

STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
DIVISION OF FINANCE AND CORPORATE SECURITIES

In the Matter of

Case No. S-12-0098

Acuity Lending Corporation, Robert  
Cancelosi, and Bret Costelow,  
  
Respondents.

FINAL ORDER TO CEASE AND DESIST,  
FINAL ORDER DENYING THE USE OF  
EXEMPTIONS TO THE SECURITIES  
REGISTRATION REQUIREMENTS, AND  
FINAL ORDER ASSESSING CIVIL  
PENALTIES BY DEFAULT AGAINST  
ACUITY LENDING CORPORATION

On November 6, 2012, the Director of the Department of Consumer and Business Services for the State of Oregon (hereinafter, “the Director”), acting by the authority of the Oregon Securities Law, ORS chapter 59, issued Administrative Order No. S-12-0098, ORDER TO CEASE AND DESIST, ORDER DENYING THE USE OF EXEMPTIONS TO THE SECURITIES REGISTRATION REQUIREMENTS, PROPOSED ORDER ASSESSING CIVIL PENALTIES, AND NOTICE OF RIGHT TO AN ADMINISTRATIVE HEARING (the “Proposed Order”) against Acuity Lending Corporation (“Acuity”).

On November 9, 2012, Acuity was duly served with true copies of the Proposed Order by certified United States Mail, postage prepaid, at the following two addresses: (1) 2066 E. Champagne Place, Chandler, Arizona 85249 (Article No. 7011 2000 0000 7333 1215); and (2) 13332 SW 129<sup>th</sup> Avenue, Tigard, Oregon 97223 (Article No. 7011 2000 0000 7333 1222).

According to the return receipts, the Proposed Order was signed for by Erica Costelow at the Arizona address and Robert Cancelosi at the Oregon address.

Acuity has not made a written demand for a contested case hearing in this matter and time to do so has now expired.

Division of Finance and Corporate Securities  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387





1 NOW THEREFORE, after consideration of the file in the matter maintained by  
2 the Oregon Department of Consumer and Business Services, including any materials that  
3 Acuity may have submitted, the Director hereby issues the following Findings of Fact,  
4 Conclusions of Law, and Final Orders.

5 I.

6 FINDINGS OF FACT

7 The Director FINDS that:

8 A. Parties:

9 1. Acuity Lending Corporation (hereinafter “Acuity”) was first registered as a  
10 corporation with the Oregon Secretary of State on or about July 7, 2003. Acuity lists its  
11 principle place of business as 1225 NW Murray Blvd., Ste. 215, Portland, Oregon 97229.  
12 Bret James Costelow (hereinafter “Costelow”) is listed as the president of Acuity. Robert  
13 Raymond Cancelosi III (hereinafter “Cancelosi”) is listed as the secretary of Acuity. On  
14 or about September 7, 2012 Acuity was administratively dissolved by the Oregon  
15 Secretary of State.

16 2. The Oregon Department of Consumer and Business Services’ Division of Finance  
17 and Corporate Securities (“DFCS”) has no record of any securities offering ever being  
18 registered in the name of Acuity or any associated persons. Additionally DFCS has no  
19 record of Acuity or any associated persons having ever been licensed by any federal or  
20 state government agency to sell securities.

21 B. Hard Money Lending Program:

22 3. From approximately 2003 to 2008, Acuity solicited and obtained at least  
23 \$25,000,000 from at least 170 investors for “Trust Deed Investments”. Typically,  
24 investor funds received by Acuity were pooled into a single account managed by Acuity  
25 to make hard money loans for residential and commercial construction projects and land  
26 acquisitions identified by Acuity (hereinafter “Hard Money Lending Program”). The



1 hard money loans from Acuity to the borrowers ranged from approximately \$100,000 to  
2 \$2,000,000.

