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2  
3 STATE OF OREGON  
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
5 DIVISION OF FINANCE AND CORPORATE SECURITIES

6 In the Matter of

Case No. S-14-0003

7 SECURITIES AMERICA, INC.,

ORDER TO CEASE AND DESIST AND  
ASSESSING CIVIL PENALTIES AND  
CONSENT TO ENTRY OF ORDER

8 Respondent

9 WHEREAS, the Director of the Department of Consumer and Business Services  
10 for the State of Oregon (the "Director"), acting pursuant to the authority granted by the  
11 Oregon Securities Law, Oregon Revised Statutes ("ORS") 59.005 *et seq.*, has conducted  
12 an investigation into the securities-related activities of SECURITIES AMERICA, INC., a  
13 broker-dealer licensed by the Director;

14 WHEREAS, the Respondent does not wish to expend additional time or incur  
15 additional costs in connection with the Director's investigation;

16 NOW THEREFORE, the Director hereby issues the following Findings of Fact  
17 and Conclusions of Law, which the Respondent neither admits nor denies, and Order, to  
18 which the Respondent consents, as evidenced by the Consent to Entry of Order attached  
19 hereto.

20  
21 I. FINDINGS OF FACT

22 The Director FINDS that:

23 Part One: Securities America, Inc.

24 1. Securities America, Inc. (hereafter "Securities America") is a Delaware  
25 corporation authorized to conduct business in Oregon (Oregon Business Registry  
26 #564280-98).

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           2.     Securities America is a broker-dealer (CRD# 10205), and is licensed by the  
2 Director to transact securities-related business in Oregon.

3           3.     Securities America maintains retail offices in Oregon with licensed broker-  
4 dealer salespersons to provide financial services to Oregon residents.

5                                 Part Two: Broker-Dealer Regulatory Requirements

6           4.     Securities America, like all licensed broker-dealers, must, under Oregon law,  
7 establish, maintain, and enforce written policies and procedures governing the manner by  
8 which it will engage in certain aspects of its securities-related activities, such as the  
9 opening of new accounts, the frequent examination of active accounts to prevent  
10 unsuitable recommendations, and the prompt review and approval of all securities  
11 transactions by a supervisor, among other responsibilities.

12          5.     Securities America, like all licensed broker-dealers, must, under Oregon law,  
13 exercise diligent supervision over the securities activities of all of its associated persons,  
14 whether or not a given associated person has direct contact with a customer.

15          6.     Securities America, like all licensed broker-dealers, must, under Oregon law,  
16 have reasonable grounds to believe a securities transaction is “suitable” for its customer.

17                                 Part Three: Product Due Diligence (Medical Provider Financial Corporation)

18          7.     Medical Capital Holdings, Inc., a Nevada corporation (Entity #C4855-1996)  
19 based in Anaheim, California, represented that it would use proceeds from the sale of  
20 “secured notes” (hereafter “Medical Capital Notes”) to purchase accounts receivable  
21 from physicians and other medical providers at a discount through a series of special  
22 purpose corporations (Medical Provider Financial Corporation I, Medical Provider  
23 Financial Corporation II, etc).

24          8.     Medical Capital Notes were putatively exempt from federal securities  
25 registration requirements because they were offered under Regulation D, Rule 506.  
26 Medical Capital Notes were putatively exempt from Oregon securities registration



1 requirements on the same basis, pursuant to ORS 59.055 (3). Issuers offering securities in  
2 Oregon pursuant to Regulation D, Rule 506 must make certain “notice filings” within 15  
3 days of the first sale in Oregon, pursuant to ORS 59.049 (3). For example, Medical  
4 Provider Financial Corporation III submitted “notice filings” to the Director on July 25,  
5 2005 and April 23, 2007.

6 9. Securities America offered and sold Medical Capital Notes to its Oregon  
7 customers. More specifically, Securities America offered and sold Medical Capital Notes  
8 valued at \$4,801,000 to 55 Oregon residents.

9 10. Medical Capital Notes were not listed or freely traded on any securities  
10 exchange. Rather, Securities America offered Medical Capital Notes as part of a "private  
11 placement" to select customers. In such a case, a broker-dealer must conduct a  
12 reasonable, independent investigation - a process referred to as "due diligence" - to  
13 ensure that a given private company's securities will be suitable for its clients before  
14 placing the offering in question on its list of securities approved for sale to retail  
15 customers.

