information or a legally valid and enforceable order to compel disclosure issued by a court of competent jurisdiction.

6. No Waiver of Privileges and Confidentialities. Any communication of Confidential Information, whether by written, oral, electronic, or any other form, from one Party to another, is not intended to waive, and shall not waive or otherwise affect any Privileges and Confidentialities with respect to the Confidential Information. The Parties acknowledge that all Confidential Information remains the property of the Responding Party and agree that such information shall not be disclosed without the express written permission of the Responding Party, which permission shall not be unreasonably withheld.

7. Protection of Communications. The Parties shall protect the Privileges and Confidentialities relating to Confidential Information, and shall work cooperatively to ensure the applicable Privileges and Confidentialities are maintained. Prior to disclosing documents, the Responding Party shall mark documents subject to Privileges and Confidentialities or, in the alternative, the Responding and Requesting Parties shall agree to treat all documents as confidential.

8. Procedures for the Sharing of Information. The Parties agree to provide Confidential Information upon request. Documents requested shall not be withheld by the Responding Party based on Privileges and Confidentialities, but all Privileges and Confidentialities shall be retained notwithstanding the transfer of documents. The Parties may also exchange other information in order to promote coordination and general awareness of supervisory policies, positions and practices including but not limited to sharing information related to proposed legislation or rules, complaints, investigations, examinations or other matters of mutual interest. The Parties shall endeavor to provide prompt notice of any enforcement action against an individual or entity known to be subject to the regulatory jurisdiction of the Parties. Nothing in this MOU shall limit the ability of the Parties to exchange information that is not Confidential Information.

9. Referrals to the Attorney General. Nothing in this MOU shall affect the statutory role of the Attorney General to initiate enforcement actions based upon a referral from a Party or Parties.



10. Resolution of Disputes. Any disputes regarding the sharing and use of information under this MOU shall be resolved by the Attorney General.

This MOU shall be effective until terminated in writing by any Party, provided, however, that such termination shall be effective only as to the terminating Party. Termination shall not affect the rights and obligations of the Parties with respect to Confidential Information shared pursuant to this MOU.

Effective this 8th day of February 2010



Peter C. Hildreth  
Bank Commissioner



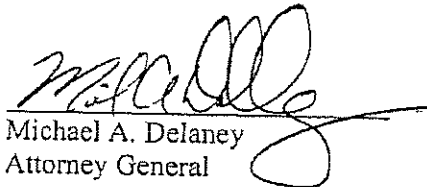
William M. Gardner  
Secretary of State

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Roger A. Sevigny  
Insurance Commissioner



Mark Connolly  
Director, Securities Division



Michael A. Delaney  
Attorney General

Attachment 2

TO: Michael A. Delaney, Attorney General  
Peter C. Hildreth, Banking Commissioner  
FROM: Mark Connolly, Securities Director  
RE: Confidential or Privileged Records under MOU

The Bureau of Securities Regulation understands the term "confidential or privileged records" as used in the proposed Memorandum of Understanding to include without limitation:

Letters and other hard copy correspondence between counsel and/or regulatory compliance advisors for Financial Resources Mortgage, Inc.(FRM), Scott Farah, CL&M, Inc., and Donald Dodge and the Banking Department

Emails and other electronic correspondence between counsel and/or regulatory compliance advisors for FRM, Scott Farah, CL&M, Inc., and Donald Dodge and the Banking Department

Work papers supporting audits released by the Banking Department as well as any show cause orders issued by the Banking Department against FRM

Loan documents related to loans made by or through FRM, Scott Farah, CL&M, Inc., or Donald Dodge

Promissory notes related to loans made by or through FRM, Scott Farah, CL&M, Inc., or Donald Dodge

All other communications of Scott Farah and/or Attorney Maloney

Records related to the role of accountants working on behalf of FRM

Records related to the role of Gould & Burke, PLLC in relation to the activities of FRM and associated entities, especially closing documents

Financial statements of FRM and all associated entities

HUD-1 statements given to borrowers by FRM, Scott Farah, CL&M, Inc., or Donald Dodge

Copies of all FRM Web site information in the possession of the Banking Department

Copies of all complaints made to the Banking Department regarding FRM, Scott Farah, CL&M, Inc., or Donald Dodge as well as investigatory files related to those complaints

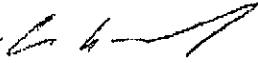
Attachment 3

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NEW HAMPSHIRE BANKING DEPARTMENT  
MEMORANDUM

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TO: SECURITIES DIVISION OF THE NEW HAMPSHIRE SECRETARY OF STATE'S OFFICE

FROM: CELIA K. LEONARD, GENERAL COUNSEL 

SUBJECT: FINANCIAL RESOURCES MORTGAGE AND RELATED PERSONS AND ENTITIES INFORMATION SHARING

DATE: FEBRUARY 11, 2010

CC: FILE

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Pursuant to paragraph 7 of the Memorandum of Understanding by, between and among the New Hampshire Banking Department, the New Hampshire Insurance Department, the Securities Division of the Secretary of State's Office and the New Hampshire Department of Justice dated February 8, 2010 ("MOU"), all documents and information disclosed by the New Hampshire Banking Department regarding Financial Resources Mortgage and any related persons and entities shall hereby be considered marked "Subject to Privileges and Confidentialities." Accordingly, no disclosure should be made of any such information without the express written permission of the New Hampshire Banking Department. (See paragraph 6 of the MOU).

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## **Appendix B – Decision Trees Regarding Application of RSA 397-A**

The following charts represent a series of decision trees drafted by Susan LeDuc of the Gallagher law firm on behalf of Financial Resources Mortgage, Inc (“FRM”). These decisions trees were to be used by FRM to determine whether a particular loan/mortgage was covered by RSA 397-A, the statute by which the Banking Department licenses, examines, and regulates mortgage bankers and brokers.

NH Licensing Requirements<sup>1</sup> for Mortgage Loans – Decision Tree  
(as of March 2009)

1. Is loan collateral NH land only (no \$ for improvements or construction)?
  - a. If yes, then no license required. DONE
  - b. If no, then go to #2.
  
2. Is loan collateral NH land and building(s), including \$ for improvements or construction?
  - a. If no dwelling units (i.e., only commercial, retail, manufacturing, warehouse, etc.), then no license required. DONE
  - b. If commercial space and dwellings – "mixed-use" (such as retail space on first floor with apartments above), then:
    - i. If more than 50% of revenue from property (when fully leased up) is or will be generated by the commercial space, or if more than 50% of the square footage of the building is for commercial use, then no license required. DONE
    - ii. If more than 50% of revenue from property (when fully leased up) is or will be generated by the dwellings, or if more than 50% of the square footage of the building is for dwelling(s), then go to #2(c) and #2(d) below.
  - c. If 5 or more dwelling units, then no license required. DONE
  - d. If 1-4 dwelling units<sup>2</sup>, then go to #3.
  
3. Is property to be non-owner occupied (i.e., not the primary dwelling of the borrower)? Examples include a spec. home, or a revenue-generating property, such as an apartment building or rental, or a second home or "vacation home," etc. [Note: A borrower can have only one primary residence at a time; if a "second home" is occupied by the borrower less than 50% of the time, then the vacation home is considered non-owner occupied (i.e., an investment property).]
  - a. If non-owner occupied, then no license required<sup>3</sup>. DONE
  - b. If owner occupied or to be owner-occupied, then go to #4.

<sup>1</sup> Based on NH RSA chapter 397-A, BAN 2400 (expired), and the Instruction to the Mortgage Banker/Broker/Service Annual Report Form

<sup>2</sup> 1-4 family property includes a single-family dwelling, a duplex, a multi-family 1-4 family unit dwelling, manufactured housing, a mobile home affixed to real property, or a single-family condo unit. Excluded: Time share units, recreational vehicles (such as boats and campers), and transitory residences (such as hotels, hospitals, and college dormitories – whose occupants have principal residences elsewhere.) are not included.

<sup>3</sup> Do not report these loans on the Annual Report of NH loans as submitted to the NH Banking Department.

4. Is lender (i.e., creditor on note) extending a loan (purchase, refinance, construction, home equity loan/line, or reverse mortgage) for the primary home of the borrower, and taking a first or junior lien on the property<sup>4</sup>?

a. If yes, then lender must be licensed.

- i. \_\_\_\_\_ can be lender, or
- ii. A NH-licensed correspondent lender can be lender (\_\_\_\_\_ is broker), or
- iii. An exempt-from NH-licensing lender (such as a subsidiary of a national (OCC) or federal (OTS) bank), can be lender (\_\_\_\_\_ is broker), or
- iv. A private investor who is exempt from NH licensing<sup>5</sup> can be lender (\_\_\_\_\_ is broker), or
- v. Or lender must be otherwise exempt from licensing pursuant to NH RSA 397-A:4.

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<sup>4</sup> NH land & building (including construction), 1-4 family, owner-occupied or to be owner-occupied, as primary home of borrower.

<sup>5</sup> For a private investor to be exempt from NH licensing pursuant to NH RSA 397-A:4, II, the investor must be a natural person making not more than 4 first mortgage loans within any calendar year with the person's own funds and for the person's own investment without an intent to resell such mortgage loans.

NH Lending Decision Tree A

May 1, 2009

**Non-Bank Lenders: When is a NH loan offered pursuant to NH RSA 397-A?**

1. Is any portion of the collateral occupied or intended to be occupied, as a dwelling<sup>1</sup> by the owner?
  - a. If yes, go to 2.
  - b. If no, then no license required\*.
  
2. Is any portion of the collateral (or will it be) the borrower's primary residence<sup>2</sup>?
  - a. If yes, go to 3.
  - b. If no, then no license required\*.
  
3. Does the collateral include 1-4 dwelling units<sup>3</sup>?
  - a. If yes, go to 4.
  - b. If no, then no license required\*.
  
4. Is the property primarily (i.e., >50%) used for personal, family or household purposes<sup>4</sup>?
  - a. If yes, then
    - i. Loan broker (if applicable) must be a NH-licensed mortgage broker or mortgage banker,<sup>5</sup> and
    - ii. Lender (creditor on loan note) must be a:
      1. Bank or a bank subsidiary, or
      2. NH-licensed mortgage banker, and
    - iii. Loan originator must be licensed.
  - b. If no, then no license required\*.

\* "No license required" means that the loan is considered to be "commercial" and would not be reported to the NH Banking Department in the Annual Report of loan production, would not be subject to review by the NH Banking Department, would not be listed on the "loan list" to be provided to the NH Banking Department examiners for purposes of examination, and would not be subject to the requirements of NH RSA 397-A. Other legal and regulatory compliance requirements may still apply to these loans.

<sup>1</sup> Includes construction of a dwelling to be occupied by owner if construction financing is included in loan.

<sup>2</sup> Primary residence does not include transitory residences such as hotels, hospitals, college dormitories, time share units or second/vacation homes.

<sup>3</sup> 1-4 dwelling units includes a single-family dwelling, a duplex, a multi-family 1-4 family unit dwelling, manufactured housing, a mobile home, or a single-family condo or co-op unit. It does not include RVs, boats or campers.

<sup>4</sup> If more than half of property (by square footage or by revenue generated) is used for commercial purposes (such as a retail store-front with apartments above), then the loan is considered to be a commercial loan and is not originated subject to a license.

<sup>5</sup> Applies to any lien (purchase, refinance, HELOC, reverse mortgage, etc.).



NH Lending Decision Tree B

May 1, 2009

Bank Lenders: What Type of Loan Requires that the Bank Loan Officer (loan originator) be Registered?

1. Is any portion of the collateral occupied or intended to be occupied, as a dwelling<sup>6</sup> by the owner?
  - a. If yes, go to 2.
  - b. If no, then no loan originator registration required.
  
2. Is any portion of the collateral (or will it be) the borrower's primary residence<sup>7</sup>?
  - a. If yes, go to 3. -
  - b. If no, then no loan originator registration required.
  
3. Does the collateral include 1-4 dwelling units<sup>8</sup>?
  - a. If yes, go to 4.
  - b. If no, then no loan originator registration required.
  
4. Is the property primarily (i.e., >50%) used for personal, family or household purposes<sup>9</sup>?
  - a. If yes, then
    - i. Loan Officer must be registered (when the FFIEC process becomes available).
  - b. If no, then no loan originator registration required.

<sup>6</sup> Includes construction of a dwelling to be occupied by owner if construction financing is included in loan.

<sup>7</sup> Primary residence does not include transitory residences such as hotels, hospitals, college dormitories, time share units or second/vacation homes.

<sup>8</sup> 1-4 dwelling units includes a single-family dwelling, a duplex, a multi-family 1-4 family unit dwelling, manufactured housing, a mobile home, or a single-family condo or co-op unit. It does not include RVs, boats or campers.

<sup>9</sup> If more than half of property (by square footage or by revenue generated) is used for commercial purposes (such as a retail store-front with apartments above), then the loan is considered to be a commercial loan and is not originated subject to a license.

NH Lending Decision Tree A – Final

May 15, 2009

**Non-Bank Lenders and Brokers: When is a NH mortgage loan<sup>1</sup> made or brokered pursuant to NH RSA 397-A?**

1. Is the mortgage loan to be secured by real property (land and improvements – either existing or to be constructed) located in NH?
  - a. If yes, go to 2.
  - b. If no, loan is not subject to NH RSA 397-A (i.e., outside jurisdiction, or land only).
  
2. Is the loan secured<sup>2</sup>, in whole or in part (such as within a commercial property), by 1-4 existing (or to be constructed) dwelling units<sup>3</sup>?
  - a. If yes, go to 3.
  - b. If no (i.e., 5 or more dwelling units), then no NH RSA 397-A licenses required\* – it's a commercial loan.
  
3. Is any portion of the collateral intended to be occupied by anyone<sup>4</sup> as a dwelling?
  - a. If yes, then:
    - i. Loan broker (if applicable) must be a NH-licensed mortgage broker or mortgage banker, and
    - ii. Lender (creditor on loan note) must be a:
      1. Bank or a bank subsidiary, or
      2. NH-licensed mortgage banker, and
    - iii. Loan originator must be licensed.
  - b. If no, then no NH RSA 397-A licenses required\*.

\* "No license required" means that the loan is considered to be "commercial" and would not be reported to the NH Banking Department in the Annual Report of loan production, would not be subject to review by the NH Banking Department, would not be listed on the "loan list" to be provided to the NH Banking Department examiners for purposes of examination, and would not be subject to the requirements of NH RSA 397-A. Other legal and regulatory compliance requirements may still apply to these loans.

Currently, HB 610 is pending in the state legislature. If that bill passes, then this decision tree will become inaccurate and will need to be updated to reflect the amended RSA 397-A provisions.

<sup>1</sup> Any mortgage loan type: purchase loan, refinance, HELOC, second mortgage, reverse mortgage, etc.

<sup>2</sup> Any lien: First mortgage, second mortgage or any junior lien.

<sup>3</sup> 1-4 dwelling units includes a single-family dwelling, a duplex, a multi-family 1-4 family unit dwelling, manufactured housing, a mobile home, a single-family condo or co-op unit, or a second/vacation home. It does not include time share units, RVs, boats or campers.

<sup>4</sup> Occupied by owner or by non-owner.

## NH Lending Decision Tree

May 19, 2009

### Non-Bank Lenders and Brokers: When is a NH mortgage loan<sup>1</sup> made or brokered pursuant to NH RSA 397-A?

1. Is the mortgage loan to be secured by real property (land and improvements -- either existing or to be constructed) located in NH?
  - a. If yes, go to 2.
  - b. If no, loan is not subject to NH RSA 397-A (i.e., outside jurisdiction, or land only).
  
2. Is the loan secured<sup>2</sup>, in whole or in part (such as within a commercial property), by 1-4 existing (or to be constructed) dwelling units<sup>3</sup>?
  - a. If yes, go to 3.
  - b. If no (i.e., 5 or more dwelling units), then no NH RSA 397-A licenses required\* -- it's a commercial loan.
  
3. Is any portion of the collateral intended to be occupied by the owner/borrower as a dwelling?
  - a. If yes, then:
    - i. Loan broker (if applicable) must be a NH-licensed mortgage broker or mortgage banker, and
    - ii. Lender (creditor on loan note) must be a:
      1. Bank or a bank subsidiary, or
      2. NH-licensed mortgage banker, and
    - iii. Loan originator must be licensed, and
    - iv. Loan Servicer must be registered with NH Banking Dept. (RSA 397-B).
  - b. If no, then no NH RSA 397-A licenses required\*.

\* "No license required" means that the loan is considered to be "commercial" and would not be reported to the NH Banking Department in the Annual Report of loan production, would not be subject to review by the NH Banking Department, would not be listed on the "loan list" to be provided to the NH Banking Department examiners for purposes of examination, and would not be subject to the requirements of NH RSA 397-A. Other legal and regulatory compliance requirements may still apply to these loans.

Currently, HB 610 is pending in the state legislature. If that bill passes, then this decision tree will become inaccurate and will need to be updated to reflect the amended RSA 397-A provisions.

<sup>1</sup> Any mortgage loan type: purchase loan, refinance, HELOC, second mortgage, reverse mortgage, etc.

<sup>2</sup> Any lien: First mortgage, second mortgage or any junior lien.

<sup>3</sup> 1-4 dwelling units includes a single-family dwelling, a duplex, a multi-family 1-4 family unit dwelling, manufactured housing, a mobile home, a single-family condo or co-op unit, or a second/vacation home. It does not include time share units, RVs, boats or campers.

NH Lending Decision Tree A – Final

May 15, 2009

**Non-Bank Lenders and Brokers: When is a NH mortgage loan<sup>1</sup> made or brokered pursuant to NH RSA 397-A?**

1. Is the mortgage loan to be secured by real property (land and improvements – either existing or to be constructed) located in NH?
  - a. If yes, go to 2.
  - b. If no, loan is not subject to NH RSA 397-A (i.e., outside jurisdiction, or land only).
  
2. Is the loan secured<sup>2</sup>, in whole or in part (such as within a commercial property), by 1-4 existing (or to be constructed) dwelling units<sup>3</sup>?
  - a. If yes, go to 3.
  - b. If no (i.e., 5 or more dwelling units), then no NH RSA 397-A licenses required\* – it's a commercial loan.
  
3. Is any portion of the collateral intended to be occupied by anyone<sup>4</sup> as a dwelling?
  - a. If yes, then:
    - i. Loan broker (if applicable) must be a NH-licensed mortgage broker or mortgage banker, and
    - ii. Lender (creditor on loan note) must be a:
      1. Bank or a bank subsidiary, or
      2. NH-licensed mortgage banker, and
    - iii. Loan originator must be licensed.
  - b. If no, then no NH RSA 397-A licenses required\*.

\* "No license required" means that the loan is considered to be "commercial" and would not be reported to the NH Banking Department in the Annual Report of loan production, would not be subject to review by the NH Banking Department, would not be listed on the "loan list" to be provided to the NH Banking Department examiners for purposes of examination, and would not be subject to the requirements of NH RSA 397-A. Other legal and regulatory compliance requirements may still apply to these loans.

Currently, HB 610 is pending in the state legislature. If that bill passes, then this decision tree will become inaccurate and will need to be updated to reflect the amended RSA 397-A provisions.

<sup>1</sup> Any mortgage loan type: purchase loan, refinance, HELOC, second mortgage, reverse mortgage, etc.

<sup>2</sup> Any lien: First mortgage, second mortgage or any junior lien.

<sup>3</sup> 1-4 dwelling units includes a single-family dwelling, a duplex, a multi-family 1-4 family unit dwelling, manufactured housing, a mobile home, a single-family condo or co-op unit, or a second/vacation home. It does not include time share units, RVs, boats or campers.

<sup>4</sup> Occupied by owner or by non-owner.

## NH Lending Decision Tree

October 19, 2009

### Non-Bank Lenders and Brokers: When is a NH mortgage loan<sup>1</sup> offered, originated, made, funded or brokered pursuant to NH RSA 397-A?

1. Is the mortgage loan to be secured by real property (land and improvements – either existing or to be constructed) located in NH?
  - a. If yes, go to 2.
  - b. If no, loan is not subject to NH RSA 397-A (i.e., it is outside NH jurisdiction, or land only).
  
2. Is the loan primarily for personal, family, or household use<sup>2</sup>?
  - a. If yes, go to 3.
  - b. If no, loan is not subject to NH RSA 397-A (i.e., it is a commercial purpose loan).
  
3. Is the loan secured<sup>3</sup>, in whole or in part, by 1- 4 existing (or to be constructed) dwelling<sup>4</sup> units<sup>5</sup>?
  - a. If yes, then:
    - i. Loan broker (if applicable) must be a NH-licensed mortgage broker or mortgage banker, and
    - ii. Lender (creditor on loan note) must be a:
      1. Bank or a bank subsidiary, or
      2. NH-licensed mortgage banker, and
    - iii. Loan originator must be licensed, and
    - iv. Loan Servicer must be registered with NH Banking Dept. (RSA 397-B) unless exempt.
  - b. If no (i.e., 5 or more dwelling units), then no NH RSA 397-A licenses required\* – it is a commercial loan.

\* "No license required" means that the loan is considered to be "commercial" and would not be reported to the NH Banking Department in the Annual Report of loan production, would not be subject to review by the NH Banking Department, would not be listed on the "loan list" to be provided to the NH Banking Department examiners for purposes of examination, and would not be subject to the requirements of NH RSA 397-A. Other legal and regulatory compliance requirements may still apply to these loans.

<sup>1</sup> Any mortgage loan type: purchase loan, refinance, HELOC, second mortgage, reverse mortgage, etc.

<sup>2</sup> Where will the cash flow to repay this loan come from? If cash flow comes from personal income, then it is likely a personal use loan (i.e., not commercial). If the repayment cash flow comes from the property itself, it is likely commercial. Remember that whether the property is owner occupied or non-owner occupied does not matter in making the determination of personal, family, or household use.

<sup>3</sup> Any lien: First mortgage, second mortgage or any junior lien.

<sup>4</sup> It does not matter whether the property is owner-occupied or non-owner-occupied.

<sup>5</sup> 1-4 dwelling units includes a single-family dwelling, a duplex, a multi-family 1-4 family unit dwelling, manufactured housing, a mobile home, a single-family condo or co-op unit, a second/vacation home, or a trailer if it is used or intended to be used as a residence. "Dwelling Units" does not include time share units.

Notes from conversation with Mary Jurta of NH Banking Department on 11/4/2009  
Denis Maloney & Susan LeDuc, Gallagher, Callahan & Gattrell, PC

### NH RSA 397-A Coverage

**NOT COVERED** – a loan secured by:

Land only in NH is not covered.

A NH property with 5 or more dwelling units is not covered.

A NH commercial property (storefront, warehouse, office building) with no dwellings is not covered.

### **COVERED**

NH RSA 397-A (a licensing statute) coverage is much more broad than Regulation Z (a disclosure regulation) coverage.

Assume that every NH property with 4 or fewer dwelling units is 397-A covered (even though some may not be Regulation Z covered, such as a 4-unit non-owner-occupied rental property). It might be possible to prove that such a loan is not for "personal, family or household use," however, the NH Banking Department takes the position that a loan to an individual is not likely to qualify (i.e., a loan to an individual is inherently for personal, family or household use). If such a loan were made to a development company or other obviously commercial entity, then the loan may more easily qualify as NOT "personal, family or household use."

Assume that you will have to prove why every loan secured by an interest in real property with 4 or fewer dwelling units is NOT 397-A covered. Expect examiners to request a sample of "Non-397-A" loans for review.

### **LICENSING**

Each 397-A loan must be offered by, originated by, made, funded or brokered by a licensed mortgage loan originator working within a licensed mortgage banker (or broker). FRM is a NH licensed mortgage banker. Scott Farah is currently not a NH licensed mortgage loan originator.

