

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-377  
) )  
3 State of New Hampshire Banking )  
) )  
4 Department, ) Order to Show Cause with Immediate  
) Suspension  
5 Petitioner, )  
) and  
6 and )  
) Cease and Desist Order  
7 Lifetime Home Loans, Inc., Daniel )  
) )  
8 Steven Flamand, and Robert Leonard )  
) )  
9 McKee, )  
) )  
10 Respondents )  
) )

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11 NOTICE OF ORDER

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

14 LEGAL AUTHORITY AND JURISDICTION

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

19 Pursuant to RSA 397-A:18, the Banking Department of the State of New  
20 Hampshire (hereinafter the "Department") has the authority to issue a  
21 complaint setting forth charges whenever the Department is of the opinion  
22 that the licensee or person over whom the Department has jurisdiction is  
23 violating or has violated any provision of RSA Chapter 397-A, rule or order  
thereunder.

24 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New  
25 Hampshire (hereinafter the "Department") has the authority to issue and cause  
to be served an order requiring any person engaged in any act or practice

1 constituting a violation of RSA 397-A or any rule or order thereunder, to  
2 cease and desist from violations of RSA 397-A.

3 Pursuant to RSA 397-A:17 and RSA 541-A:30 the Bank Commissioner  
4 ("Commissioner) may by order summarily postpone or suspend any license or  
5 application pending final determination of any order to show cause, or other  
6 order, or of any other proceeding under this section, provided the Commissioner  
7 finds that the public interest would be irreparably harmed by delay in issuing  
8 such order.

9 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind  
10 such orders as are reasonably necessary to comply with the provisions of the  
11 Chapter.

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

15 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct  
16 that is or may be an unfair or deceptive act or practice under RSA 358-A and  
17 exempt under RSA 358-A:3,I or that may violate any of the provisions of  
18 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
19 Commissioner may hold hearings relative to such conduct and may order  
20 restitution for a person or persons adversely affected by such conduct. The  
21 Commissioner may utilize all remedies available under the Act.

22 **NOTICE OF RIGHT TO REQUEST A HEARING**

23 The above named Respondents have the right to request a hearing on this  
24 Order to Show Cause with Immediate Suspension and Cease and Desist Order  
25 (hereinafter "Order"), as well as the right to be represented by counsel at  
each Respondent's own expense. Any such request shall be in writing, and  
signed by the Respondents or by the duly authorized agent of the above named  
Respondents, and shall be delivered either by hand or certified mail, return  
receipt request, to the New Hampshire Banking Department, 53 Regional Drive,

1 Suite 200, Concord, NH 03301. In accordance with RSA 541-A, a hearing shall  
2 be held not more than ten (10) days of such request. If any of the  
3 Respondents fails to appear at the hearing after being duly notified, such  
4 person shall be deemed in default, and the proceeding may be determined  
5 against the defaulting Respondent(s) upon consideration of the Order, the  
6 allegations of which may be deemed to be true.

7 If any of the Respondents fails to request a hearing within thirty (30)  
8 calendar days of receipt of this Order or reach formal settlement with the  
9 Department within that timeframe, then such Respondent shall likewise be  
10 deemed in default, and the Order shall, on the thirty-first (31<sup>st</sup>) day become  
11 permanent, and shall remain in full force and effect until and unless later  
12 modified or vacated by the Commissioner, for good cause shown.

13 Pursuant to RSA 541-A:30, the Department shall hold a hearing within ten  
14 (10) working days after the date of this Order suspending the Respondents'  
15 license on the issue of the immediate suspension. That hearing is noticed  
16 under separate order. A record of this proceeding shall be made by a certified  
17 shorthand court reporter provided by this Department.

18 After said hearing and within 20 days of the date of the hearing the  
19 Commissioner shall issue a further order vacating this Order or making it  
20 permanent as the facts require and making such findings as are necessary. All  
21 hearings shall comply with 541-A.

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

23 The Staff Petition dated September 11, 2008 (a copy of which is  
24 attached hereto) is incorporated by reference hereto.

25 [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

1 ORDER

2 WHEREAS, finding it necessary and appropriate and in the public  
3 interest, and consistent with the intent and purposes of the New Hampshire  
4 banking laws,

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

7 WHEREAS, FINDING a substantial likelihood that delay will cause harm to  
8 the public health, safety or welfare, requiring emergency action,

9 It is hereby ORDERED, that:

- 10 1. **Respondents' license is immediately suspended;** and  
11 2. Pursuant to RSA 541-A:30, III, an adjudicative hearing  
12 regarding only the issue of suspension shall be held within  
13 ten (10) working days of the date of this Order.