16 11. As is common in the securities industry, Securities America maintained a due  
17 diligence committee, comprised of senior executives, whose function it was to assess and  
18 approve each private placement product to be offered to retail customers.

19 12. The Securities America, Inc. Compliance Manual instructed that "the essential  
20 objective of the Due Diligence Committee is to provide a thorough review of investment  
21 products prior to the offering of the product...when internal resources are not sufficient  
22 to conduct a thorough due diligence examination, independent research firms selected by  
23 [Securities America] conduct the review of the proposed investment product."

24 13. Securities America’s due diligence committee, in connection with its review  
25 of Medical Capital Notes, relied heavily on reports produced by consultants who were not  
26 selected by Securities America and whose services were, in point of fact, paid for directly



1 by Medical Capital Holdings, Inc.

2 14. Securities America sold certain Medical Capital Notes beginning in 2004. On  
3 February 15, 2005 Jim Nagengast, CFO of Securities America, after review of a due  
4 diligence consultant's report, wrote to W. Thomas Cross, Senior Vice President of  
5 Securities America, that:

6 My big concern is the audited financials. At this point, there is no excuse for not having  
7 audited financials... it is a cost they [Medical Capital] simply have to bare (sic) to offer  
8 product through our channel. We may simply have to tell them that if they don't have  
9 financials by XXXX date we will stop distributing the product on that date. Then they  
10 can decide if that is worth spending \$50,000 to have it done. If they won't spend the  
11 money, that should give us concerns.

12 15. In August 2005 the consultant utilized by the Securities America due  
13 diligence committee issued a report evincing concerns about Medical Provider Financial  
14 Corporation III, including but not limited to the absence of any "sinking fund" or a  
15 requirement that the issuer maintain certain financial ratios to better ensure the likelihood  
16 of repayment; the ability of the issuer to invest up to \$50,000,000 in equity securities in  
17 businesses outside of the issuer's area of core expertise; and the ability of the issuer to  
18 purchase receivables aged greater than 180 days (previous Medical Capital Holdings-  
19 sponsored offerings purportedly acquired receivables averaging 90 days).

20 16. Despite repeatedly enunciated concerns by the consultant, Securities America  
21 did not insist that the issuer alter the structure of its offering or obtain audited financial  
22 statements. In November 2006 a consultant wrote to Securities America First Vice  
23 President, and due diligence committee member, Jay Idt:

24 ... if you [the due diligence committee] decide to approve [the sale of a Medical Capital  
25 offering by Securities America] please do so with restrictions on percentage of net worth,  
26 liquid and non-liquid, no reinvestment of interest, capping future note principal  
reinvestment to note proceeds from redemption or even a reduced percentage. Frankly, I  
am upset that an organization bringing in these dollars cannot agree to a partial sinking  
fund and appointment of an independent overseer...

17. Securities America offered and sold the Medical Capital Notes to Oregon



1 customers RJL, KJ, and CR described below without heeding the cautionary warnings  
2 resulting from the due diligence process.

3 Part Four: Limitations On Sale Of Medical Capital Notes By Salespersons

4 18. Securities America adopted written “Compliance Policies and Procedures”  
5 governing the sale of a Regulation D Offering, such as Medical Capital Notes, by its  
6 salespersons to its customers. The procedures served to establish “suitability” (eligibility)  
7 requirements to purchase such securities. The firm’s broker-dealer salespersons were  
8 instructed that restrictions were warranted because Regulation D offerings “are not  
9 registered for distribution in accordance with the provisions of the Securities Act or any  
10 applicable state securities laws... consequently, holders of these securities may not be  
11 able to liquidate their investments if an emergency arises or for any other reason.”

12 19. Securities America adopted written “Compliance Policies and Procedures”  
13 instructing salespersons that its “client’s investment knowledge as referenced on the New  
14 Account Form should either be good or excellent. For clients who do not have good or  
15 excellent investment knowledge, Registered Representatives **must** provide written  
16 documentation with the New Account Form explaining how the Regulation D Offering  
17 meets the client’s needs given the fact that these are risky and illiquid investments.”  
18 (Emphasis added.)

19 20. Securities America adopted written “Compliance Policies and Procedures”  
20 instructing salespersons that “clients who invest in them [Regulation D Offerings] should  
21 have an investment objective of either growth or maximum growth and a risk exposure of  
22 either aggressive or speculative. For clients who do not fall within these investment  
23 objectives/risk exposures, Registered Representatives **must** provide additional  
24 information with the New Account Form explaining how the Regulation D Offering  
25 meets the client’s needs given the fact that these investments are highly risky and  
26 volatile.” (Emphasis added.)



