

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.

**ORDER TO CEASE AND DESIST,  
ORDER DENYING EXEMPTIONS,  
ORDER ASSESSING CIVIL PENALTY,  
AND CONSENT TO ENTRY OF ORDER  
BY RESPONDENT ROBERT  
CANCELOSI**

WHEREAS, 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, Oregon Revised Statutes Chapter 59, has conducted an investigation of Robert Cancelosi (“Cancelosi”) and concluded that violations of Oregon law had been committed; and

WHEREAS Cancelosi, without admitting or denying the Findings of Fact and Conclusions of Law stated hereinafter, wishes to resolve this matter with the Director;

NOW THEREFORE, as evidenced by the signature(s) subscribed on this Order, Cancelosi hereby CONSENTS to entry of this Order upon the Director’s Findings of Fact and Conclusions of Law as stated hereinafter.

I.

FINDINGS OF FACT

The Director FINDS that:

1. Acuity Lending Corporation (hereinafter “Acuity”) was first registered as a corporation with the Oregon Secretary of State on or about July 7, 2003. Acuity lists its principle place of business as 1225 NW Murray Blvd., Ste. 215, Portland, Oregon 97229. Cancelosi is listed as the secretary of Acuity. On or about September 7, 2012 Acuity was administratively dissolved by the Oregon Secretary of State.





1 2. Cancelosi’s last known address is 13332 SW 129<sup>th</sup> Avenue, Tigard, Oregon 97223.  
2 At all times relevant to this matter, Cancelosi was a resident of Oregon.

3 3. The Oregon Department of Consumer and Business Services’ Division of Finance  
4 and Corporate Securities (“DFCS”) has no record of any securities offering ever being  
5 registered in the name of Acuity, Cancelosi, or any other person associated with Acuity.  
6 Additionally, while Cancelosi was licensed to engage in residential mortgage  
7 transactions in Oregon, DFCS has no record of Cancelosi, Acuity or any other person  
8 associated with Acuity having ever been licensed by any federal or state government  
9 agency to sell securities.

10 A. Hard Money Lending Program

11 4. From approximately 2003 to 2008, Cancelosi through Acuity solicited and obtained  
12 at least \$25,000,000 from at least 170 investors for “Trust Deed Investments”.  
13 Typically, investor funds received by Acuity were pooled into a single account to make  
14 hard money loans for residential and commercial construction projects and land  
15 acquisitions (hereinafter “Hard Money Lending Program”). The hard money loans to the  
16 borrowers ranged from approximately \$100,000 to \$2,000,000.

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

23 WHAT MAKES FIRST TRUST DEED INVESTMENTS SO SAFE?

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

25 **Strong Equity Positions.** We do not offer high LTV [loan-to-value ratio]  
26 loans. The borrowers must have a strong equity position for us to consider



1 these loans. Most loans are under 70% of the value of the property and  
2 many are less than 50%.

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

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

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

10 6. In exchange for their investment in the Hard Money Lending Program, investors  
11 were promised a rate of return of between 8 and 12 percent. At the end of the loan  
12 period, typically between one and three years, each investor was promised the return of  
13 his or her principal investment.

14 7. As part of the Hard Money Lending Program, investors were required to sign a loan  
15 servicing agreement, which allowed Acuity to act as each investor's agent in servicing  
16 the loan, including collecting all scheduled payments on each loan. For servicing each  
17 loan, Acuity received a "servicing fee of 1.75% of the regularly scheduled principal Loan  
18 balance."

19 8. In early 2008, many investors stopped receiving interest payments on their  
20 investments.

21 9. On or about November 17, 2008, Cancelosi, sought judicial dissolution and the  
22 appointment of a receiver with the Circuit Court of the State of Oregon for the County of  
23 Multnomah (the "Circuit Court") to wind-up and liquidate Acuity. On or about  
24 November 24, 2008, the Circuit Court issued an order appointing a receiver to wind up  
25 the business affairs of Acuity.