14 It is hereby further ORDERED, that:

- 15 3. Respondent Lifetime Home Loans, Inc. ("Respondent Lifetime  
16 Home Loans") shall show cause why penalties in the amount of  
17 \$52,500.00 should not be imposed against it individually and  
18 therefore, \$157,500.00 jointly and severally;  
19 4. Respondent Daniel Steven Flamand ("Respondent Flamand") shall  
20 show cause why penalties in the amount of \$82,500.00  
21 (\$52,500.00 for Respondent Lifetime Home Loans and \$30,000.00  
22 for Respondent Flamand) should not be imposed against him  
23 personally and therefore, \$217,500.00 jointly and severally;  
24 5. Respondent Robert Leonard McKee ("Respondent McKee") shall  
25 show cause why penalties in the amount of \$82,500.00  
(\$52,500.00 for Respondent Lifetime Home Loans and \$30,000.00  
for Respondent McKee alone) should not be imposed against him  
personally and therefore, \$217,500.00 jointly and severally;

1           6. The above named Respondents shall show cause why, in addition  
2           to the penalties listed in paragraphs 1 through 5 above,  
3           statutory penalties of \$475.00 should not be imposed for late  
4           filing of the annual report, jointly and severally against the  
5           above named Respondents;

6           7. The above named Respondents shall show cause why, in addition  
7           to the penalties listed in paragraphs 1 through 6 above,  
8           statutory penalties of \$2,500.00 should not be imposed for  
9           failing to file the fiscal year end financial statement;

10          8. The above named Respondents shall show cause why, in addition  
11          to the penalties listed in paragraphs 1 through 7 above,  
12          statutory penalties of \$8,750.00 (to date and accruing daily)  
13          should not be imposed for failing to file requested  
14          examination documents, jointly and severally against the above  
15          named Respondents; and

16          9. The above named Respondents shall show cause why, in addition  
17          to the penalties listed in paragraphs 1 through 8 above,  
18          Respondent Lifetime Home Loan's license should not be revoked.

19          It is hereby further ORDERED that:

20          10. Along with the \$52,500.00 administrative penalty for  
21          Respondent Lifetime Home Loans and \$82,500.00 each for  
22          Respondent Flamand and Respondent McKee, the outstanding three  
23          invoices in the total amount of \$11,725.00 shall be  
24          immediately paid;

25          11. The Respondents shall immediately **Cease and Desist** from all  
violations of New Hampshire law and the rules promulgated  
thereunder; and

1 12. Failure to request a hearing within 30 days of the date of  
2 receipt of this Order shall result in a default judgment being  
3 rendered and administrative penalties imposed upon the  
4 defaulting Respondents(s).

5  
6 SIGNED,

7  
8 Dated: 9/11/08

9 /s/  
PETER C. HILDRETH  
BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of: ) Case No.: 08-377  
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 3 State of New Hampshire Banking ) Staff Petition  
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 4 Department, )  
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 5 Petitioner, ) September 11, 2008  
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 6 and )  
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 7 Lifetime Home Loans, Inc., Daniel )  
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 8 Steven Flamand, and Robert Leonard )  
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 9 McKee, )  
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 10 Respondents )  
 )

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11  
12 I. STATEMENT OF ALLEGATIONS

13 The Staff of the Banking Department, State of New Hampshire (hereinafter  
14 "Department") alleges the following facts:

15 Facts Common on All Counts:

- 16 1. Respondent Lifetime Home Loans, Inc. (hereinafter "Respondent  
 17 Lifetime Home Loans") has been licensed as a Mortgage Broker  
 18 since November 8, 2005, with an amended license date of March 12,  
 19 2008.
- 20 2. Respondent Daniel Steven Flamand (hereinafter "Respondent  
 21 Flamand") is, or was at all relevant times, Chief Executive  
 22 Officer, President, Director and Owner/Co-Owner of Respondent  
 23 Lifetime Home Loans.
- 24 3. Respondent Robert Leonard McKee (hereinafter "Respondent McKee")  
 25 is, or was at all relevant times, Vice-President, Secretary,

1 Director and Co-Owner of Respondent Lifetime Home Loans.

2 Violation of RSA 397-A:5, III (c) Failure to Post Continuous Surety Bond (1  
3 Count):

4 Violation of RSA 397-A:10, IV Failure to Update Information on File with  
5 Commissioner (2 Counts):

6 Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to  
7 Department Inquiries Regarding Surety Bond (2 Counts):

8 4. Paragraphs 1 through 3 are hereby realleged as fully set forth  
9 herein.

