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BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE

OF THE STATE OF IDAHO

STATE OF IDAHO, DEPARTMENT OF FINANCE, SECURITIES BUREAU, Complainant, vs. HOPKINS FINANCIAL SERVICES, INC., Respondents.	Docket No. 2009-7-03 **AGREEMENT AND ORDER**

The Director of the Department of Finance, State of Idaho (Director or Complainant), has conducted a review of the securities activities of HOPKINS FINANCIAL SERVICES, INC. (Respondent). Pursuant to that review, it appears to the Director that violations of Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.* (the Act), have occurred. The Director and Respondent have agreed to resolve this matter without the necessity of a public hearing or litigation. Therefore, the Director deems it appropriate and in the public interest to enter into this Agreement and Order (Order). Respondent voluntarily consents to the entry of this Order.

PARTIES

1. Respondent was formed as an Idaho corporation on November 4, 1988 and conducts a real estate oriented lending business in Idaho from 910 E. Carol Street, Meridian, Idaho 83646. While it has conducted business under various business names for the past several years, Respondent operates primarily under the name "Hopkins Financial Services, Inc." Respondent is essentially an umbrella organization over several other LLCs.

2. Other related parties, though not Respondents, are:

a. Randall H. Hopkins (Hopkins), Respondent's President and 80% owner of Respondent, has been a resident of Idaho at all times relevant herein, living in Canyon and Ada Counties.

b. Aaron Van Der Aa (Van Der Aa), a 12% owner of Respondent, has been a resident of Ada County, Idaho at all times relevant herein.

c. Brian Murphy (Murphy), an 8% owner of Respondent, has been a resident of Ada County, Idaho at all times relevant herein.

COMPLAINANT'S ALLEGATIONS

Complainant alleges as follows:

3. Hopkins, Van Der Aa, and Murphy, through Respondent, raised investor money, pooled it, and lent it out to various real estate-related projects on behalf of various limited liability companies. The investments were successful dating back to the 1990s, and during the real estate bubble (approximately 2004 through 2007), appeared to be very successful. As the market heated up, Respondent experienced increasing demand for loans, so Respondent, Hopkins, Van Der Aa and Murphy started up new investment funds, solicited new money for lending pools, and leveraged the pooled money by borrowing money from a bank to place into the lending pools.

4. As business boomed, Respondent, Hopkins, Van Der Aa, and Murphy began to take greater risks and began to cut corners on the promises they made to their investors, primarily regarding risk in the funds and steps they would take to mitigate the risks. They also omitted material information about the funds from offering documents and presentations to investors.

5. The real estate bubble burst, probably sometime in 2007, and when it did, Respondent's business model eventually became substantially more difficult to sustain. By mid-2008, the respective funds experienced a significant increase in loan defaults, significant decrease in value of property secured by loans and a significant decrease in development viability of certain bare ground investments. These factors along with the increased risk combined to eventually cause two of the investment funds serviced by Respondent to collapse.

6. Respondent has ceased paying interest to the investors in the collapsed funds, and it is unable to return investor money. Respondent is also writing down the principal owed to some of the investors in the collapsed funds, in effect unilaterally reducing the amount owed to those investors.

ALLEGED VIOLATIONS AND CONCLUSIONS OF LAW

Complainant alleges the following violations and conclusions of law:

7. Idaho Code § 30-14-501(2) provides that it is unlawful for any person, directly or indirectly, in connection with the offer, sale or purchase of a security, to make an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

8. Respondent, Hopkins, Van Der Aa and Murphy made misrepresentations to prospective investors that were made in connection with the offer, sale or purchase of securities.

The misrepresentations were material and constituted violations of Idaho Code § 30-14-501(2) as to each misrepresentation to each investor.

9. Hopkins, Van Der Aa and Murphy made omissions of material facts and failures to disclose material information to prospective investors that were made in connection with the offer, sale or purchase of securities. Such omissions of material facts and failures to disclose material information constitute violations of Idaho Code § 30-14-501(2) as to each omission and failure to disclose to each investor.

10. Respondent, Hopkins, Van Der Aa and Murphy engaged in acts that were made in connection with the offer, sale or purchase of securities. As described above, they engaged in conduct that constituted violations of Idaho Code §§ 30-14-501(1) and 30-14-501(3) as to each investor.