1 21. Securities America adopted written “Compliance Policies and Procedures”  
2 instructing salespersons that they “must maintain, in the client’s file, any additional  
3 documentation considered when determining the suitability of a transaction. The  
4 information in the client’s file must be dated.”

5 Part Five: Supervision Of Broker-Dealer Salespersons

6 22. Though the suitability assessment must begin with a broker-dealer’s  
7 salesperson, Securities America placed supervisory responsibilities over salespersons’  
8 assessment on the OSJ (branch office manager).

9 23. The Securities America Compliance Manual states that “... the OSJ should  
10 verify the suitability of all transactions” and managers should “confer with registered  
11 representatives [salespersons] regarding any transactions for customers where  
12 suitability... may be an issue.”

13 Part Six: Securities America Client RJL

14 24. RJL, an Oregon resident, was a Securities America client. Securities America  
15 sold RJL a one-year, \$50,000 Medical Provider Financial Corporation III Note on June  
16 21, 2007. Additionally, Securities America sold RJL a two-year, \$50,000 Medical  
17 Provider Financial Corporation V Note on February 27, 2008. RJL was 77 years of age  
18 on the date of the first transaction.

19 25. RJL represented to Securities America, in writing, that her investment  
20 knowledge was “limited.” Securities America’s policies and procedures required that  
21 certain offerings, including Notes issued by Medical Provider Financial Corporation, be  
22 sold only to persons describing their investment knowledge as “good” or “excellent”  
23 unless a Securities America broker-dealer salesperson provides “written documentation...  
24 explaining how the Regulation D offering meets the client’s needs given the fact that  
25 these are risky and illiquid investments.” There was no written documentation or  
26 communication between the Securities America broker-dealer salesperson and his

1 supervisor regarding this transaction.

2 26. RJL represented to Securities America, in writing, that her investment  
3 objective was to have an account with holdings that were “balanced” and that her “risk  
4 exposure” tolerance was “moderate.” Securities America’s policies and procedures  
5 required that certain offerings, including Notes issued by Medical Provider Financial  
6 Corporation, be sold only to persons describing their investment objective as “growth” or  
7 “maximum growth”, and their “risk exposure” tolerance as “aggressive” or “speculative”,  
8 unless a Securities America broker-dealer salesperson provides “written documentation...  
9 explaining how the Regulation D offering meets the client’s needs given the fact that  
10 these are risky and illiquid investments.” There was no written documentation or  
11 communication between the Securities America broker-dealer salesperson and his  
12 supervisor regarding this transaction.

13 Part Seven: Securities America Client KJ

14 27. KJ, an Oregon resident, was a Securities America client. Securities America  
15 sold KJ a one-year, \$150,000 Medical Provider Financial Corporation III Note on  
16 October 9, 2007. KJ was 55 years of age on the date of the transaction.

17 28. KJ represented to Securities America, in writing, that her “risk exposure”  
18 tolerance for the account from which she purchased the Note was “moderate.” Securities  
19 America’s policies and procedures required that certain offerings, including Notes issued  
20 by Medical Provider Financial Corporation, be sold only to persons describing their “risk  
21 exposure” tolerance as “aggressive” or “speculative”, unless a Securities America broker-  
22 dealer salesperson provides “written documentation... explaining how the Regulation D  
23 offering meets the client’s needs given the fact that these are risky and illiquid  
24 investments.” There was no written documentation or communication between the  
25 Securities America broker-dealer salesperson and his supervisor regarding this  
26 transaction.





1 Part Eight: Securities America Client CR

2 29. CR, an Oregon resident, was a Securities America client. Securities America  
3 sold CR a one-year, \$100,000 Medical Provider Financial Corporation III Note on  
4 November 6, 2007. CR was 55 years of age on the date of the transaction.

5 30. CR represented to Securities America, in writing, that her “risk exposure”  
6 tolerance was “moderate.” Securities America’s policies and procedures required that  
7 certain offerings, including Notes issued by Medical Provider Financial Corporation, be  
8 sold only to persons describing their “risk exposure” tolerance as “aggressive” or  
9 “speculative”, unless a Securities America broker-dealer salesperson provides “written  
10 documentation... explaining how the Regulation D offering meets the client’s needs  
11 given the fact that these are risky and illiquid investments.” There was no written  
12 documentation or communication between the Securities America broker-dealer  
13 salesperson and his supervisor regarding this transaction.