### **SALE OF ORIGINATED LOANS**

An existing 397-A loan (originated in the name of a licensed mortgage banker such as FRM) can only be sold in its entirety (no partial investors or participations) to one licensed mortgage banker or bank via assignment. (Be sure to give the Regulation Z mortgage transfer notice as newly required by the Helping Families Save Their Homes Act of 2009 (see the Truth in Lending Act §131(g))). A purchaser of a 397-A loan is required to be 397-A licensed as a mortgage banker (unless exempt under RSA 397-A:4).

### **ARRANGING 397-A LOANS FOR INVESTORS/DIRECT LENDERS**

Any investor (direct lender) on a 397-A loan (4 or fewer units) must be licensed as a mortgage banker.

### SALE OF LOANS

There can be NO partial interests or participations in any type of loan (397-A covered or not) sold to others without violating 421-B.

Table funding (defined in RSA 397-A:XXIV as "a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of a loan to the person advancing the funds") of 100% of a 397-A loan must be provided by a licensed mortgage banker or a bank.

The sale of a 397-A loan must only be made to a licensed mortgage banker or a bank.

Table funding or sale of 100% of a non-397-A loan to a non-397-A licensed person is OK.

### WEBSITE

Whether web site is accessed via password or no password, it is deemed to be "advertising."

A 100% interest in a 397-A loan can be offered only by a licensed mortgage banker to a licensed mortgage banker or a bank.

No 397-A loans (i.e., properties with 4 or fewer dwelling units) can be offered to unlicensed lenders or unlicensed purchasers. The existing web site could offer the 100% table funding or 100% sale (no partial interests) of non-397-A loans (warehouse, retail shops, land, etc.).

FRM could have a separate web site for the table funding or sale of 397-A loans to 397-A licensed entities. The FRM contact on the web site (i.e., loan originator) must be 397-A licensed as a 397-A mortgage loan originator. FRM should keep records confirming that access is only granted to 397-A licensed entities and originators. Also, the NH Banking Department will likely want to be added to the distribution list.

No partial interests or participations in any type of loan can be offered.

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## **Appendix C – October 30, 2009 Letter of Attorney Denis Maloney**

The following letter is a letter to the BSR from Attorney Denis Maloney of the Gallagher law firm explaining his position that loans brokered by Financial Resources Mortgage, Inc. were not covered by RSA 421-B, the New Hampshire securities statute.



DENIS J. MALONEY

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Concord, NH 03302-1415

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maloney@gcglaw.com

October 30, 2009

**HAND DELIVERED**

Jeffrey Spill, Esquire  
Deputy Director  
Bureau of Securities Regulation  
Department of State  
State of New Hampshire  
State House, Room 204  
Concord, NH 03301-4989

RECEIVED

OCT 30 2009

NEW HAMPSHIRE BUREAU  
OF SECURITIES REGULATION

Re: Financial Resources Mortgage, Inc.

Dear Mr. Spill:

This is written on behalf of Financial Resources Mortgage, Inc., a New Hampshire corporation ("Company") and the holder of a 'mortgage banker' license issued by the New Hampshire Banking Department ("Department"). This matter arose pursuant to the Department's letter dated October 13, 2009 to the Company particularly referencing an internet-based advertisement addressing mortgage funding opportunities. Following initial discussion, you have asked for a copy of such a recent Company advertisement for your review; a copy of the 'advertisement' materials is attached hereto, together with a copy of the Department's letter and the Company's response thereto. Also enclosed for your ease of reference is a copy of RSA 397-A, a recently amended statute entitled "Licensing of Non-Depository First Mortgage Bankers and Brokers" (the "Licensing Act") reference in the Department's letter.

In the subject advertisements, the Company is generally soliciting third party funding of proposed mortgage loans. For example, on page 1 of the attached, the Company is offering third parties the opportunity to invest a minimum amount of \$100,000 (the 'minimum participation') in a loan **to be funded** secured by land and three commercial buildings. At the closing, if any, the (a) mortgage loan documents would be executed **in the name of the actual third party lenders** and these third party lenders would contemporaneously fund the subject loan; or alternatively, (b) the loan would be funded by a **contemporaneous** advance of loan funds and an assignment of the loan to the person advancing the funds (see definition of "table funding" taken from the Licensing Act, below).

The Company therefore offers proposed loans for "funding" by third party lenders at the closing table (i.e., table funding). Similarly to the many mortgage bankers who 'regularly' fund loans through and in the name of correspondent banks/lenders, the Company works to fund loans on behalf of proposed borrowers through third parties. As stated, the loans are funded and originated in the name of the actual lender, or alternatively, funded contemporaneously by the lender with an assignment of the loan documents to the lender, as distinguished from the case where the funds are loaned by the 'lender/investor' directly to the Company which then originates the loan in the Company's name.

The following material terms are defined in the Licensing Act:

- (1) **"Lender"** means any person that provides the initial funding for a mortgage and includes any legal successor to the rights of the lender. **For the purpose of a table-funded transaction, the lender is the person who actually provides the funds for the transaction.**
- (2) "Licensee" means a person, whether mortgage banker, mortgage broker, or mortgage originator, duly licensed by the commissioner pursuant to the provision of this chapter.
- (3) "Mortgage banker" means a person not exempt under RSA 397-A:4 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:
  - (a) Makes or originates mortgage loans as payee on the note evidencing the loan;
  - (b) Advances, or offers to advance, or makes a commitment to advance the banker's own funds for mortgage loans, or closes mortgage loans with the banker's own funds; and
  - (c) Otherwise engages in the business of funding mortgage loans.
- (4) **"Mortgage broker"** means a person not exempt under RSA 397-A:4 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:
  - (a) **Acts as an intermediary, finder, or agent of a lender or borrower for the purpose of negotiating, arranging, finding, or procuring mortgage loans, or commitments for mortgage loans;**

Jeffrey Spill, Esquire, Deputy Director  
Bureau of Securities Regulation  
October 30, 2009  
Page 3

- (b) Offers to serve as agent for any person in an attempt to obtain a mortgage loan; and
- (c) Offers to serve as agent for any person who has money to lend for a mortgage loan.

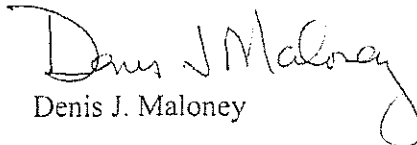
(5) "Mortgage lender" means a mortgage banker.

(6) "Table funding" means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of a loan to the person advancing the funds. A table-funded transaction is **not** a secondary market transaction.

In our view, the Company is acting in the capacity of a Mortgage Broker in the advertisements, seeking sources of funding on behalf of the borrowers. The Company is seeking lenders to fund mortgage loans to be originated in the name of the lender, or assigned to the lender contemporaneously with such funding. Analyzed under RSA 421-B, the New Hampshire Uniform Securities Act, in distinction, through and pursuant to the advertisements the Company is: (1) **not** issuing a note in its name, likely a security, to raise funds to originate a loan, and (2) **not** offering to sell a participating interest in an existing funded loan, also likely a security, but only a loan to be prospectively funded. As such, the Company has not engaged in the offer and sale of a security under the Uniform Securities Act.

Please call me with any questions or comments with respect to the foregoing. For the benefit of our records, kindly acknowledge receipt of this letter and its enclosure by signing and dating or date-stamping the enclosed receipt acknowledgement copy of this letter and return it to me in the enclosed self-addressed envelope.

Very truly yours,

  
Denis J. Maloney

DJM:baf  
Enclosures

cc: Scott Farah  
Mary L. Jurta, Director  
Consumer Credit  
New Hampshire Banking Department

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**APPENDIX D – REPORT OF REVIEW OF FINANCIAL RESOURCES AND  
ASSISTANCE OF THE LAKES REGION & T. GARY COYNE IN POSSESSION OF  
THE BUREAU OF SECURITIES REGULAITON**

**INTRODUCTION**

The NH Bureau of Securities Regulation (BSR) reviewed any securities-related matters within our jurisdiction for the years 2000 through 2007. This review included but was not limited to department notes, e-mails, depositions, legal briefs, motions, hearings, consumer complaints, interoffice communications, letter correspondence, Hearings, and Consent Agreements. It should be additionally noted that the Bureau had no contact with, did not examine or have any knowledge of Dodge Financial, Greatland Project Development Inc., SMM Reality Trust, CL&M, Inc., and Don Dodge Real Estate Trusts. The BSR did not license any of these entities or persons. In addition, Appendix D reviews the Bureau's involvement following the closing of FRM in 2009.

**TIME LINE AND NOTES**

- 3/00            Attorney Steven Latici of McKean, Mattson, and Latici, PA Village West PO Box 7386, Gilford, NH 03247 (603-524-4747) files complaint with BSR. The Complaint is in regard to Nancy Gabrielson (client) and her invested funds being misdirected by Scott Farah of FRA and T. Gary Coyne of Coyne Associates.
- 3/7/00            ██████████, BSR Director Peter Hildreth's brother, was issued FRA preferred shares of stock as Collateral for Notes. Report displays ██████████ holds a promissory note outstanding for \$25,000. There have been no dividends paid to him, only interest under the note. The Date of investment is 3/00. Notes indicated that "██████████, Mr. Hildreth's other brother, may have invested 30K but no other references to what the investment entailed.
- 3/9/00            Attorney Latici sent letter to Christopher Lent at BSR outlining background of Ms. Gabrielson's investment with FRA. Mr. Latici also speculates that FRA was involved in the sale of unregistered securities.
- 3/22/00            Deposition for US Federal Court. Attorney Steven Latici for Nancy Gabrielson vs. T. Gary Coyne and Attorney Ruth Hall for Scott Farah. Deposition of Mr. Farah, President of FRA, focused on FRA's company structure, Mr. Farah's relationship to Mr. Coyne, and the alleged misapplication of Ms. Gabrielson's investment.
- 3/30/00            Attorney Latici sent letter to Mr. Lent and again discusses Ms. Gabrielson investment with FRA.

- 4/4/00 Attorney Latici sent letter to Mr. Lent with a copy of a mortgage and assignment and expresses his concerns as to whether the assignment was properly executed to his client, Ms. Gabrielson.
- 3/31/00 US District Court for NH Case No. C-99-285-JD dated 3/31/2000; amended complaint from Plaintiff Gabrielson against the Defendants, T. Gary Coyne, and Scott D. Farah. Allegations include "Breach of Fiduciary Duty, Fraud and Deceit, and Breach of Contract".
- 7/21/00 Attorney Latici sent letter to Mr. Lent. Discusses recent federal court rulings on various discovery motions involving FRA.
- 9/11/00 Letter forwarded to BSR by Attorney Latici re: correspondence from Al Rubega, former BSR Director to Mr. Latici--discusses Mr. Rubega's opinion that Coyne and Farah violated securities laws with Gabrielson's Financial Resources promissory note.
- 10/16/00 Attorney Latici sent letter to then BSR Director Peter Hildreth. Mr. Latici encloses his prior correspondence to Christopher Lent, a copy of a report prepared by Attorney Al Rubega and a copy of an Amended Complaint filed in Federal Court by Ms. Gabrielson. Mr. Latici asks whether the BSR intends to continue this investigation.
- 12/18/00 Deposition: Nancy Gabrielson vs. T. Gary Coyne. Attorney Hall, for Mr. Farah and Mr. Coyne, deposed Mr. Coyne who described promissory notes, how they worked and the proposed investment of Ms. Gabrielson with Sandbar Restaurant presented as collateral.
- 1/23/01 Deposition: Scott D. Farah Volume II. Deposition of Mr. Farah by Attorney Latici, for Ms. Gabrielson, pointed out discrepancies between FRA's taxes and financial statements.
- 2/01 BSR letter to Mr. Coyne to produce information.  
BSR letter to Attorney Hall for Farah/FRA to produce information.  
BSR letter to Farah/FRM to produce information.
- 3/01 Second BSR letter to Attorney Hall for Farah/FRA to produce information.
- 3/8/01 Letter from Attorney Hall to Mr. Spill who asks that BSR narrow its prior request to produce information.
- 4/01 Mr. Spill called Kimothy Griffin of SBD. Mr. Griffin noted unlawful mortgage activity of FRA. FRA paid referral fee to Mr. Coyne, who was unlicensed. Also, FRA supposed to have \$100K net worth or \$100K bond in place.

BSR letter to Attorney Hall re: FRA to produce information.

Mary Jurta (Ms. Jurta was still employed at BSR at this time) and Mr. Spill examine Coyne and Farah promissory notes in Meredith, NH.

4/19/01 Letter from Mr. Spill to Attorney Hall requesting FRA check book ledgers, accounting ledgers, checking account statements, stock ledgers, other information.

4/23/01 Letter from Attorney Jason M. Sullivan (representing Scott Farah) to Mr. Spill; makes case as to why FRA is not a broker/dealer or investment advisor as defined in RSA 421-B: 2. Attorney Sullivan goes on to argue that the promissory notes were two-party notes and did not rise to a security.

4/24/01 Correspondence to Ms. Jurta and Mr. Spill from Attorney Sullivan which included Promissory Notes Payable to the order of FRA to individuals to further support the claim that notes did not rise to a security as defined in 421-B:2. Examples:

There was a \$164,000 note which replaced 4 other notes and \$14,000 paid to US Note and Mortgage for a mortgage payment. There was a promissory note duly executed by T. Gary Coyne for Nancy Gabrielson as an assignment to a mortgage owned by Coyne Associates.

Eighteen FRA notes signed by Scott Farah and FRA with interest and terms that varied but most of them were short term. Annual rates were as high as 119% but payable within 15 days.

4/27/01 Mr. Spill re: phone log--Spoke with Attorney Latici.

5/06/01 BSR letter to Raymond Heroux at SBD requesting information that SBD might have re: FRA. Mr. Heroux suggested sending Document Request form for guidance. No response noted.

Mr. Spill calls SBD re: status of FRA and Coyne.

5/16/01 Mr. Farah sent letter to BSR stating it may be a violation of bank privacy laws if he gives banking related information to BSR.

7/2/01 Mr. Spill re: phone log--spoke with Attorney Latici.

8/31/01 Correspondence to Mr. Spill from Attorney Latici, Re: Nancy Gabrielson vs. T. Gary Coyne d/b/a Coyne Associates Financial Resources of the Lakes Region and Scott D. Farah. Mr. Latici describes his research on notes, assignment of notes, disclosures to his client Ms. Gabrielson and confusion as to how notes were secured.



- 10/01 Attorney Latici settles suit with FRA and Ms. Gabrielson's BSR complaint is withdrawn. As part of settlement, Ms. Gabrielson requested agreement not to participate in any BSR action.
- 11/01 BSR files Staff Petition for relief re: unsecured/unregistered promissory notes. Names FRA, Farah and Coyne. Cease & Desist order issued.
- 11/8/01 First Order to Show Cause and to Cease and Desist issued by BSR to FRA, Farah, and Coyne.
- 11/11/01 BSR Order to Show Cause and Cease and Desist issued to FRA including additional petition for relief for other distinct violations.
- 12/13/01 Robert Ambrose, Deputy Secretary of State, first order for Hearing re: FRA-- Order to Show Cause and Cease and Desist issued on 11/11/01, scheduled for December 20, '01.
- 12/20/01 BSR motion of continuance signed by Mr. Ambrose, scheduled for January, 02, hearing date to be determined.
- 12/28/01 Anthony Stevens, NH Assistant SOS; Order for hearing re: FRA. Hearing scheduled for January 31, 02.
- 12/31/01 Draft of Audited Financial Statements display Assets of Notes Receivable \$1.3 million and Equity Preferred Shares \$930,000; \$442,000 Preferred Stock \$1,000 par value, 0 shares authorized, 442 shares issued and outstanding on the balance sheet.
- 1/31/02 Motion for continuance; Attorney Michael Burke for Coyne (requested 60 additional days). Mr. Ambrose signs Hearing Order for April 1, 02.
- 4/1/02 Motion for Continuance; Mr. Burke for Mr. Coyne. Securities Director Mark Connolly signs Hearing Order scheduled for 5/28/02.
- 4/4/02 Mr. Connolly signs Order for Hearing; Scott Farah, FRA, Hearing scheduled for May 28, 02.
- 5/22/02 Mr. Spill re: phone log—spoke with Attorney Latici.
- 5/23/02 Motion for Continuance, Mr. Burke for Mr. Coyne. Hearing scheduled for 7/30/02.
- Mr. Spill re: phone log—spoke with Attorney Latici.

7/2/02 Dennis Maloney of Gallagher, Callahan & Gartrell--motion to BSR; Motion to BSR to Dismiss vs. Financial Resources. States FRM did not issue securities.

7/19/02 Correspondence to Mr. Spill from Mr. Maloney stating, "Company has also sold additional shares of preferred stock, \$1,000 par per share, for which no certificates were issued." 930 shares issued without certificates.

"Company has also issued shares of preferred stock as collateral for such indebtedness" (Preferred Stock). 384 shares of stock issued as collateral.

"The company's business remains strong and the Farah Respondents believe that they are in possession of the financial resources to work with the Bureau to restructure its capital accounts."

7/24/02 Motion for Continuance, Mr. Burke for Mr. Coyne. Hearing scheduled for 9/30/02.

8/6/02 Mr. Connolly signs Order for Hearing; Scott Farah, FRA. Hearing scheduled for 9/10/02.

8/28/02 Mr. Spill re: phone log—spoke with Attorney Latici.

8/29/02 Mr. Spill re: phone log—spoke with Attorney Latici.

9/3/02 Fax transmittal from Attorney Latici to Mr. Spill re: General Release and Settlement Agreement--Nancy Gabrielson, T. Gary Coyne, Scott Farah and Financial Resources and Assistance of the Lakes Region. Ms. Gabrielson forever acquits and discharges all claims against defendants and settles for a monetary payment.

9/3/02 Mr. Spill re: phone log—spoke with Ms. Suzanne Gorman/AOG.

Mr. Spill re: phone log—spoke with Attorney Latici.

Mr. Spill re: phone log—spoke with Ms. Gabrielson.

9/4/02 Mr. Spill re: phone log—spoke with Attorney Latici.

Mr. Spill re: phone log—spoke with Ms. Gorman.

9/6/02 Mr. Spill re: phone log—spoke with Ms. Gorman.

9/9/02 Mr. Spill re: phone log—spoke with Ms. Gorman.

9/05/02 Additional BSR Staff Petition for Relief re: Farah/FRA—sale of unregistered stock. Mr. Spill met with Ms. Gorman at OAG, request for assistance.

- 9/10/02 Motion for Continuance--Burke for Coyne, scheduled for 10/8/02.
- 10/1/02 Letter from Mr. Spill to Mr. Maloney requesting list of assets, business plan, and an additional interview with Mr. Farah.
- 10/1/02 Mr. Spill to Michael Burke (Atty. for Gary Coyne)--Request to execute consent order for Coyne. Re: promissory notes intended for mortgages and actually deposited in FRA's operations account. Fined \$1000.
- 10/02 BSR settles with Mr. Coyne. Coyne file closed out; Cease and Desist and fine.
- 10/1/02 Financial Resources Preferred Stock issued as Collateral for Notes as of 12/31/01 displays [REDACTED] holds a promissory note outstanding for \$25,000.
- 10/22/02 Letter from Mr. Maloney to Barry Glennon, BSR Hearings Officer--requesting continuance for Farah hearing until 11/12/02. Hearing Order issued by Mr. Glennon.
- 11/20/02 Motion for Continuance from Mr. Maloney, representing FRA, to Mr. Glennon. Hearing scheduled for 12/10/02.
- 12/9/02 Motion for Continuance from Mr. Maloney, representing FRA, to Mr. Glennon. Hearing scheduled for 1/14/03
- 2002/2003 Auditors report (Conner and Associates) for FRA; end of year cash 02= \$8,919, 03= \$56,195.
- 1/03 List of FRA stakeholders (preferred shareholders) sent by Attorney Maloney to BSR.
- 1/3/03 Correspondence to Mr. Maloney from Mr. Spill outlining what should be included in a letter to FRA investors regarding violations of 421-B.
- 1/14/03 Letter from Mr. Maloney to Mr. Glennon; Joint motion for Continuance of Hearing, scheduled for 1/24/03 until 4/29/03 (Phillip Brouillard is co-counsel for Farah).  
  
Motion for Continuance from Mr. Maloney, representing FRA, to Mr. Glennon. Hearing scheduled for 4/29/03.  
  
Letter from Mr. Maloney to Mr. Spill--notes postponement of Hearing until 4/29/03. BSR to furnish letter for each preferred shareholder of FRA. FRA will not issue any new securities. FRA is authorized to redeem preferred shares. FRA will undertake a rescission offer to include full disclosure of operations and

financial status. FRA will provide financial statements for 01 and 02 no later than 4/14/03. FRM will consent to certain findings and statutory fine of \$25,000.

4/18/03 Correspondence to Mr. Spill from Mr. Maloney stating, "Draft financials reflect significant income to the company from 2002 operation." "Material reduction in the amount of outstanding loans from the company to Insurance Options, Inc., a related party to Scott Farah" (Scott Farah-owner).

Also enclosed is an Asset Schedule, for notes and stock, collateral includes real estate, unsecured, accounts receivable, equipment, personal guaranty (Insurance Options). A note included National Inspection and Repair (\$717,984) with 72% interest annual secured by real estate, accounts receivable, and equipment.

The 1996 ledger displayed deposits and expenses by Coyne Associates and T. Gary Coyne. A description of FRA business from Maloney stating, "The Company focuses on originating loans for residential business and the company closed 154 residential loans throughout the end of July 2002."

4/24/03 Letter from Mr. Spill to Mr. Maloney--BSR questioned discrepancies on financial statements.

4/25/03 Letter from Mr. Maloney to Mr. Spill--answers audit issues.

4/29/03 Motion for Continuance from Mr. Maloney, representing FRA, to Mr. Glennon. Hearing scheduled for 7/8/03.

5/6/03 Mr. Spill re: phone log—spoke with [REDACTED], FRA note holder. Mr. Spill asked if Mr. [REDACTED] had any issues with Mr. Farah's business and Mr. [REDACTED] said he did not, was just concerned about a late payment from FRA.

5/15/03 Letter from Mr. Spill to Mr. Maloney---Respondent failed to supply the Bureau with audited financial statements, "draft" version was sent in.

5/16/03 Mr. Spill re: phone log—left message with Ms. Jurta.

5/20/03 Mr. Spill re: phone log—spoke with Mr. [REDACTED].

5/21/03 Mr. Spill re: phone log—spoke with Ms. Gorman.

5/27/03 BSR e-mail request to Ms. Jurta of SBD, request to release NH Banking audits to BSR. Ms. Jurta response indicated that they could not do so as information was confidential, but she will confer with counsel. BSR received no further response.

5/28/03 Letter from Mr. Spill to Mr. Maloney--BSR noted discrepancies in financial audits of 01 and 02. BSR concerned about FRM's ability to fund rescissions.

6/03 BSR Amended FRA/Farah Staff Petition to include undated stock sales re: Farah and FRA.

6/10/03 Mr. Spill re: phone log—spoke with Ms. Gorman.

6/16/03 Letter from Mr. Spill to Mr. Maloney--“Respondent’s asset base is illiquid and uncertain, and not readily transferable to fully fund a rescission offer.” (Principle issue in BSR negotiations with FRA attorney Maloney as to whether FRA had the means to return investors money).

6/10/03 Mr. Spill and NH OAG Susan Gorman exchange phone calls re: FRA asset freeze.

6/12/03 Mr. Spill meets with Ms. Gorman at OAG office re: FRA.

