

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 06-090  
 )  
 4 State of New Hampshire Banking ) Order to Show Cause  
 )  
 5 Department, ) And  
 )  
 6 and ) Cease and Desist Order  
 )  
 7 Apex Financial Group Inc., and Roy )  
 )  
 8 Williams, )  
 )  
 9 Respondents )  
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 11 )

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12 NOTICE OF HEARING

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

17 Pursuant to RSA 397-A:18 the banking department may issue a cease and  
18 desist order against any licensee or person who it has reasonable cause to  
19 believe is in violation of the provisions of this chapter or any rule or order  
20 under this chapter.

21 Pursuant to RSA 383:10-d the Commissioner shall investigate conduct  
22 that is or may be an unfair or deceptive act or practice under RSA 358-A and  
23 exempt under RSA 358-A:3, I or that may violate any of the provisions of  
24 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
25 commissioner may hold hearings relative to such conduct and may order

1 restitution for a person or persons adversely affected by such conduct. The  
2 Commissioner may utilize all remedies available under the Act.

3 Pursuant to RSA 397-A:21 the Commissioner has the authority to suspend,  
4 revoke or deny any license and to impose administrative penalties of up to  
5 \$2,500.00 for each violation of New Hampshire banking law and rules.

6 The Department issued the Respondents an Order to Show Cause and Cease  
7 and Desist Order on July 30, 2007. The Respondents filed a timely request  
8 for a hearing in this matter.

9 The Department alleges the following:

10 **Issue 1: Co-brokering with Unlicensed Entities 48 Counts (RSA 397-A:17).**

11 **Issue 2: Operating Unlicensed Braches 13 Counts (RSA 397-A:3)**

12 **Issue 3: Failure to Notify Department of Significant Events 14 Counts (RSA**  
13 **397-A:10 IV).**

14 **Issue 4: Failure to Facilitate an Examination 1 Count (RSA 397-A:12).**

15  
16 Accordingly, an adjudicative proceeding shall be commenced pursuant to  
17 541-A:31 and Chapter 200 of the Department's rules (NH Code of  
18 Administrative Rules BAN 200) for the purpose of permitting the Respondents  
19 to show compliance with RSA 397-A and the Rules adopted thereunder.

20 Each party has the right to have an attorney present to represent the  
21 party at the party's expense, or may represent itself. All proceedings shall  
22 be recorded verbatim. Each party has the right to have the Department provide  
23 a certified shorthand court reporter at the requesting party's expense. Any  
24 such request must be submitted in writing to the Department at least 10 days  
25 prior to a scheduled hearing date.

1           THEREFORE, IT IS ORDERED, that the Respondents appear before the New  
2 Hampshire Banking Department on **October 23, 2007 at 10:00 am**, at the  
3 Department's offices at 64B Old Suncook Road, Concord, New Hampshire, for the  
4 purpose of participating in an adjudicative proceeding, at which time the  
5 Respondents will have the opportunity to demonstrate why the relief sought in  
6 the show cause order should not be imposed; and

7           IT IS FURTHER ORDERED, that if the Respondents elect to be represented  
8 by Counsel, said Counsel shall file notice of appearance at the earliest  
9 possible date; and

10           IT IS FURTHER ORDERED, that James Shepard, Staff Attorney, New  
11 Hampshire Banking Department is designated as Hearing Counsel in this matter  
12 with authority to represent the public interest within the scope of the  
13 Department's authority. Hearing Counsel shall have the status of a party to  
14 this proceeding; and

15           IT IS FURTHER ORDERED, that the Commissioner designates Maryam Torben-  
16 Desfosses to serve as the Presiding Officer in this proceeding who shall  
17 issue a RECOMMENDED DECISION in this matter which shall be reviewed and  
18 approved, disapproved or modified by the Bank Commissioner; and

19           IT IS FURTHER ORDERED, that any proposed exhibits shall be pre-marked,  
20 for identification only, and filed with the Department and provided to the  
21 opposing party **prior to October 18, 2007**. Hearing Counsel shall pre-mark the  
22 Department's exhibits with Arabic numbers. The Respondents shall pre-mark  
23 exhibits with capital letters. An index/list of exhibits providing a brief  
24 description of each exhibit with its corresponding pre-marked number or  
25 letter shall be filed by both parties simultaneous with the filing of  
exhibits; and

          IT IS FURTHER ORDERED, that all periods referenced in this notice shall  
be calendar days. If the last day of the period so computed falls on a  
Saturday, Sunday, or legal holiday, then the time period shall be extended to

1 include the first business day that is not a Saturday, Sunday, or legal  
2 holiday; and

3 IT IS FURTHER ORDERED, that the Department shall have the burden of  
4 setting forth a *prima facie* case, then the Respondents shall have the burden  
5 of showing compliance with applicable law by a preponderance of the evidence;

6 IT IS FURTHER ORDERED, that Respondents' failure to appear at the time,  
7 date, and place specified may result in the hearing being held *in absentia*  
8 and/or default ruling in favor of the Department, without further notice or  
9 opportunity to be heard; and

10 IT IS FURTHER ORDERED, that all documents shall be filed with the  
11 Presiding Officer in the form of an original and one (1) copy and shall bear  
12 a certification that a copy is being delivered to Hearing Counsel and any  
13 other parties to this matter in accordance with NH Code of Administrative  
14 Rules Ban 204.08. All documents shall be filed by mailing or delivering them  
15 to the New Hampshire Banking Department, ATTN: Presiding Officer 06-090, 64B  
16 Old Suncook Road, Concord, NH 03301. Filing by facsimile or electronic  
17 transmission shall not be accepted; and

18 IT IS FURTHER ORDERED, that the parties may submit Proposed Orders,  
19 which shall include findings of fact and conclusions of law, separately  
20 stated, no later than ten (10) days following conclusion of the hearing(s) in  
21 this matter; and

22 IT IS FURTHER ORDERED, that routine procedural inquiries may be made by  
23 telephoning Abigail Shaine at (603)-271-3561, but all communications with the  
24 Presiding Officer shall be in writing and shall be filed as provided above.  
25 *Ex parte* communications are forbidden by statute; and

IT IS FURTHER ORDERED, that a copy of this Notice of hearing shall be  
mailed to all named Respondents at their addresses of record or their counsel  
and that a copy shall also be delivered to James Shepard, Hearing Counsel,  
and to the Presiding Officer at the New Hampshire Banking Department.

