

1 State of New Hampshire Banking Department

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3 In re the Matter of: ) Case No.: 08-BD-006  
 )  
 4 State of New Hampshire Banking )  
 )  
 5 Department, )  
 )  
 6 Petitioner, ) Cease and Desist Order  
 )  
 7 and )  
 )  
 8 "328 Milton Street, Cincinnati, Ohio )  
 )  
 9 45202-0926", Clarissa A. Kin, Brent E. )  
 )  
 10 Niese, Kenneth Michael, Catherine )  
 )  
 11 Michael, DOES INDIVIDUALS 1-100, and )  
 )  
 12 DOES COMPANIES 1-100, )  
 )  
 13 Respondents

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15 NOTICE OF CEASE AND DESIST ORDER

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

19 LEGAL AUTHORITY AND JURISDICTION

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

1 Commissioner may issue and serve an order upon the individual or business  
2 entity requiring the individual or business entity to cease and desist from  
3 such act or conduct.

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

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

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

18 The above named Respondents have, or any interested party has, the  
19 right to petition for a hearing on this Cease and Desist Order (hereinafter  
20 "Order"), as well as the right to be represented by counsel. If any of the  
21 above named Respondents to whom this Order is issued, or any interested party,  
22 fails to request a hearing within 30 calendar days of receipt of such Order,  
23 then such person shall be deemed in default, and the Order shall, on the  
24 thirty-first day, become permanent and shall remain in full force and effect  
25 until and unless later modified or vacated by the Commissioner, for good cause  
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,

1 to the Banking Department, State of New Hampshire, 53 Regional Drive, Suite  
2 200, Concord, NH 03301.

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

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

12 The Staff Petition dated September 2, 2008 (a copy of which is attached  
13 hereto) is incorporated by reference herein.

14 **ORDER**

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

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

20 It is hereby ORDERED, that:

- 21 1. The Respondents shall immediately cease and desist from the  
22 unauthorized and deceptive use of the full or abbreviated  
23 name, trade name, service mark, or trademark of any financial  
24 institution in any written, electronic, or oral advertisement  
25 or solicitation for products or services;
2. The Respondents shall immediately cease and desist from  
including loan information relative to a specifically  
identified consumer that is publicly available in:

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

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

13 3. The Respondents shall each show cause why each should not pay  
14 administrative penalties in the amount of \$2,500 per each  
15 violation of RSA 384:67 ("Unauthorized and Deceptive Use");

16 4. Failure to request a hearing within 30 days of the date of  
17 receipt of this Order shall result in a default judgment being  
18 rendered and administrative penalties being imposed upon the  
19 defaulting Respondent.

20 SIGNED,

21 Dated: 9/2/08

22 /s/  
23 PETER C. HILDRETH  
24 BANK COMMISSIONER  
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