

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 2 DIVISION OF FINANCE AND CORPORATE SECURITIES
 3 BEFORE THE DIRECTOR OF THE
 4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

5 In the Matter of:)

M-09-0029-10

6 ACUITY LENDING CORPORATION,)

ORDER TO CEASE AND DESIST,
 ASSESSING CIVIL PENALTIES

7 Respondent.)
 8)
 9)
 10)

ENTERED BY DEFAULT

11 On May 11, 2009 the Director (the "Director") of the Department of Consumer
 12 and Business Services (the "Department") acting by the authority of Oregon Revised
 13 Statutes ("ORS") 59.840 et seq. (the "Oregon Mortgage Lender Law"), issued
 14 Administrative Order **M-09-0029-10**, ORDER TO CEASE AND DESIST, ASSESSING
 15 CIVIL PENALTIES AND NOTICE OF RIGHT TO HEARING (the "Proposed Order")
 16 against **ACUITY LENDING CORPORATION** (the "Respondent").

17 On May 11, 2009, Respondent was mailed true copies of the Proposed Order by
 18 regular, first-class mail and by certified mail, postage prepaid, return receipt requested,
 19 and addressed to: **ACUITY LENDING CORPORATION, BEAVERTON, OR 97008**.
 20 Respondent received the certified mailing as evidenced by the signed return receipt.

21 The regular mailing was not returned to the Department's Division of Finance and
 22 Corporate Securities (the "Division").

23 Respondent has not advised the Division of any change in its address or
 24 cessation of business at any of its offices, as required by Oregon Administrative Rule
 25 ("OAR") 441-860-0070.

26 Respondent has not made a written request for a contested case hearing in this

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1 matter and the time to do so has expired.

2 NOW THEREFORE, after consideration of the Division's investigative file and
3 related documents, the Director hereby issues the following Findings of Fact,
4 Conclusions of Law, and Final Order.

5 FINDINGS OF FACT

6 The Director **FINDS** that:

7 1. **ACUITY LENDING CORPORATION** ("Respondent") is or was engaged in Oregon
8 residential mortgage lending, operating from a principal place of business located at
9 **ACUITY LENDING CORPORATION, BEAVERTON, OR 97008**. Respondent
10 obtained a license **ML-2970** to engage in Oregon residential mortgage transactions that
11 was effective in 2008.

12 2. ORS 59.860(3) requires that the Division obtain annual reports from licensed
13 Oregon mortgage bankers and brokers concerning their residential mortgage lending
14 activities. OAR 441-865-0025 defines the data required to be included in those reports
15 and sets the deadline for filing them. The deadline for licensees to file mortgage
16 lending annual reports was March 31, 2009.

17 3. On or about February 5, 2009, the Division activated a website
18 (<https://www4.cbs.state.or.us/exs/dfcs/mlrpt/>) for licensees to use to file their annual
19 reports. The Division posted a link to that website from the Division home page along
20 with information on the annual report requirement. In addition, on February 6, 2009,
21 the Division also posted a prominent notice on its Mortgage Lending Section website
22 (http://www.dfcs.oregon.gov/mortgage_lending.html).

23 4. On or about February 6, 2009, an e-mail was sent to all the valid e-mail addresses
24 the Mortgage Lending Section had for entities with a license at any time in 2008
25 reminding them of the requirement to file the report and providing information on how to
26 do so. The list of e-mail addresses was tracked on a spreadsheet (the "Annual Report

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1 Spreadsheet”) and saved on the Division’s hard drive. Each “undeliverable” e-mail
2 address notice received was tracked on the Annual Report Spreadsheet. When the
3 Division received notice that the e-mail should be forwarded to a different address, a
4 Division employee forwarded the e-mail to the new address provided. This information
5 was also tracked on the Annual Report Spreadsheet.

6 5. On or about February 6, 2009, a letter was sent to all active licensees that had a
7 license any time in 2008 informing them of the requirement to file an annual report.

8 6. On March 9, 2009, another e-mail was sent to those entities for which the Division
9 had a valid e-mail address, with a license at any time in 2008, but that had not yet filed
10 an annual report. Again, the Division tracked those e-mails that were returned as
11 “undeliverable” and a Division employee forwarded e-mails as directed. This
12 information was tracked on the Annual Report Spreadsheet.

13 7. On March 25, 2009, a final e-mail was sent to those entities the Division had a
14 valid e-mail address for that had not yet filed an annual report. The Division tracked
15 those e-mails that were returned as “undeliverable” and forwarded e-mails as directed.
16 This information was tracked on the Annual Report Spreadsheet.

17 8. On April 1, 2009, a final letter was sent to all active licensees that currently hold a
18 mortgage banker / broker license in Oregon and had a license at some point in 2008,
19 but had not yet filed an annual report. The letter reminded the licensees of the
20 obligation to file an annual report and of the \$100 per day penalty for failure to file the
21 report.

22 9. As of June 15, 2009, Respondent had not filed an annual report for mortgage
23 lending business conducted in 2008 and has not contacted the Division to discuss the
24 issue.

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26 //

1 **CONCLUSION OF LAW**

2 1. By failing to file an annual report with the Director by March 31, 2009, Respondent
3 violated ORS 59.860(3) and OAR 441-865-0025.

4 **ORDER**

5 **NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:**

6 The Director, pursuant to its authority under ORS 59.865, ORS 59.885, and ORS
7 59.870, hereby **ORDERS** that Respondents shall **CEASE AND DESIST** from violating
8 any provision of Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-885-
9 0010 and any rule, order or policy issues by the Division; **AND**

10 The Director, pursuant to ORS 59.996 and ORS 59.870 hereby **ORDERS**
11 Respondent to pay the State of Oregon a civil penalty of **\$3,800**. The civil penalty is
12 based on a fine of \$100 per day for each day after March 31, 2009 through May 8, 2009
13 on which Respondent failed to file an Annual Report in violation of ORS 59.860(3) and
14 OAR 441-865-0025.

15 The date of this Order is the day the Director or the Director's nominee signs the
16 Order. The entry of this Order in no way limits further remedies which may be available
17 to the Director under Oregon law.

18 Dated this 25th day of June 2009, at Salem, Oregon.

19 **NUNC PRO TUNC** May 11, 2009.

20
21 **CORY STREISINGER, Director**
22 **Department of Consumer and Business Services**

23 

24 **David Tatman, Administrator**
25 **Division of Finance and Corporate Securities**

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