14  
15 II. CONCLUSIONS OF LAW

16 The Director CONCLUDES that:

17 31. Respondent, in connection with the sale of Medical Capital Notes to RJL, KJ,  
18 and CR, failed to maintain and enforce written procedures it had adopted, in violation of  
19 ORS 59.205 (13) and OAR 441-205-0210 (3), by (A) failing to adhere to its own written  
20 mandate to independently select consultants to aid its due diligence efforts and (B) failing  
21 to adhere to its own written mandate to abstain from the offer and sale of Regulation D  
22 securities to customers who did not meet certain explicit suitability criteria.

23 32. Respondent, in connection with the sale of Medical Capital Notes to RJL, KJ,  
24 and CR, failed to have reasonable grounds to believe that the sale was suitable for its  
25 customers, in violation of ORS 59.205 (2) and OAR 441-205-0140, because its customers  
26 did not satisfy one or more of the suitability criteria Securities America had itself adopted





1 for the offer and sale of Regulation D securities.

2 33. Respondent, in connection with the sale of Medical Capital Notes to RJL, KJ,  
3 and CR, failed to diligently supervise its associated persons, in violation of ORS 59.205  
4 (13) and OAR 441-205-0210, by (A) failing to ensure that due diligence committee  
5 members took appropriate action in response to repeated warnings by due diligence  
6 consultants with respect to Medical Capital Notes prior to placing these securities on the  
7 list of securities eligible for sale to Securities America customers; (B) failing to  
8 frequently examine these customers' accounts to detect and prevent irregularities or  
9 abuses, such as unsuitable transactions.

11 III. ORDER

12 Now, therefore, the Director issues the following ORDER:

13 34. Respondent shall, pursuant to the authority contained in ORS 59.245, CEASE  
14 AND DESIST from offering or selling securities in violation of the Oregon Securities  
15 Law, ORS 59.005 *et seq.*, its accompanying administrative rules, or the terms of this  
16 Order.

17 35. Respondent shall, pursuant to the authority contained in ORS 59.995, pay the  
18 Department of Consumer and Business Services ("DCBS") the sum of SEVENTY  
19 THOUSAND DOLLARS (\$70,000) as a civil penalty for all violations of ORS 59.205  
20 and OAR 441-205 described herein.

21 36. Respondent shall also pay DCBS the sum of TWENTY-FIVE THOUSAND  
22 DOLLARS (\$25,000) to reimburse DCBS for the costs of its investigation in this matter.

23 37. Respondent shall also pay DCBS the sum of FIVE THOUSAND DOLLARS  
24 (\$5,000) to be allocated for the DCBS Consumer Financial Education Account.

25 38. The Respondent shall pay in full, prior to the execution of this Order, all sums  
26 required in paragraphs 35, 36, and 37.



1 the entry of this Order does not limit other remedies that are available to the Director  
2 under Oregon Law for conduct not described within this Order.

3 IT IS SO ORDERED.

4 Issued this 4th day of February, 2015.

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

7  
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  
Lehor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387



1 CONSENT TO ENTRY OF ORDER BY SECURITIES AMERICA, INC.

2 Securities America, Inc. (the "RESPONDENT") attests that one or more of its  
3 employees and/or officers with appropriate authority has read this Consent Order, fully  
4 understand its contents; consents to the entry of this Consent Order, without admitting or  
denying the allegations therein, and will take any necessary steps to ensure that  
Respondent fully complies with the terms of the Order.

5 RESPONDENT further attests that it has been advised of its right to a hearing and  
6 voluntarily and without any force or duress expressly waives any right to a hearing in this  
7 matter.

8 RESPONDENT understands that this Consent Order is a public document.

9 James D. Nagengast is the C. E. O. of Securities  
10 America, Inc. and is authorized to execute this Consent to Entry of Order on behalf of  
11 Securities America, Inc.

12 Securities America, Inc.

13 By: /s/ James D. Nagengast  
14 Signature

15 James D. Nagengast  
16 Printed name

17 CEO  
18 Title

19 State of Nebraska

20 County of Sarpy

21 Subscribed and sworn before me \_\_\_\_\_ January 29, 2015.

22 /s/ Natalie Blanke  
23 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

