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

In the Matter of ACUITY LENDING CORPORATION, ROBERT CANCELOSI, AND BRET COSTELOW, Respondents.	Case No. S-12-0098 FINAL ORDER TO CEASE AND DESIST, FINAL ORDER DENYING EXEMPTIONS TO THE SECURITIES REGISTRATION REQUIREMENTS, FINAL ORDER ASSESSING CIVIL PENALTIES, AND CONSENT TO ENTRY OF ORDER BY RESPONDENT BRET COSTELOW.

The Director of the Department of Consumer and Business Services for the State of Oregon (the "Director") has determined that Bret Costelow ("Costelow") is liable for certain violations of ORS 59.005 to 59.451, 59.991 and 59.995 (the "Oregon Securities Law") by Acuity Lending Corporation ("Acuity") because he was the principal, owner and President of Acuity ; and

Costelow agrees to waive his right to an administrative hearing and to resolve and settle this matter by CONSENTING to entry of this Final Order.

Now, therefore, as evidenced by the authorized signature subscribed on this document, the Director issues the following Final Order.

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I. FINDINGS OF FACT

The Director FINDS that:

1. Acuity Lending Corporation ("Acuity") was at all times material herein an Oregon corporation with a principle place of business at 1225 NW Murray Blvd., Ste. 215, Portland, Oregon 97229. Acuity was formed on or about July 7, 2003 and

administratively dissolved on or about September 7, 2012.

2. At all times material to this Order, Acuity was in the business of making loans ("Hard Money Loans") to third-parties for residential and commercial construction projects as well as for land acquisitions (a "Project").

3. Acuity was licensed by the Director as a "mortgage broker" from August 15, 2003 to August 22, 2008 (ML # 2970). It was not licensed by the Director as a "broker-dealer" or "salesperson" under the Oregon Securities Law.

4. Bret Costelow ("Costelow") is an Arizona resident with a last known address of 2066 E Champagne, Chandler, AZ 85249. From on or about June 2003 to on or about November 2008, Costelow was an owner, principal and the President of Acuity. Costelow was licensed by the Director as a "mortgage loan originator" to Acuity from August 1, 2003 to August 1, 2010. Costelow was not licensed by the Director as a "broker-dealer" or "salesperson" under the Oregon Securities Law.

5. Costelow was responsible for locating and identifying suitable Projects and underwriting Hard Money Loans. After reviewing a Project's credit score, bank statements, property values, etc., Costelow would prepare a summary report for the Project. Agents and principals of Acuity would then use that summary report among other items to solicit investment in the Project from third-parties. Those solicitations were made, among other things, through newspaper advertisements, direct mail solicitations, Craigslist ads, restaurant tabletop ads, coupon books, or through "cold calls."

6. Investments in the Hard Money Loans were advertised as safe and secure because the loans were made at low loan-to-value ratios, which would allow for quick sale should a Project go into default. As an example, one of Acuity's advertisement stated:

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WHAT MAKES FIRST TRUST DEED INVESTMENTS SO SAFE?

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

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

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

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

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

7. Investors ("Investors") were typically promised a return of 8 – 12% on their initial investment as well as a return of their principal at the end of the term of the Hard Money Loan, which was typically one to three years. Investors also received a first trust deed that represented their fractionalized interest in the Project. The Investors were not informed of the known foreseeable risks of investing in a Project.

8. Each Investor typically invested $100,000 to $2,000,000 with Acuity. The total number of Investors in a Project varied. Some Projects had as many as 30 - 40 Investors. In total, Acuity solicited and obtained at least $25,000,000 in Trust Deed Investments from at least 170 Investors. The investments ("Trust Deed Investments") were not registered by the Director as a "security" under the Oregon Securities Law. The fact that the securities were not registered was not disclosed to Investors.

9. Beginning in 2003, Investors were told by Acuity and its agents that their money would be deposited into a bank account for a specific Project. Money would then

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go from that individual bank account to the specific Project. From approximately 2003 to 2005, all Investor funds were first pooled into one bank account (a "Collective Bank Account") and then transferred to individual bank accounts for each Project.

10. Starting on or about 2005, Acuity utilized a computer software application that allowed Acuity to track the finances of multiple Projects at the same time without having to set up individual bank accounts. Acuity relied on that software to allocate funds to each Project from the Collective Bank Account and stopped using individual bank accounts for each Project. Costelow asserts that this method of managing Investor funds was disclosed to some Investors. The Director finds, however, that that method of managing Investor funds was not disclosed to all Investors.