6/17/03 BSR follow up letter to Ms. Gorman requesting OAG to “secure assets,” or freeze assets, of FRA because under NH law rescission/restitution must be fully funded and FRA has negative net worth.

7/24/03 Mr. Farah Hearing re: promissory notes/stock. Attorney Maloney – “sales are exempt and products are not securities.” Mr. Farah said he could come up with 500K using his property as collateral. Property is in a trust under his wife’s name. Over 1 million owed. Mr. Maloney asks for partially funded rescission/restitution and BSR objects.

7/29/03 Mr. Spill re: phone log—spoke with Ms. Gorman.

7/30/03 Mr. Spill re: phone log—spoke with Ms. Gorman.

8/1/03 Correspondence to Mr. Spill and Mr. Glennon from Dennis Maloney which states, “Motion to dismiss certain of the pending claims against Farah Respondents on the basis that certain issuance of securities qualify for the Isolated Sales Exemption at RSA 421-B:17, II (a) and Reves.”

2004/2005 FRM financials--zero cash at year end 2004.

11/05 BSR Phone call with [REDACTED], complainant, re: Farah/FRA dispute with National Inspection and Repair (NIR). He said he contacted the OAG. [REDACTED] said he had a “participation agreement.” He has a lawyer, Chris Carter.

11/4/05 Mr. Spill re: phone log—spoke with [REDACTED].

- 5/4/06 Letter from Mr. Spill to Mr. Maloney stating, "Recent information in the Bureau's possession concerning a law suit filed by investors of Scott and Robert Farah require the Bureau to conduct an audit of FRA. ....I would like to propose either May 11<sup>th</sup> or 12<sup>th</sup> at 9:00 am as a start time to review the current status of all promissory notes issued, and any investments of Center Harbor Christian Church members."
- Mr. Spill re: phone log—left message with Ms. Jurta.
- 5/12/06 Stephen Masuck, BSR Examiner and Mr. Spill travel to FRA in Meredith, submit BSR's Issuer-Dealer Document Request List along with Additional Request list for other financials. File unclear on result.
- 5/22/06 Letter from Mr. Spill to Mr. Maloney--request for documents auditing "participation agreements," notes, stock, and any pending legal claims from investments.
- 6/5/06 Letter from Mr. Maloney to Mr. Spill--reconciling "participation agreements" payment redemptions.
- 6/23/06 Letter from Mr. Maloney to Mr. Spill--All "participation agreements" has been redeemed.
- 7/06 NIR case settled confidentially. Mr. Maloney tells BSR he can't reveal the details of the case.
- 8/2/06 Mr. Spill re: phone log—exchanged messages with Mr. Head.
- 8/4/06 Mr. Spill re: phone log—exchanged messages with Mr. Head.
- 8/7/06 Mr. Spill re: phone log—exchanged messages with Mr. Head.
- 9/21/06 Letter from Mr. Spill to Mr. Maloney; additional follow-up on "participation" notes.
- 10/06 Mr. Maloney tells BSR all FRA "participations" paid in full.
- 1/7/07 [REDACTED] writes hand-written letter to BSR re: "Whom it May Concern"...offering his opinion of Scott Farah and father Robert Farah being "sharp con artists" and referencing [REDACTED] investment of 140K in a defunct Texas Company. There was an out of court settlement. Newspaper article attached precipitated [REDACTED] letter which stated that Scott Farah and Robert Farah allegedly defrauded investor who was a parishioner of Robert Farah's church.
- 1/24/07 BSR Consent Agreement; Cease and Desist, \$20,000 fine, over \$1 million restitution to redeem outstanding shares.

1/25/07 BSR Consent Order signed re: Farah and FRA. All promissory notes/stock paid in full plus interest, Cease & Desist plus fine.

**BSR ACTIVITIES RE: FINANCIAL RESOURCE MORTGAGE, INC. (FRM) BEGINNING OCTOBER, 2009**

10/13/09 First communication, Mary Jurta at SBD sent letter to Denis Maloney (Gallagher, Callahan & Gartrell) with copy to Barry Glennon (BSR) discussing Financial Resources Mortgage (FRM) web site and suggesting lenders fractional interest are securities. Mr. Glennon gives letter to Mr. Spill.

10/29/09 Mr. Spill wrote to Attorney Maloney and asked "Under the authority in RSA 421-B, describe fractional interest in mortgages offered for sale on the web site of the above named business and submit copies of the web site to the Bureau."

10/30/09 Attorney Maloney wrote to Mr. Spill and offers opinion on aforementioned internet-based advertisement addressing mortgage funding opportunities. Mr. Maloney interpreted recently amended Banking licensing act in RSA 397-A and stated that notes and/or participating interest in an existing funded loan is not a security and that the Company (FRM) is acting in the capacity of a Mortgage Broker in the advertisements. Mr. Maloney goes on to say FRM does, "Table funding" and a table-funded transaction is also not a secondary market transaction.

11/10/09 Mark Connolly received call from Banking Commissioner Hildreth on cell phone. Mr. Hildreth said he was contacted by Mr. Maloney, who reported FRM had closed shop. Mr. Hildreth is sending auditors to Meredith. He said it is a securities matter and his jurisdiction is narrow and concerns residential mortgages only.

11/10/09 Mr. Connolly received call from Ms. Jurta. Mr. Connolly asked her to contact Mr. Spill to coordinate BSR/SBD response.

11/10/09 Mr. Connolly received call from Mr. Hildreth. No substantive information offered.

11/10/09 Mr. Connolly spoke with Mr. Spill. Mr. Spill reviewed background from BSR standpoint. No evidence at that point securities involved. Mr. Connolly asked Mr. Spill to call SEC to get opinion.

- 11/11/09 Mr. Hildreth called Mr. Connolly reiterating this is a securities issue. Mr. Connolly did not comment or engage.
- 11/11/09 Mr. Connolly asked Mr. Spill to send securities auditors to Meredith (FRM). Mr. Spill in contact with Meredith police—they are not involved directly.
- 11/12/09 Mr. Hildreth called Mr. Connolly. Discussed FRM.
- 11/12/09 BSR Examiners Masuck/Tefft with SBD Examiners at FRM in Meredith
- 11/13/09 BSR Examiners Masuck/Tefft with SBD Examiners at FRM in Meredith
- 11/13/09 Mr. Spill tells Mr. Connolly SEC initial opinion not a securities issue but will keep reviewing. Reviewed with Mr. Connolly background on Reves Test/applicability. Said BSR is being inundated by mortgagors and mortgagees—SBD referring everything to BSR.
- 11/13/09 Attorney General Michael Delaney calls Mr. Connolly. Wanted to meet in his office at 4:30. He had spoken with Mr. Gardner. Mr. Connolly attended via telephone. In attendance: Mr. Spill, FBI, USA Postal, AG, Banking. Mr. Delaney leads discussion...brief on where things are. Will file involuntary bankruptcy and put out statement regulators and officials are working together. Mr. Delaney asked who would handle the press. USA rep suggested SBD.
- 11/14/09 Mr. Hildreth called Mr. Connolly. Mr. Connolly inquired what the problem was and what he expected him (Connolly) to do at that point. Coordinated response was agreed the day before. Mr. Hildreth said BSR's regulatory response should be stronger, that BSR auditors did not spend enough time in Meredith. Mr. Connolly said matter doesn't appear to be a state securities issue, that Mr. Hildreth had primary licensing and regulatory and auditing oversight and if it is a securities issue and why is he only now telling him this. Mr. Connolly also said the SEC has not yet called it a securities matter. Mr. Connolly said BSR has gone back to the Regional SEC Boston office to ask it to take another look. Mr. Connolly asked if Mr. Hildreth had reviewed the trust instruments that funded mortgages. Mr. Hildreth said he had not. Mr. Connolly asked how Mr. Hildreth knows it is a security if he doesn't have complete information. Mr. Connolly also suggested Mr. Hildreth not call this a Ponzi scheme publicly until all the facts have been reviewed. Mr. Connolly asked Mr. Hildreth if he had recused himself from FRM. He said he had. Mr. Connolly asked if Mr. Hildreth had informed his superior, the Governor, as well as Mr. Gardner. Mr. Hildreth said he had not done so. Mr. Connolly asked Mr. Hildreth to forward by email FRM trust material to review.
- 11/14/09 Mr. Connolly called Carvel Tefft. Asked if Mr. Tefft saw any evidence of securities while visiting Meredith. Mr. Tefft said no securities issues were discovered and that SBD bank examiners on the premises agreed saw no securities issues..



- 11/14/09 Mr. Connolly called Mr. Gardner. Mr. Gardner said jurisdiction should not be a public issue at this point. Mr. Connolly agreed.
- 11/16/09 BSR Examiners Masuck/Tefft with SBD Examiners at FRM.
- 11/20/09 Mr. Gardner met with BSR about FRM matter. Mr. Connolly showed him Mr. Maloney's letter of November 30. Briefed him on what auditors found and discussed BSR securing assets communication with OAG back in '03.
- 12/3/09 Kevin Moquin sends request to SBD for information including SBD audits.
- 12/8/09 Phone message from Jeffrey Myers of Governor's office to have a meeting following week. Did not specify nature of the meeting.
- 12/10/09 Mr. Connolly called Mr. Myers to get briefed on nature of meeting. No contact made.
- 12/11/09 Mr. Connolly spoke with Richard Head of OAG. Asked purpose of meeting with Governor's office. Mr. Head did not know. Discussed upcoming meeting on December 14 with OAG. Mr. Head said it was a general meeting with SBD and OAG.
- 12/14/09 Meeting with Mr. Head at OAG's office. Present: Ms. Jurta, Mr. Hildreth, Mr. Fleury, Mr. Spill, Mr. Moquin, and Mr. Connolly – who asked Mr. Hildreth to stop calling this a securities matter to the press until all facts are on the table. Discussion ensued on jurisdiction. At meeting, Mr. Connolly showed e-mail evidence that SBD has not agreed to allow access to Audits in the past. Also, SBD currently refuses BSR's efforts to access SBD documents. Mr. Connolly continued to push for access and SBD acquiesced. Mr. Connolly, Mr. Spill, and Mr. Moquin have meeting with Mr. Head following.
- 12/14/09 Mr. Connolly called Mr. Head to ask him to meet to review what BSR auditors had found at SBD. Mr. Connolly told Mr. Head auditors had limited access to SBD records that afternoon. Some discussion on MOU. One already in effect. Ms. Jurta wrote BSR, saying MOU in effect would suffice.
- 12/15/09 Mr. Head was briefed on findings of auditors day before and in Meredith. Mr. Connolly gave Mr. Head a copy of audit findings/responses of Banking/FRM in Meredith.
- 12/16/09 Mr. Connolly spoke with Mr. Myers, who said meeting with him was to review MOU understandings as well as what agencies knew what and when. Mr. Connolly said he would participate and cooperate but we also need to be wary over certain topics as BSR is in investigatory mode.

- 12/17/09 Mr. Connolly met at Governor's office with Mr. Segal, Mr. Myers, Mr. Fleury, Ms. Jurta and other members of Governor's staff. Mr. Head reviewed status. Mr. Connolly asked SBD to release records. Mr. Segal said a timeline and memo should be prepared for Governor.
- 12/20/09 Bud Fitch asks to meet with Mr. Connolly. Mr. Fitch wanted to know about public statement by Mr. Connolly that he may subpoena FRM records held at SBD. Mr. Connolly said he didn't intend to issue subpoena that day and would talk with him about FRM as well as subpoena at another time.
- 12/20/09 Governor's office called FRM meeting. Present: Governor, Mr. Delaney, Mr. Segal, Mr. Meyers, Mr. Head, Mr. Connolly and Mr. Spill. Mr. Delaney reviewed situation. Mr. Hildreth said he wished he had not said certain things publicly. Mr. Connolly said he would release all BSR records regarding FRM and did not agree with the handling of the matter to-date--that further transparency is needed. Mr. Delaney asked to meet with Mr. Hildreth and Mr. Connolly to discuss MOU. All agree to meet at OAG office later that day. At meeting, Mr. Hildreth said he intended to release FRM records the following Monday. Mr. Fitch said Mr. Hildreth should meet with the OAG before doing so. Mr. Hildreth agreed to meet first thing following Monday morning. Mr. Connolly said if we could not agree on MOU in near future, he would file a subpoena. Mr. Connolly asked to meet with Mr. Fitch after this meeting.
- 12/29/09 Mr. Connolly meets with Mr. Fitch and Mr. Spill at Mr. Fitch's office. Discussed FRM, MOU, subpoena. Mr. Connolly also tells Mr. Fitch that OAG was not responsive to BSR request for assistance on FRM in prior years as well as other cases. Mr. Fitch said OAG does not have securities expertise and OAG is busy with many cases.
- 01/08/10 Mr. Connolly issues subpoena for FRM records at SBD. Has learned from Mr. Scanlon unlikely Mr. Hildreth to agree to revised MOU.
- 1/19/10 Mr. Connolly meets with Mr. Fitch and Mr. Scanlan. He explains why he issued subpoena and will recall it if BSR has access to SBD-FRM records, as previously agreed.
- 1/26/10 Mr. Connolly met with Mr. Gardner, who showed a suspension notice for subpoena signed by Mr. Scanlan. Request to withdraw subpoena made by OAG. Later in the day there was a discussion with Mr. Gardner and BSR staff as to whether to withdraw subpoena, but Mr. Connolly respectfully declined to do so at that time.
- 1/27/09 Mr. Connolly met with Mr. Scanlan, Mr. Gardner and Mr. Spill. Reviewed matter. Mr. Gardner said he too wants FRM records released for public inspection.

- 1/29/10 Mr. Gardner reiterates in discussion he wants records released.
- 2/2/10 Meeting takes place with Mr. Fitch, Mr. Head, Mr. Gardner, and Mr. Connolly. They discussed the pending OAG review of the FRM matter. Discussed OAG's intent to appoint outside counsel to investigate the FRM matter, and Mr. Connolly suggested that contract for outside counsel should be reviewed by the Governor and Council because of possible inherent conflicts. Mr. Connolly said OAG had been compromised by virtue of the BSR communication in 2003...the so-called "secure assets" memo as well as subsequent conversations regarding FRM with OAG.
- 2/8/10 Meeting at OAG including Mr. Hildreth, Mr. Fleury, Ms. Jurta, Mr. Tefft, Mr. Moquin, Mr. Spill, Mr. Gardner, Mr. Delaney, Mr. Head, Mr. Fitch, Ms. Leonard and Mr. Connolly. Mr. Hildreth said he has no evidence of a security at his office-that he provided it to Mr. Connolly in an e-mail in November. Mr. Connolly was told by Mr. Fitch to remove subpoena. Mr. Connolly, Mr. Gardner, Mr. Fitch, Mr. Moquin and Mr. Spill met privately in Mr. Fitch's office where Mr. Connolly stated BSR needed to make sure it had access to all SBD records before he would agree to withdraw subpoena. He then withdrew the subpoena based upon verbal agreement between OAG and Department of State that it would have access to all records, including e-mails.
- 2/11/10 BSR review files at SBD.
- 2/12/10 BSR review files at SBD.
- 2/16/10 BSR review files at SBD.
- 2/17/10 BSR review files at SBD.
- 2/19/10 E-mail from Mr. Head to Mr. Connolly, cc: Christopher Marshall, Mr. Scanlon, Subject: FRM. A request from Mr. Head that he and Mr. Marshall conduct an interview with Mr. Connolly as part of the OAG evaluation.
- 2/19/10 E-mail response from Mr. Connolly to Mr. Head. Mr. Connolly did not feel it appropriate to meet at that time because of the ongoing investigation/findings by the BSR re: FRM, was still a work in progress.
- 2/19/10 E-mail response from Mr. Head to Mr. Connolly. Mr. Head disagrees, wants to discuss issues with SBD and again asks for a date agreeable to meet.
- 2/22/10 E-mail from Mr. Connolly to Mr. Head. Mr. Connolly suggests they talk on Friday, the 26<sup>th</sup>. Mr. Connolly explains why certain SBD documents were flagged during the BSR review and questions whether all records were made available. Mr. Connolly also states that all BSR records, with the exception of complainant files, have been made public.

- 2/22/10 E-mail response from Mr. Head to Mr. Connolly. Mr. Head thanks Mr. Connolly for the clarification. Mr. Head could not confirm a meeting on Friday since Mr. Marshall would be out on Friday and he would revisit his schedule and get back to Mr. Connolly. Mr. Head also asked if copies of the publicly released BSR documents were available.
- 2/23/10 E-mail response from Mr. Connolly to Mr. Head. Mr. Connolly stated that all records relevant to FRM's unlicensed securities action are available. Mr. Connolly further offered that Mr. Spill's personal notes/call logs, etc. are also available if desired.
- 2/23/10 E-mail response from Mr. Head to Mr. Connolly. Mr. Head thanks Mr. Connolly and stated that he will coordinate with Mr. Spill.
- 3/11/10 BSR at Gallagher, Callahan & Gartrell Concord, NH Law Firm to review files.
- 3/12/10 BSR at Gallagher, Callahan & Gartrell Concord, NH Law Firm to review files.
- 4/6/10 Mr. Moquin, accompanied by Deputy Secretary of State Dave Scanlan, was interviewed by Richard Head and Christopher Marshall of the OAG for approximately two hours. Mr. Head conducted most of the interview. Mr. Head first asked Mr. Moquin to talk about when he was hired and the changes that have occurred at the BSR over the course of Mr. Moquin's employment, focusing particularly on the enforcement and examination functions. Mr. Moquin described the conduct of typical examinations done by the BSR, emphasizing that the BSR can only examine licensees and those required to be licensed under the RSA 421-B. Mr. Moquin was asked about issues seen during the examination of the SBD's records. Lastly, Mr. Moquin was asked why he believed this situation did not involve securities issues, responding with the analysis of RSA-B:17, II(d).
- 4/8/10 Jeff Spill and Dave Scanlan, who had to leave from about 10:30 to 11:30, met with Chris Marshall and Richard Head for approximately 3.5 hours regarding the Financial Resources OAG Review. Much of the questioning related to BSR staffing levels, case loads, and issuer-dealer licensing requirements going back to the year 2000. Also discussed was a chronological review of the BSR's involvement with Financial Resources starting in 2000 and moving forward. Much of the focus in the chronological review was on individual communications and their content and meaning. The questioning ended when Mr. Head had to exit for another appointment. The chronological questioning reached about spring 2006. Another session is set for 4/29/2010.
- 4/8/10 –  
4/15/10 Mr. Connolly away from office at securities meeting in Washington until 4/15. Mr. Head sent Mr. Connolly emails on 4/8 and 4/15 requesting an interview. Mr. Connolly responded on 4/15 saying he needed to discuss with Mr. Gardner.

4/19/10      Mr. Connolly emailed Mr. Head and said he would be able to meet 4/21/10.

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## APPENDIX E - TIMELINE OF BSR ATTEMPTS TO OBTAIN INFORMATION FROM THE BANKING DEPARTMENT<sup>1</sup>

- 11/12/2009 After notification by the Banking Department that Financial Resources Mortgage, Inc. (FRM) had closed, the Bureau sent two auditors to FRM to review files. The Bureau accessed FRM's building under the auspices of the Banking Department. The usual Access Request Letter that is used to obtain information from other federal and state agencies was submitted to the Banking Department in order to have access to the information at FRM's location.
- 11/17/2009 Mary Jurta/Banking Department submitted a letter with enclosures to Securities Director Mark Connolly regarding the sharing of information
- 11/23/2009 Mr. Connolly replies by email to Ms. Jurta's letter and asks that the Banking Department sends copies of all audits done for FRM, related firms, and any firms run by Donald Dodge.
- 11/24/2009 Mr. Connolly emails Ms. Jurta requesting she check past FRM audits and advise whether any securities issues were enumerated in written form.
- 12/3/2009 Ms. Jurta sends email to Mr. Connolly inviting the Bureau to send examiners to review Banking Department documents related to FRM. (NOTE: I don't have a copy of this email.)
- 12/3/2009 Bureau Staff Attorney Kevin Moquin contacts Ms. Jurta and follows up by email. Mr. Moquin requests copies of FRMs licensing applications, all audits from 2000 forward – including supporting documents, FRM annual reports and financial statements, all mortgages that FRM was involved with, documents relating to any actions taken against FRM, Scott Farah, CL&M, Inc., or Donald Dodge, and any documents provided to the United States Securities and Exchange Commission.
- 12/4/2009 Ms. Jurta responds to Ms. Moquin stating, "We are declining to your request to copy and provide the other documents you have requested."
- 12/10/2009 Mr. Moquin sends email to Ms. Jurta requesting to send examiners to the Banking Department pursuant to her invitation by email of 12/3/2009. As part of this, Mr. Moquin requests information regarding what documents will be available for examiners to review.
- 12/14/2009 Ms. Jurta responds saying that, as previously discussed, it would be helpful to have an information sharing/confidentiality document in place before Bureau examiners look at the Banking Department's files. She suggested that an appropriately altered access letter – as used on

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<sup>1</sup> For further information, see the copies of documents and emails following this timeline.

11/12/2009 – “should be just fine” and that the examiners could just bring it with them. The Bureau sent Ms. Moquin and two examiners to the Banking Department with the access letter at approximately 1:00 PM. After review by Banking Department attorneys, the Banking Department determined that the normal access letter was not sufficient and that it would suggest changes. Bureau staff was given access to Banking Department records but only for on-site review. The Bureau was not allowed to make copies and was asked to leave by 2:30 PM.

12/16/2009

Mr. Moquin seeks clarification on a Memorandum of Understanding (MOU) that the Banking Department was proposing for Bureau access to documents. In addition, Mr. Moquin sought clarification on the availability of a room to continue the Bureau’s review. Deputy Bank Commissioner Robert Fleury advises that the MOU has been sent to Mr. Connolly’s email and that Bureau examiners would be allowed in on the following day. Mr. Connolly receives the MOU from Rebekah Becker. Mr. Moquin again seeks clarification in an email to Ms. Becker, Ms. Jurta, Celia Leonard/Banking Department Counsel, Maryam Torben-Desfosses/Banking Department Hearing Examiner, and Banking Commissioner Peter Hildreth regarding changes from the Access Request presented on 12/14/2009, noting that the Access Request is the same letter that the Bureau uses to request information from other state regulators and from the SEC. Mr. Moquin also noted that a provision stating “That except for our investigation and any proceeding resulting therefrom, our office will make no use of the files or information contained therein” had been removed and questioned its removal. Ms. Leonard responded that, under the Banking laws, the Bureau could not make public use of information from the Banking Department, even pursuant to a public enforcement action. Mr. Moquin responded seeking clarification on redacted documents that had been observed by Bureau examiners and asking specifically what Banking Department information would be made available to Bureau examiners. Ms. Leonard responded addressing the issue of redacted information but did not address the question of specifically what information would be made available to Bureau examiners. Attempts by Mr. Moquin to specify that “investigative, examination, and other non-public information” would be made available to Bureau examiners were not responded to. Furthermore, Mr. Moquin’s attempt to get a full explanation for why the normal Access Request was not acceptable was not responded to.

12/17/2009

A meeting was arranged between representatives of the Governor’s office, the Attorney General’s office, the Banking Department, and the Securities Bureau. The Bureau attempted to get clarification on why it was being denied access to records by the Banking Department and what records would be made available. Mr. Connolly expressed his position that the



records should be made available to the Bureau as well as to the public. However, the issue was not addressed at this meeting.

