

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 08-BD-007  
 )  
 4 State of New Hampshire Banking )  
 )  
 5 Department, )  
 )  
 6 Petitioner, ) Cease and Desist Order  
 )  
 7 and )  
 )  
 8 "Information Service Center, PO Box )  
 )  
 9 3999, Peoria, Illinois 61612-9944", )  
 )  
 10 DOES INDIVIDUALS 1-100, and DOES )  
 )  
 11 COMPANIES 1-100, )  
 )  
 12 Respondents )  
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14 NOTICE OF CEASE AND DESIST ORDER

15 This Cease and Desist Order (hereinafter "Order") commences an  
16 adjudicative proceeding under the provisions of RSA 384:12-a, RSA 384:67 and  
17 RSA 384:68 in conformity with RSA 541-A:31 through RSA 541-A:36.

18 LEGAL AUTHORITY AND JURISDICTION

19 Pursuant to RSA 383:9 ("Duties"), banks shall be under the control and  
20 supervision of the Bank Commissioner (hereinafter "the Commissioner"). Many  
21 of the powers now vested in the Commissioner are listed in RSA Chapter 384,  
22 entitled "General Provisions As To Savings Banks, Trust Companies, And  
23 Depositories".

24 Pursuant to RSA 384:12-a ("Cease and Desist Order"), IV, if, in the  
25 opinion of the Commissioner, an individual or business entity is engaging in  
or has engaged in any act or conduct in violation of RSA 384:67, the  
Commissioner may issue and serve an order upon the individual or business

1 entity requiring the individual or business entity to cease and desist from  
2 such act or conduct.

3 Pursuant to RSA 384:68 ("Enforcement"), the Commissioner may issue a  
4 cease and desist order, as provided in RSA 384:12-a, IV, against any  
5 individual or business entity which engages in any act or conduct in  
6 violation of RSA 384:67 involving a financial institution under the  
7 jurisdiction of the Commissioner and may bring legal action to enforce the  
8 order.

9 Pursuant to RSA 383:10-d ("Consumer Complaints and Restitution"), the  
10 Commissioner shall have exclusive authority and jurisdiction to investigate  
11 conduct that is or may be an unfair or deceptive act or practice that may  
12 violate any of the provisions of Titles XXXV and XXXVI and administrative  
13 rules adopted thereunder. The Commissioner may hold hearings relative to  
14 such conduct and may order restitution for a person or persons adversely  
15 affected by such conduct.

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

17 The above named Respondents have, or any interested party has, the  
18 right to petition for a hearing on this Cease and Desist Order (hereinafter  
19 "Order"), as well as the right to be represented by counsel. If any of the  
20 above named Respondents to whom this Order is issued, or any interested party,  
21 fails to request a hearing within 30 calendar days of receipt of such Order,  
22 then such person shall be deemed in default, and the Order shall, on the  
23 thirty-first day, become permanent and shall remain in full force and effect  
24 until and unless later modified or vacated by the Commissioner, for good cause  
25 shown. Any such request for a hearing shall be in writing, signed by the  
Respondent or by the duly authorized agent of the above named Respondent, and  
shall be delivered either by hand or certified mail, return receipt request,  
to the Banking Department, State of New Hampshire, 53 Regional Drive, Suite  
200, Concord, NH 03301.

1 A hearing shall be held not later than 10 days after the petition for  
2 such hearing is received by the Commissioner. Within 20 days of the date of any  
3 such hearing the Commissioner shall issue a further order either vacating this  
4 Order or making it permanent as the facts require. All hearings shall comply  
5 with RSA 541-A. If the person to whom this Order is issued fails to appear at  
6 the petitioned hearing after being duly notified of the date and time, such  
7 financial institution shall be deemed in default, and the proceeding may be  
8 determined against it upon consideration of this Order, the allegations of  
9 which may be deemed to be true.

9 **STATEMENT OF ALLEGATIONS, APPLICABLE LAW, AND RELIEF REQUESTED**

10 The Staff Petition dated September 8, 2008 (a copy of which is attached  
11 hereto) is incorporated by reference herein.

12 **ORDER**

13 WHEREAS, finding it necessary and appropriate and in the public  
14 interest, and consistent with the intent and purposes of the New Hampshire  
15 banking laws, and

16 WHEREAS, finding that the allegations contained herein, if proved true  
17 and correct, form the legal basis of the relief requested,

18 It is hereby ORDERED, that:

- 19 1. The Respondents shall immediately cease and desist from the  
20 unauthorized and deceptive use of the full or abbreviated  
21 name, trade name, service mark, or trademark of any financial  
22 institution in any written, electronic, or oral advertisement  
23 or solicitation for products or services;
- 24 2. The Respondents shall immediately cease and desist from  
25 including loan information relative to a specifically  
identified consumer that is publicly available in:
  - a. any written or electronic solicitation when the  
advertisement or solicitation does not clearly and

1 conspicuously state on the front page or introduction in  
2 bold-faced type in the same font size as is  
3 predominately used in the advertisement or solicitation  
4 disclosing that such individual or business entity is  
5 not sponsored by or affiliated with, and that such  
6 solicitation is not authorized by, the financial  
7 institution and that the information was retrieved from  
8 public records, or

9 b. an oral solicitation when the same disclosure is not  
10 made at the beginning of the solicitation;

- 11 3. The Respondents shall each show cause why each should not pay  
12 administrative penalties in the amount of \$2,500 per each  
13 violation of RSA 384:67 ("Unauthorized and Deceptive Use");  
14 4. Failure to request a hearing within 30 days of the date of  
15 receipt of this Order shall result in a default judgment being  
16 rendered and administrative penalties being imposed upon the  
17 defaulting Respondent.

18 SIGNED,

19 Dated: 9/8/08

20 \_\_\_\_\_/S/  
21 PETER C. HILDRETH  
22 BANK COMMISSIONER  
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