11. In some instances, if a Project was in distress Acuity would transfer money from the Collective Bank Account to the distressed Project even if the Project did not have sufficient funds on reserve.

12. From 2003 to early 2008, Acuity regularly made interest and principal payments to Investors after collecting those payments from the borrowers as part of its loan servicing obligations to Investors. Due to the crash in the housing market and credit crunch in 2008, however, Hard Money Loan borrowers were unable to meet their construction deadlines, repay or refinance their loans, or make principal or interest payments. By early 2008, 49 out of 55 Projects were in varying stages of failure. As a result, Acuity stopped making interest and principal payments to Investors on behalf of borrowers, even though it would have been able to make some of those payments if Project funds had not been commingled.

13. On or about November 17, 2008, Acuity sought judicial dissolution and the appointment of a receiver with the Multnomah County, Oregon Circuit Court (the "Circuit Court") to wind-up and liquidate Acuity. On or about November 24, 2008, the Circuit Court appointed a receiver. As part of that dissolution, the Investors retained their

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first trust deeds.

14. On or about April 23, 2013, the Director entered a Final Order by Default against Acuity having concluded that Acuity sold unregistered securities, and sold securities without being licensed to do so. The order also concluded that Acuity omitted to state material facts in connection with the sale of securities in violation of ORS 59.135(2) by, among other things, failing to disclose to Investors: 1) the known, foreseeable risks associated with the Hard Money Lending Program; 2) the Trust Deed Investments were securities, 3) Acuity and its agents were not licensed by the Director to sell securities; and 4) that Acuity based its calculation of the loan-to-value ratio for each Project on the value of the property upon completion of the Project, not on the current appraised value of the property.

II. CONCLUSIONS OF LAW

The Director CONCLUDES that:

15. The Trust Deed Investments described herein are "securities" under ORS 59.015(19)(a) because they are "investment contracts" or "real estate paper sold by a mortgage broker."

16. Acuity and its agents sold unregistered securities in Oregon in violation of ORS 59.055. Costelow is liable under ORS 59.115(3) for Acuity's violations of ORS 59.055 because he was the principal, owner, and President of Acuity.

17. Acuity and its agents sold securities in Oregon without being licensed in violation of ORS 59.165. Costelow is liable under ORS 59.115(3) for Acuity's violations of ORS 59.165 because he was the principal, owner, and President of Acuity.

18. Acuity and its agents violated ORS 59.135(2) when in connection with the purchase or sale of securities, they made an untrue statement of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the

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circumstances under which they were made, not misleading. Specifically, Acuity and others did not disclose that 1) the Trust Deed Investments were securities, 2) Acuity and its agents were not licensed by the Director to sell securities, 3) Acuity calculated the loan-to-value ratio not on the basis of the current appraised value of the property, but rather upon the value of the property upon completion of the Project, and 4) all Project funds would be commingled with each other. Costelow is liable under ORS 59.115(3) for Acuity's violations of ORS 59.135(2) because he was the principal, owner, and President of Acuity.

III. ORDERS

The Director ISSUES the following ORDERS:

Order to Cease and Desist

19. Pursuant to the authority of 59.245, the Director ORDERS Costelow to CEASE AND DESIST from violating any provision of the Oregon Securities Law and administrative rules thereunder.

Order Denying the Use of Exemptions to the Securities Registration Requirements

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

Additional Orders

21. Costelow shall surrender to all Oregon Investors, with no benefit to himself, his current holdings in any Project or interest in Acuity or related or successor entities by December 31, 2013.

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22. Costelow shall not act as a licensed, unlicensed, or exempt broker-dealer, salesperson, investment adviser, or investment adviser representative in Oregon or with Oregon residents without obtaining prior approval from the Director.

23. Costelow shall not maintain any ownership interest in or executive role with a licensed, unlicensed, or exempt broker-dealer, salesperson, investment adviser, or investment adviser representative without obtaining prior approval from the Director.

24. Costelow shall not apply for, hold, or renew any license or registration required by the Director in Oregon – including but not limited to, any investment adviser, broker-dealer, securities salesperson, or mortgage broker licenses – for ten years from the effective date of this Order.