- 12/29/2009 A planned meeting for 12/29/2009 to discuss issues, including a confidentiality meeting, was cancelled at the request of the Banking Department. The meeting was rescheduled to 1/4/2010.
- 1/4/2010 Mr. Moquin submitted a proposed MOU to Richard Head/Associate Attorney General that would satisfy the Bureau. Mr. Moquin noted the importance of getting access to the Banking Department's FRM documents because the Bureau's information based on working with federal regulators suggested that federal action was imminent. Without the access to documents, the Bureau might be unable to complete its review before a federal action was commenced.
- 1/5/2010 Mr. Head circulated a draft MOU in anticipation of a meeting with Governor Lynch. However, later in the day, Mr. Head notified all parties that consensus on the final language of an MOU would not be achieved before the meeting based on a telephone call from Mr. Hildreth.
- 1/12/2010 Mr. Moquin sought clarification from Mr. Head regarding the Banking Department's objections to his proposed MOU. Mr. Moquin also noted that there were items missing from a timeline requested by the Governor's office relative to the FRM case that the Bureau had submitted to the Attorney General's office. Mr. Connolly sent an email to Mr. Head objecting to having his name associated with a proposed Memorandum to the Governor suggesting legislative changes and advising that the Bureau believed the MOU still needed work, noting that Mr. Hildreth continued to withhold agreement on the MOU. Mr. Moquin also sought clarification from Mr. Head regarding the Banking Department's objections to the MOU.
- 1/13/2010 Mr. Head responds to Mr. Connolly but does not address the issue of the MOU.
- 1/14/2010 Mr. Connolly sends email to Mr. Head advising that the timeline being given to the Governor was missing any mention of the mortgage servicing firm CL&M, Inc. and a letter of October 30, 2009 from Attorney Denis Maloney to Deputy Director Spill indicating that FRM was not engaged in securities business.
- 1/15/2010 Mr. Head responded to Mr. Moquin's email of 1/12/2010 stating that he had not spoken with Mr. Hildreth. Mr. Head was unable to provide an explanation of the Banking Department's objections to the MOU.

- 1/15/2010 Mr. Connolly issues a subpoena seeking access to the records being requested by the Bureau since 11/23/2009.
- 2/8/2010 The Secretary of State's office, the Attorney General's office, and the Banking Department met and worked out an MOU that was acceptable to all parties. Mr. Head advised he would arrange to give Bureau examiners access to Banking Department records during the week of 2/8/2010. Mr. Connolly withdraws his subpoena. Mr. Hildreth states that the Banking Department does not have information or records in its possession indicating there was securities business conducted by FRM.
- 2/16/2010 Mr. Spill advises Deputy Attorney General Bud Fitch that he is pulling together files to present a list of cases in which the Bureau requested assistance from the Attorney General's office but did not get assistance. Mr. Connolly noted in an email to Mr. Spill that he should be sure to note the recent case of GM Enterprises that required repeated requests before the Attorney General's office took any action.
- 2/17/2010 Mr. Head advised that the Attorney General's office would begin scanning FRM-related documents provided by the Banking Department. He noted that his understanding was that the BSR would be completing its review that same day. He further stated that the Attorney General's office would segregate documents requested by the Bureau and determine whether they appeared to be within the Bureau's jurisdiction. Any documents that, in the opinion of the Attorney General's office, were not within the Bureau's jurisdiction would be further segregated for review, possibly by "our outside securities consultant." The Bureau remains unaware of who the consultant is.
- 2/18/2010 Mr. Spill responded to Mr. Head to inform him that the Bureau's review was not complete and that Bureau attorneys needed to review the information flagged for copying. Mr. Spill requested a time when Bureau attorneys could revisit the files. He further reminded Mr. Head that the Bureau's understanding of the securities issues would require an understanding of the regulator role of the Banking Department.
- 2/19/2010 Mr. Head contacted Mr. Connolly to set up an interview along with Attorney Chris Marshall of the Attorney General's office. The subject of the meeting was to be a discussion of "information you have regarding the operation of Banking, DOJ, or any other state entity as it relates to FRM and its related entities." Given the Bureau's ongoing investigation, Mr. Connolly suggested that it would be inappropriate to meet.
- 2/23/2010 Bureau attorneys and examiners returned to the Banking Department to continue a review of the files.

- 2/24/2010 Mr. Moquin sends an email to Mr. Head with questions relating to the records made available to the Bureau at the Banking Department. Specifically, Mr. Moquin seeks clarification as to whether all records relating to FRM are being made available to the Bureau. In addition, he requests further access files relating to FRM at the Banking Department, including emails related to third parties who were associated with FRM.
- 2/26/2010 Mr. Head responds requesting the basis for the Bureau's questioning the completeness of the files made available by the Banking Department. He does not address the issue of further access to files at the Banking Department. Mr. Moquin responds that the Bureau has reason to believe based on our review of the documents made available so far that the files may not be complete. He requests confirmation that the Bureau has been given access to all of the files at the Banking Department related to FRM pursuant to the MOU signed by all parties on 2/10/2010. Later in the day, Mr. Moquin again requests access to the files at the Banking Department. Mr. Moquin also sends an email to Ms. Leonard asking to confirm that the Bureau has been given access to all records related to FRM and associated person in the possession of the Banking Department. Ms. Leonard responds stating, "So that I may better address your inquiry, please let me know what it is you are looking for and we'll make every effort to assist you in finding it." Mr. Moquin responds again asking Ms. Leonard to confirm whether the Bureau has been given access to all information.
- 3/2/2010 Mr. Moquin again sends an email to Mr. Head again requesting access to Banking Department files and confirmation that the BSR has received access to all files at the Banking Department related to FRM, Scott Farah, CL&M, Inc., and Donald Dodge. Mr. Head responds, "It is my understanding that you have been given access to Banking's documents regarding Financial Resources, Scott Farah, CL&M and Donald Dodge. With regard to going back to review documents again, please coordinate with Celia Leonard." Mr. Moquin responds to Mr. Head and Ms. Leonard again asking for either of them to confirm whether the Bureau has received access to all documents related to FRM.
- 3/3/2010 Ms. Leonard responds to the Bureau request by stating, "Banking has cooperated with securities and has been and continues to be in compliance with the MOU. Again, if you are looking for something specific for the investigation of those who are or may be subject to securities' jurisdiction, please feel free to let us know so we can assist you in finding it." Mr. Moquin responds, "Can someone please tell us either, 'Yes, the Bureau of Securities has been granted access to all information related to Financial Resources, Scott Farah, CL&M, and Donald Dodge in the possession of the Banking Department' or 'No, the Bureau of Securities has not been granted access to all information related to Financial Resources, Scott Farah, CL&M, and Donald Dodge in the possession of the Banking

Department.” Also, Mr. Moquin requests access to records on 3/4/2010, 3/5/2010, and possibly the week of 3/8/2010. Ms. Leonard responds stating, “We are formally reviewing your requests, but in any event tomorrow and Friday are not convenient.”

3/5/2010

Mr. Moquin sends email to Ms. Leonard on behalf of Mr. Connolly stating that the SBD’s failure to assure the BSR that it has been given access to all information related to FRM, Scott Farah, CL&M, and Donald Dodge is a violation of the MOU. In response, Mr. Head indicates he is triggering Section 10 of the MOU which authorizes the OAG to resolve any disputes regarding the sharing and use of information. He requests memos from Mr. Moquin and Ms. Leonard outlining the dispute.

3/8/2010

Mr. Moquin responds to Mr. Head clarifying that there is not dispute regarding the sharing or use of information. Rather, the BSR simply is trying one last time to get a straight answer as to whether all information has been provided pursuant to the MOU. Mr. Head responds that he has no reason to believe that the OAG has been given access to any different documents than the documents to which the BSR was provided access. Mr. Head also states, “Banking has stated it has given Securities access to the documents it has requested in compliance with the MOU.” Mr. Moquin responds again clarifying the information the BSR seeks: 1) Has the BSR been given access to all information related to FRM, Farah, CL&M, and Dodge; 2) When will the BSR be given access again to information in the possession of the SBD; and 3) Will the SBD do an email search for the particular terms previously request by the BSR? In addition, Mr. Moquin seeks clarification as to whether Mr. Head is representing that the SBD has provided all requested information. Mr. Head responds that what he previously stated was his understanding from previous SBD emails.

3/9/2010

Ms. Leonard responds to Mr. Moquin stating, “The only legitimate purpose for Securities to have access to Banking files regarding FRM is to determine if any FRM information in Banking’s possession indicates that FRM was involved with activities that fall within Securities’ jurisdiction. To that end, Banking has complied with the MOU and cooperated with Securities.” Ms. Leonard claims that the BSR’s review of SBD records was disruptive. She further states, “Attorney Moquin’s repeated demand for a specific answer to his inquiry seems to suggest he is seeking something. I have stated numerous times that we are happy to assist in finding whatever it is he believes to be missing, however, to do so we must have a clear understanding of what it is he is seeking.” The email goes on to deny the BSR further access to the SBD’s records. Mr. Moquin replies that our conclusion is that the BSR has not received access to all documents, to which Ms. Leonard responds, “In that case, I respectfully suggest we agree to disagree.” Again seeking clarification, Mr. Moquin

asks if the BSR can conclude from this statement that it has been given access to all records. Mr. Connolly, responding to the prior series of emails, states, "I have concluded from these responses that Bank records related to FRM have been kept from our review, which is counter with our February agreement with all parties."

3/11/2010

Ms. Leonard responds, "Banking has complied with the MOU. Banking has given Securities repeated access to all information of FRM and related entities in Banking's possession that Banking has been able to locate to date so that Securities could determine if the activities of FRM or a related entity fell within Securities' jurisdiction." Mr. Connolly responds asking Attorney Leonard to move beyond any qualifying statements and provide a simple yes or no answer so that the BSR can complete its review. He advises Ms. Leonard that anything beyond a simple yes or no answer will lead us to conclude that the BSR has not been given access to all information. No further reply is received.

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## **Appendix F – Expert Opinion of Joseph C. Long**

**EXPERT OPINION**

**Prepared by  
Joseph C. Long**

**April 21, 2010**



I, Joseph C. Long, 2609 Acacia Ct., Norman, Oklahoma, 73072, have been engaged by the New Hampshire Secretary of State, Securities Division, to generate an expert opinion, based upon my extensive knowledge and study of *state* securities law, interpreting whether the New Hampshire Securities Act applies to the original or primary offer and sale of a promissory note coupled with a whole mortgage. In other words, when the owner of property issues a promissory note and secures the note by creating a first or primary mortgage covering the property, and then sells both note and mortgage as a unit, in an original or primary transaction to a third party, does the transaction involve a sale of a security within the coverage of the New Hampshire Securities Act?

This task involves a case of pure statutory interpretation because there is no New Hampshire legislative history or commentary dealing with the issue. The only guidance that is available is the definition of a security found in §421-B:2(XX)(a) indicating that "any note" is a security under the New Hampshire Act and the exemption from the registration requirements of the Act found in § 421-B:17(II)(d) for *non-issuer* transactions covering *secondary sales* of a promissory note, coupled with a whole mortgage, sold as a unit.

The statutory definition is useful because the New Hampshire Act is the substantial adoption of the Uniform Securities Act (1956). The "any note" language is found in the Uniform Act definition. Unif. Sec. Act (1956) §401(l).

The whole mortgage exemption is even more helpful because the New Hampshire Legislature altered the Uniform Securities Act exemption, found in Uniform Securities Act (1956) §402(b)(5), by inserting the words "*non-issuer*." The Uniform Act

exemption covers "all transactions," whether primary or secondary. With the New Hampshire alteration, it is clear that *a secondary trade in the note and mortgage would be an exempt security, if the other conditions of the exemption are met.* But what about the original or primary transaction? Is it a security, but not exempt? Or did the New Hampshire Legislature intend such sale not to be a *sale of a security?* If the legislative intent was the latter, the original or primary sale *would not be covered by the New Hampshire Securities Act.* Again, there is no New Hampshire legislative history or commentary as to why the change was made or what effect it was to have on the original or primary sale of the note and mortgage by the property owner. Absent such New Hampshire legislative history and commentary, the statute has to be interpreted by consulting authority outside New Hampshire.

## I. BACKGROUND

I will not here undertake to outline my credentials in detail, but will attach a copy of my resume which outlines my experience in the securities area. I will add only that I have acted as an expert witness in a criminal securities case in New Hampshire and prepared to testify in a second, which was settled at the last moment.

## II. ISSUE

I have been asked to render an opinion on the following issue:

Whether under the New Hampshire Uniform Securities Act, promissory notes, coupled with a whole mortgage on tangible personal or real property, commercial or residential, are securities when the owner of the property originates the mortgage and promissory note and then sells them as a unit to a third party in the initial primary sale?

### III. CONCLUSION

Based upon my knowledge and understanding of securities law in general, and the unique statutory language of the New Hampshire Uniform Securities Act, I am of the opinion:

That promissory notes, coupled with a whole mortgage on tangible personal or real property, commercial or residential, are *not* securities under the New Hampshire Uniform Securities Act, *when the owner of the property creates the mortgage and issues the promissory note and then sells them in an initial or primary sale as a unit to a third party.*

Note that this opinion is limited to *specific facts* involving the *initial* sale of the note and mortgage by the owner of the property. Any deviation from these facts would probably lead to a contrary conclusion. Likewise, this opinion is based exclusively upon the unique language of the New Hampshire Act, which, to my knowledge, is not found in any other current state or federal securities act. Again, absent the special language of the New Hampshire Act, my opinion would probably be that the notes and mortgages would be securities.

### IV. ANALYSIS

The beginning point for any analysis of whether a document or transaction constitutes a security is the statutory definition. Since this opinion is based upon New Hampshire law, the appropriate statutory definition is that found in NH RSA §421-B:2(XX)(a). This definition is not a true definition describing the elements of "securitiness." Instead, it is a laundry list of things which are to be considered "securities." There is no mention of mortgages within this laundry list of §421-

B:2(XX)(a). The laundry list, however, provides that "any note" is a security.

"Any note" is not further defined in either the New Hampshire statute or the Rules and Regulations thereunder. Read in isolation, this language would suggest that all notes, including those coupled with a whole real or chattel mortgage, are securities.

But the "all notes" language can not be read in isolation for two reasons. First, the introductory clause of §421-B:2 provides: "When used in this chapter, unless the context otherwise requires...." Similar language in the definitional section of the Securities Act of 1933 led the Supreme Court in *Reves v. Ernst & Young*, 494 U.S. 56, 110 S.Ct. 945 (1990), to adopt the position taken by the Second Circuit in *Exchange Nat'l Bank v. Touche Ross & Co.*, 544 F.2d 1126 (2d Cir. 1976), that not all promissory notes are securities.

The *states are not* obligated to apply an interpretation of federal law by either the lower federal courts or the Supreme Court when considering the interpretation of the same term found in a *state securities act*. See e.g., *Roehrs v. FSI Holdings, Inc.*, 248 S.W.3d 796 (Tex. App., Dallas, 2008); *State v. Montgomery*, 135 Idaho 348, 17 P.3d 292 (2001); *O'Malley v. Boris*, 1999 WL 39548 (Del. Ch. Jan. 19, 1999). While my research has revealed no New Hampshire court decision or Securities Division opinion which has, to date, accepted the *Reves* analysis, the New Hampshire courts may well elect to follow the *Reves* holding. As a result, it is a factor which I will consider in forming my opinion.

Second, NH RSA §421-B:17(II)(d) contains *an exemption from the registration*

*requirements*<sup>1</sup> of the New Hampshire Act for:

(d) any *non-issuer* sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes and bonds secured thereby, is sold to a single purchaser at a single sale.<sup>2</sup>

There is no corresponding exemption under either Sections 3 or 4 of the federal Securities Act of 1933, 15 U.S.C. 77(c) and (d). But see, Section 4(5) of the 1933 Act, 15 U.S.C. §77d(5), covering some notes and mortgages.

The quoted language suggests that the New Hampshire Legislature believed that *at least some* sales of promissory notes secured by a mortgage involved the sale of a security. Why have an exemption from the *registration* requirements of the Act if the promissory note and mortgage did not involve the sale of a security? The issue then becomes whether *all* promissory notes secured by a mortgage are securities or only some.

To answer this question, it is necessary to examine the treatment of promissory notes secured by mortgages under *both* the state blue sky laws as well as the federal Securities Act of 1933. As will be seen, this history is not totally consistent.

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<sup>1</sup>The broker-dealer registration and anti-fraud provisions still apply to the notes exempted by §421-B:17(II)(d).

<sup>2</sup>This language, restricting the exemptions to non-issuer sales in secondary markets, is unique among the current state acts. The Minnesota Act had a similar provision before Minnesota adopted the Uniform Securities Act (2002). I could find no legislative history, caselaw, or academic discussion as to why the alteration was made in either the New Hampshire or Minnesota Acts.

### A. The State Experience

From a very early point in the development of the Blue Sky statutes, an exemption existed for promissory notes coupled with a mortgage. For example, Section 3 of the 1915 Arkansas Act, states that:

*The provisions of this Act shall not apply to ... (f) mortgages upon real or personal property situated in this state where the entire mortgage is sold and transferred with the note or notes secured by such mortgage.*  
[Emphasis added.]

See John M. Elliott, *The Annotated Blue Sky Laws of the United States* 64 (1919). This language suggests that *all* promissory notes, coupled with a mortgage, whether issued in primary or secondary transactions, *were securities*, but were to be excluded from coverage under the Act. The same approach was taken in Section 4(7) of the 1919 Illinois Act, where the notes and mortgage were classified as Class A securities which were not subject to coverage by the Act. *Id.* at 163-164. This pattern was carried forward as a transactional exemption in the first Uniform Act, the Uniform Sale of Securities Act (1929). Section 5 of that Act provides:

Section 5. *Exempt Transactions.* Except as hereinafter expressly provided, *the provisions of this act shall not apply to the sale of any security in any of the following transactions:*

\* \* \*

(g) Bonds or notes secured by mortgages upon real estate or tangible personal property where the entire mortgage together with all of the bonds or notes secured thereby are sold to a single purchaser at a single sale.  
[Emphasis added.]

This Act is reprinted as Appendix I in 12B Joseph C. Long, *Blue Sky Law* (2009) ("Long, ....") However, the pattern was changed in the second Uniform Act, the Uniform

Securities Act (1956).<sup>3</sup> Section 402(b) of the 1956 Act provides:

(b) The following transactions are exempted from sections 301 [the securities registration provision] and 403 [the filing of sales literature]:

\* \* \*

(6) any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit...

The Official Comment states:

This exemption is severely restricted by the requirement that everything be both offered and sold as a unit. But it permits a public offering as a unit.

Reprinted in Long, Appendix D, p. D-43.

A very similar exemption from registration is found in Section 402(7) of the Uniform Securities Act (1985). Reprinted in Long, Appendix D1, at p. D1-55. The Official Comments make clear that the Uniform Commissioners considered these interests as securities. They stated: "Obviously, the antifraud provisions still apply to any such sale." However, the Uniform Securities Act (2002), while providing a similar transaction exemption from registration, added several new restrictions. Section 202(11) of the 2002 Act provides:

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<sup>3</sup>The 1956 Act was the pattern for the New Hampshire Act.

(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this

[Act] as a broker-dealer or as an agent.

Reprinted in Long, App.D2 at p. 46. The Official Comments explain the changes in the 2002 Act:

In recent years the application of this exemption has been one of concern to state securities administrators. The conditions that conclude this exemption are new and are intended to address these concerns.

*Id.* at D2-52.

In summary, the state experience with notes and mortgages is to treat them as securities, but as *exempt securities* under certain limited circumstances *whether the transaction involved a primary sale by the issuer of the note and mortgage or whether the transaction is in the secondary market by dealers reselling the notes and mortgages*. Since the exemption is an exemption from the registration of securities requirement *only*, the broker-dealer-agent registration requirement and the anti-fraud provisions continue to apply.

#### **B. The Federal Experience**

As noted above, the federal experience with notes and mortgages is quite



different than the state experience outlined above. The federal Securities Act of 1933, 15 U.S.C. §§77(c) and (d) do not contain an exemption similar to Section 402(b)(6) of the 1956 Uniform Act or Section B:17(II)(d) of the New Hampshire Act. NH RSA §421-B:17(II)(d) Beginning in the 1973 case of *Lino v. City Investing Co.*, 487 F.2d 689 (3d Cir. 1973), the federal courts began to develop the idea that commercial and consumer transactions were not intended to be covered by the Securities Act of 1933. That Act, the courts concluded, was limited to dealing with *investment securities and not commercial and consumer transactions*.<sup>4</sup> To justify this conclusion, the federal courts seized upon the introductory language of Section 2, the definitional section, 15 U.S.C. §77b, which is identical to that in the introductory clause of §421-B:2, quoted above. This language, the federal courts held, allows the court to examine the context of the transaction to determine whether there was a security involved.

Almost immediately following *Lino*, a promissory note and mortgage given to support a bank loan was held to be a "commercial transaction" in *Bellah v. First Nat'l. Bank of Hereford*, 495 F.2d 1109 (5<sup>th</sup> Cir. 1974). Similarly, the federal courts concluded that loan participations in notes on commercial real property were not securities, but commercial transactions. See e.g., *American Fletcher Mortg. Co., Inc. v. U.S. Steel*, 635 F.2d 1247 (7th Cir. 1980); *C.N.S. Enterp., Inc. v. G & G Enterp., Inc.*, 508 F.2d 1354

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<sup>4</sup>This conclusion may be accurate given the nature and purpose of the federal act. However, the history of the blue sky statutes indicate that it is not a correct statement as to the state laws. The blue sky laws, first enacted in 1911, were intended to be the original consumer protection statutes. The state courts are increasingly beginning to recognize that the federal and state securities acts have different missions and different emphases. The state acts are not simply little federal securities statutes as the state consumer protection statutes are often referred to as little "FTC's."

(7th Cir. 1975). These participations involve a very large promissory note and mortgage on commercial property. Since the amount of these loans is greater than one bank can legally make, or the buyer wants to take, the originating institution will fractionalize the promissory note and mortgage into "loan participates." These participates are then sold to other banks, insurance companies, or other commercial lenders.

The alternative approach to the exclusion of notes generated in commercial or consumer transactions, known as "the family resemblance" test, was first developed by the Second Circuit in *Exchange Nat'l. Bank v. Touche Ross & Co.*, 544 F.2d 1126 (2d Cir. 1976). The "family resemblance" test was refined and adopted in *Reves v. Ernst & Young*, 494 U.S. 56, 110 S.Ct. 945 (1990). Under this test, based on the language of the statute, that all promissory notes were securities, there is a rebuttable presumption that *all promissory notes* are securities. However, the defendant could rebut this presumption, so that the note in a specific case would not be considered a security.

However, the Court in *Reves*, then outlined seven discrete categories of transactions which were obviously *not securities*. In these categories, there was that *per se* rule that the transactions did not involve securities for federal purposes, i.e., the presumption had already been rebutted. The seven categories are:

- (1) Notes delivered in consumer financing;
- (2) Notes secured by a mortgage on a home;
- (3) Short-term notes secured by a lien on a small business or some of its assets;
- (4) Notes evidencing a "character" loan to a bank customer;
- (5) Short-term notes secured by an assignment of accounts receivable;

- (6) Notes which simply formalize an open-account debt incurred in the ordinary course of business; and
- (7) Notes evidencing loans by commercial banks for current operations.

The problem with this list is that neither *Exchange Bank* nor *Reves* gave any explanation why these promissory notes should be excluded. Both courts simply established the categories by fiat, and *assumed* that this conclusion was self-evident.

