State of New Hampshire Banking Department

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3 In re the Matter of:

Case No.: 07-216

4 State of New Hampshire Banking

Department,

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Complainant,

Order on Respondents' Motion to
 Reconsider the Order on Petitioner's
 Motion to Amend the Petition and to
 Reinstate the Request to File Briefs

and

American Home Mortgage Corp, Michael

J. Strauss, Stephen A. Hozie, Alan B.)

Horn, and American Home Mortgage

11 | Holdings, Inc.,

Respondent

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HISTORY

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An Order to Show Cause was issued in this case by the Commissioner on August 2, 2007. Petitioner omitted reference to RSA 397-A:10, which is implemented by New Hampshire Administrative Rule BAN 2407.01.

On October 17, 2007 the Commissioner granted Petitioner's Motion to

Amend the Petition after the hearing to allow an opportunity to re-litigate

the matter due to the omission of reference to RSA 397-A:10 in the initial

Order to Show Cause and Staff Petition. This was after the Commissioner's

October 15, 2007 issued order requiring both Petitioner and Respondents to

file briefs on two issues: one concerning whether the Order to Show Cause and

Staff Petition must mention the particular RSA implemented by the BAN Rule,

and if the inclusion of the RSA is required, whether mention of RSA 397-A:5 alone is sufficient.

On October 22, 2007, Respondents filed a motion to reconsider the order on Petitioner's Motion and to reinstate the request to file briefs.

STATUTORY AUTHORITY

Fair notice of the issues to be addressed at the hearing is a basic requirement of the New Hampshire Administrative Procedure Act, RSA 541-A:31, III (c). Petitioner did reserve the right to amend the Staff Petition, which accompanies the Order to Show Cause, and to request that the Commissioner take additional administrative action.

ORDER

Since the time to amend has not been limited, Petitioner is not precluded from amending the Order to Show Cause and the accompanying Staff Petition.

However, based on review of Respondents' Motion To Reconsider, fair notice can be met through each party's filed briefs on the aforementioned issues. Therefore, it is this 28th day of November, 2007 ORDERED:

- 1. That the Order on Petitioner's Motion to Amend the Petition dated October 17, 2007, be vacated;
- 2. That the Presiding Officer's request to File Briefs dated October 15, 2007, be reinstated so that the parties may be permitted to file the requested briefs.
- 3. The such briefs shall be due December 14, 2007.

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4	FINDING THE ABOVE ORDER ON ORDER ON RESPONDENTS' MOTION TO RECONSIDER THE
5	ORDER ON PETITIONER'S MOTION TO AMEND THE PETITION AND TO REINSTATE THE
6	REQUEST TO FILE BRIEFS CONTAINED THEREIN TO BE IN THE PUBLIC INTEREST IT IS;
7	SO ORDERED
8	This <u>28th</u> day of November, 2007.
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11	/S/ Peter Hildreth,
12	Bank Commissioner
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