Order Assessing Civil Penalties

25. The Director, pursuant to ORS 59.995, assesses Costelow CIVIL PENALTIES in the total amount of $600,000 as follows:

a) $200,000 for Costelow's liability under ORS 59.115(3) for Acuity's 170 violations of ORS 59.055;

b) $200,000 for Costelow's liability under ORS 59.115(3) for Acuity's continuing violations ORS 59.165(1); and

c) $200,000 for Costelow's liability under ORS 59.115(3) for Acuity's 170 violations of ORS 59.135(2).

Suspension of Collection of Civil Penalties.

26. The Director agrees to SUSPEND the collection of a specified portion of the assessed $600,000 CIVIL PENALTIES as follows:

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a) The Director agrees to SUSPEND the collection of $555,000 of the assessed $600,000 CIVIL PENALTIES so long as Costelow complies with all terms and conditions of this Order, commits no new violations of the Oregon Securities Law or the Oregon Administrative Rules thereunder, and pays $45,000 to the Director by December 31, 2013;

b) The Director agrees to SUSPEND the collection of $552,000 of the assessed $600,000 CIVIL PENALTIES so long as Costelow complies with all terms and conditions of this Order, commits no new violations of the Oregon Securities Law or the Oregon Administrative Rules thereunder, and pays $48,000 to the Director by December 31, 2014;

c) The Director agrees to SUSPEND the collection of $549,000 of the assessed $600,000 CIVIL PENALTIES so long as Costelow complies with all terms and conditions of this Order, commits no new violations of the Oregon Securities Law or the Oregon Administrative Rules thereunder, and pays $51,000 to the Director by December 31, 2015;

d) The Director agrees to SUSPEND the collection of $546,000 of the assessed $600,000 CIVIL PENALTIES so long as Costelow complies with all terms and conditions of this Order, commits no new violations of the Oregon Securities Law or the Oregon Administrative Rules thereunder, and pays $54,000 to the Director by December 31, 2016;

e) The Director agrees to SUSPEND the collection of $543,000 of the assessed $600,000 CIVIL PENALTIES so long as Costelow complies with all terms and conditions of this Order, commits no new violations of the Oregon Securities Law or the Oregon Administrative Rules thereunder, and pays $57,000 to the Director by December 31, 2017; or

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f) The Director agrees to SUSPEND the collection of $540,000 of the assessed $600,000 CIVIL PENALTIES so long as Costelow complies with all terms and conditions of this Order, commits no new violations of the Oregon Securities Law or the Oregon Administrative Rules thereunder, and pays $60,000 to the Director by December 31, 2018.

IV. AUTHORITY OF DIRECTOR TO SEEK OTHER REMEDIES UNDER OREGON LAW

27. This Order is a "Final Order" under ORS 183.310 (6)(b). It not subject to judicial review under ORS chapter 183. Subject to ORS 183.310 (6)(b), the entry of this Order does not limit other remedies that are available to the Director under Oregon Law.

IT IS SO ORDERED.

Dated this 26th day of September, 2013, at Salem, Oregon.

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

David C. Tatman, Administrator
Division of Finance and Corporate Securities

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CONSENT OF RESPONDENT TO ENTRY OF ORDER

Subject to ORS 59.135(4), I affirm that I have read the foregoing Consent Order and know and fully understand the contents hereof. I voluntarily and without any force or duress, consent to the entry of this Consent Order and will fully comply with its terms and conditions. Before signing this Consent, I was advised of my right to a hearing and waive any right to a hearing that I may have in this matter. I also understand that this Consent Order is a public document.

By: _____
Bret Costelow

State of _____

County of _____

Subscribed and sworn before me _____ 2013.

BK. 09.12.13

_____
Notary Public

State of California County of
San Francisco
Subscribed and sworn to (or affirmed)
Before me on this 12 day of Sept, 2013, by
BRET Costelow
BK. personally known to me or proved to me on
the basis of satisfactory evidence to be the
person(s) who appeared before me.
Signature Pamela Kahn

(Seal)

PAMELA KAHN
Commission # 1894855
Notary Public - California
San Francisco County
My Comm. Expires Aug 3, 2014

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STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of: ACUITY LENDING CORPORATION, ROBERT CANCELOSI, AND BRET COSTELOW, Respondents.	Case No. S-12-0098 ADDENDUM TO FINAL ORDER ASSESSING CIVIL PENALTIES, AS AGAINST RESPONDENT BRET COSTELOW ONLY

This Addendum is for the purpose of amending, in part, the Final Order to Cease and Desist, Final Order Denying Exemptions to the Securities Registration Requirements, Final Order Assessing Civil Penalties, and Consent to Entry of Order (the "Consent Order") entered into by and between the Director of the Department of Consumer and Business Services for the State of Oregon (the "Director") and Respondent Bret Costelow ("Costelow"), effective September 26, 2013, and signed by Costelow on September 12, 2013.