The *Reves* Court then established a four-factor test which should be considered by the lower federal courts in adding additional categories to the *per se* list or ruling on the status of individual promissory notes in a particular transaction. These factors are:

- (1) The motivations that would prompt a reasonable seller and buyer to enter into [the transaction];
- (2) The "plan of distribution" of the instrument;
- (3) The reasonable expectation of the parties that the securities act would apply to the transaction; and
- (4) Whether the transaction is subject to regulation under another regulatory statute, so that coverage under the securities act is not required.

In summary, the federal experience is quite different than the state experience when dealing with promissory notes as securities. The difference between the two approaches is this. As outlined above, under the state acts, these promissory notes *are* securities. However, under certain circumstances, these promissory notes *are exempt from the securities registration requirement*. As securities, the broker-dealer-agent registration requirements, as well as the anti-fraud provisions, *would apply*. Under the federal approach, the *seven per se categories* of promissory notes are *not* securities. Therefore, at the federal level, the securities registration and broker-dealer-agent

registration requirements *do not apply*. Nor do the anti-fraud provisions. These notes, as non-securities, are simply not subject to the federal securities acts.

**C. Applying The State Experience To Interpret The Language Of The New Hampshire Act**

Since New Hampshire adopted the Uniform Securities Act of 1956, my inclination would be that the state experience would control and that a promissory note, coupled with a whole mortgage, would be considered a security. Section 402(b)(6) of the Uniform Act would then exempt the security from the *securities registration* requirements of the Act, if the conditions of the exemptions are met. This approach would leave the transaction involving the note and mortgage subject to both the broker-dealer-agent registration requirements and the anti-fraud provisions of the Act. If the conditions of the exemption *were not met*, the transaction would be fully subject to the Act, i.e., the notes would have to be registered or exempt, the people handling them would have to be registered, and the anti-fraud provisions would apply.

This analysis, however, will not work under the New Hampshire Act. New Hampshire did not adopt the 402(b)(6) exemption as found in the 1956 Uniform Act. Instead, the Legislature changed §421-B:17(II)(d) to read:

(d) any *non-issuer* sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes and bonds secured thereby, is sold to a single purchaser at a single sale. [Emphasis added.]

In my opinion, by altering the language of Section 402(b)(5) of the Uniform Act and adopting Section 421-B:17(II)(d), the New Hampshire Legislature consciously intended to exclude a note tied to a mortgage offered in a primary sale to the first buyer from treatment as a security under RSA 421-B. Resale of these notes in the *secondary*

*market* by a non-issuer, however, by virtue of Section 421-B:17(II)(d) *are securities, but exempt securities*, if the conditions of Section 421-B:17(II)(d) are met. This approach is consistent with the state treatment of these notes and mortgages in the *secondary market*. However, as securities, these notes and mortgages are still subject to the broker-dealer-agent registration requirement and the anti-fraud provisions of the Act.

If the language is read literally, the sales of these notes and mortgages in the secondary (non-issuer) market, whether to the general public or an institutional investor, would be exempt, but the *primary or original sale* by the issuer *would not*. Thus, the origination of the promissory note and mortgage by the owner of the property would: (1) *be a security*; and (2) a non-exempt security. This analysis is consistent with the idea that such notes, coupled with a whole mortgage, are securities and not exempt, if the *other conditions of the exemption are not met*.

The above interpretation, however, appears to run contrary to the public policy concerns behind the exemption. Traditionally, the abuses in this area have resulted when the note and mortgage are resold by *non-issuer* brokers in the *secondary market*, and not in the initial origination and sale of the note and mortgage by the property owner. Regulating the *secondary market* where these notes and mortgages are often sold to the general public by *non-issuers* is the major public policy concern as outlined by the Official Comments to the Section 202(11) exemption in the 2002 Uniform Act, quoted above. Therefore, it makes no rational sense to fully regulate the original initial sale of these notes, coupled with a mortgage by the property owner, and then provide an exemption from the registration requirements for *secondary non-issuer* sales.

The only way to harmonize the above identified public policy goal and the actual

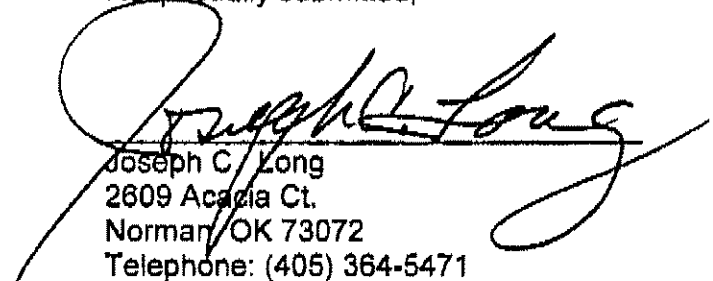
language of the New Hampshire Act, in my opinion, is to treat the original sale as one *not* involving the sale of a security. This conclusion is not a sound decision from both a theoretical and academic perspective, but it is a practical way to accomplish the acknowledged public policy goals involved within the language of the New Hampshire Act.

Support for my analysis is found by examining several points. First, the whole mortgage exemption was altered by the New Hampshire Legislature from its original formatting which included both issuer and non-issuer transactions under the Uniform Securities Act of 1956. Second, the whole mortgage exemption has not been updated from its original enactment under RSA 421-B. For instance New Hampshire chose not to adopt the Uniform Securities Act of 2002 which contains conditions for the application of the whole mortgage exemption such that it cannot be claimed if there is a general solicitation or advertisement for the sale, and which requires its application to both issuer and non-issuer transactions. Most states have modernized their securities act to address the relatively recent phenomenon of securitization of mortgages. Third, in most states, including New Hampshire, to my understanding, the regulation of the mortgage business is regulated under the state banking department. As a result, submitting the original negotiation of the note and mortgage to securities regulation would result in unnecessary duplicitous state regulation. Finally, New Hampshire securities regulators have not historically been involved in regulating loans secured by real property. See Manchester Bank v. Connecticut Bank and Trust Company, 497 F.Supp. 1304 NH (1980), wherein the court held that a loan participation was not a security.

### SUMMARY

Based upon the above analysis and authorities, it is my opinion that the creation of the original note and mortgage by the property owner to the first buyer, *does not involve the sale of the security under the New Hampshire Securities Act* because of the unique wording of §421-B:17(II)(d). However, the resale of that note and mortgage, if sold to a subsequent purchaser, *in the secondary market, will be a security, but that security would not have to be registered because of the transactional exemption found in §421-B:17(II)(d).*

Respectfully submitted,



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## EXHIBIT A

# RESUME OF JOSEPH C. LONG 2010

### PERSONAL DATA

Office: 2609 Acacia Court, Norman, Oklahoma  
73072

Phone numbers: Office Telephone (405) 364-5471, Fax (405) 360-4893

Date of Birth: September 26, 1939

### EDUCATION

Bachelor of Arts degree in History from the University of Missouri in 1961

Juris Doctor from the University of Missouri in 1963, graduated second in a class of 54, member of the Order of the Coif, and Leading Articles and Book Review Editor of the Missouri Law Review

Master of Law degree from the University of Virginia in 1972

### PRESENT STATUS

Professor of Law Emeritus at the University of Oklahoma, College of Law, 300 Timberdell Road, Norman, Oklahoma 73019, since 2001

### TEACHING EXPERIENCE

1970 to 2001, Associate Professor and Professor of Law at the University of Oklahoma, College of Law

Courses Taught: Agency and Partnerships (35 years); Corporations (35 years); Federal Securities Regulation (28 years); State Securities Regulation (Blue Sky Law) (a separate two-hour course) (28 years); Contracts I and II; Torts I; Business Planning; Close Corporations Seminar; Corporate Drafting Seminar; Franchising Seminar; Legal Writing; Appellate Advocacy; and Securities Transfers



Fall Semester, 1989, Harter Distinguished Visiting Professor of Law at the University of Louisville College of Law

1969-1970, Assistant Professor of Law at Stetson College of Law, St. Petersburg, Florida

1968-1969, Instructor at the University of Virginia

1966-1968, Assistant Professor at the University of South Dakota Law School

1975-1997, Instructor, Oklahoma Bar Review, teaching Agency and Partnerships, and Corporations

## **PROFESSIONAL EXPERIENCE**

Member of the United States Supreme Court, Third, Sixth and Tenth United States Courts of Appeals, and United States District Court for the Western District of Oklahoma

Member of the American Bar Association and Oklahoma Bar Association

Member of the ABA Section on Corporations and Banking, the State Securities Committee and the State Securities Enforcement Subcommittee

Member of the Oklahoma Bar Association Committee on Corporations, Banking, and Securities

Member, Public Investors Arbitration Bar Association; former President, Treasurer, and member of the Board

Member, Board of Advisers, National Council of Individual Investors

1970 to Present, Special Advisor and Consultant to the Oklahoma Securities Commission. Job has included trial and appellate litigation and expert testimony

1996, Member, Oklahoma Securities Commission Committee for Continuing Education for Broker-Dealers

1979-1995, Special Counsel for the North American Securities Administrators Association ("NASAA"). NASAA is an organization composed of the state and provincial securities agencies of the United States, Canada, and Mexico. Job included preparing legal briefs to be filed with the United States Supreme Court, the lower federal courts and the various state courts; testifying on behalf of NASAA and the state agencies before legislative hearings and as an expert witness in court and administrative cases; and providing general legal support for member agencies and prosecutors. The relationship with NASAA continues on a case by case basis.

1986-1991, Consultant to the Mead Corporation for the purpose of developing a national blue sky (state securities) law library for inclusion in the Lexis computer data system.

1988-1989, Consultant to the Virginia Corporation Commission in connection with a legislative study on revision of the securities and transactional exemptions in the Virginia Uniform Securities Act.

1980-1983, Co-Reporter for the National Conference of Commissioners on Uniform State Laws in their project to re-draft the Uniform Securities Act.

Expert witness in over 50 cases for state or state agencies on securities matters in state administrative or criminal cases in Oklahoma, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Idaho, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Missouri, Montana, Nevada, New Jersey, New Hampshire, North Dakota, Pennsylvania, Tennessee, Texas, Virginia, Wisconsin, Wyoming, and the Securities and Exchange Commission.

Counsel or Expert Witness in numerous private securities actions and arbitrations throughout the United States, including the United States Supreme Court, the U.S. Courts of Appeal for the Third, Fourth, Sixth, Tenth, and Eleventh Circuits, and U.S. District Courts for the District of Columbia, Georgia, Illinois, Maryland, Massachusetts, Nevada, Oklahoma, Pennsylvania, Texas, Virginia, and Utah as well as numerous state trial and appellate courts.

## **PROFESSIONAL HONORS AND AWARDS**

Distinguished Visiting Professor and holder of the Harter Chair, University of Louisville (1989)

Distinguished Associates Professor (1987)

North American Securities Administrators Association "Blue Sky Cube" Award for Distinguished Service (1986)

## **MAJOR RESEARCH PROJECT**

Development of a national state securities law data base from 1986 through 1991. This data base contains over 350,000 pages and consists of largely unreported or otherwise unavailable court decisions, administrative opinions, interpretive letters, statements of policies, and attorney general's opinions from the 50 states and District of Columbia. It covers a period from approximately 1956 through the present. The collection of this material required visiting each of the state securities agencies throughout the United States and copying their records. In many cases, the data base is now more complete than the individual state records. This information is an invaluable primary research source from my treatise on Blue Sky Law. Collected material from all 50 states is presently available on LEXIS.

## **PUBLICATIONS**

These publications have been cited by over 50 state and federal courts, including the United States Supreme Court, and state securities agencies in reported decisions.

### **BOOKS AND TEACHING MATERIALS**

Blue Sky Law (48<sup>th</sup> Semi-Annual Supplemental Release, November, 2009), 1800+ pages. Volumes 12, 12A and 12B of the Thomson/West Group Securities Series. First released in 1984. Supplements average over 300 pages of change. Considered the definitive text on state securities laws. This treatise is also available in electronic form on WestLaw.

Securities Arbitration Desk Reference, 2009-2010 Edition, Securities Law Handbook Series, co-authored with Seth E. Lipner, Thomson West. First released in 2006.

Cases and Materials on Federal Securities Regulation (11th ed. 1999). University of Oklahoma Continuing Legal Education, 400+ pages, loose-leaf.

Cases and Materials on State Securities (Blue Sky) Regulation (9th ed. 1999). University of Oklahoma Continuing Legal Education, 400+ pages, loose-leaf.

Cases and Materials On Agency and Partnerships (4th ed. 1999). University of Oklahoma Continuing Legal Education, 300+ pages, loose-leaf.

Materials on Agency and Partnerships and Corporations (1997 Ed.). Oklahoma Bar Review, 125+ pages. Materials updated annually since 1975.

The Federal Medical Care Recovery Act, 400+ pages, unpublished master's thesis submitted to the University of Virginia (1973).

### **LAW REVIEW ARTICLES**

"Viatical Settlements As Securities: Murky Area of Securities Law Begins to Clear, Part I," 1998 Ohio Sec. Bul. (No.2) (1998).

"Viatical Settlements As Securities: Murky Area of Securities Law Begins to Clear, Part II," 1998 Ohio Sec. Bul. (No.3) (1998).

"The Anatomy of An Investment Contract," 1997 Enforcement Law Reporter (NASAA)

147.

"Extended Liability in Administrative and Civil Enforcement Actions," 1994 Enforcement Law Reporter (NASAA) 1.

"Cellular Telephone and Wireless Cable Interests As Investment Contracts," 1993 Enforcement Law Reporter (NASAA) 86.

"Developments and Issues in Civil Liability Under the Uniform Securities Act," 62 U. Cin. L. Rev. 439 (1993).

"A Guide to the Investigative and Enforcement Provisions of the Uniform Securities Act," 37 Wash. & Lee L. Rev. 739 (1980), reprinted in the National Law Review Reporter.

"State Securities Regulation - An Overview," 32 Okla. L. Rev. 541 (Summer 1979), reprinted in 1980 Securities Law Review 745.

"The Conflict of Law Provisions of the Uniform Securities Act or When Does A Transaction 'Take Place In This State'," Part I, 32 Okla. L. Rev. 781 (1978).

"Commodity Options - Revisited," 25 Drake L. Rev. 75 (1976), reprinted in 1977 Securities Law Review 499.

"A Lawyer's Guide to the Intra-State Exemption and Rule 147," 24 Drake L. Rev. 471 (1975).

"Exemptions Under the Oklahoma Securities Act, Part I: The Governmental and Financial Institutional Exemptions," 28 Okla. L. Rev. 235 (1975).

"Introduction to Student Symposium, Definition of a Security," St. Mary Law. J. 95 (1974).

"The Naked Commodity Option Contract as a Security," 15 William and Mary L. Rev. 211 (1973).

"Don't Forget the Securities Acts!," 26 Okla. L. Rev. 160 (1973).

"The Federal Medical Care Recovery Act: A Case Study in the Creation of Federal Common Law," 18 Villanova L. Rev. 353 (1973).

"Partnerships, Limited Partnerships, and Joint Venture Interests as Securities," 37 Mo. L. Rev. 581 (1972).

"Control of the Spin-off Device Under the Securities Act of 1933," 25 Okla. L. Rev. 217 (1972).

"An Attempt to Return 'Investment Contracts' to the Mainstream of Securities Regulation," 24 Okla. L. Rev. 135 (1971).

"Administration of the Federal Medical Care Recovery Act," 46 Notre Dame Law, 253 (1971).

"Ex Parte Merryman: The Showdown Between Two Great Antagonists: Lincoln and Taney," 14 S. Dak. L. Rev. 207 (1969).

"Annual Surveys of South Dakota Law in Contracts, Agency, and Corporations," 13 S. Dak. L. Rev. at 422 (1968).

"Government Recovery Beyond the Federal Medical Recovery Act," 14 S.D. L. Rev. 20 (1967).

"Annual Surveys of South Dakota Law in Contracts, Agency, and Corporations," 12 S. Dak. L. Rev. at 269 (1967).

Student Comment, "Contracts: Promissory Estoppel: Employment Contracts for Indefinite Duration," 27 Mo. L. Rev. 611 (1962).

## **OTHER PUBLICATIONS AND PRESENTATIONS**

CLE Presentation, "The State of State Securities 2009," 2010 Winter Enforcement Conference (January 10-12, 2010)

CLE Presentation, "Misrepresentations and Omissions and How to Prove Them," 2009 NASAA Attorney/Investigator Training Seminar (December 7-8, 2009)

CLE Presentation, "The NASAA 2008 Annual Survey of State Securities Law," 2009 Winter Enforcement Conference (January 9-11, 2009)

CLE Presentation, "U.S. Securities Law Update," 2008 NASAA Attorney/Investigator Training Seminar (December 12-13, 2008)

CLE Presentation, "Expert Witnesses," 2008 NASAA Attorney/Investigator Training Seminar (December 12-13, 2008)

CLE Presentation, "Recent Developments in the Legislatures and the Courts," 2008 Winter Enforcement Conference (January 4-5, 2008)

CLE Presentation, "Update on the Law," NASAA Attorney/Investigator Training Seminar (December 1, 2007)

"Pleading Causes of Action," PIABA CLE Program 9<sup>th</sup> Annual Securities Law Seminar (October 17, 2007)

"Non-Element and Spurious Defenses," PIABA CLE Program 9<sup>th</sup> Annual Securities Law Seminar (October 17, 2007)

"Statute of Limitations and the FINRA Proposed Motion to Dismiss Rule," PIABA

CLE Program 9<sup>th</sup> Annual Securities Law Seminar (October 17, 2007)

CLE Presentation, "2006 Update on Developments in Blue Sky Law," NASAA Attorney/Investigator Training Seminar (December 1, 2006)

"The *Buckeye* Case and Its Impact on Arbitration," PIABA CLE Program "8<sup>th</sup> Annual Securities Law Seminar (October 25, 2006)

"Fixed, Variable, and Equity Indexed Annuities as Securities," PIABA CLE Program "8<sup>th</sup> Annual Securities Law Seminar" (October 25, 2006)

"Preserving Your Assets," Academy of Dispensing Audiologists 2006 Convention (October 13, 2006)

"Business Structure: Forming, Operating and Disposing of an Audiology Practice," Academy of Dispensing Audiologists 2006 Convention (October 12, 2006)

"Different Theories of Recovery and the Amount Thereof," PIABA CLE Program "7<sup>th</sup> Annual Securities Law Seminar" (September 28, 2005)

"A Revised Hedge Fund Primer," PIABA CLE Program "7<sup>th</sup> Annual Securities Law Seminar" (September 28, 2005)

"Ways to Avoid Arbitration," PIABA CLE Program "7<sup>th</sup> Annual Securities Law Seminar" (September 28, 2005)

"Primer on Liability for the Actions of an Investment Adviser," PIABA CLE "7<sup>th</sup> Annual Securities Law Seminar" (September 28, 2005)

CLE Presentation, "Annual Review of Significant Securities Cases," NASAA Winter Enforcement Conference (January 24, 2005)

CLE Presentation, "Securities Law and Case Updates," NASAA Attorney/Investigator Training Seminar (December 3, 2004)

"Broker-Dealer Liability for the Actions of an Investment Adviser," PIABA CLE Program "6<sup>th</sup> Annual Securities Law Seminar" (October 20, 2004)

"An Overview of the Uniform Securities Act (2002)," PIABA CLE Program "6<sup>th</sup> Annual Securities Law Seminar" (October 20, 2004)

"National/Legal Developments/Hedge Funds," Arizona State Bar Convention, "Current Topics in Securities Litigation/Regulation Practice" (June 10, 2004)

"Hedge Funds - How They Operate and Are They Securities?," PIABA CLE Program "5<sup>th</sup> Annual Securities Law Seminar" (October 22, 2003)

"Investment Analyst Cases-Legal Theories of Recovery," PIABA CLE Program "5<sup>th</sup> Annual Securities Law Seminar" (October 22, 2003)

"An Overview of Investment Analyst Cases," PIABA CLE Program "5<sup>th</sup> Annual Securities Law Seminar" (October 22, 2003)

PIABA Analyst Meeting (June 28, 2003)

Mass Torts Made Perfect, Securities, Drug & Environmental Litigation (June 19-20, 2003)

CLE Presentation, "State Securities Law for Examiners," NASAA 2003 Corporate Finance Training Seminar (March 21-22, 2003)

CLE Presentation, "New Developments in the Legislatures and the Courts," NASAA 2003 Winter Enforcement Conference (January 4-7, 2003)

"From the Professor," "A Primer on the Liability and Damages Provisions of Securities Acts - Part II, Rule 10b(5) and the Uniform Securities Act," Vol. 9, No. 4 PIABA Bar Journal 3-23 (Winter 2002)

"Law Practice Update," PIABA 11<sup>th</sup> Annual Meeting (October 3, 2002)

"Different Theories of Recovery and the Amount Thereof," PIABA CLE Program "4<sup>th</sup> Annual Securities Law Seminar" (October 2, 2002)

"Recent Developments in Clearing Broker Liability," PIABA CLE Program "4<sup>th</sup> Annual Securities Law Seminar" (October 2, 2002)

"Confirmation & Vacatur Practice," PIABA CLE Program "4<sup>th</sup> Annual Securities Law Seminar" (October 2, 2002)

"From the Professor," "A Primer on the Liability and Damages Provisions of Securities Acts - Part I, the Securities Act of 1933," Vol. 9, No. 3 PIABA Bar Journal 60-78 (Fall 2002)

CLE Presentation, "Securities Scams," NASAA 2002 Attorney/Investigator Training Seminar (August 16-17, 2002)

"From the Professor," "An Introduction to State Securities Law," Vol. 9, No. 2 PIABA Bar Journal 2-12 (Summer 2002)

CLE Presentation, "Securities Enforcement Update," NASAA 2001 Attorney

Investigator Training Seminar (November 2001)

"Update on Securities and Arbitration Cases," PIABA 10<sup>th</sup> Annual Meeting (October 18, 2001)

"Viatical Settlements As Securities," PIABA CLE Program "Securities Law Update: A Day With The Professors" (October 17, 2001)

"Theories of Liability in Selling Away Cases," PIABA CLE Program "Securities Law Update: A Day With The Professors" (October 17, 2001)

"Theories of Clearing Broker Liability," PIABA CLE Program "Securities Law Update: A Day With The Professors" (October 17, 2001)

Faculty Presenter, "Viaticals as Securities," Viatical Academy 2000 Program "New Directions for Viatical/Life Settlements," Newport Beach, California (October 27-29, 2000)

"Calculation of Damages," PIABA CLE Program "Securities 201" (October 10, 2000)

"Broker-dealer Liability Under Common Law," PIABA CLE Program "Securities 201" (October 10, 2000)

Panelist, "Predictions and Recommendations," Practising Law Institute Program "Securities Arbitration 2000, Today's Trends, Predictions for Tomorrow," New York City, NY (August 17, 2000)

"From the Professor," "Return to Basics III: Duty to Investigate; Contributory and Comparative Negligence; And In Pari Delicto," (December 1999)

CLE Paper, "Securities Regulation: An Initial Overview of the Securities Act and What is a Security?," NASAA Litigation Training Seminar (November 1999)

"What Is A Security?," PIABA CLE Program "Securities 101" (October 20, 1999)

"In This State," PIABA CLE Program "Securities 101" (October 20, 1999)

"Civil Liability Under State Securities Laws," PIABA CLE Program "Securities 101" (October 20, 1999)

"From the Professor," "Duty to Mitigate Damages In Securities Actions," Vol. 6, No. 3 PIABA Quarterly 8-12 (September 1999)



Annual Regional Enforcement Report, ABA Committee on Blue Sky Law, ABA Subcommittee on Enforcement (August 1999)

"From the Professor," "Clearing Broker Liability," Vol. 6, No. 1 PIABA Quarterly 2-7 (March 1999)

"From the Professor," "Thoughts on Weston Securities Corp. v. Aykanian," Vol. 5, No. 4 PIABA Quarterly 4-8 (December 1998)

CLE Presentation, "New Developments in State Securities Law," NASAA Litigation Training Seminar (November 1998)

CLE Presentation, "Elements of Fraud," NASAA Litigation Training Seminar (November 1998)

Course Materials, "Recent Developments In Securities Arbitration," PIABA 7th Annual Meeting 1-2-1-14 (October 22-24, 1998)

CLE Course Materials, "Dispositive Motions," PIABA 7th Annual Meeting 10-1-10-37 (October 22-24, 1998) (with Scot Bernstein)

"From the Professor," "Confirmation and Vacatur, Part I, Post-Award Interest," Vol 5, No. 3 PIABA Quarterly 4-11 (September 1998)

Annual Regional Enforcement Report, ABA Committee on Blue Sky Law, ABA Subcommittee on Enforcement (September 1998)

CLE Presentation, NASAA Summer Enforcement Training Conference  
(June 1998)

"From the Professor," "Dispositive Motions II," Vol. 5, No. 1 PIABA Quarterly 2-7 (March 1998)

"From the Professor," "Dispositive Motions," Vol. 4, No. 4 PIABA Quarterly 3-9 (December 1997)

CLE Course Materials, "Recent Developments in Arbitration and Civil Securities Litigation," PIABA 6th Annual Meeting (October 1997)

Annual Regional Enforcement Report, ABA Committee on Blue Sky Law, ABA Subcommittee on Enforcement (October 1997)

CLE Presentation, NASAA Summer Enforcement Training Conference (September 1997).