10 5. On January 28, 2008, the Department was notified by The Hartford of  
11 a surety bond cancellation to be effective February 24, 2008.

12 6. On February 20, 2008, the Department sent Respondent Lifetime Home  
13 Loans a notice via U.S. Certified Mail Return Receipt requested,  
14 that the bond must be reinstated or replaced immediately and the  
15 originally-executed bond sent to the Department.

16 7. The February 20, 2008 Department notice was delivered at 11:26 a.m.  
17 on February 28, 2008 in Auburn, Massachusetts 0101 as indicated by  
18 track and confirm receipt number 7007149000004224066.

19 8. As of April 10, 2008, Respondent Lifetime Home Loans has not  
20 contacted the Licensing Division to inform it of the status of the  
21 bond reinstatement.

22 9. On or about August 1, 2008, Examiner Sarah Lobdell indicated by  
23 email that attempts to contact Respondents (for failure to maintain  
24 a bond) by calling Respondent Flamand were unsuccessful. Examiner  
25 Lobdell left a voice message for him, however, Respondent Flamand  
is no longer accepting messages on this telephone line.



1           10. To date, Respondent Lifetime Home Loans does not have a \$20,000  
2           broker bond in place.

3 **Violation of RSA 397-A:13, II Failure to File Financial Statement (1 Count):**

4 **Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to**

5 **Department Inquiries Regarding Financial Statement (3 Counts):**

6           11. Paragraphs 1 through 10 are hereby realleged as fully set forth  
7           herein.

8           12. The Department's fiscal year end was December 31, 2007 and the  
9           financial statement was due on or before March 31, 2008.

10          13. Respondent Lifetime Home Loans was licensed on the date the  
11          financial statement filing was due.

12          14. The Department sent Respondent Lifetime Home Loans a reminder  
13          letter on January 24, 2008 via U.S. Certified Mail Return Receipt  
14          requested, notifying the Respondents of the upcoming filing  
15          requirement.

16          15. The January 24, 2008 notice was received by Michelle Martone of  
17          Respondent Lifetime Home Loans at 11:49 a.m. on May 12, 2008 in  
18          Auburn, MA 01501.

19          16. The Department sent Respondent Lifetime Home Loans another letter  
20          on April 9, 2008, indicating the filing was not received and that a  
21          fine had begun to accrue.

22          17. On May 8, 2008, the Department sent Respondent Lifetime Home Loans  
23          a final notice advising it the financial statement had not been  
24          received and if it was not received by May 30, 2008, a referral to  
25          the Legal Division would be made.

1 18. To date, none of the above named Respondents have responded to  
2 these letters, submitted the financial statement or paid the  
3 accrued fine of \$2,500.

4 Violation of 397-A:13, IV Failure to Pay Annual Report Late Filing Fee (1  
5 Count):

6 Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to  
7 Department Inquiries Regarding Financial Statement (4 Counts):

8 19. Paragraphs 1 through 18 are hereby realleged as fully set forth  
9 herein.

10 20. Respondent Lifetime Home Loans's annual report was due in the  
11 Department on or before February 1, 2008.

12 21. The Department received the annual report on February 20, 2008,  
13 generating a fine of \$25 a day, for a total of \$475.00 (\$25/day x  
14 19 days).

15 22. The Department sent three invoices: March 2008, May 2008 and June  
16 24, 2008 and received no payment.

17 23. On July 8, 2008, an additional letter from the Department's  
18 Licensing Supervisor was sent regarding this penalty, with no  
19 response from any of the three Respondents.

20 24. To date the invoice for \$475.00 remains unpaid.

21 Violation of RSA 397-A:12, VII Failure to Facilitate Exam (4 Counts):

22 Violation of RSA 397-A:12, III Examinations: Failure to Provide Requested  
23 Files (3 Counts):

24 Violation of RSA 397-A:13, II Failure to File Financial Statement (2 Counts):

25 Violation of RSA 397-A:13, V Failure to File Additional Documents (3 Counts):

1 Violation of RSA 397-A:11, II Record Keeping: Failure to Provide Requested

2 Files (1 Count):

3 Violation of RSA 397-A:10, IV Failure to Update Information on File with

4 Commissioner (2 Counts):

5 Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to

6 Department Inquiries Regarding Financial Statement (3 Counts):

7 25. Paragraphs 1 through 24 are hereby realleged as fully set forth  
8 herein.

