1 State of New Hampshire Banking Department In re the Matter of:) Case No.: 07-276 2 State of New Hampshire Banking) Order to Show Cause 3 4 Department, 5 Petitioner, 6 and 7 Orchid Island TRS, LLC, Opteum Inc., 8 Robert Filiberto, G. Hunter Haas IV and Peter R. Norden, 9 10 Respondents 11 12 NOTICE OF ORDER This Order commences an adjudicative proceeding under the provisions of 13 RSA 397-A:17, 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 penalties for violations of New 18 Hampshire Banking laws should not be imposed. 19 Pursuant to RSA 397-A:21, the Commissioner has the authority to 20 suspend, revoke or deny any license and to impose administrative penalties of up to \$2,500.00 for each violation of New Hampshire banking law and rules. 21 NOTICE OF RIGHT TO REQUEST A HEARING 22 The above named respondents have the right to request a hearing on this 23 Order to Show Cause, as well as the right to be represented by counsel at 24 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

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

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

STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

The <u>Staff Petition</u> dated November 19, 2007 (a copy of which is attached hereto) is incorporated by reference hereto.

ORDER

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

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

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

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

1	3. Respondent Orchid Island TRS should not have to pay a
2	statutory fine in the amount of \$3,650.00; and
3	It is hereby ORDERED that:
4	4. Failure to request a hearing within 30 days of the date of
5	receipt of this Order shall result in a default judgment being
6	rendered, license revocation and administrative penalties
7	imposed upon the defaulting Respondent.
8	SIGNED,
9	Dated: 11/20/07/S/
10	PETER C. HILDRETH BANK COMMISSIONER
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1 State of New Hampshire Banking Department In re the Matter of: 2) Case No.: 07-276 3 State of New Hampshire Banking Staff Petition) 4 Department, 5 Petitioner,) November 19, 2007 6 and 7 Orchid Island TRS, LLC, Opteum Inc., Robert Filiberto, G. Hunter Haas IV 8 and Peter R. Norden, 9 10 Respondent 11 12 STATEMENT OF ALLEGATIONS 13 The Staff of the Banking Department, State of New Hampshire (hereinafter 14 referred to as the "Department) alleges the following facts: 15 On or about June 11, 2007 the Department was scheduled to begin 16 an examination of Orchid Island TRS, LLC (hereinafter "Respondent 17 Orchid"). 18 2. Opteum Inc. (hereinafter "Respondent Opteum") is 92.5% owner of 19 Respondent Orchid. 20 Peter R. Norden (hereinafter "Respondent Norden") is President 3. 21 and Chief Executive Officer of Respondent Orchid. 22 4. Robert Filiberto (hereinafter "Respondent Filiberto") is Senior 23 Vice President and Co-Chief Operating Officer of Respondent Orchid. 24 25 G. Hunter Haas IV (hereinafter "Respondent Haas") is Senior Vice 5.

President and Co-Chief Operating Officer of Respondent Orchid.

- 6. Respondent is licensed as a Mortgage Banker and at all times relevant to this action held a Department license since at least 2003.
- 7. The Department sent a notice of an upcoming examination to the Respondent via US Certified Mail on June 11, 2007. The Respondent acknowledged the examination and submitted materials in accordance with the First Day Letter.
- 8. The Department sent a notice of file review phase to the Respondent via US Certified Mail on August 14, 2007 (mail piece number 7002 2410 0005 1958 9182). The Respondent received and signed for the notice on or about August 17, 2007.
- 9. The Department sent a second notice to the Respondent via US

 Certified Mail and via facsimile on September 12, 2007 (mail piece number 7006 3450 0000 0609 8907). The Respondent received and signed for the notice on or about September 17, 2007.
- 10. To date the Respondent has failed to facilitate the examination.
- 11. September 7, 2007 was the end of the 21-day grace period.
- 12. It has been 73 days since September 7th without any production of documents.

ISSUES OF LAW

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

- The Department realleges the above stated facts in paragraphs 1 through 12.
- 2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker activities

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- 3. Pursuant to New Hampshire Banking law, RSA 397-A:12 Department may examine the business affairs of any licensee or any other person, whether licensed or not, as it deems necessary to determine compliance with this Chapter and the rules adopted pursuant to it and with the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.). In determining compliance, the Department may examine the books, accounts, records, files, and other documents or matters of any licensee or person. 397-A:12 further requires every person being examined, and all employees, the officers, directors, agents, and representatives of such person shall make freely available to the commissioner or his examiners, the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination and shall facilitate the examination. The Respondent violated this provision by failing to facilitate the examination.
- 4. RSA 397-A:11 provides for a fine of \$50 per day for every day that records are not produced after 21 days.
- 5. RSA 397-A:21 IV provides that any person who, either knowingly or negligently, violates any provision of Chapter 397-A, may upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties or civil

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liabilities imposed by New Hampshire Banking laws.

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

RELIEF REQUESTED

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

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

1	A:21, for violations of Chapter 397-A, in the number and amount equal
2	to the violations set forth in section II of this petition; and
3	5. Take such other administrative and legal actions as necessary for
4	enforcement of the New Hampshire Banking Laws, the protection of New
5	Hampshire citizens, and to provide other equitable relief.
6	RIGHT TO AMEND
7	The Department reserves the right to amend this Staff Petition and to
8	request that the Commissioner take additional administrative action.
9	Nothing herein shall preclude the Department from bringing additional
10	enforcement action under RSA 397-A or the regulations thereunder.
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12	Respectfully submitted by:
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15	Staff Attorney
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