26 10. On or about February 14, 2009, the Acuity receiver dispatched a letter to all  
potential claimants explaining that as part of its lending investor funds to borrowers for  
construction projects "Acuity would hold back a reserve fund (Construction Trust



1 account) for each project intended to insure completion of the work undertaken by the  
2 Borrower.” The Acuity receiver states that “it appears that as projects ran short of  
3 funding, Acuity would invest the money it held in the Construction Trust Account to  
4 support other struggling projects.” Additionally, the Acuity receiver notes that it appears  
5 that “the monies in the Construction Trust account were commingled with other projects  
6 to the point that the Receiver believes that it is impossible to tell what portion of the  
7 monies on deposit in the Construction Trust account belong to any particular project.”

8 11. The Acuity receiver also notes that at the time of his letter, Acuity has “45 projects  
9 in varying stages of failure.”

10 12. Cancelosi failed to disclose to investors: (1) that the investments offered in the  
11 Hard Money Lending Program were securities under Oregon law; (2) that the securities  
12 offering was not registered with the State of Oregon; (3) that although he was licensed to  
13 engage in residential mortgage transactions in Oregon, he was not licensed to sell  
14 securities by the State of Oregon; and (4) that the Hard Money Lending Program  
15 calculated the loan-to-value ratio not on the basis of the current appraised value of the  
16 property, but rather upon the value of the property upon completion of the project.

## 17 II.

### 18 CONCLUSIONS OF LAW

19 The Director CONCLUDES that:

20 13. The Hard Money Lending Program offered and sold by Cancelosi, as described  
21 herein meets the definition of an investment contract and “real estate paper” in Oregon,  
22 and as such is considered a “security” under ORS 59.015(19)(a).

23 14. Cancelosi sold unregistered securities in Oregon in violation of ORS 59.055.

24 15. Cancelosi sold securities in Oregon without being licensed in violation of ORS  
25 59.165.

26 16. Cancelosi omitted to state material facts in connection with the sale of securities in

1 violation of ORS 59.135(2) by failing to disclose to investors: (1) that the investments  
2 offered in the Hard Money Lending Program were securities under Oregon law; (2) that  
3 the securities offering was not registered with the State of Oregon; (3) that although he  
4 was licensed to engage in residential mortgage transactions in Oregon, he was not  
5 licensed to sell securities by the State of Oregon; and (4) that the Hard Money Lending  
6 Program calculated the loan-to-value ratio not on the basis of the current appraised value  
7 of the property, but rather upon the value of the property upon completion of the project.

8 III.

9 ORDERS

10 The Director ISSUES the following ORDERS:

11 Order to Cease and Desist

12 17. Pursuant to the authority of 59.245, the Director hereby ORDERS Cancelosi to  
13 CEASE AND DESIST from:

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

18 Order Denying the Use of Exemptions to the Securities Registration Requirements

19 18. The Director, pursuant to the authority under ORS 59.045, hereby DENIES  
20 Cancelosi's ability to rely on the exemptions to the securities registration requirements  
21 allowed by ORS 59.025 and ORS 59.035.

22 Order Assessing Civil Penalties

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

25 20. Pursuant to ORS 59.995, the Director hereby assesses Cancelosi a CIVIL  
26 PENALTY in the amount of \$600,000 for the following violations:





- 1 a. A CIVIL PENALTY of \$200,000 for 170 violations of ORS 59.055 for selling  
2 unregistered securities.
- 3 b. A CIVIL PENALTY of \$200,000 for 170 violations of ORS 59.165(1) for selling  
4 securities without a license.
- 5 c. A CIVIL PENALTY of \$200,000 for 170 violations of ORS 59.135(2) for  
6 omitting to state material facts in connection with the sale of securities by failing to  
7 disclose to investors: (1) that the investments offered in the Hard Money Lending  
8 Program were securities under Oregon law; (2) that the securities offering was not  
9 registered with the State of Oregon; (3) that although he was licensed to engage in  
10 residential mortgage transactions in Oregon, he was not licensed to sell securities by the  
11 State of Oregon; and (4) that the Hard Money Lending Program calculated the loan-to-  
12 value ratio not on the basis of the current appraised value of the property, but rather upon  
13 the value of the property upon completion of the project.