9 26. The Department attempted to conduct an examination of Respondent  
10 Lifetime Home Loans on or about March 20, 2008.

11 27. On February 26, 2008, the Department sent the February 22, 2008  
12 Notice of Examination to Respondent Lifetime Home Loans via U.S.  
13 Certified Mail Return Receipt, which Respondent Lifetime Home Loans  
14 signed for and received at 11:36 a.m. on February 28, 2008 in  
15 Auburn, MA 01501.

16 28. The February 22, 2008 Notice of Examination required the Respondent  
17 to submit the following documents:

18 a. A list of all New Hampshire files of loans that the licensee  
19 originated, funded, closed, denied, or that were withdrawn,  
20 canceled or serviced by the licensee during the period 18 months  
21 prior to the date of this notice;

22 b. A copy of the most recent year-end financial statement, SEC 10-K  
23 and 10-Q if applicable, and most recent Federal Income Tax  
24 return;

25 c. A copy of the most recent quarterly financial statement;

d. Work papers and copies of source documents to support the

1 figures submitted on the company's most recently filed New  
2 Hampshire Annual Report; the work papers shall demonstrate the  
3 actual calculation of the numbers for verification by the  
4 department; and

5 e. A list on Schedules A and B of the license application form of  
6 the current direct owners, indirect owners and all principals of  
7 the company.

8 29. The loan list, described in paragraph 28a. above, was due within 7  
9 days of the receipt of notice of examination. The Department  
10 received this list and acknowledgment within eight (8) days.  
11 However, with no further response and submittal of the remaining  
12 requested documents, the Department sent a second notice.

13 30. A second notice dated April 7, 2008 was submitted to Respondent  
14 Lifetime Home Loans via U.S. Certified Mail Return Receipt and  
15 received on April 10, 2008.

16 31. Again, with no response, the Department sent the licensee a notice  
17 of additional examination on July 17, 2008 via U.S. Certified Mail  
18 Return Receipt requested, which Respondent Lifetime Home Loans  
19 received on July 22, 2008.

20 32. Respondent Lifetime Home Loans did not respond to the July 22, 2008  
21 request.

22 33. The Department called the Respondents on August 22, 2008 and spoke  
23 with someone who answered the telephone that the President/Owner  
24 Respondent Flamand was no longer in the building.

25 34. The examiner later sent an email to Respondent Flamand, which  
stated that the examination material was still outstanding.

1 35. Respondent Flamand responded to this email that his partner had  
2 left the business and he is in the process of dissolving the  
3 company. Respondent Flamand's email did not indicate if any  
4 information was in-route to the Department.

5 36. The Department responded to Respondent Flamand's email by stating  
6 the loan files were required to be provided to the Department.

7 37. Bank Examiner Michael Poulios googled the name Lifetime Home Loans,  
8 Inc. and came upon a listing that stated the same address the  
9 Department has on file, but with a different telephone number.

10 38. To date, the requested materials have not been received and  
11 Respondents have not responded to these inquiries and requests.

12 39. To date, fines have accrued for failing to provide the requested  
13 files. The current fine to date is \$8,750.00 (\$50/day x 175 days)  
14 and still accruing.

15 **Violation of RSA 397-A:10, II Failure to Notify Commissioner of Change in**

16 **Ownership (1 Count):**

17 40. Paragraphs 1 through 39 are hereby realleged as fully set forth  
18 herein.

19 41. The Department received an email from President/Owner Respondent  
20 Flamand that his business partner, Vice-President/Co-Owner  
21 Respondent McKee, opted out three months ago.

22 42. Respondents failed to notify the Department of this change in  
23 ownership.

1 **II. ISSUES OF LAW**

2 The staff of the Department, alleges the following issues of law:

- 3 1. The Department realleges the above stated facts in paragraphs 1  
4 through 42 as fully set forth herein.
- 5 2. The Department has jurisdiction over the licensing and regulation  
6 of persons engaged in mortgage banker or broker activities pursuant  
7 to NH RSA 397-A:2 and RSA 397-A:3.
- 8 3. RSA 397-A:5, III (c) requires licensee to post a continuous surety  
9 bond in the amount of \$20,000 to the Department. Each of the above  
10 named Respondents violated this statute one time by allowing the  
11 surety bond to be cancelled.
- 12 4. RSA 397-A:10, II provides that a licensee shall submit written  
13 notification to the Department of the addition or deletion of a  
14 principal and shall provide the name and address of each new  
15 principal no later than 30 days after such change. Each of the  
16 above named Respondents violated this statute on one occasion as  
17 alleged above.
- 18 5. RSA 397-A:10, IV provides that persons licensed under RSA Chapter  
19 397 are under a continuing obligation to update information on file  
20 with the Commissioner. Each of the above named Respondents failed  
21 to update the Commissioner on at least five occasions as alleged  
22 above.
- 23 6. RSA 397-A:11, II provides that requested files and business records  
24 must be received by the Department within 21 calendar days of  
25 request. The licensee will be subject to a \$50.00 a day fine every  
day after the 21-day period the records are not produced.

