### NOTICE OF ORDER

This Order to Show Cause commences an adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA Chapter 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:17,II(e)(1) the Commissioner has the authority to remove or ban from office or employment, including license revocation, any person conducting business under RSA Chapter 397-A who violates RSA Chapter 397-A.

Pursuant to RSA 397-A:17,IX, in addition to any other penalty provided for under RSA Chapter 397-A, after notice and opportunity for hearing, the Commissioner may assess fines and penalties against a mortgage loan originator in an amount not to exceed \$25,000.00 (for each violation) if the

Commissioner finds the mortgage loan originator has violated or failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public Law 110-289, Title V or any regulation or order issued thereunder.

Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA Chapter 397-A shall be commenced within 6 years after the date on which the violation occurred.

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,IV, 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.

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 Chapter 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 Chapter 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 a 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 January 12, 2010 (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:

- 1. Respondent First Option Mortgage Corp ("Respondent First Option") shall show cause why penalties in the amount of \$2,500.00 should not be imposed against it;
- 2. Respondent Christopher L. Germano ("Respondent Germano") shall show cause why penalties in the amount of \$7,500.00 should not be imposed against him;
- 3. Respondent Mark Belmain ("Respondent Belmain") shall show cause why penalties in the amount of \$7,500.00 should not be imposed against him plus any additional penalty not to exceed \$25,000.00 pursuant to RSA 397-A:17,IX;
- 4. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 3 above, the \$1,511.30 examination fee should not be paid to the Department;
- 5. Respondents shall be jointly and severally liable for the above amounts alleged in Paragraphs 1 through 4 above;

1	6. The above named Respondents shall show cause why, in addition
2	to the penalties listed in Paragraphs 1 through 5 above,
3	Respondent First Option's license should not be revoked.
4	It is hereby further ORDERED that:
5	7. Along with the administrative penalties listed for the above
6	named Respondents, the outstanding sum of \$1,511.30 shall be
7	immediately paid; and
8	8. Failure to request a hearing within 30 days of the date of
9	receipt or valid delivery of this Order shall result in a
10	default judgment being rendered and administrative penalties
11	imposed upon the defaulting Respondent(s).
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13	SIGNED,
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15	Dated: 01/12/10 /s/
16	PETER C. HILDRETH BANK COMMISSIONER
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### Violation of RSA 397-A:12, V Failure to Pay Examination Fee (1 Count):

# Violation of RSA 397-A:13, VI Failure of Officer and Owner to Respond to

### Department Inquiries (2 Counts):

- 4. Paragraphs 1 through 3 are hereby realleged as fully set forth herein.
- 5. The Department conducted an examination of Respondent First Option on January 12, 2009.
- 6. On April 17, 2009, the Department mailed the report of examination and invoice for \$1,511.30 to Respondent First Option, via U.S. Certified Mail Return Receipt requested, which the Respondents received on April 21, 2009.
- 7. The above named Respondents failed to respond to the April 17, 2009 correspondence from the Department.
- 8. The Department, via U.S. mail, mailed a second notice on May 21, 2009 and a third notice on July 22, 2009.
- 9. The Department's Examiner-in-Charge telephoned the above named Respondents on July 27, 2009 and left several voice mails, which the above named Respondents have not returned.
- 10. On July 27, 2009, the Department mailed a final letter with invoice for \$1,511.30 to Respondent First Option, via U.S. Certified Mail Return Receipt requested, which the Respondents received on July 30, 2009.
- 11. To date, the above named Respondents still owe the \$1,511.30 examination fee for the 1.7 day examination.

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## 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 11 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 RSA 397-A:2 and RSA 397-A:3.
- 3. RSA 397-A:12,V provides that the expense of such examination shall be chargeable to and paid by the licensee. Each of the above named Respondents violated this provision on at least one occasion as alleged above. To date, the above named Respondents have failed to pay the \$1,511.30 examination invoice.
- 4. RSA 397-A:13, VI provides that any officer, owner, manager or agent any licensee shall reply promptly in writing, designated form, to any written inquiry from the Department. Respondent Germano and Respondent Belmain each violated this provision on at least two occasions as alleged above.
- 5. RSA 397-A:17,I provides in part that the Commissioner may by order, upon due notice and opportunity for hearing, 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 directly or indirectly controlling the person 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.

- 6. RSA 397-A:17,II(e)(1) provides that the Commissioner may issue an order or directive to remove or ban from office or employment, including license revocation, any person conducting business under RSA Chapter 397-A who violates RSA Chapter 397-A.
- 7. RSA 397-A:17,IX provides that in addition to any other penalty provided for under RSA Chapter 397-A, after notice and opportunity for hearing, the Commissioner may assess fines and penalties against a mortgage loan originator in an amount not to exceed \$25,000.00 if the Commissioner finds the mortgage loan originator has violated or failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public Law 110-289, Title V or any regulation or order issued thereunder.
- 8. RSA 397-A:17,X provides an action to enforce any provision of RSA Chapter 397-A shall be commenced within 6 years after the date on which the violation occurred.
- 9. 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.
- 10. 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

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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 be imposed in addition to any criminal penalties or civil liabilities imposed by New Hampshire Banking laws.

11. 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.

#### III. 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 Staff

1	Petition;
2	2. Make conclusions of law relative to the allegations contained in
3	section II of this Staff Petition;
4	3. Pursuant to RSA 397-A:17,IX, order Respondent Belmain to show
5	cause why he should not be assessed an additional penalty not to
6	exceed \$25,000.00.
7	4. Pursuant to RSA 397-A:17, order each of the above named
8	Respondents to show cause why their licenses should not be
9	revoked;
10	5. Assess fines and administrative penalties in accordance with RSA
11	397-A:21, for violations of RSA Chapter 397-A, in the number and
12	amount equal to the violations set forth in section II of this
13	Staff Petition; and
14	6. Take such other administrative and legal actions as necessary for
15	enforcement of the New Hampshire Banking Laws, the protection of
16	New Hampshire citizens, and to provide other equitable relief.
17	IV. RIGHT TO AMEND
18	The Department reserves the right to amend this Staff Petition and to
19	request that the Commissioner take additional administrative action.
20	Nothing herein shall preclude the Department from bringing additional
21	enforcement action under RSA Chapter 397-A or the regulations thereunder.
22	Respectfully submitted by:
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24	/s/ Maryam Torben Desfosses  Date
25	Hearings Examiner