"From the Professor," "NASD Arbitrator's Training Materials," Vol. 4 No. 3 PIABA Quarterly 2-5 (September 1997)

"From the Professor," "Back to Basics, Part 2," Vol. 4, No. 2 PIABA Quarterly 2-10 (June 1997)

"From the Professor," "Back To Basics," Vol. 4, No. 1 PIABA Quarterly 2-7 (March, 1997)

Course Materials, "Viatical Settlements as Securities," 1997 NASAA Winter Enforcement Conference (January 1997)

"From the Professor," "The Changing Face of Arbitration," Vol. 3, No. 4 PIABA Quarterly 2-6 (December 1996)

CLE Course Materials, "Use of An Expert Witness," NASAA Winter Enforcement Training Conference (December 1996)

CLE Course Materials, "Recent Developments in Arbitration and Civil Securities Litigation," PIABA 5th Annual Meeting (October 1996)

"From the Professor," "Choice of Laws Clauses," Vol. 3, No. 3 PIABA Quarterly 2-5 (September 1996)

Annual Regional Enforcement Report, ABA Committee on Blue Sky Law, ABA Subcommittee on Enforcement (June 1996)

3-day Short Course, "Business Organizations, Agency and Partnerships, Business Planning, Securities Law, and White Collar Crime," United States Aid For Development and University of Oklahoma College of Continuing Education given in Baku, Azerbaijan (former Soviet Republic) (June 1996)

"From the Professor," "Potpourri," Vol. 3 No. 2 PIABA Quarterly 4-5 (June 1996)

CLE Course Materials, "Recent Developments in Arbitration and Civil Securities Litigation," PIABA 4th Annual Meeting, (October 1995)

CLE Course Materials, "Recent Developments Involving Business Under the Blue Sky," American Bar Association, Blue Sky Section, Annual Meeting (August 1995)  
Annual Regional Enforcement Report, ABA Committee on Blue Sky Law, ABA Subcommittee on Enforcement (June 1995)

CLE Course Materials and Four-Hour Presentation, "Recognizing and Investigating Securities Cases," National White Collar Crime Center and Nevada

Securities Division (March 1995)

Materials and Participation for 5 Separate Short Courses covering topics of "Business Organizations, Agency and Partnerships, Business Planning, Securities Law, and White Collar Crime," United States Aid For Development and University of Oklahoma College of Continuing Education (1995). Students from Poland, Bosnia, Azerbaijan, Kazakstan, and Kyrgyzstan.

CLE Course Materials, "Recent Developments in Arbitration and Civil Securities Litigation," PIABA 3rd Annual Meeting (October 1994)

CLE Course Materials, "Admission of CRD Records Into Evidence Into Evidence and Jurisdictional Problems in Connection With Computer Bulletin Boards," NASAA and Florida Department of Banking and Finance Training Course (Spring 1994)

Annual Regional Enforcement Report, ABA Committee on Blue Sky Law, ABA Subcommittee on Enforcement (March 1994)

CLE Course Materials, "Recent Developments in Arbitration and Civil Securities Litigation," PIABA 2nd Annual Meeting (October 1993)

CLE Course Materials, Securities Symposium, Ohio  
Bar Association and Ohio  
Division (Fall 1993)

CLE Presentation, Missouri Bar Annual Meeting (September 1993)

CLE Course Materials, "Current Issues and Cases In Arbitration," in "Securities Arbitration," University of Oklahoma CLE and Securities Arbitration Institute (1991)

Short Course Materials, "Criminal Prosecutions Under State Securities Laws of Oil, Gas, and Mining Schemes," Leviticus Training Program (September, 1990) (four-hour presentation). Leviticus is a federally funded organization consisting of state agencies with police powers which investigate and prosecute criminal conduct in the area of oil, gas, and mining.

CLE Course Materials, "Present Trends and Concerns in Blue Sky Law," University of Montana Continuing Legal Education, Securities Regulation Symposium (1990)

CLE Course Materials, "Current Issues and Cases In Arbitration," in "Securities Arbitration," Securities Arbitration Institute (1990)

CLE Course Materials, "Securities Regulation: An Initial Overview or Securities 101," North American Securities Administrators Association Analyst Education

Seminar (1990)

CLE Course Materials, "Current Issues and Cases In Arbitration," in "Securities Arbitration," Securities Arbitration Institute (1989)

CLE Course Materials, "Securities Regulation: An Initial Overview or Securities 101," North American Securities Administrators Association Analyst Education Seminar (1989)

Class Presentation, Leviticus Training Program (September, 1988).

CLE Course Materials, "Are Gold Mine Scams Securities Or Commodities," North American Securities Administrators Association, Project Goldbrick Seminar (1988).

CLE Course Materials, "Securities Regulation: An Initial Overview or Securities 101," North American Securities Administrators Association Analyst Education Seminar (1988).

CLE Course Materials, "The Application of Federal Securities Laws," in "Forming and Representing Business Entities," University of Oklahoma CLE (1988).

CLE Course Materials, "Overview of Litigation and Arbitration in Federal and State Securities Cases," in "Stockbroker Litigation and Arbitration Regional Institute," University of Oklahoma CLE (1988).

CLE Course Materials, "Overview of Regulation D," in "Securities Law: A Guide to Amended Regulation D," University of Oklahoma CLE (1988).

CLE Course Materials, "Arbitration in Securities and RICO cases--It's History and Current Legal Standing," in "Stockbroker Litigation and Arbitration," University of Oklahoma CLE (1988).

CLE Course Materials, "Regulation D as Revised, 1988," in "Securities Law: A Guide to Amended Regulation D," University of Oklahoma CLE (1988).

CLE Course Materials, "Rights and Liabilities of Directors, Officers, and Shareholders," in "Corporations from A to Z," University of Oklahoma CLE (1987)

CLE Course Materials, "Fallout For Old Corporations: What Amendments Cannot Be Made, Unanswered Questions, The Issue of Vested Rights," in "Corporations From A to Z," University of Oklahoma CLE (1987).

CLE Course Materials, "Overview of Litigation and Arbitration in Federal and State Securities and Commodities Cases," in "After the Crash: Defending or Suing the Stockbroker," University of Oklahoma CLE (1987).

CLE Short Course, "Securities Law Primer: Part I," University of Oklahoma CLE (1986).

CLE Short Course, "Securities Law Primer: Part II," University of Oklahoma CLE (1986).

CLE Materials, "Exemptions Under the Hawaii Securities Act," North American Securities Administrators Association and Hawaii Securities Commission Joint Enforcement Training Program (1986).

CLE Materials, "The Application of Securities Laws to Horse Syndications: Jurisdiction, Exemption and Integration," University of Oklahoma CLE (1984).

CLE Materials, "State Regulations," in Conference on Securities Regulation, University of Texas CLE (1985).

CLE Materials, "Securities Law and the U.C.C. Considerations," in "Corporations-How To Start, Advise, and Dissolve," University of Oklahoma CLE (1985).

CLE Materials, "Developments in State and Federal Courts, in "New Developments in Securities and Corporate Law," University of Oklahoma CLE (1985).

CLE Materials, "The Application of Securities Laws, Definitions of 'Security' and 'Offer and Sale', Jurisdiction, and Integration Problems," in "Securities Law For the General Practitioner and Litigation Lawyer," University of Oklahoma CLE (1985).

CLE Materials, "Federal and State Securities Regulation of Horses," in "Horse Law: From Auctions to Syndications," University of Oklahoma CLE (1984).

CLE Materials, "An Overview of Regulation D," in "Regulation D in 1984," University of Oklahoma CLE (1984).

CLE Materials, "The Proposed Uniform Limited Partnership Act of Oklahoma," in "Partnerships II: Using Limited Partnerships as Tax Shelters For Real Estate and Oil and Gas Activities," University of Oklahoma CLE (1983).

CLE Materials, "Statutory Provisions," in "Partnerships I: Overview of Tax, Securities, and Drafting Issues of General and Limited Partnerships," University of Oklahoma CLE (1983).

CLE Materials, "Basic Securities Issues in Limited Partnerships," in "Partnerships I: Overview of Tax, Securities, and Drafting Issues of General and Limited

Partnerships," University of Oklahoma CLE (1983).

CLE Presentation, "ABC's of Corporations," University of Oklahoma CLE (1983).

CLE Materials, "The Oil Field Promoter - The ABC's of a Plaintiff's Securities Suit Against the Promoter," University of Oklahoma CLE (1983).

CLE Materials, "Securities Primer For the General Practice Lawyer," University of Oklahoma CLE (1983).

CLE Materials, "Review of Private and Limited Offering Exemptions," in "SEC Regulation D Limited Offering Exemption," University of Oklahoma CLE (1982).

CLE Presentation, "Investigation and Prosecution of the Boiler Room," NASAA Fraud Enforcement Seminar (1982).

CLE Materials, "Integration-History and Present Posture" in "Securities Integration," University of Oklahoma CLE (1982).

Article, "The Power of State Securities Agencies to Establish Ethical Standard for Practice Before the Agency," Blue Sky News (NASAA) (Spring 1981).

CLE Materials, "State Securities Investigative and Enforcement Procedures-An Overview," NASAA 4th Annual Regional Seminar (1979).

CLE Materials, "State Securities Investigative and Enforcement Procedures Including Administrative and Civil Relief Available," NASAA 4th Annual Regional Seminar (1979).

CLE Materials, "The Expanding Definition of a Security," in "Securities and Franchises," University of South Dakota and South Dakota State Bar (1979).

CLE Materials, "State Investigative and Enforcement Procedures-An Overview," NASAA 3d Annual Regional Seminar on Securities Fraud (1978).

CLE Materials, "State Securities Regulation-An Overview," NASAA 3d Annual Regional Seminar on Securities Fraud (1978).

White Collar Crime Training Manual, "Expanding Enforcement Options: The Securities Fraud Approach," Battelle Inst.-LEAA (1978).

CLE Materials, "State Securities Regulation," NASAA 2d Annual Regional Seminar on Securities Fraud (1977).

CLE Materials, "State Securities Regulation-An Overview," NASAA 1st Annual

Regional Seminar on Securities Fraud (1976).

CLE Materials, "The Intrastate Exemption and Regulation A," in "Regulation of Securities in Oklahoma," University of Oklahoma CLE (1974).

CLE Materials, "What is a Security?," in "Regulation of Securities in Oklahoma," University of Oklahoma CLE (1974).

Editor and Author of first two chapters, "Regulation of Securities in Oklahoma," University of Oklahoma CLE (1974).

Book Review, "Warren The Man, The Court, and The Era," 13 S. Dak. L. Rev. 247 (1968).

Article, "The Dawn of a New Era in Freedom of Government Information?," 8 Grassroots Editor 15 (Sept. 1967)

CLE Materials, "Introduction and Model Business Corporation Act, Sections 1-15," in "Corporations," University of South Dakota CLE (1967).

Article, "The News Photographer and the Law," 5 Grassroots Editor 3 (April 1964).

## OTHER LEGAL RESEARCH

### SIGNIFICANT BRIEFS

PIABA Amicus Curiae Brief, *The United States Securities and Exchange Commission v. ETS Payphones, Inc. and Charles E. Edwards*, Supreme Court of the United States (2003)

Brief, *Weinstein v. Josephthal, Lyon & Ross, Inc.*, U.S. Court of Appeals, 11th Circuit (1999).

Brief, *Slinkard v. Ameritas Inv. Corp.*, United States Supreme Court (Brief in opposition to grant of Certiorari) (1995).

Brief, *Slinkard v. Ameritas Inv. Corp.*, Oklahoma Supreme Court (1994).

Brief, *Slinkard v. Ameritas Inv. Corp.*, Oklahoma District Court (1994).

NASAA Amicus Curiae Brief, *American Microtel, Inc. v. State, Nevada* Supreme Court (1994).

NASAA Amicus Curiae Brief, *Dean Witter Reynolds Inc. v. M.C. McCoy*, U.S. Court of Appeals, 6th Circuit (1994), reprinted in *NASAA Reports (CCH)* ¶15,007.

NASAA Amicus Curiae Brief, Spectrum Resources Group, Inc. v. State ex. rel. Secretary of State, Securities Division, Indiana Superior Court (1994).

NASAA Amicus Curiae Brief, State v. Fullerton, Nevada Supreme Court (1993).

NASAA Amicus Curiae Brief, In re American Microtel, Indiana Securities Division (1993).

NASAA Amicus Curiae Brief, Olde Discount Corp. v. Tupman, United States Supreme Court (Brief in support of grant of Certiorari) (1993), reprinted in NASAA Reports (CCH) ¶15,003.

NASAA Amicus Curiae Brief, In re Spectrum, Ltd., Indiana Securities Division (1993), reprinted in NASAA Reports (CCH) ¶15,001.

NASAA Amicus Curiae Brief, Boettcher & Co. v. Munson, Colorado Supreme Court (1992).

NASAA Amicus Curiae Brief, State v. Keating, California Superior Court (1991), reprinted in NASAA Reports (CCH) ¶9613.

NASAA Amicus Curiae Brief, Probst v. State, Oklahoma Court of Criminal Appeals (1991).

NASAA Amicus Curiae Brief, Aganda v. Montana State Auditor's Office, Securities Division, Montana District Court, 1st District (1991).

NASAA Amicus Curiae Brief, State v. Black, Arizona Supreme Court (1991), reprinted in NASAA Reports (CCH) ¶9614.

NASAA Amicus Curiae Brief, Norden v. Friedman, et al., Missouri Supreme Court (1991).

Brief, Pepsico, Inc., et al. v. Uselton, et al., United States Supreme Court (Brief in opposition of grant of Certiorari) (1991).

Brief, Uselton v. Commercial Lovelace Motor Freight, United States Supreme Court (1991).

Brief, Uselton v. Commercial Lovelace Motor Freight, U.S. Court of Appeals, 10th Circuit (1990).

Oklahoma Securities Commission Amicus Curiae Brief, Hall v. Edge Energies. Inc., Oklahoma Court of Appeals (1990).

NASAA Amicus Curiae Brief, Memphis Investment Banking Association v. MacReynolds, Tennessee Chancery Court (1990), reprinted in NASAA Reports (CCH) ¶9611.

Brief, Cook v. Westinghouse Credit Corp., Oklahoma Court of Appeal (1990).

NASAA Amicus Curiae Brief, State v. Saas, Washington Supreme Court (1990), reprinted in NASAA Reports (CCH) ¶9612.



NASAA Amicus Curiae Brief, Securities Industry Association v. Lewis, U.S. District Court, Southern District of Florida (1990), reprinted in NASAA Reports (CCH) ¶¶9607.

Brief, Federal Deposit Insurance Corp. v. Bell, U.S. Court of Appeals, Tenth Circuit (1990).

NASAA Amicus Curiae Brief, Securities Industry Association v. Connolly, United States Supreme Court (Brief in support of grant of Certiorari) (1989).

NASAA Amicus Curiae Brief, Securities Industry Association v. Connolly, U.S. Court of Appeals, First Circuit (1989), reprinted in NASAA Reports (CCH) ¶¶9604.

NASAA Amicus Curiae Brief, Connolly and Guthary v. Securities Industry Association, United States Supreme Court (1989).

NASAA Amicus Curiae Brief, Feigin v. Zinn, Colorado Court of Appeals (1989), reprinted in NASAA Reports (CCH) ¶¶9609.

NASAA Amicus Curiae Brief, Reves v. Arthur Young and Co., United States Supreme Court (1989), reprinted in NASAA Reports (CCH) ¶¶9606.

NASAA Amicus Curiae Brief, Caucus Distributors v. State, Alaska Supreme Court (1989), reprinted in NASAA Reports (CCH) ¶¶9610.

Brief, Cook v. Westinghouse Credit Corp., Oklahoma Supreme Court (1988).

NASAA Amicus Curiae Brief, Moreland v. Department of Corporations, California District Court of Appeal (1987).

NASAA Amicus Curiae Brief, S.W. Devanney & Co., Inc. v. Griffin, Colorado Court of Appeals (1986), reprinted in NASAA Reports (CCH) ¶¶9603.

NASAA Amicus Curiae Brief, Holderman and Cox v. Fleet Aerospace Corporation, United States Supreme Court (1986).

Brief, Valentine v. Blubough, Oklahoma District Court (1986).

Brief, Mayfield v. H.B. Oil & Gas, Inc., Oklahoma Supreme Court (1985).

Brief, Gale v. Great Southwestern Exploration Co., U.S. District Court, Northern District of Oklahoma (1984).

Brief, Ratliff v. Jim Edelman Production Co., U.S. District Court, Western District of Oklahoma (1984).

Brief, Trinity Broadcasting v. Eller, Oklahoma Supreme Court (1984).

NASAA Amicus Curiae Brief, North Star Int'l v. Arizona Corporation Commission, U.S. Court of Appeals, Ninth Circuit (1983).

NASAA Amicus Curiae Brief, Kroog v. Mait, U.S. Court of Appeals, Seventh Circuit (1982).

NASAA Amicus Curiae Brief, People v. Carter, Illinois Supreme Court (1982).

NASAA Amicus Curiae Brief, Payable Accounting Corp. v. McKinley, Utah Supreme Court (1981).

NASAA Amicus Curiae Brief, Edgar v. Mite Corp., United States Supreme Court (1981).

NASAA Amicus Curiae Brief, Board of Trade of the City of Chicago v. Securities and Exchange Commission, U.S. Court of Appeals, Seventh Circuit (1981).

NASAA Amicus Curiae Brief, Edgar v. Mite Corporation and Mite Holdings, Inc., United States Supreme Court (1981).

NASAA Amicus Curiae Brief, State v. Forbes and Bradstreet, Inc., Montana District Court (1980).

Oklahoma Securities Commission Brief, State ex rel. Day v. Southwestern Mineral Energy, Oklahoma Supreme Court (1980).

Oklahoma Securities Commission Brief, Marley v. Lentz & Assoc., Oklahoma Supreme Court (1979).

Oklahoma Securities Commission Brief, In re Merrill Lynch Pierce, Fenner, and Smith, Oklahoma Securities Commission (1979).

Oklahoma Securities Commission Brief, State ex rel. Day v. Petco Oil & Gas, Inc., Oklahoma Supreme Court (1976).

## **MEMORANDA**

Expert Witness Memorandum, Boyd v. Drinker, Biddle & Reath, Pennsylvania Court of Common Pleas (1998).

State of California Expert Witness Memorandum, People v. CD Services, Inc., California Superior Court (1998).

State of Alaska Expert Witness Memorandum, Government Duty to Investigate Before Granting Securities Exemption (1997).

NASAA Expert Witness Memorandum, State v. Beard, Idaho District Court (1997).

NASAA Expert Witness Memorandum, In re Juran & Moody, Inc., North Dakota Securities Commission (1997).

State of Tennessee Expert Witness Memorandum, Sizemore v. Lloyd's of London, Tennessee Chancery Court (1996).

Expert Witness Memorandum, Washington v. Mining Properties, Inc., Montana District Court (1996).

Expert Witness Memorandum, Bullough v. Merging Capital, Inc., U.S. District Court, District of Nevada (1996).

NASAA Expert Witness Memorandum, In re Eurogold, North Dakota Securities Commission (1995).

NASAA Memorandum, Use and Legal Provisions of the NASAA "CRD" system (1994).

NASAA Expert Witness Memorandum, State v. Gertken, North Dakota Securities Commission (1993).

Expert Witness Memorandum, Stephens, Inc. v. Royal Maccabee Life Ins. Co., Arkansas Chancery Court (1993).

NASAA Expert Witness Memorandum, Comstock v. Evans, Alabama Circuit Court (1991).

Expert Witness Memorandum, Reagan v. Adams, Texas District Court (1991).

Expert Witness Memorandum, Dyer v. Prudential Bache, American Arbitration Association (1991).

NASAA Memorandum, In re Monex, New Hampshire Securities Division (1991).

NASAA Memorandum, State v. Keating, California Superior Court (1990).

NASAA Memorandum, In re Double Jeopardy, Illinois Circuit Court (1990).

NASAA Memorandum, In re Take-Over of Cummins Diesel, Indiana Securities Commission (1990).

NASAA Memorandum, In re Cartwright, Montana Securities Division (1990).

NASAA Expert Witness Memorandum, Pardo v. Pomeroy, Federal District Court, Southern District of Texas (1990).

Expert Witness Memorandum, Ahrberg v. Mid-America Racing Stables Inc., U.S. District Court, Western District of Oklahoma (1989).

NASAA Expert Witness Memorandum, State v. Dill, New Mexico Securities Commission (1988).

NASAA Expert Witness Memorandum, Adams v. Landers, Colorado District Court (1986).

Expert Witness Memorandum, Petroleum Acreage Corp.(1986).

Expert Witness Memorandum, TXO Production Corp. v. Bullock Resources, Inc., U.S. District court, Southern District of Texas (1985).

Expert Witness Memorandum, Westlake v. Abrahams, U.S. District Court, Northern District of Georgia (1982).

NASAA Memorandum, Agent Examination Requirements (1981).

## **OPINIONS**

NASAA Opinion, In re Foreign Banks, Iowa Securities Division (1990).

Draft Opinion, Cook v. Pepco, [1987-1988 Transfer Binder] Blue Sky L. Rep. (CCH) ¶72,694 (Okla. Dist. Ct. 1987).

Draft Opinion, In re Overthrust Mineral Corp., [1982-1984 Transfer Binder] Blue Sky L. Rep. (CCH) ¶71,849 (Wyo Sec. State. 1983).

Draft Opinion, In re Goldstein Samuelson, [1971-1978 Transfer Binder] Blue Sky L. Rep. (CCH) ¶71,095 (Okla. Sec. Admin. 1973).

## **STATUTES**

Drafts 1 and 2, Revised Uniform Securities Act (1985)(Co-Reporter) (1981-1983).

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## **APPENDIX G - Report of Documents Reviewed at Gallagher, Callahan & Gartell PC**

### **Introduction**

On March 11, 2010, Jeff Spill and Kevin Moquin of the State of NH Bureau of Securities Regulation (BSR) were at Gallagher, Callahan & Gartell PC (GCG) 214 N. Main Street, Concord, NH 03302 (800-528-1181). On March 12, 2010, Carvel Tefft, BSR, William Masuck, BSR, and Jeff Spill were at GCG. Documents relating to Financial Resources Mortgage (FRM), GCG, and the State of NH Banking Department (SBD) were reviewed and flagged for copies. Copies were provided to the BSR.

