STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE MARCH 1996

FROM NH BUREAU OF SECURITIES REGULATION **AT (OFFICE)**

SUBJECT FLEXIBLE MORTGAGE CORPORATION

TO BRIAN TIERNEY (ATTORNEY GENERAL'S OFFICE

Attention Attorney General's Office:

On March 5, 1996 Brian Tierney, Senior Financial Analyst, requested that the Bureau provide a statement as to whether the promissory notes issued by Flexible Mortgage Corporation are "Securities" within the meaning of NH RSA 421-B:2,XX and also whether these securities are unregistered and non-exempt under NH RSA 421-B.

It is the Bureau's position that, as claimed in the Bureau's December 15, 1995 Cease and Desist Order, Flexible Mortgage Corporation's issuance of promissory notes are securities within the meaning of the statute. Under the definition of Security, a security is any "note". Flexible's promissory notes are, on its face, notes within the meaning of the section. Therefore, these promissory notes are securities.

Additionally, Flexible's promissory notes are securities in that they are "investment contracts" as defined under the section. An investment contract has been defined under SEC v. Howey as: 1) an investment of money; 2) into a common enterprise; 3) with the expectation of profit; 4) coming from the efforts of others. The Bureau claims that Flexible' promissory notes meet this test.

Further, these notes are neither registered with the Bureau nor exempt under NH RSA 421-B. According to the most recent records of the Bureau, Flexible has never registered these notes with the Bureau. Moreover, it is the Bureau's position that an exemption from the registration requirement is not available under NH RSA 421-B:17.

Because these securities are neither registered nor exempt, the offer and sale of them is in violation of NH RSA 421-B:11. Accordingly, the Bureau claims that Flexible and its agents have violated NH RSA 421-B:24,II.

Should you have any questions please feel free to contact the Bureau.

Exhibit