

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 07-276
)
 3 State of New Hampshire Banking) Order to Show Cause
)
 4 Department,)
)
 5 Petitioner,)
)
 6 and)
)
 7 Orchid Island TRS, LLC, Opteum Inc.,)
)
 8 Robert Filiberto, G. Hunter Haas IV)
)
 9 and Peter R. Norden,
 10 Respondents

11
12 NOTICE OF ORDER

13 This Order commences an adjudicative proceeding under the provisions of
14 RSA 397-A:17, RSA 541-A, BAN 200 and JUS 800.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17, the Banking Department of the State of New
17 Hampshire (hereinafter the "Department") has the authority to issue an order
18 to show cause why license revocation penalties for violations of New
19 Hampshire Banking laws should not be imposed.

20 Pursuant to RSA 397-A:21, the Commissioner has the authority to
21 suspend, revoke or deny any license and to impose administrative penalties of
22 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

23 NOTICE OF RIGHT TO REQUEST A HEARING

24 The above named respondents have the right to request a hearing on this
25 Order to Show Cause, as well as the right to be represented by counsel at
each Respondent's own expense. All hearings shall comply with RSA 541-A. Any
such request for a hearing shall be in writing, and signed by the respondents

1 or the duly authorized agent of the above named respondents, and shall be
2 delivered either by hand or certified mail, return receipt requested, to the
3 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH
4 03301. Such hearings will be scheduled within 10 days of the request. If the
5 Respondents fail to appear at the hearing after being duly notified, such
6 person shall be deemed in default, and the proceeding may be determined against
7 the Respondent upon consideration of the Order to Show Cause, the allegations
8 of which may be deemed to be true.

9 If the Respondents fail to request a hearing within 30 calendar days of
10 receipt of such order or reach formal settlement with the Department within
11 that time frame, then such person shall likewise be deemed in default, and the
12 orders shall, on the thirty-first day, become permanent, and shall remain in
13 full force and effect until and unless later modified or vacated by the
14 commissioner, for good cause shown.

15 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

16 The Staff Petition dated November 19, 2007 (a copy of which is attached
17 hereto) is incorporated by reference hereto.

18 **ORDER**

19 WHEREAS, finding it necessary and appropriate and in the public
20 interest, and consistent with the intent and purposes of the New Hampshire
21 banking laws, and

22 WHEREAS, finding that the allegations contained in the Staff Petition,
23 if proved true and correct, form the legal basis of the relief requested,

24 It is hereby ORDERED, that the Respondent shall show cause why:

- 25 1. Administrative penalties of \$2,500.00 should not be imposed
against each named Respondent; and
2. Respondent Orchid Island TRS, LLC's license should not be
revoked; and

1 pursuant to NH RSA 397-A:3.

2 3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the
3 Department may examine the business affairs of any licensee or
4 any other person, whether licensed or not, as it deems necessary
5 to determine compliance with this Chapter and the rules adopted
6 pursuant to it and with the Consumer Credit Protection Act, as
7 amended (15 U.S.C. 1601 et seq.). In determining compliance,
8 the Department may examine the books, accounts, records, files,
9 and other documents or matters of any licensee or person. RSA
10 397-A:12 further requires every person being examined, and all
11 of the officers, directors, employees, agents, and
12 representatives of such person shall make freely available to
13 the commissioner or his examiners, the accounts, records,
14 documents, files, information, assets, and matters in their
15 possession or control relating to the subject of the examination
16 and shall facilitate the examination. The Respondent violated
17 this provision by failing to facilitate the examination.

18 4. RSA 397-A:11 provides for a fine of \$50 per day for every day
19 that records are not produced after 21 days.

20 5. RSA 397-A:21 IV provides that any person who, either knowingly
21 or negligently, violates any provision of Chapter 397-A, may
22 upon hearing, and in addition to any other penalty provided for
23 by law, be subject to an administrative fine not to exceed
24 \$2,500, or both. Each of the acts specified shall constitute a
25 separate violation, and such administrative action or fine may
 be imposed in addition to any criminal penalties or civil

1 liabilities imposed by New Hampshire Banking laws.

2 6. RSA 397-A:21 V provides that every person who directly or
3 indirectly controls a person liable under this section, every
4 partner, principal executive officer or director of such person,
5 every person occupying a similar status or performing a similar
6 function, every employee of such person who materially aids in
7 the act constituting the violation, and every licensee or person
8 acting as a common law agent who materially aids in the acts
9 constituting the violation, either knowingly or negligently, may,
10 upon notice and opportunity for hearing, and in addition to any
11 other penalty provided for by law, be subject to suspension,
12 revocation, or denial of any registration or license, including
13 the forfeiture of any application fee, or the imposition of an
14 administrative fine not to exceed \$2,500, or both. Each of the
15 acts specified shall constitute a separate violation, and such
16 administrative action or fine may be imposed in addition to any
17 criminal or civil penalties imposed.

18 **RELIEF REQUESTED**

19 The staff of the Department requests the Commissioner take the following

20 Action:

- 21 1. Find as fact the allegations contained in section I of this petition;
- 22 2. Make conclusions of law relative to the allegations contained in
23 section II of the this petition;
- 24 3. Order the Respondents to Show Cause why its license should not be
25 revoked;
4. Assess fines and administrative penalties in accordance with RSA 397-