GCG was the FRM Corporate Attorney. Attorney Dennis Maloney, Director, and Susan LeDuc, Regulatory Specialist, were the two primary individuals within the firm involved with FRM dealings. Mr. Maloney is Susan LeDuc's supervisor. GCG corresponded with the SBD on FRM regulatory matters and with the BSR regarding FRM issuing unregistered securities.

Included within GCG's records were records of FRM's financial deficiencies, SBD correspondence, internal FRM correspondence, evidence of FRM's private lending opportunities, correspondence related to FRM's mortgage originator required licensure, other states' exams of FRM, and notes on the day FRM closed.

### **Summary**

1) The following information appeared in GCG's files related to financial deficiencies:

- There were numerous flags indicating FRM was having financial troubles. Mr. Maloney advised Mr. Farah to borrow money to recapitalize FRM twice. The second time was October 30, 2006, at which time Mr. Maloney discussed a potential loan from a lender "out west." Mr. Maloney said the loan cannot be to FRM and instead should be made out to Mr. Farah, who would then invest the money to FRM himself.
- It took five months for FRM to provide financial documents to the SBD and they were in draft form. FRM was aware SBD was going to request financial documents in October 2008. A March 20, 2009 email from Susan LeDuc to Nicole Jeanson of SBD stated FRM draft financials were received by accountant but outstanding verifications still exist. Draft Cash Flow Statement displays net income dropping from \$249,789 in 2007 to \$20,270 in 2008.

2) The following information appeared in GCG's files related to SBD Communications:

- Files related to SBD communications include: notes related to Susan LeDuc speaking with Banking Commissioner Peter Hildreth; CL & M bank information; and SBD announcements to FRM concerning exam dates.

- On June 8, 2006 the Law Office of Gould and Burke responded to Mr. Hildreth regarding the SBD Subpoena for Financial Statements that Mr. Hildreth signed.
- On May 11, 2009 an email from Susan LeDuc to Rhonda Vappi re: Exam Response; Susan LeDuc indicates she talked to the Bank Commissioner about a Financial Resources document she sent over. The document isn't specified.
- In correspondence from the SBD in March 2003, the SBD issued FRM a license even though information provided by FRM was inaccurate and incomplete.
- November 20, 2007 correspondence to SBD displays CL&M's wiring instructions and bank information.
- November 12, 2007 Jennifer McAllister of SBD states SBD 12/20/05 Order to Show Cause Enforcement Case No. 05-071 is closed. This allowed FRM to disclose there were no open administrative actions when applying for licensing in other states.
- October 23, 2008 correspondence indicates SBD's most recent exam was announced to FRM which allowed FRM to "feverishly" look at files and revise databases. After the announced SBD exam, Mr. Farah mentioned working papers cannot be provided and located on the back-up Network to which Scott Farah, Nancy O'Connor and Richard Rollock have access. Mr. Farah mentions the Annual Report is populated from a "Closed File Data Base."
- April 21, 2009 email from Rhonda Vappi to Susan LeDuc states, " Mr. Farah needs to respond to the SBD examiners' questions because the majority of the problems are Hard Money alternative construction loans."

3) The following information appeared in GCG's files related to internal correspondence:

- Rhonda Vappi expressed her concern about FRM to Susan LeDuc a couple of times, starting in July 2008 saying that they are behind on the eight ball and she is concerned she may be liable for FRM's wrong doings.
- February 19, 2009 Email from Rhonda Vappi of FRM to Susan LeDuc, Subject: Personal Question "Since I am titled Office Manager and Compliance Officer, will I be able to held financial liable should anything go terribly wrong?" (Attachment 1)
- May 22, 2008 FRM internal email indicates FRM is having difficulty getting Federal Housing Administration (FHA) approval because of false advertising.

4) The following information appeared in GCG's files related to private lending and FRM required licensure:

- Private lender and mortgage originator licensure start on August 13, 2007 but FRM never gets licensed.
- Discussion on the private lenders and required licensure first appears on August 13, 2007. Licensure is also mentioned. An email from Rhonda Vappi to Susan LeDuc says that Mr. Farah wants her to “type a newsletter which will contain a link giving his private lenders access by secure means to some sensitive information.” A conference call is scheduled.
- March 23, 2009 email from Susan LeDuc to Richard Rollock of FRM cc: Rhonda Vappi Subject: Mortgage Loan Originator License Required by 4/1/09, “Hi Rich, mortgage loan originators must be licensed by 4/1/09 in NH. I assume Scott (as an individual mortgage loan originator) must also be licensed.” FRM or Mr. Farah never became licensed.
- March 31, 2009 Susan LeDuc emails Mr. Farah suggesting private investors are benefitting from licensing exemptions which have expired.
- October 16, 2009 email from Susan LeDuc internal to GCG, Subject: Decision tree for mortgage licensing pursuant to RSA 397-A-- mentions if HB 610 (Title: *relative to consumer protection from certain practices of mortgage bankers, mortgage brokers, and mortgage loan originators and implementing the S.A.F.E. mortgage licensing act.*) passes there will no longer be exemptions, and lenders would be required to be licensed as mortgage bankers. Mentions discussions with SBD--commercial loans and lenders would be required to be licensed or be a bank.
- June 16, 2009 email from Susan LeDuc to Dennis Maloney Re: Referrals, “The bottom line is that any person cannot pay any other person for the referral of mortgage settlement service business”.
- October 19, 2009 email from Susan LeDuc to Rhonda Vappi cc: Dennis Maloney; “The problem is that after the changes to RSA 397-A this summer, it is now prohibited for any individuals to be a lender for 397-A loans unless s/he is licensed.” “The banking department will expect to be able to access the site to ensure that you don’t have any 397-A loans on it” (Attachment 2).
- October 20, 2009 correspondence from Dennis Maloney to Mary Jurta cc: Farah, Barry Glennon Re: Financial Resources; GCG retained to represent FRM regarding 10/13/09 SBD letter -- mentions fractional interest and loans subject to RSA 397-A and Farah is in the process of filing for a loan originator license.

5) The following information appeared in GCG’s files related to other FRM State Exams that display numerous violations:

- An FRM employee, Melissa, quit on/about June 27, 2008 after the Commissioner of Banks of the Commonwealth of Massachusetts (MA) examination. FRM received a 4 rating out of 5 with 5 being the worst. MA issues MOU and states in exam, “Internal, unaudited financial statements have not, historically, been provided to examiners.”



Advertising violations including unauthorized websites ([www.franhomloans.com](http://www.franhomloans.com)). FRM needs to comply with revised net worth and surety bond requirement effective 12/31/08.

- On 7/23/08 an email from Rhonda Vappi to Susan LeDuc Subject: states R U Mad at me? "We got a response from MD's (Maryland Banking Department) exam on Monday as well and it is not good and I am feeling like we are getting further and further behind the eight ball here."
- A State of Virginia Banking exam displayed FRM was doing business in states in which it was not licensed.

6) The following information appeared in GCG's files related to the last day of FRM:

- November 10, 2009 Dennis Maloney had written notes: "call from Celia, Mary Jurta, and Kim Griffin. FRM closed doors; sent examiners today; docs and records open to public: not secure; door to downstairs office was unlocked; examiners went in to go upstairs; no people in the building; Gould & Burke – no longer represent FRM as of Friday and last contact with Scott on Thurs; Dodge at CLM not a tenant?; DAK moved out on Sunday; G&B moving out today."

### **GCG TIME LINE/KEY CORRESPONDENCE**

The GCG Time Line reflects key correspondence in a chronological order.

- 7/11/02      Denis Maloney comments on Draft FRM 12/31/01 Financial Statements:  
"Articles don't provide for issuance of preferred stock and not authorized."
- Mr. Maloney notes on financial statements indicate: incorrect dollar amount and number of subscribed preferred stock on Balance Sheet; value of notes payable is inaccurate
- Notes to Financial Statements state "Notes Receivable state the majority of loans are unsecured and noninterest bearing; related party notes state the company has advanced funds on an unsecured, non-interest bearing basis to a related corporation that is owned by the company's majority shareholder; the lease is between the company and a related party."
- 1998 general ledger register report displays Scott Farah loaning \$255,842 to FRA; many inflows and outflows of Farah money in 1999 register. 1997 register report displays \$477,446.97 of Farah inflow. 1996 Farah inflow \$357,590.
- 10/31/02      Correspondence from Dennis Maloney to Scott Farah regarding telephone conversation to borrow funds from a family acquaintance for funding/recapitalizing the company; recommends to pay outstanding balance of related company, Insurance Options, Inc.

- 3/26/03 Correspondence from Mary Jurta of SBD to Scott Farah issuing renewal license but mentions information FRM provided is inaccurate and incomplete; preferred shares didn't match up with financial statements.
- 4/22/03 Correspondence from Scott Farah to Mary Jurta – second draft financials provided; indicates there are three shareholders, including [REDACTED], who have promissory notes with preferred shares as additional collateral and says the accountant classified them as short term notes payable.
- 2006 Dennis Maloney notes on conversation with Scott Farah. No specific dates for these noted, but sometime in 2006. Maloney noted, “2006 doing well; separate corporation does servicing; CL & M, no ownership or control, NV Corp, different closing agent involved in table funding . \$ straight through the closing/title agent.”
- 
- 5/10/06 Email from Dennis Maloney to Jeff Spill: provides FRM year end 12/31/04, 12/31/03 financial statements. 12/31/05 not completed by FRM yet.
- 6/6/06 Correspondence from Scott Farah to SBD; [REDACTED] redeemed 25 preferred shares or 100% October 2005.
- 6/8/06 Correspondence from the Law Office of Gould and Burke to Peter Hildreth, SBD responding to SBD Subpoena.
- 10/13/06 Denis Maloney writes letter to Scott Farah advertising legal services and acknowledges Mr. Farah's intent to use law firm. Susan LeDuc named Regulatory Specialist for FRM.
- 10/26/06 Email from Susan LeDuc to Scott Farah; mentions SBD 10/4/06 referral for enforcement.
- 10/26/06 Email from Susan LeDuc to Donna Soucy, SBD cc: Kim Griffin; Ms. LeDuc requests to speak to SBD to develop a timeline for action/improvements.
- 10/30/06 Dennis Maloney notes on conversation with Scott Farah, “person out west willing to lend \$'s; discussed loan cannot be to company, so lend \$'s to Scott then will invest money into the company himself.”
- 10/31/06 Dennis Maloney notes on conversation with Scott Farah, “discussed statement that all debt of FRA paid (vs. personal debt of Scott). Farah said fellow came out of woodwork recently and said Scott Farah-FRA owed him 30g from 10 years ago, had pledged stock. Scott will pay off today – he will get a release from fellow.”

- 11/3/06 Virginia Banking Department exam – cited 5 violations (includes sharing applications with lenders).
- 11/9/06 Dennis Maloney sends Susan LeDuc BSR Draft consent order.
- 11/29/06 Email from Susan LeDuc to Scott Farah cc: Dennis Maloney Subject Virginia Exam Report; Ms. LeDuc provides response to VA Exam; FRM was originating residential mortgages from locations that are not licensed in VA, including GA and Oklahoma; overcharging fees, failure to complete all items on the disclosure form.
- 12/20/06 GCG discusses meeting with Peter Hildreth, SBD Commissioner, regarding ongoing NH Banking Company matters including FRM:
- 12:45 pm Email from Christopher Gallagher to Dodd Griffin; Susan Hollinger; Denis Maloney; Susan LeDuc, Subject Re: Strategy/SNL; says “Keep in mind I meet with the Commissioner tomorrow AM so if there are any issues for his attention I need to know today, what they are.”
- 1:39 pm Email from Dennis Maloney to Christopher Gallagher cc: Susan LeDuc; Susan Hollinger Subject Re: Strategy/SNL Hildreth Thoughts; Thoughts on Peter Hildreth include - “I am not certain if the SBD would start a proceeding to yank license, providing us with opportunity to be heard...name of this client is Financial Resources of the Lakes Region, Inc. now, I believe things are quiet so probably best to let this one lie quiet.”
- 2:22 pm Email from Susan LeDuc to Dennis Maloney Christopher Gallagher of GCG cc: Susan Hollinger and W. John Funk Subject Re: Strategy/SNL Hildreth Thoughts; LeDuc says she thinks there is some confusion how SBD have let the file languish at SBD since the 2004 exam and it plays to GCC’s advantage Ms. LeDuc states, “The October 4, 2006 letter from Kim Griffin states that “Observations in the report are significant enough that we are referring the file to our enforcement attorney for evaluation and possible enforcement action.”” (Attachment 4)
- 1/22/07 Email from Susan DeLuc to GCG attorneys requesting a meeting for FRM mortgage bankers/brokers—quasi-litigation issues.
- 6/28/07 Judgment to disbar from Massachusetts Supreme Court; Stuart H. Sojcher (was registered agent of FRM in Massachusetts and kept funds from lender rather than pay off \$1 million in mortgages).
- 8/13/07 Private Lenders website is first mentioned in an Email from Rhonda Vappi to Susan LeDuc; Vappi tells LeDuc that Farah wants her to “type a newsletter which will contain a link giving his private lenders access by secure means to some sensitive information.” A conference call is scheduled.

- 8/21/07 Memorandum of Understanding between Scott Farah, Business Manager, and Mike Trainum Founder and Majority owner of Shellbook Publishing Systems, LLC (SPS), regarding the structure the company and its future operations. Farah has 30% share in SPS.
- 8/22/07 Email from Susan LeDuc to Scott Farah--reminder of who must be licensed in order to act as a mortgage banker, given the mortgage loan funding crisis and potential for creative funding solutions.
- 10/25/07 Email from Rhonda Vappi to Susan LeDuc --asking if she has gotten anywhere on the question of where to draw the line between Broker expectations and Lenders.
- 11/01/07 Email from Rhonda Vappi to Susan LeDuc—Ms. Vappi sends Ms. LeDuc response to SBD questionnaire. SBD questions CL&M. Number 10 of the questionnaire describes CL&M address. FRM provides wiring instructions for CL&M to display physical address. Also included is CL&M's bank account information.
- 11/20/07 Email from Jennifer McAllister of SBD to Susan LeDuc Re: Status of Case No. 05-071; McAllister says case is closed. Ms. LeDuc needs to know status of the case because FRM needs to state whether there are any open administrative actions in other states.
- 12/6/07 E-mail from Laurie Main to Susan LeDuc; FRM inactive in WA (failed to file annual report).
- 1/28/08 Susan LeDuc also primarily responsible for handling name changes and amended articles of incorporation for other state registrations. Summary document of name changes for all states that FRM does business; NH, CA, GA, ID, ML, MA, MI, NM, NC, OK, PA, WA, VA.
- 2/27/08 Email from Susan LeDuc to Betty Frasier cc: Dennis Maloney; "If DJM does not know about Gabrielson, then Mike Burke (Gould & Burke) probably does."
- 3/14/08 Correspondence from Jeff Spill to Dennis Maloney; Mr. Spill asked if \$160,000 loan to the borrower was funded by investors and whether the investor received a promissory note in exchange for their investment. This is regarding [REDACTED] inquiry.
- 3/20/08 Correspondence from Mr. Maloney to Mr. Spill--FRM served as a commercial broker. Loan to borrower was funded by 3<sup>rd</sup> party investors, who received a promissory note payable in exchange for their investment.

- 3/24/08 Correspondence from Mr. Spill to Mr. Maloney—Mr. Spill asks Mr. Maloney to provide a copy of all promissory notes issued and loan docs associated with the [REDACTED] and [REDACTED].
- 3/26/08 Email from Mr. Maloney to Mr. Farah, provide all [REDACTED] and [REDACTED].
- 4/7/08 Scott Farah provided docs to Dennis Maloney - FRM served as a commercial broker. Provided was a promissory note, commercial construction loan, deed of trust and commercial loan agreement, and settlement statement as received with respect to borrower.
- 5/22/08 Email from Rhonda Vappi to Jason Davis, “We are having difficulty getting FHA approval. The woman Jason Davis has been dealing with out of that agency is stating that our national in our name is false advertising for use with FHA loans.”
- 6/4/08 Email from Rhonda Vappi to Susan LeDuc--MA examiner gave FRM a 4 rating of 5 with 5 being the worst; Ms. Vappi said Mr. Farah told her MA examiners would likely give FRM a 2 rating.
- 6/27/08 Email from Rhonda Vappi to Susan LeDuc, Subject: MA Responses; draft of MA Report of Exam, mentions that Melissa of FRM has quit and Ms. Vappi said she thinks Melissa caused a lot of the mistakes; there is a Maine audit coming up.
- 6/30/08 Email form Susan LeDuc to Rhonda Vappi cc: Scott Farah, Dennis Maloney--mentions seriousness of MA MOU.
- 7/14/08 Correspondence from Scottt Farah to Steven Antonakes, Commissioner of Banks of the Commonwealth of Massachusetts. Mr. Farah disappointed that the report indicates a less than satisfactory compliance position. Regarding financial position, “Internal, unaudited financial statements have not, historically, been provided to examiners.” Advertising violations include unauthorized websites ([www.franhomloans.com](http://www.franhomloans.com)). FRM needs to comply with revised net worth and surety bond requirement, effective 12/31/08.
- 7/21/08 Scott Farah sends letter to Commissioner Peter Hildreth informing the SBD that FRM has entered into a Memorandum of Understanding with the Commissioner of Banks of the Commonwealth of MA. “Draft attached for Commissioner Hildreth...pursuant to state requirements; i.e., 2407.01(a) (7) FRM has entered into an MOU with Commissioner Bucher (MA), effective date of 7/14/08 (MOU because of Mr. Sojcher disbarment).
- 7/23/08 2:04 pm Email from Rhonda Vappi to Susan LeDuc Subject: R U Mad at me? “We got a response from MD’s exam on Monday as well and it is not good and I am feeling like we are getting further and further behind the eight ball here.”

- 7/23/08 2:32 pm Email from Susan LeDuc to Rhonda Vappi; "I think the NH examiners will send you the first day letter and officers' questionnaire ahead of time. But they can change their minds like the wind. Let's hope they give you notice."
- 8/11/08 Email from Susan LeDuc to Rhonda Vappi RE: Draft Response to Maryland Exam Report; Susan LeDuc states "All I've done is taken your hard work and added some spin to make it regulator-focused."
- 10/7/08 FRM Board of Directors and Shareholders Meeting to change the name Financial Resources National, Inc to Financial Resources Mortgage, Inc. Scott Farah is listed as the sole Director and Shareholder.
- 10/16/08 Correspondence from Kimothy Griffin, SBD Consumer Credit Administrator, to Scott Farah requesting documents for "planned examination". (Attachment 5)
- 10/23/08 Email from Rhonda Vappi of FRM to Susan LeDuc Subject: NH Audit "That dreaded notification for the NH Audit...I got the notice Monday afternoon. I am feverishly looking at files and checking lists as the database had not been revised in the time frame they are examining."
- 10/24/08 Email from Susan LeDuc to Dennis Maloney, saying SBD still shows FRM old name on roster.
- 10/27/08 Letter to Kimothy Griffin, SBD Consumer Credit Administrator, from Scott Farah; FRM is in receipt of the SBD Notice of Examination 10/16/08. Contacts are Mr. Farah and Susan LeDuc; FRM provides requested documents; Mr. Farah states he is out of the country 11/16/09 – 11/29/09 and would like to participate in the SBD Examination after he gets back.
- 10/31/08 Email from Susan LeDuc to Rhonda Vappi, 2/2007 SBD questionnaire provided so Ms. Vappi can have it ready when SBD arrives.
- 11/14/08 Email from Susan LeDuc to Dennis Maloney; says she worked on previous year SDB questionnaire and that the last SBD exam was a surprise.
- 11/7/08 Correspondence from Scott Farah to Kimothy Griffin, of SBD, pre-on site request for documentation including financial statements and tax returns sent to SBD. Mr. Farah mentions working papers cannot be provided and located on the "back-up network" that Mr. Farah, Nancy O'Connor and Richard Rollock have access to. Mr. Farah mentions the Annual Report is populated from a Closed File Data Base.
- 1/15/09 Email to Rhonda Vappi from Kim Griffin of the SBD; Ms. Vappi has questions regarding certain disclosures. Mr. Griffin does not answer and recommends seeking attorney to answer.
- 2/9/09 Email from Susan LeDuc to Rhonda Vappi explaining what table funding is.

- 2/16/09 Email from Vappi to Susan LeDuc; Ms.Vappi looking for rule for mortgage brokers regarding the Notice to Applicant of the Right to Receive a Copy of an Appraisal.
- 2/17/09 3:22pm Email from Rhonda Vappi of FRM to Susan LeDuc Subject: Personal Question "Since I am titled Office Manager and Compliance Officer, will I be able to held financial liable should anything go terribly wrong?"
- 2/17/09 2:14pm Email from Susan LeDuc to Rhonda Vappi; act in good faith with job duties and you should be immune from the company's financial struggles.
- 2/25/09 Spreadsheet displaying three FRM litigations and nine complaints.
- 3/4/09 Email from Nicole Jeanson of SBD to Susan LeDuc Subject: NH Examination, "Lorry and I were just wondering when we would be able to get a copy of the trial balance and financial statements? Once we get these we will be able to set-up the exit interview if you would like one."
- 3/20/09 Email from Susan LeDuc to Nicole Jeanson of SBD--FRM draft financials received by accountant but outstanding verifications still exist. Draft Cash Flow Statement displays net income dropping from \$249,789 in 2007 to \$20,270 in 2008.
- 3/23/09 Email from Susan LeDuc to Richard Rollock of FRM cc: Rhonda Vappi Subject: Mortgage Loan Originator License Required by 4/1/09 "Hi Rich, mortgage loan originators must be licensed by 4/1/09 in NH. I assume Scott (as an individual mortgage loan originator must also be licensed."
- 3/30/09 Email from Susan LeDuc to W. John Funk, Susan Hollinger, Dennis Maloney, Erik Newman--working on decision tree to try to accurately reflect the criteria for what types of consumer and commercial loans.....conversation with Kim Griffin.
- 3/31/09 Email from Susan LeDuc to Scott Farah cc: Rhonda Vappi, Dennis Maloney Subject Licensing Exemption to be removed from 397-A; "I believe that your private investors are benefitting from the exemption in the licensing law which indicates that the licensing provisions do not apply to."
- 4/21/09 Email from Rhonda Vappi of FRM to Susan LeDuc Re: Question & NHBD Report "Scott will need to address the majority of it (SBD Exam) because the problems were to do with Hard Money alternative construction loans..."
- 4/29/09 Email from Vappi to Susan LeDuc regarding SBD audit. Spreadsheet displays Ms. LeDuc is assigned to work on unlicensed activity (CL&M).