11. Respondent issued, sold or offered for sale in Idaho securities in the form of debentures, promissory notes and investment contracts. Although Respondent attempted to obtain an exemption from registration under Rule 506, 17 C.F.R. § 230.506, it failed to ensure that all unaccredited investors had such knowledge and experience in financial and business matters that made them capable of evaluating the merits and risks of the prospective investment, nor did it reasonably believe all investors had such knowledge and expertise. Having failed to qualify as federally covered securities, the securities were required by Idaho Code § 30-14-301 to be registered with the Department. These securities were not registered with the Department as required.

12. Respondent also issued one-year promissory notes. Promissory notes are securities under Idaho Code § 30-14-102(28) and must be registered. Respondent failed to register the promissory note securities.

13. Respondent's failure to register such securities with the Department constitutes a violation of Idaho Code § 30-14-301.

14. Hopkins, Van Der Aa and Murphy transacted business in Idaho as agents of an issuer. Although they attempted to obtain an exemption from registration under Rule 506, 17 C.F.R. § 230.506, Hopkins, Van Der Aa and Murphy failed to ensure that all unaccredited investors had such knowledge and experience in financial and business matters that made them capable of evaluating the merits and risks of the prospective investment, nor did they reasonably believe all investors had such knowledge and expertise. Having failed to qualify as federally covered securities, Hopkins, Van Der Aa and Murphy were required by Idaho Code § 30-14-402(a) to be registered with the Department as agents of the issuer. Hopkins, Van Der Aa and Murphy were not registered as agents with the Department as required.

15. The failure of Hopkins, Van Der Aa and Murphy to register as agents with the Department constitutes a violation of Idaho Code § 30-14-402(a).

REMEDIES

16. Respondent, Hopkins, Van Der Aa and Murphy neither admit nor deny the allegations set forth above.

17. Respondent, Hopkins, Van Der Aa and Murphy agree to the following:

a. That Hopkins Northwest Fund, LLC and Hopkins Growth Fund, LLC will continue to be managed by Respondent, but will be wound down and eventually liquidated with no new investors in these funds.

b. That Respondent, Hopkins, Murphy, and Van Der Aa agree not to start any new securities fund offerings for a period of three and one-half (3 ½) years from the date of issuance of this Order. During this time, sales of securities will be limited to securities offerings in

Hopkins Mortgage Fund, LLC ("Mortgage Fund"); Hopkins Western Fund, LLC ("Western Fund"); Hopkins US Fund, LLC ("US Fund"); and Hopkins Fixed Rate Fund, LLC ("Fixed Rate Fund"). These funds are hereinafter collectively referred to as the "Hopkins Family of Funds."

c. That the Fixed Rate Fund will continue to be registered with the Department and managed accordingly. Any proposed changes to the Fixed Rate Fund would be presented outside of the scope of this Order. Review of this fund, including prior review and approval of any advertising, will continue per usual Department protocol.

d. That investments by new investors, that is, a person who does not have funds invested in a Hopkins fund on the date of the signing of this Order, in each of the Mortgage Fund, Western Fund and US Fund will be limited to accredited investors only (as defined pursuant to Reg. D) with a maximum of 99 total investors (existing and new) per fund. No new investor may have more than 10% of net worth invested in any one fund nor more than 15% of net worth invested in the Hopkins Family of Funds, excluding the Fixed Rate Fund. An existing investor may only make a new investment if the investor's total investment amount (existing investment in the Hopkins Family of Funds, excluding the Fixed Rate Fund, combined with new investment) does not exceed 15% of the investor's net worth (total net worth minus the value of primary residence. The intent of this paragraph is that no existing investor may invest more than a total of 15% of net worth through Respondent in the Hopkins Family of Funds with any investment occurring after the date of this Agreement and Order, whether that investment is in one fund, or distributed across more than one fund, excluding the Fixed Rate Fund, and no new investor may have more than 10% of net worth in any one Fund nor more than 15% of net worth invested in the Hopkins Family of funds, excluding the Fixed Rate Fund.

e. That the Mortgage Fund, Western Fund, and US Fund will be subject to the following Department of Finance oversight:

1) Submission of annual audited financial statements.