The Consent Order provided that Costelow was subject to a civil penalty of $600,000 for various violations of the Oregon Securities Law, as more fully described therein. Under Paragraph 26 of the Consent Order, however, the parties agreed that the Director would suspend the collection of a certain portion of the $600,000 in civil penalties so long as Costelow paid certain sums within the timeframes described in Paragraph 26. The final deadline for Costelow to pay any reduced civil penalties in exchange for a suspension of civil penalties was December 31, 2018. Under Paragraph 26, Section f), the Director agreed to suspend the collection of $540,000 of the $600,000 in civil penalties so long as, on or before December 31, 2018, Costelow paid the remaining $60,000 to the Director. Costelow failed to pay the $60,000 on or before the deadline of December 31,

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2018, and after demand for payment was made, the Director initiated collection proceedings. Costelow subsequently identified certain extenuating circumstances that resulted in his failure to meet the December 31, 2018 deadline.

The parties agree, through this Addendum, that the deadline set forth in Paragraph 26, Section f) of the Consent Order shall be extended from December 31, 2018 to May 31, 2021, subject to the following terms:

1. The principal balance of the amount due and owing from Costelow to the Director shall be reduced, during the term of this Addendum, from $600,000 to $60,000;

2. The Director will charge Costelow certain fees and costs associated with the collection of the $60,000, which are currently set at 19.5% of all amounts collected. As of June 4, 2020, the total amount of collection fees and costs accrued on the debt is $14,812.97;

3. The garnishment that is currently in place to collect the amounts due and owing from Costelow to the Director shall remain in full force and effect until the principal balance of $60,000 together with all fees and costs charged for the collection of the debt are paid in full;

4. Costelow shall receive credit for any amounts the Director has collected through garnishments prior to execution of this Addendum. As of June 4, 2020, such credits shall reduce the $60,000 principal balance to $53,385.08, and the $14,812.97 in collection fees and costs to $13,179.89, for a total amount of $66,564.97 due and owing as of June 4, 2020;

5. Any amount that the Director is unable to collect from Costelow through garnishments or otherwise on or before the extended deadline of May 31, 2021, shall be due and payable by Costelow no later than May 31, 2021;

6. If Costelow fails to pay the balance of the $60,000 debt, plus all fees and costs, on or before May 31, 2021, this Addendum shall be revoked and the full balance of $600,000 set forth in the Consent Order, together with any fees, costs, and interest accrued on the

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debt between the original due date of December 31, 2018 and the date this Addendum expires, May 31, 2021, shall be due and owing;

7. If Costelow satisfies this Addendum by paying the full $60,000 principal balance, plus all accrued fees and costs, on or before May 31, 2021, and so long as Costelow is not in violation of any other term in the Consent Order and has not committed any new violation of the Oregon Securities Law or the Oregon Administrative Rules adopted thereunder, the remaining $540,000 in civil penalties shall be permanently waived; and

8. All Findings of Fact, Conclusions of Law and Orders set forth in the Consent Order shall remain in full force and effect, except to the extent amended by this Addendum.

Now, therefore, as evidenced by the authorized signature subscribed on this document, the Director issues the following Addendum to the Consent Order.

SO ORDERED this 13th day of July, 2020.

ANDREW R. STOLFI, Director
Department of Consumer and Business Services

/s/Dorothy Bean
Dorothy Bean, Chief of Enforcement
Division of Financial Regulation

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CONSENT TO ENTRY OF ORDER

I, Bret Costelow, have read the foregoing Addendum and I know and fully understand the contents hereof. All representations and terms stated herein are true and correct. I have been advised of the right to be represented by counsel in this matter. I voluntarily consent to the entry of this Addendum without any force or duress. I understand that the Director reserves the right to take further action against me to enforce the Consent Order or this Addendum, or to take appropriate action upon discovery that I have committed other violations of the Oregon Securities Law. I will fully comply with the terms and conditions stated herein.

I understand that this Addendum is a public document.

Signature: */s/ Bret Costelow*
Bret Costelow

State of Oregon

County of Multnomah

Signed or attested before me on this 9th day of July _, 2020 by Bret Costelow.

/s/ Dayron Rafael Bueno Morales

Notary Public

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