- 5/1/09 Email from Susan LeDuc to Kim Griffin of the SBD cc: Mary Jurta, [cleonard@banking.state.nh.us](mailto:cleonard@banking.state.nh.us), Ingrid White, Maryam Torben-Desfoses Subject: Draft NH Lending Decision Trees A & B; Tree A is for non-bank lenders and addresses 397-coverage and the requirements for loan originator (loan officer) registration. Tree B is for bank lenders and addresses the requirements for loan originators (loan officer) registration.
- 5/5/09 Email from Celia Leonard of the SBD to Susan LeDuc cc: Mary Jurta, Kim Griffin, Maryam Torben-Desfosses, Ingrid White Re: Draft NH Lending Decision Trees A & B; SBD does not comment or review the decision trees.
- 5/11/09 Email from Susan LeDuc to Rhonda Vappi re: Exam Response; Ms. LeDuc says she talked to the Bank Commissioner about a Financial Resources document she sent over. The document isn't specified.
- 5/15/09 Email from Susan LeDuc to internal GCG Subject: Decision tree for mortgage licensing pursuant to RSA 397-A; mentions if HB 610 passes there will no longer be exemptions and lenders would be required to be licensed as mortgage bankers. Mentions discussions with SBD; commercial loans; and lenders would be required to be licensed or be a bank.
- 5/19/09 Email from Susan LeDuc to Vappi and Farah; Revised Decision Tree – owner occupied.
- 5/20/09 Email from Susan LeDuc to Dennis Maloney; SBD response completed and delivered to SBD.
- 5/22/09 Email from Mr. Farah to Susan LeDuc; says Mr. [REDACTED] has already refinanced. "I don't know how you want to inform the Banking Commissioner."
- 6/16/09 Email from Susan LeDuc to Dennis Maloney Re: Referrals--"The bottom line is that any person cannot pay any other person for the referral of mortgage settlement service business."
- 10/13/09 Email to Scott Farah from Mary Jurta cc: Barry Glennon; private loan opportunities on the internet soliciting persons for mortgage loans and need to be licensed as a mortgage loan originator....violations RSA 397A and SAFE Act. FRM need to cease operations. The website appears to be offering fractional interest so contact BSR.
- 10/13/09 Correspondence from Mary Jurta to Scott Farah cc: Barry Glennon; references private loan opportunities website and says appears to be offering securities in the form of fractional interest.
- 10/16/09 Email from Susan LeDuc to Farah and Rhonda Vappi cc: Dennis Maloney; private website residential loans subject to RSA 397A -- jurisdiction\_SBD.



- 10/16/09 Email from Mr.Farah to Ms. LeDuc--Private Loan Opp website shut down temporarily.
- 10/16/09 Email form Susan LeDuc to Scott Farah and Rhonda Vappi cc: Dennis Maloney; residential loans are on the private opportunity website which makes it subject to RSA 397-A and the jurisdiction of the SBD; Farah or someone from FRM needs to be licensed as a loan originator; says "Once Denis is able to speak with Barry Glennon at Securities on Monday, we will set up time to discuss with you when Scott gets back on Thursday".
- 10/19/09 4:09 pm Email from Susan LeDuc to Rhonda Vappi cc: Dennis Maloney, "The problem is that after the changes to RSA 397-A this summer, it is now prohibited for any individuals to be a lender for 397-A loans unless s/he is licensed. The banking department will expect to be able to access the site to ensure that you don't have any 397-A loans on it."
- 5:37 pm Email from Rhonda Vappi to Susan LeDuc Subject: Draft letter to NHBD; "...if it is a loan that is for an income property, but is a single unit meant for a dwelling, it is considered a "mortgage loan" as defined under RSA 397-A, correct? This is where Scott mixes things up I think...." (Attachment 5)
- Email form Susan LeDuc to Rhonda Vappi, Scott Farah cc: Dennis Maloney Updated decision tree for 397-A.
- 10/20/09 Correspondence from Dennis Maloney to Mary Jurta cc: Scott Farah and Barry Glennon. GCG represents FRM on disabled loan opportunity website; was developed for commercial loans but residential are listed subject to the revised RSA 397-A; Mr. Farah is in the process of filing for mortgage originator license. Notes are included and read: fractional interest in mortgages-there is no authority for a mortgage banker to offer participations for loans, any investor or originator who buys/lends on a residential property must be licensed, Mr. Farah is not a licensed loan originator for residential loans (even for construction loans) and must be licensed person as contact for residential (397-A) Loans.
- 10/21/09 Email from Rhonda Vappi to Susan LeDuc cc: Dennis Maloney, subject Conference about the site; Conference is set up for Friday, Oct 23 at 10am regarding FRM website.
- 10/30/09 Correspondence from Dennis Maloney to Jeff Spill, stating FRM has not engaged in the offer and sale of a security under the Uniform Securities Act.
- 11/2/09 Email from RhondaVappi to DennisMaloney cc: Susan LeDuc subject website--sent private loan opportunities link.

- 11/4/09 2:30 pm Email from Rhonda Vappi to Susan LeDuc, re: Notes from our conversation with Mary Jurta, "With our residential department dead, this is all we had going for us. A creative unique undertaking."
- 11/4/09 3:20 pm Email from Susan LeDuc to Farah, Vappi Subject: Notes from our conversation with Jurta; document includes notes from conversations with Jurta relating to the website. "There are many new distinctions relating to the definitions in the new 397-A that are quite different from what we have understood prior to this time. Please disregard the most recent decision tree it is not consistent with Mary Jurta's comments."
- 11/10/09 Dennis Maloney written notes; "Call from Celia, Mary Jurta, and Kim Griffin. FRM closed doors; sent examiners today; docs and records open to public; not secure; door to downstairs office was unlocked; examiners went in to go upstairs; no people in the building; Gould & Burke – no longer represent FRM as of Friday and last contact with Scott on Thurs; Dodge at CLM not a tenant?; DAK moved out on Sunday; G&B moving out today."

*Attachment 1*

**Susan LeDuc**

---

**From:** Rhonda Vappi [rvappi@frmortgageinc.com]  
**Sent:** Tuesday, February 17, 2009 2:22 PM  
**To:** Susan LeDuc  
**Subject:** RE: Personal Question

Hi Susan:

I really appreciate your time on this. I know that was a hard question to look into, you know as well as I the situation. I do work hard and I provide all of the information necessary for compliance, for growth and improvement. No I am not an "officer" and I know Scott deliberately made that choice to protect me. I just needed a bit of assurance. Now I will sleep easier.

You are very important to me and I appreciate you very much!

Rhonda

---

**From:** Susan LeDuc [mailto:leduc@gcglaw.com]  
**Sent:** Tuesday, February 17, 2009 2:14 PM  
**To:** Rhonda Vappi  
**Subject:** RE: Personal Question

Hi Rhonda,

I've been thinking about your question. I believe (unless something has changed) you are not an officer of the Corporation, not a director, and not a majority stockholder.

As a general matter, an employee is 'protected' when acting in good faith in the conduct of her employment, with a degree of care comparable to that expected of people in similar positions.

Do your best, pay attention to your job assignments, act in good faith, and you will not likely be considered 'negligent' in the performance of your duties – you should be immune from the company's financial struggles.

Susan

---

**From:** Rhonda Vappi [mailto:rvappi@frmortgageinc.com]  
**Sent:** Monday, February 16, 2009 3:22 PM  
**To:** Susan LeDuc  
**Subject:** Personal Question

Hello:

I am sorry to monopolize your time but I have an important question. My Husband has been laid-off and so I am feeling more and more the need to protect my self and my family. Since I am titled Office Manager and Compliance Officer, will I be help financial liable should anything go terribly wrong?

Thank you for your time.

*Rhonda*

Rhonda J. Vappi  
Office Manager  
Financial Resources Mortgage, Inc.  
Phone 603.279.1133  
Fax 603.279.8491

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Attachment 2

Susan LeDuc

From: Rhonda Vappi [rvappi@firmortgageinc.com]  
Sent: Monday, October 19, 2009 5:37 PM  
To: Susan LeDuc  
Subject: RE: Draft letter to NHBD

Sooo, if it is a loan that is for an income property, but is a single unit meant for dwelling (by any individual or family), it is considered a "mortgage loan" as defined under RSA 397-A, correct? This is where Scott mixed things up I think...or some anyway...I know you all will have a lot to discuss.

I am not convinced Scott understood what HB 610 would change (yes, I explained-but what he understood, did not coincide. I wish with all my heart that person had not given out his credentials. I am holding my breath....

Thank you for your help in this. I will try not to bite my nails off for the rest of the week...

Rhonda

From: Susan LeDuc [mailto:leduc@gcgllaw.com]  
Sent: Monday, October 19, 2009 5:20 PM  
To: Rhonda Vappi  
Subject: RE: Draft letter to NHBD

Hi Rhonda,

There is no license requirement for true commercial loans; however, if the loan meets the definitions within 397-A for "mortgage loan," then it cannot be considered to be a commercial loan. The statute defines what is a covered loan, not what we characterize it as.

The exemption from having to be licensed as a private individual used to be that you could do no more than 4 per year. But when HB 610 passed this summer, that exemption was removed, and so there is now NO exemption. That means any person who funds a "mortgage loan" as defined in 397-A must be licensed as a mortgage banker.

The primary parts of the mortgage loan definition in 397-A have changed. It is now a mortgage loan on land and improvements (existing or to be constructed) in NH where the loan is primarily for personal, family or household use and it is secured by 1-4 dwelling units. It no longer matters whether the property is owner occupied or not. We can talk about this more - those were the impacts of the changes this summer.

I will delete that sentence out of the letter, and we will hand-deliver it to the Banking Department tomorrow.

Thanks!

Susan

From: Rhonda Vappi [mailto:rvappi@firmortgageinc.com]  
Sent: Monday, October 19, 2009 4:59 PM  
To: Susan LeDuc

Subject: RE: Draft letter to NHBD  
Importance: High

Susan:

I am doing my level best to keep up with the changes taking place at enough speed to cause whip-lash and with little guidance, I might add. Forgive me, but I do not recall hearing that NO person can be a lender unless they were licensed, on commercial loans. The last I recall hearing from you, the last time you were here, is that if they do more than 4 per year they must be licensed. I get that some of the loans Scott had put on there were construction loans on residential dwellings, but he did not. He now agrees that was a mistake and will take those off. And he will take off the fractional interest statements as well.

I did talk to Scott and he would like to keep that sentence off and have a meeting to go into more detail in a later letter to them. He feels we should only respond to what is directly mentioned in the letter and not add fuel to the fire.

Thank you for your prompt reply. I am sorry to keep you, but I had to wait for Scott to call in....

Sincerely,

*Rhonda*

Rhonda J. Vappi  
VP-Operations Manager  
Financial Resources Mortgage, Inc.  
Phone 603.279.1133  
Fax 603.279.8491

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---

From: Susan LeDuc [mailto:[leduc@gcglaw.com](mailto:leduc@gcglaw.com)]  
Sent: Monday, October 19, 2009 4:09 PM  
To: Rhonda Vappi  
Cc: Denis Maloney  
Subject: RE: Draft letter to NHBD

Whether the web site is private or not, FRM still cannot violate the law. The problem is that after the changes to RSA 357-A this summer, it is now prohibited for any individual to be a "lender" for 357-A loans unless s/he is licensed. That sentence was trying to help your investors to avoid trouble for not being licensed if/when they directly funded a 357-A loan between July 31, 2009 and now.

There is no way for a private investor to be a mortgagee on a 357-A loan without being a licensed mortgage banker.

Denis and I discussed it, and we think we could remove that sentence from the letter if you prefer; however, it doesn't change the fact that you must stop arranging private non-licensed lenders for 357-A loans. You should also expect that

Here is our draft of the letter that we plan to send to Mary Jurta today. Please have Scott review and OK for us to send.

We will plan to talk more when Scott returns on Thursday.

Thanks!

Susan

Susan W. LeDuc, CRCM  
Regulatory Specialist  
Financial Institutions

603.545.3617 (direct dial)  
800.528.1181 (x273)  
Fax: 603.226.3334  
Email: [leduc@gcglaw.com](mailto:leduc@gcglaw.com)

Gallagher, Callahan & Gattrell, P.C.  
A multidisciplinary law firm  
214 No. Main Street, P.O. Box 1415  
Concord, New Hampshire 03302-1415

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at your next exam, the banking department will expect to be able to access the site to ensure that you don't have any 197-A loans on it.

Please let me know if you'd like me to simply remove that sentence about erroneously solicited direct mortgages

Thanks.

Susan

**From:** Rhonda Vappi [mailto:rvappi@fmortgageinc.com]  
**Sent:** Monday, October 19, 2009 3:41 PM  
**To:** Susan LeDuc  
**Subject:** RE: Draft letter to NHBD  
**Importance:** High

Dear Susan:

There is one part that is a problem. Neither of us like the part about erroneous solicitation of mortgagee's. This is a private website and, as you saw, only accessible (through private personal log in credentials. We do not know how that persons credentials were given away, but apparently they were. Can this be reworded to give better explanation?

Thank you!

*Rhonda*

Rhonda J. Vappi  
VP-Operations Manager  
Financial Resources Mortgage, Inc.  
Phone 603.279.1133  
Fax 603.279.8491

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---

**From:** Susan LeDuc [mailto:leduc@gcglaw.com]  
**Sent:** Monday, October 19, 2009 1:54 PM  
**To:** Rhonda Vappi  
**Cc:** Denis Maloney  
**Subject:** Draft letter to NHBD

Hi Rhonda,

Rhonda,



# FINANCIAL RESOURCES

15 Northview Dr. • P.O. Box 1158 • Meredith, NH 03253  
603-279-1133 • Fax (603) 279-5912  
www.franh.com

Attachment 3

6/06/2006

NH Banking Dept.

Licensing Div.

64B Old Suncook Rd.

Concord, NH 03301

Re: Preferred shares

Dear Sirs,

During the course of the recent banking audit, I was told by the auditors that whenever Financial Resources redeemed preferred stock, we were supposed to send a letter to you saying that there had been a change in ownership. I thought that change of ownership applied only to common stock. There has been no change of ownership of common stock.

The following preferred stockholders had their shares redeemed over the past 12 months:

|                                     |                |           |
|-------------------------------------|----------------|-----------|
| [REDACTED]                          | August, 2005   | 22 shares |
| 100 % of preferred shares redeemed. |                |           |
| [REDACTED]                          | October, 2005  | 25 shares |
| 100 % of preferred shares redeemed  |                |           |
| [REDACTED]                          | December, 2005 | 36 shares |
| 100 % of preferred shares redeemed. |                |           |
| [REDACTED]                          | March, 2006    | 40 shares |
| 100 % of preferred shares redeemed. |                |           |
| [REDACTED]                          | March, 2006    | 17 shares |
| 100 % of preferred shares redeemed. |                |           |
| [REDACTED]                          | April, 2006    | 61 shares |
| 100 % of preferred shares redeemed. |                |           |
| [REDACTED]                          | May, 2006      | 15 shares |
| 100 % of preferred shares redeemed. |                |           |

(cont.)

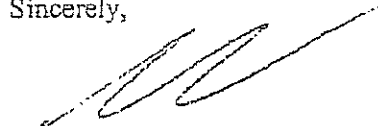
|            |                                     |           |
|------------|-------------------------------------|-----------|
| [REDACTED] | May, 2006                           | 34 shares |
|            | 100 % of preferred shares redeemed. |           |
| [REDACTED] | May, 2006                           | 34 shares |
|            | 100 % of preferred shares redeemed. |           |
| [REDACTED] | May, 2006                           | 33 shares |
|            | 100 % of preferred shares redeemed. |           |
| [REDACTED] | June, 2006                          | 39 shares |
|            | 100 % of preferred shares redeemed. |           |

There have been no new shares at all issued to anyone.

If you have any questions, please don't hesitate to call.

Thank you.

Sincerely,

  
Scott D. Farah  
President

Denis Maloney

From: Christopher Gallagher  
Sent: Thursday, December 21, 2006 4:54 PM  
To: Susan LeDuc; Denis Maloney  
Cc: Susan Hollinger; W. John Funk  
Subject: RE: Strategy/SNL Hildreth thoughts

Attachment 4

Thx Susan  
I agree on fr&a

---

From: Susan LeDuc  
Sent: Wednesday, December 20, 2006 2:22 PM  
To: Denis Maloney; Christopher Gallagher  
Cc: Susan Hollinger; W. John Funk  
Subject: RE: Strategy/SNL Hildreth thoughts

Re: Financial Resources & Assistance: I think the "confusion" surrounding how Andrea Shaw and Donna Soucy have let the file languish since the 2004 exam plays to our advantage. The October 4, 2006 letter from Kim Griffin states that, "The observations in the report are significant enough that we are referring the file to our attorney for evaluation and possible enforcement action." I am not sure when Jim Shepard will pick up this file. Based on his handling of the Traditional Mortgage - [REDACTED] complaint, and FR&A's filing of a letter with Kim Griffin saying that they have hired us to help, I would expect that Shepard would call us when/if he gets to the file, and/or we are forced to file notice of a settlement with the Securities Div.

Until we have both a Data Security Risk Assessment and a compliance program document completed (which I am working on now), I don't think we want to bring FR&A to Peter's attention.

As far as other Banking Department issues:

- Traditional Mortgage - [REDACTED] I will be completing a proposed 397-A response to the complaint after I finish FR&A.
- Traditional Mortgage - conversion to mortgage banker. Once the [REDACTED] complaint is settled, Traditional wants to change status which will involve a new application.
- [REDACTED] - a retail sales finance application is pending at DOB.
- [REDACTED] - waiting for Peter's response to characterization of exam disaster and sloppy business practices as "botched dissolution" between business partners. If OK's, then we will prepare a License Termination filing.

---

From: Denis Maloney  
Sent: Wednesday, December 20, 2006 1:39 PM  
To: Christopher Gallagher

**Denis Maloney**

**From:** Susan LeDuc  
**Sent:** Wednesday, December 20, 2006 2:22 PM  
**To:** Denis Maloney; Christopher Gallagher  
**Cc:** Susan Hollinger; W. John Funk  
**Subject:** RE: Strategy/SNL Hildreth thoughts

Re: Financial Resources & Assistance: I think the "confusion" surrounding how Andrea Shaw and Donna Soucy have let the file languish since the 2004 exam plays to our advantage. The October 4, 2006 letter from Kim Griffin states that, "The observations in the report are significant enough that we are referring the file to our attorney for evaluation and possible enforcement action." I am not sure when Jim Shepard will pick up this file. Based on his handling of the Traditional Mortgage - ~~complaint~~ complaint, and FR&A's filing of a letter with Kim Griffin saying that they have hired us to help, I would expect that Shepard would call us when/if he gets to the file, and/or we are forced to file notice of a settlement with the Securities Div.

Until we have both a Data Security Risk Assessment and a compliance program document completed (which I am working on now), I don't think we want to bring FR&A to Peter's attention.

As far as other Banking Department issues:

- Traditional Mortgage - ~~complaint~~ - I will be completing a proposed 397-A response to the complaint after I finish FR&A.
- Traditional Mortgage - conversion to mortgage banker. Once the ~~complaint~~ complaint is settled, Traditional wants to change status which will involve a new application.
- ~~complaint~~ - a retail sales finance application is pending at DOB.
- ~~complaint~~ - waiting for Peter's response to characterization of exam disaster and sloppy business practices as "botched dissolution" between business partners. If OK's, then we will prepare a License Termination filing.

---

**From:** Denis Maloney  
**Sent:** Wednesday, December 20, 2006 1:39 PM  
**To:** Christopher Gallagher  
**Cc:** Susan LeDuc; Susan Hollinger  
**Subject:** FW: Strategy/SNL Hildreth thoughts

Hildreth -

- 1) I am not certain if the NHBD would start a proceeding to yank license, providing us with opportunity to be heard, as with Securities folks; OR just yank it and we have to talk them back into issuing new license. Much different situations - would like to be informed prior to yank, name of this client is Financial Resources of the Lakes Region, Inc. and for right

now, I believe things are quiet so probably best to let this one lie quiet. SNL – do you agree??

- 2) Other matters – presume you have looped in with John on pending business to come before Peter, I am particularly aware of:
  - 1) [REDACTED] – we will be filing for merger approval, need to form 'phantom bank' to get there, good work should be no political issues
  - 2) [REDACTED] – this is new bank to be formed, [REDACTED] involved \$\$\$\$. We are presently raising organizational expense capital for organizing entity [REDACTED] and will be filing for new trust company charter in early 2007 together with application for federal deposit insurance. Organizers could be more bank savvy as is [REDACTED] team but these are our guys so . . .

Thanks for efforts

Denis

---

**From:** Susan LeDuc  
**Sent:** Wednesday, December 20, 2006 1:20 PM  
**To:** Christopher Gallagher; Dodd Griffith; Susan Hollinger; Denis Maloney  
**Subject:** RE: Strategy/SNL

SBH's calendar indicates that she will not be in the office until tomorrow.

---

**From:** Christopher Gallagher  
**Sent:** Wednesday, December 20, 2006 12:45 PM  
**To:** Dodd Griffith; Susan Hollinger; Denis Maloney; Susan LeDuc  
**Subject:** RE: Strategy/SNL

Thanks for "replying to all". Dodd, it now looks like we will have to wait until tomorrow, but keep in mind that I meet with the Commissioner tomorrow AM so if there are any issues for his attention I need to know today, what they are. We may also be able to meet effectively without you since this is the mortgage practice group but if you can join us as the leader of the broader group, that would be helpful.

---

**From:** Dodd Griffith  
**Sent:** Wednesday, December 20, 2006 12:08 PM  
**To:** Christopher Gallagher; Susan Hollinger; Denis Maloney  
**Cc:** Donald Pfundstein  
**Subject:** RE: Strategy/SNL

4 is fine with me. I have a client meeting at 2, which could take awhile, but I think it should be over by then.

# State of New Hampshire

## Banking Department

65 Regional Drive, Suite 200  
Concord, New Hampshire 03301

Telephone: (603) 271-3561  
FAX: (603) 271-1090 or (603) 271-0750

PETER C. HILDRETH  
BANK COMMISSIONER  
ROBERT A. FLEURY  
DEPUTY BANK COMMISSIONER

### NOTICE OF EXAMINATION October 16, 2008 CERTIFIED MAIL

*Attachment 5*

MR SCOTT FARAH, PRESIDENT  
FINANCIAL RESOURCES NATIONAL, INC  
PO BOX 1158  
MEREDITH, NH 03253

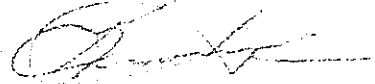
Dear Licensee:

This document is official notification of the planned examination by the department of your licensed activity under RSA 383:9. Examinations cannot be waived or postponed. To facilitate the examination and pursuant to RSA 397-A:11, you must submit the following:

- (1) **Within seven (7) calendar days from receipt of this notice you must:**
  - a. Submit a written acknowledgement of this notice by e-mail or facsimile to the department. The acknowledgement shall include the name of the person at the company to contact regarding the examination including the person's title, telephone number, fax and e-mail address.
  - b. A list of all NFI files of loans that the licensee originated, funded, closed, denied, or that were withdrawn, canceled or serviced by the licensee during the period 18 months prior to the date of this notice. Please provide a separate list of foreclosures for the same time period. Please use the format as disclosed at <http://www.nh.gov/banking/CCDEexamLoanList.xls>.
- (2) The following documents must be submitted to the department **within 21 calendar days from receipt of this notice:**
  - a. A copy of the most recent year-end financial statement, SEC 10-K & 10-Q if applicable, and most recent Federal Income Tax return;
  - b. A copy of the most recent quarterly financial statement;
  - c. Work papers and copies of source documents to support the figures submitted on the company's most recently filed NEI Annual Report; the work papers shall demonstrate the actual calculation of the numbers for verification by the department;
  - d. A list on Schedules A and B of the license application form of the current direct owners, indirect owners and all principals of the company;

Please contact the undersigned at (603) 271-3561 with any questions or concerns you may have. Your cooperation is appreciated.

Respectfully,



Timothy C. Griffin  
tgriffin@banking.state.nh.us

\* Lack of complete response to all requested items within noted time frames may result in fines.  
RSA 397-A:11  
**RESPONSE REQUIRED**  
Rev 1/31/08  
TDD Access: Relay NH 1-800-735-2969