2) Submission of annual attestations that: i) the funds are in compliance with all state and federal securities laws; ii) all new investments meet the applicable suitability requirements; iii) all loan and investment criteria for each respective fund have been and are being followed; iv) the funds have been operated in strict accordance with disclosures in the PPMs; and v) all new investments (from existing and new investors) have been made pursuant to the agreed net worth requirements (maximum of 15%).

3) The Department may request at any time documentation to support the annual attestations for any fund.

f. Prominent disclosure must be made to existing and prospective investors of any actions, or agreements entered into, by the Department or any other regulatory agency or individual involving Respondent, the funds, Hopkins, Van Der Aa and Murphy. This Order must be disclosed within the private placement memorandum or other offering document that is provided to investors, including existing investors. Disclosure must be contained in the following sections of the private placement memorandum or other offering document: 1) Management Discussion and Analysis (History and Market section as currently written); 2) Litigation; and 3) Risk Factors, which will be located in the front quarter of the private placement memorandum or other offering document. In addition, Respondent's financial statements must contain disclosure of this Order and a summary of its terms. Disclosure of this Order (whenever required pursuant to this provision) shall read as follows:

> "On January ___, 2012, Hopkins Financial Services, Inc. entered into an agreement (Agreement and Order) with the Idaho Department of Finance

("Department") to remedy alleged violations of the 2004 Idaho Uniform Securities Act. The Department has alleged violations including (1) misrepresentations and omissions in the offer and sale of securities, (2) failure to properly register securities, and (3) failure to properly register selling agents. While neither admitting nor denying such allegations, Hopkins Financial Services, Inc., and its officers, agreed, among other remedies, to provide $250,000 in restitution to investors allegedly affected by such alleged violations."

g. That Respondent agrees to pay to the Department the total sum of Two Hundred Fifty Thousand Dollars ($250,000), constituting restitution to be paid by the Department to investors. Respondent agrees to pay such sum as follows:

1) The sum of One Hundred Twenty Five Thousand Dollars ($125,000) shall be paid by no later than June 25, 2012; and

2) The remaining balance of One Hundred Twenty-Five Thousand Dollars ($125,000), shall be paid over the period of five (5) years in annual payments of Twenty Five Thousand Dollars ($25,000) due by no later than July 1 of each year, with the first payment to begin on July 1, 2013. Such Twenty Five Thousand Dollar ($25,000) payments shall continue until the sum of One Hundred Twenty-Five Thousand Dollars ($125,000) is paid in full.

h. That all of the above payments will be returned by the Department to investors as restitution. Allocation of these restitution payments shall be at the Department's sole discretion.

i. That Hopkins, Van Der Aa and Murphy attest that the confidential statements of net worth previously provided by them to the Department remain accurate. Any material misrepresentation in an attestation shall constitute a breach of this Order entitling the Department to all Remedies set forth below.

j. That Hopkins, Van Der Aa and Murphy agree to personally guarantee, pursuant to their pro rata ownership in Respondent (Hopkins 80%, Van Der Aa 12%, Murphy 8%), that Respondent will perform on its payment of Two Hundred Fifty Thousand Dollars ($250,000) to the Department as detailed above. This personal guarantee will survive until this Two Hundred

Fifty Thousand Dollars ($250,000) is fully paid, even if the individual guarantor(s) cease(s) to have an ownership interest in Respondent.

k. That Hopkins, Van Der Aa and Murphy each agree to pay to the Department the amount of Ten Thousand Dollars ($10,000) as penalties pursuant to Idaho Code § 30-14-603(b)(2)(C). Each penalty will be suspended during the performance period required of Respondent hereunder, and waived if Respondent fully performs all agreements in this Order.

l. That Respondent agrees to pay to the Department the amount of Twenty Thousand Dollars ($20,000) as penalties, pursuant to Idaho Code § 30-14-603(b)(2)(C). These penalties will be suspended during the performance period required of Respondent hereunder, and waived if Respondent fully performs all agreements in this Order.

m. None of the payments agreed to herein will be paid with funds made available by writing down the value of existing debentures.