3 4. The Hard Money Lending Program was advertised in newspapers and via direct  
4 mail solicitations. In some of the advertisements the Hard Money Lending Program was  
5 represented as a safe investment. Specifically, the Hard Money Lending Program was  
6 advertised as a secure investment because the loans “are typically made at low Loan to  
7 Value ratios so that if ever a default occurs, there is plenty of equity in the property to  
8 allow a quick sale, thus avoiding losses.” Additionally, Acuity advertised that:

9 WHAT MAKES FIRST TRUST DEED INVESTMENTS SO SAFE?

10 Acuity Lending strives to make every loan as safe as possible, so we take  
11 specific steps to protect you.

12 **Strong Equity Positions.** We do not offer high LTV [loan-to-value ratio]  
13 loans. The borrowers must have a strong equity position for us to consider  
14 these loans. Most loans are under 70% of the value of the property and  
15 many are less than 50%.

16 **Full Appraisals.** Acuity requires appraisals on every property from a  
17 third party state certified and licensed appraiser. We want to be confident  
18 in the true value of each individual property.

19 **Title Insurance.** We always require Full Extended ALTA Title Insurance  
20 to guarantee you are secured with a first position lien on each property.

21 **Ability to Make Payments.** The borrower must prove they can make  
22 their monthly mortgage payment to Acuity Lending.

23 5. In exchange for their investment in Acuity’s Hard Money Lending Program,  
24 investors were promised a rate of return of between 8 and 12 percent. At the end of the  
25 loan period, typically between one and three years, each investor was promised the return  
26 of his or her principal investment.

6. As part of the Hard Money Lending Program, Acuity had investors sign a loan  
servicing agreement, which allowed Acuity to act as each investor’s agent in servicing  
the loan, including collecting all scheduled payments on each loan. For servicing each



1 loan, Acuity received a “servicing fee of 1.75% of the regularly scheduled principal Loan  
2 balance.”

3 7. In early 2008, many investors stopped receiving interest payments on their  
4 investments with Acuity.

5 8. On or about November 17, 2008, Cancelosi, sought judicial dissolution and the  
6 appointment of a receiver with the Circuit Court of the State of Oregon for the County of  
7 Multnomah (the “Circuit Court”) to wind-up and liquidate Acuity. On or about  
8 November 24, 2008, the Circuit Court issued an order appointing a receiver to wind up  
9 the business affairs of Acuity.

10 9. On or about February 14, 2009, the Acuity receiver dispatched a letter to all  
11 potential claimants explaining that as part of its lending investor funds to borrowers for  
12 construction projects “Acuity would hold back a reserve fund (Construction Trust  
13 account) for each project intended to insure completion of the work undertaken by the  
14 Borrower.” The Acuity receiver states that “it appears that as projects ran short of  
15 funding, Acuity would invest the money it held in the Construction Trust account to  
16 support other struggling projects.” Additionally, the Acuity receiver notes that it appears  
17 that “the monies in the Construction Trust account were commingled with other projects  
18 to the point that the Receiver believes that it is impossible to tell what portion of the  
19 monies on deposit in the Construction Trust account belong to any particular project.”

20 10. The Acuity receiver also notes that at the time of his letter, Acuity has “45 projects  
21 in varying stages of failure.”

22 11. Acuity failed to disclose to investors: (1) known, foreseeable risk factors in  
23 connection with the Hard Money Lending Program; (2) that the investments offered in  
24 the Hard Money Lending Program were securities under Oregon law; (3) that the  
25 securities offering was not registered with the State of Oregon; (4) that Acuity and its  
26 associated persons were not licensed to sell securities by the State of Oregon; and (5) that



1 the Hard Money Lending Program calculated the loan-to-value ratio not on the basis of  
2 the current appraised value of the property, but rather upon the value of the property  
3 upon completion of the project.

4 II.

5 CONCLUSIONS OF LAW

6 The Director CONCLUDES that:

7 12. The Hard Money Lending Program offered and sold by Acuity, as described herein  
8 meets the definition of an investment contract and “real estate paper” in Oregon, and as  
9 such is considered a “security” under ORS 59.015(19)(a).

