NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 397-A and RSA 541-A.

LEGAL AUTHORITY AND JURISDICTION

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

Pursuant to RSA 397-A:18, the Department has the authority to issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction is violating or has violated any provision of RSA Chapter 397-A, or any rule or order thereunder.

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

Pursuant to RSA 397-A:21, the Commissioner has the authority to 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.

2.4

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

NOTICE OF RIGHT TO REQUEST A HEARING

The above named Respondents have the right to request a hearing on this Order to Show Cause, as well as the right to be represented by counsel at 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 Respondent or the duly authorized agent of the above named Respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Banking Department, State of New Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301. Such hearings will be scheduled within 10 days of the Department's receipt of the request. If the Respondent fails 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 any of the above named Respondents fails to request a hearing within

30 calendar days of receipt of such order or reach a formal written and executed 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 June 5, 2009 (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:

- Respondent Quik Fund Inc ("Respondent Quik Fund") shall show cause why penalties in the amount of \$7,500.00 should not be imposed against it;
- 2. Respondent Michael Tishman ("Respondent Tishman") shall show cause why penalties in the amount of \$15,000.00 should not be imposed against him;
- 3. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 2 above, the

1	accrued fine of \$28,900.00 for failing to provide examination		
2	materials should not be paid to the Department;		
3	4. The above named Respondents shall be jointly and severally		
4	liable for the above amounts alleged in Paragraphs 1 through		
5	4 above;		
6	5. The above named Respondents shall show cause why, in addition		
7	to the penalties listed in Paragraphs 1 through 5 above,		
8	Respondent Quik Fund's license should not be revoked.		
9	It is hereby further ORDERED that:		
10	6. Along with the administrative penalties listed for the above		
11	named Respondents, the outstanding sum of \$28,900.00 shall be		
12	immediately paid; and		
13	7. Failure to request a hearing within 30 days of the date of		
14	receipt or valid delivery of this Order shall result in a		
15	default judgment being rendered and administrative penalties		
16	imposed upon the defaulting Respondent(s).		
17	SIGNED,		
18			
19	Dated: 06/05/09		
20	BANK COMMISSIONER		
21			
22			
23			
24			
25			

1	State of New Hampshire Banking Department		
) (Case No.: 08-076	
2	In re the Matter of:		
)		
3	State of New Hampshire Banking		
	11	Staff Petition	
4	Department,		
		Tune 5, 2009	
5	Petitioner,		
)		
6	and		
_)		
7	Quik Fund Inc, and Michael Tishman,		
)		
8	Respondents)		
	I. STATEMENT OF ALLEGATIONS		
9			
10	The Staff of the Banking Department, State of New Hampshire (hereinafter		
11	"Department") alleges the following facts:		
12	Facts Common on All Counts:		
10			
13	1. Respondent Quik Fund Inc (hereinafter "Respondent Quik Fund")		
14	was licensed as a Mortgage Banker from at least September 2,		
15	2004 until its license expired on December 31, 2008.		
16	2. Respondent Michael Tishman (hereinafter "Respondent Tishman")	
17	was the 100% owner and Presid	lent of Respondent Quik Fund, when	
18	licensed by the Department.		
19	Violation of RSA 397-A:12, VII Failure to Facilitate Exam (1 Count):		
20	Violation of RSA 397-A:12, III Examinations: Failure to Provide Requested		
0.1			
21	Files (1 Count):		
	Wielsties of RG 207 1 11 TT Record Western Reillers to Record Recorded		
22	Violation of RSA 397-A:11, II Record Keeping: Failure to Provide Requested		
23			
ادے	Files (I Count):		
24			
	TIOIGETON OF ROA 357-A.13, VI FAITURE OF OFFICER AND OWNER TO RESPOND TO		
25	Department Inquiries (3 Counts):		

9

10 11

12

13

14

15

16

17

18

19

20 21

22

23

24

- 3. Paragraphs 1 through 2 are hereby realleged as fully set forth herein.
- 4. The Department attempted to conduct an examination of Respondent Quik Fund on November 5, 2007, while Respondent Quik Fund was still licensed with the Department.
- 5. On October 8, 2007, the Department sent the notice of examination to Quik Fund via U.S. Certified Mail Return Receipt requested, which Respondents received on October 15, 2007.
- 6. The materials requested in the notice of examination were due on November 5, 2007, which is 21 days after the October 15, 2007 delivery of the notice of examination.
- 7. With no response from the above named Respondents, the Department submitted a second notice via U.S. Certified Mail Return Receipt requested on February 1, 2008, which Respondents received on February 6, 2008.
- 8. With no response from the above named Respondents, the Department submitted a third notice via U.S. Certified Mail Return Receipt requested on February 28, 2008 (for an expanded examination), which Respondents received on March 3, 2008.
- 9. To date, the Department has not received an acknowledgment nor the examination materials.
- 10. To date, fines have accrued for failing to provide the requested The current fine to date is \$28,900.00 (\$50.00 a day x 578 days) and still accruing.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

2.4

25

II. ISSUES OF LAW

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

- 1. The Department realleges the above stated facts in Paragraphs 1 through 10 as fully set forth herein.
- 2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker or broker activities pursuant to NH RSA 397-A:2 and RSA 397-A:3.
- 3. RSA 397-A:11, II provides that requested files and business records must be received by the Department within 21 calendar days of 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. Respondents currently owe \$28,900.00 (and still accruing). Each of the above named Respondents violated this statute on at least one occasion as alleged above.
- 4. RSA 397-A:12,III requires licensees to comply with examination requests with or without prior notice. All books, papers, files, related material, and records of assets shall be subject to the Department's examination. Each of the above named Respondents violated this statute on at least one occasion as alleged above.
- 5. RSA 397-A:12, VII provides that every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the Commissioner or his or her 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. Each of the above named Respondents violated this statute on at least one occasion as alleged above.

- 6. RSA 397-A:13, VI provides that any officer, owner, manager or agent of any licensee shall reply promptly in writing, or other designated form, to any written inquiry from the Department.

 Respondent Tishman violated this provision on at least three occasions as alleged above.
- 7. RSA 397-A:17,I provides in part that the Commissioner may by order, upon due notice and opportunity for hearing, assess penalties or deny, suspend, or revoke a license or application if it is in the public interest and the applicant, respondent, or licensee, any partner, officer, member, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, respondent, or licensee: (a) has violated any provision of RSA Chapter 397-A or rules thereunder, or (b) has not met the standards established in RSA Chapter 397-A.
- 8. RSA 397-A:18,I provides that the Department may issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction, has violated any provision of RSA Chapter 397-A or orders thereunder.
- 9. RSA 397-A:21, IV provides that any person who, either knowingly or negligently, violates any provision of RSA 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 \$2,500.00, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may imposed in addition to any criminal penalties or civil liabilities imposed by New Hampshire Banking laws.

10. RSA 397-A:21,V provides that every person who directly 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.

23

24

III. RELIEF REQUESTED

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

- Find as fact the allegations contained in section I of this Staff
 Petition;
- 2. Make conclusions of law relative to the allegations contained in section II of this Staff Petition;
- 3. Pursuant to RSA 397-A:17, order each of the above named Respondents to show cause why their license should not be revoked;
- 4. Assess fines and administrative penalties in accordance with RSA 397-A:21, for violations of Chapter 397-A, in the number and amount equal to the violations set forth in section II of this Staff Petition; and
- 5. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

IV. RIGHT TO AMEND

The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

/s/ 06/05/09
Maryam Torben Desfosses Date
Hearings Examiner