STATE OF NEW HAMPSHIRE DEPARTMENT OF STATE

IN THE MATTER OF:))
Local Government Center, Inc.; Local Government Center Real Estate, Inc.; Local Government Center Health Trust, LLC; Local Government Center Property-Liability Trust, LLC; HealthTrust, Inc.; New Hampshire Municipal Association, LLC New Hampshire Municipal Association Property-Liability Trust, Inc.; LGC – HT, LLC; LGC-PLT, LLC; Local Government Center Workers' Compensation Trust, LLC; And the following individuals: Maura Carroll; Peter J. Curro; and John Andrews RESPONDENTS))))))) Case No: C-2011000036)))))))

BUREAU OF SECURITIES REGULATION OBJECTION TO RESPONDENTS' MOTIONS IN LIMINE

NOW COMES the Petitioner, the New Hampshire Bureau of Securities Regulation, through counsel, and respectfully submits the following combined objection to the Respondents' motions in limine seeking to preclude certain testimony of Petitioner's expert witnesses in the above captioned matter. In support of its objection, Petitioner states as follows:

- 1. On April 13, 2012, the Respondents filed four motions seeking to preclude expert testimony:
 - a. LGC's Motion in Limine to Exclude Testimony of Michael A. Coutu on Two Issues of New Hampshire Law;
 - b. Respondent John Andrews' Motion to Preclude Expert Testimony From Michael A. Coutu Regarding Real Estate Issues;

- c. Respondent John Andrews' Motion to Preclude Expert Testimony From Michael A. Coutu Regarding the LGC Defined Benefit Pension Plan; and
- d. Respondent Peter J. Curro's Motion in Limine to Exclude the Testimony of Gregory S. Fryer, Esquire.
- 2. Respondents' acknowledge, as they must, that the rules of evidence are not applicable in this administrative hearing. R.S.A. 426-B:26-a, XX. Nevertheless, because the hearing will be conducted in a "trial-type" manner and because evidence must be "relevant, material and reliable," the Respondents argue that the Presiding Officer should apply the standards for expert testimony set forth in the New Hampshire Rules of Evidence and preclude certain testimony from Petitioner's expert witnesses.
- 3. As a starting point, it must be recognized that this is an administrative hearing before an experienced presiding officer. This is not a hearing before a lay board or before a jury. As such, there is no need to set strict pre-hearing limits on expert testimony. The Presiding Officer has broad discretion to decide at the hearing which evidence presented by the parties is admissible and to decide what weight to give that evidence in context.
- 4. Indeed, the Presiding Officer may decide at the hearing whether any particular testimony offered by Petitioner's expert witnesses is helpful to a full understanding of the issues, and may direct Petitioner to move on to other areas of inquiry if the Presiding Officer deems testimony "irrelevant, immaterial, unreliable, or unduly cumulative." R.S.A. 416-B:26-a, XX.
- 5. The necessity for the Presiding Officer to take action to limit testimony may be further obviated by Petitioner's decision not to solicit testimony in certain areas of inquiry.
- 6. With respect to Respondents' specific arguments, the relevant inquiry is whether the expert testimony to be offered will assist the Presiding Officer in reaching an informed decision on any matter involved in this case. While Respondents may quibble over the expertise

of Petitioner's experts in certain areas, there is no question that both Mr. Coutu and Mr. Fryer bring a wealth of knowledge and experience that will assist the Presiding Officer in understanding the evidence presented, and neither will be completely precluded from testifying. The Presiding Officer can assess the relevancy and usefulness of any subject of testimony offered at the hearing.

- 7. Finally, with regard to Mr. Curro's motion to exclude Mr. Fryer's testimony, Mr Curro takes Mr. Fryer's testimony out of context. Directly following the quoted testimony set forth by Mr. Curro, Mr. Fryer went on to explain:
 - Q. But would you also find it reasonable if the Bureau took the position that these were not securities?

A. Yes.

- Q. And would it be reasonable for a court to conclude that they were not securities as well?
- A. More reasonable if the agency in charge of administering a statute that has almost no case law concluded that they were not, a court's determination that they were not would be more reasonable under those circumstances than the other way around, and I think here we face a situation where it is the other way around.
- Q. You're suggesting that the court should give deference to the Bureau's opinion?

A. Yes.

- Q. Based on the Bureau's historic view of what is a security, is that correct?
- A. No, not exactly. I think that courts do and should give deference to administrative agencies that are charged with the responsibility for administering and enforcing highly technical provisions of their own regulations, and that deference by courts is certainly not unlimited. There are many instances where the Supreme Court has ruled against the Securities & Exchange Commission, so there are outer limits. I don't believe we're anywhere close to the outer limits in this case on these facts in this context in a state such as New Hampshire where there is a paucity of litigation over securities definitional questions which is not necessarily a bad thing, that there's a paucity of litigation. In that context I think

it makes complete sense for courts to give considerable deference to the agency that is entrusted with the authority to administer that important set of regulations.

Deposition of Gregory S. Fryer, Esq. ("Fryer Dep.") at 28-30. A copy of pages 22-37 of the Fryer Dep. are attached hereto as **Exhibit 1**.

8. Taken in context of the relevant standard of review, it is clear Mr. Fryer's opinion that the Bureau's finding that the participation agreements are securities under New Hampshire law is reasonable, and his reasoning for reaching that opinion, is relevant and material to the securities claim at issue in this case. Mr. Fryer's testimony, therefore, should not be excluded from the evidentiary hearing.

WHEREFORE, the Bureau of Securities Regulation respectfully requests that the Presiding Officer:

- A. Deny each of the Respondents' motions in limine; or, in the alternative
- B. Reserve judgment on each of Respondents' motions in limine until expert testimony is offered at the evidentiary hearing; and
- C. Grant such further relief as is fair and just.

Respectfully submitted,
The Bureau of Securities Regulations
State of New Hampshire
By its attorneys,
Bernstein, Shur, Sawyer & Nelson, PA

Dated this 19th day of April, 2012

/s/ Andru H. Volinsky
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Certificate

I hereby certify that the foregoing witness list was provided to counsel of record on the below service list by hand or electronically, this 19th day of April, 2012.

/s/ Andru H. Volinsky
Andru H. Volinsky, Esq.

Service List: Jeffrey D. Spill, Esq. Earle F. Wingate, III, Esq. Kevin B. Moquin, Esq. Eric Forcier, Esq. Adrian S. LaRochelle, Esq. William C. Saturley, Esq. Brian M. Quirk, Esq. David I. Frydman, Esq. Michael D. Ramsdell, Esq. Joshua M. Pantesco, Esq. Mark E. Howard, Esq. Jaye L. Rancourt, Esq. Roy W. Tilsley, Jr., Esq. Glenn R. Milner, Esq. Andru H. Volinsky, Esq. Steven M. Gordon, Esq. Benjamin Siracusa Hillman, Esq. Christopher G. Aslin, Esq. Kimberly Myers, Esq.