14 21. The Director agrees to SUSPEND the collection of \$540,000 of the \$600,000  
15 CIVIL PENALTY assessed herein providing that Cancelosi complies with all of the  
16 following terms and conditions:

17 a. Cancelosi shall cooperate in DFCS' continued investigation of the business  
18 dealings of Bret Costelow and Acuity, which could include, but is not limited to,  
19 testifying at any trial or administrative hearing or providing deposition testimony.

20 b. Cancelosi shall surrender, with no benefit to himself, his current holdings in  
21 Acuity projects.

22 c. Cancelosi shall comply with all terms and conditions set out in this Order and  
23 commit no new violations of the Oregon statutes regulating securities, Oregon Revised  
24 Statutes Chapter 59, and Oregon Administrative Rules Chapter 441.

25 22. The remaining \$60,000 of the \$600,000 CIVIL PENALTY shall be payable in five  
26 annual payments of no less than \$12,000 due December 31 of each calendar year,



1 beginning December 31, 2013. Provided, however, that in lieu of paying the full \$12,000  
2 each year, Cancelosi may offset the total dollar amount due and payable by performing  
3 uncompensated volunteer community or public service upon the following terms:

4 a. For every hour of uncompensated volunteer community or public service  
5 Cancelosi performs prior to the due date for each payment set forth above, the Director  
6 agrees to reduce the dollar amount owed by \$200.

7 b. The community or public service shall be performed with a nonprofit charitable  
8 organization or public body such as the United Way, Washington County's Bonnie L.  
9 Hays Small Animal Shelter or like organization, and shall be performed in-person at the  
10 organization's or public body's location, not via a computer or other technological means  
11 or at Cancelosi's place of residence.

12 c. Cancelosi shall provide an annual written report, due on or before December 31 of  
13 each year, of any and all hours of uncompensated volunteer community or public service  
14 performed, certified by the organizations or public bodies for which such service was  
15 performed, to DFCS.

16 d. Failure to pay any amount due in terms of dollars or hours of community or  
17 public services or any combination thereof, or to provide annual reports of the  
18 uncompensated volunteer community or public service as specified above, will constitute  
19 a violation of this Order.

20 23. If Cancelosi complies with all of the terms and conditions set out in this Order and  
21 commits no new violations of the Oregon statutes regulating securities during the ten-  
22 year period from the effective date of this Order, the Director WAIVES the collection of  
23 the suspended portion of the CIVIL PENALTY assessed herein.

24 24. The Director reserves the right to immediately impose the full \$600,000 CIVIL  
25 PENALTY upon a determination that the Cancelosi has violated any term of this Order.

26 25. Entry of this Order in no way limits or prevents further remedies, sanctions, or

1 actions which may be available to the Director under Oregon law to enforce this Order,  
2 for violations of this Order, for conduct or actions of the Respondents that are not  
3 covered by this Order, or against any party not covered by this Order.

4 IT IS SO ORDERED.

5 Dated this 23rd day of April, 2013, at Salem, Oregon.

6 PATRICK M. ALLEN, Director  
7 Department of Consumer and Business Services

8 /s/ David Tatman  
9 David C. Tatman, Administrator  
10 Division of Finance and Corporate Securities

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



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**CONSENT TO ENTRY OF ORDER**

I, Robert Cancelosi, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of the right to a hearing and of the right to be represented by counsel in this matter; and that I desire to resolve and settle this matter with the Director; that I voluntarily and without any force or duress, consent to the entry of this Order, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Securities Law; and that I will fully comply with the terms and conditions stated herein.

I understand that this Order is a public document.

By: /s/ Robert Cancelosi  
Robert Cancelosi

State of Oregon

County of Multnomah

Signed or attested before me on April 5 2013 by Jennifer A. Falco.

/s/ Jennifer A. Falco

Signature of Notary Public

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