1 Respondents currently owe \$8,750.00 to date and the fine is still  
2 accruing.

3 7. RSA 397-A:12, III requires licensees to comply with examination  
4 requests with or without prior notice. All books, papers, files,  
5 related material, and records of assets shall be subject to the  
6 Department's examination. Each of the above named Respondents  
7 violated this statute on at least three occasions as alleged above.

8 8. RSA 397-A:12, VII provides that every person being examined, and  
9 all of the officers, directors, employees, agents, and  
10 representatives of such person shall make freely available to the  
11 Commissioner or his or her examiners, the accounts, records,  
12 documents, files, information, assets, and matters in their  
13 possession or control relating to the subject of the examination  
14 and shall facilitate the examination. Each of the above named  
15 Respondents violated this statute on at least four occasions as  
16 alleged above. This has also generated a fine of \$2,500.00.

17 9. RSA 397-A:13, II provides that each licensee shall file a financial  
18 statement within 90 days from the date of its fiscal year end.  
19 Each of the above named Respondents violated this statute on four  
20 occasions as alleged above.

21 10. RSA 397-A:13, IV provides that any mortgage banker or broker  
22 failing to file the annual report within the time prescribed may be  
23 required to pay to the Department a penalty of \$25.00 per calendar  
24 day for each day the annual report is overdue, for a maximum of  
25 \$2,500.00. Each of the above named Respondents violated this  
statute on one occasion by failing to pay the late fee of \$475.00

1 for a late filed annual report. Respondents still owe the \$475.00  
2 outstanding invoice, as well.

3 11. RSA 397-A:13, V provides that in addition to the annual report and  
4 financial statement, the Department may require such additional  
5 special or regular reports as it may deem necessary under RSA  
6 Chapter 397-A. Each of the above named Respondents violated this  
7 provision on at least three occasions as alleged above.

8 12. RSA 397-A:13, VI provides that any officer, owner, manager or agent  
9 of any licensee shall reply promptly in writing, or other  
10 designated form, to any written inquiry from the Department.  
11 Respondent Flamand and Respondent McKee each violated this  
12 provision on at least twelve occasions each as alleged above.

13 13. RSA 397-A:18, I provides that the Department may issue a complaint  
14 setting forth charges whenever the Department is of the opinion  
15 that the licensee or person over whom the Department has  
16 jurisdiction, has violated any provision of RSA 397-A or orders  
17 thereunder.

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



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

16 **III. RELIEF REQUESTED**

17 The staff of the Department requests the Commissioner take the following  
18 Action:

- 19 1. Find as fact the allegations contained in section I of this Staff  
20 Petition;
- 21 2. Make conclusions of law relative to the allegations contained in  
22 section II of the this petition;
- 23 3. Pursuant to RSA 397-A:17, order each of the above named Respondents  
24 to show cause why their license should not be immediately  
25 suspended;
4. Pursuant to RSA 397-A:17, order each of the above named Respondents

- 1 to show cause why their license should not be revoked;
- 2 5. Pursuant to RSA 397-A:18, order each of the above named Respondents
- 3 to immediately Cease and Desist from violations of this chapter;
- 4 6. Assess fines and administrative penalties in accordance with RSA 397-
- 5 A:21, for violations of Chapter 397-A, in the number and amount equal
- 6 to the violations set forth in section II of this Staff Petition; and
- 7 7. Take such other administrative and legal actions as necessary for
- 8 enforcement of the New Hampshire Banking Laws, the protection of New
- 9 Hampshire citizens, and to provide other equitable relief.

10 **IV. RIGHT TO AMEND**

11 The Department reserves the right to amend this Staff Petition and to

12 request that the Commissioner take additional administrative action. Nothing

13 herein shall preclude the Department from bringing additional enforcement

14 action under RSA 397-A or the regulations thereunder.

15

16

17 Respectfully submitted by:

18

19                     /S/                    

20 Maryam Torben Desfosses

21 Staff Attorney

22   9/11/08

23 Date