REMEDIES UPON BREACH

18. Failure to cure any default after a 5-day notice and 30-day opportunity to cure shall be considered a breach of this Order, affording the following remedies:

a. The unpaid balance of the Two Hundred Fifty Thousand Dollars ($250,000) in restitution payments provided for in this Agreement owed by Respondent, Hopkins, Van Der Aa and Murphy, shall become immediately due and payable, and the Department can initiate suit to collect against any and all parties both directly and pursuant to personal guaranties.

b. Penalties owed by all parties pursuant to Idaho Code § 30-14-603(b)(2)(C) become immediately due and payable, and the Department can initiate suit to collect against any and all parties both directly and pursuant to personal guaranties.

c. Beginning as of the date of a notice of default, for one (1) year, Respondent, Hopkins, Van Der Aa and Murphy will not raise any statute of limitations defenses in any private right of action or action brought by the Department.

d. The Department may issue a press release detailing its investigation, its findings, the settlement agreement, and the breach.

19. Respondent, Hopkins, Van Der Aa and Murphy agree to comply with all provisions of Idaho's Uniform Securities Act, all rules promulgated under the Act, and all federal laws and regulations applicable to its business activities in Idaho at all times in the future. Failure to comply may result in an enforcement action under the Act. Nothing in this Agreement and Order shall limit or restrict the remedies available to the Department for any violation of the Act which occurs after the date of the entry of this Order, whether or not arising out of the facts giving rise to this Agreement and Order.

20. Respondent, Hopkins, Van Der Aa and Murphy acknowledge and understand that this Order is an administrative action that must be disclosed to the Department on future licensing and renewal forms. The disclosure requirements of other states may also require disclosure of the same.

DATED this 4th day of JANUARY, 2012.

HOPKINS FINANCIAL SERVICES, INC.

By: _____

President

Title

DATED this 4th day of January, 2012.

RANDY H. HOPKINS

DATED this 4TH day of January, 2012.

AARON VAN DER AA

DATED this 4th day of January, 2012.

BRIAN MURPHY

DATED this 5th day of January, 2012.

STATE OF IDAHO
DEPARTMENT OF FINANCE

MARILYN T. CHASTAIN
Securities Bureau Chief

APPROVED AS TO FORM AND CONTENT.

DATED this _____ day of _____, 2012.

_____

Erik J. Bolinder
GIVENS PURSLEY LLP
Attorney for Respondents

DATED this 5th day of January, 2012.

STATE OF IDAHO
DEPARTMENT OF FINANCE

ALAN CONILOGUE
Deputy Attorney General
Attorney for Complainant

APPROVED AS TO FORM AND CONTENT.

DATED this 5th day of January, 2012.

Erik J. Bolinder
GIVENS PURSLEY LLP
Attorney for Respondents

DATED this _____ day of _____, 2012.

STATE OF IDAHO
DEPARTMENT OF FINANCE

ALAN CONILOGUE
Deputy Attorney General
Attorney for Complainant

IT IS SO ORDERED.

DATED this 5th day of January, 2012.

STATE OF IDAHO
DEPARTMENT OF FINANCE

GAVIN M. GEE, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of January, 2012, I caused a true and correct fully-executed copy of the foregoing AGREEMENT AND ORDER to be served on the following by the designated means:

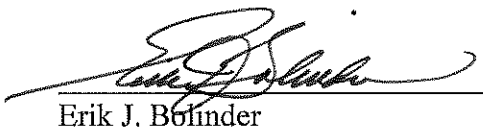
Erik J. Bolinder
GIVENS PURSLEY LLP
601 West Bannock
PO Box 2720
Boise, ID 83701

[ ] U.S. mail, postage prepaid
[ ] Certified mail
[ ] Facsimile: (208) 388-1300
[X] Email: ebolinder@givenspursley.com

Paralegal

APPROVED AS TO FORM AND CONTENT.

DATED this 5th day of January, 2012.



Erik J. Bolinder
GIVENS PURSLEY LLP
Attorney for Respondents

DATED this _____ day of _____, 2012.

STATE OF IDAHO
DEPARTMENT OF FINANCE

_____
ALAN CONILOGUE
Deputy Attorney General
Attorney for Complainant