10 13. Acuity sold unregistered securities in Oregon in violation of ORS 59.055.

11 14. Acuity sold securities in Oregon without being licensed in violation of ORS 59.165.

12 15. Acuity omitted to state material facts in connection with the sale of securities in  
13 violation of ORS 59.135(2) by failing to disclose to investors: (1) known, foreseeable  
14 risk factors in connection with the Hard Money Lending Program; (2) that the  
15 investments offered in the Hard Money Lending Program were securities under Oregon  
16 law; (3) that the securities offering was not registered with the State of Oregon; (4) that  
17 Acuity and its associated persons were not licensed to sell securities by the State of  
18 Oregon; and (5) that the Hard Money Lending Program calculated the loan-to-value ratio  
19 not on the basis of the current appraised value of the property, but rather upon the value  
20 of the property upon completion of the project.

21 III.

22 FINAL ORDERS

23 The Director ISSUES the following FINAL ORDERS:

24 Final Order to Cease and Desist

25 16. Pursuant to the authority of 59.245, the Director hereby ORDERS Acuity to  
26 CEASE AND DESIST from:



- 1 a. Selling securities without a license in violation of ORS 59.165;
- 2 b. Selling unregistered securities in the State of Oregon in violation ORS 59.055;
- 3 c. Violating any provision of the Oregon Securities Law, including ORS Chapter 59
- 4 and OAR Chapter 441.

5 Final Order Denying the Use of Exemptions to the Securities Registration Requirements

6 17. The Director, pursuant to the authority under ORS 59.045, hereby DENIES  
7 Acuity's ability, and the ability of any successor person, business or corporation, to rely  
8 on the exemptions to the securities registration requirements allowed by ORS 59.025 and  
9 ORS 59.035.

10 Final Order Assessing Civil Penalties

11 18. The Director, pursuant to ORS 59.995, may assess a CIVIL PENALTY in an  
12 amount of not more than \$20,000 for each violation of the Oregon Securities Law.

13 19. Pursuant to ORS 59.995, the Director hereby assesses Acuity a CIVIL PENALTY  
14 in the amount of \$4,500,000 for the following violations:

15 a. A CIVIL PENALTY of \$1,500,000 for 170 violations of ORS 59.055 for selling  
16 unregistered securities.

17 b. A CIVIL PENALTY of \$1,500,000 for 170 violations of ORS 59.165(1) for  
18 selling securities without a license.

19 c. A CIVIL PENALTY of \$1,500,000 for 170 violations of ORS 59.135(2) for  
20 omitting to state material facts in connection with the sale of securities by failing to  
21 disclose to investors: (1) known, foreseeable risk factors in connection with the Hard  
22 Money Lending Program; (2) that the investments offered in the Hard Money Lending  
23 Program were securities under Oregon law; (3) that the securities offering was not  
24 registered with the State of Oregon; (4) that Acuity and its associated persons were not  
25 licensed to sell securities by the State of Oregon; and (5) that the Hard Money Lending  
26 Program calculated the loan-to-value ratio not on the basis of the current appraised value

1 of the property, but rather upon the value of the property upon completion of the project.  
2 20. Entry of this Order in no way limits or prevents further remedies, sanctions, or  
3 actions which may be available to the Director under Oregon law to enforce this Order,  
4 for violations of this Order, for conduct or actions of Acuity that are not covered by this  
5 Order, or against any party not covered by this Order.

6 IT IS SO ORDERED.

7 Dated this 23rd day of April, 2013, at Salem, Oregon, NUNC  
8 PRO TUNC November 9, 2012.

9 PATRICK M. ALLEN, Director  
10 Department of Consumer and Business Services

11 /s/ David Tatman  
12 David C. Tatman, Administrator  
13 Division of Finance and Corporate Securities

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