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BEFORE THE ARIZONA CORPORATION

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AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

In the matter of:

CONCORDIA FINANCING COMPANY,
LTD, a/k/a "CONCORDIA FINANCE,"

ER FINANCIAL & ADVISORY
SERVICES, L.L.C.,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

DOCKET NO. S-20906A-14-0063

**AMENDED NOTICE OF OPPORTUNITY
FOR HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

Arizona Corporation Commission

DOCKETED

MAY 07 2015

DOCKETED BY

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NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Concordia Financing Company, Ltd., also known as "Concordia Finance," ER Financial & Advisory Services, L.L.C., Lance Michael Bersch and David John Wanzek (collectively, "Respondents") have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Lance Michael Bersch and David John Wanzek are persons controlling ER Financial & Advisory Services, L.L.C. within the meaning of A.R.S. § 44-1999(B), so that they are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as ER Financial & Advisory Services, L.L.C. for violations of the antifraud provisions of the Securities Act.

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I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. Concordia Financing Company, Ltd. (“Concordia”), also known as “Concordia Finance,” is a California corporation that did business within or from the State of Arizona from at least February 18, 1998 through at least December 2011. During that period, Concordia did not apply to the Commission to do business as a foreign corporation in Arizona and therefore was not authorized to do any business in Arizona.

3. Lance Michael Bersch, C.P.A. (“Bersch”) has been licensed as a certified public accountant by the Arizona State Board of Accountancy since December 16, 1985. Upon information and belief, Bersch has worked as an accountant in Lake Havasu, Arizona from at least February 18, 1998 through at least December 2011.

4. David John Wanzek, C.P.A. (“Wanzek”) has been licensed as a certified public accountant by the Arizona State Board of Accountancy since April 17, 1995. Upon information and belief, Wanzek worked as an accountant in Lake Havasu, Arizona from at least February 18, 1998 through at least March 2010.

5. ER Financial & Advisory Services, L.L.C. (“ERF&AS”) was an Arizona limited liability company organized on October 9, 2001. ERF&AS did business within or from the State of Arizona from that date until at least December 2011. ERF&AS filed with the Commission its *Articles of Termination* on October 31, 2012. The Commission issued to ERF&AS a *Certificate of Termination* on November 5, 2012.

6. From at least February 18, 1998 through at least October 9, 2001, when they formed ERF&AS, Bersch and Wanzek did business as “ER Financial and Advisory Service” with respect to

1 their sale of the investment contracts alleged below.

2 7. From at least February 18, 1998 through the present, Linda Wanzek has been the
3 spouse of Respondent David John Wanzek. Linda Wanzek may be referred to as "Respondent
4 Spouse."

5 8. From at least February 18, 1998 through at least March 2010, Linda Wanzek acted for
6 the benefit or in furtherance of her marital community. She is joined in this action under A.R.S. § 44-
7 2031(C) to determine the liability of her marital community.

8 9. From at least February 18, 1998 through at least March 2010, David John Wanzek
9 acted for his own individual benefit and for the benefit or in furtherance of his marital community.

10 **III.**

11 **FACTS**

12 **A. The Terms and Structure of Concordia's Investment Offerings**

13 10. Concordia was incorporated in California in 1994 with the purpose of purchasing and
14 servicing contracts for the sale of used "big rig" trucks ("Truck Financing Contracts" or "Contracts").
15 Concordia sought capital from investors to purchase more Truck Financing Contracts. To raise
16 capital, Concordia issued: (i) promissory notes ("Promissory Notes"); and (ii) investment contracts
17 comprised of Sale of Contracts and Servicing Agreements ("Servicing Agreements") and
18 accompanying Custodial Agreements.

19 11. To purchase Truck Financing Contracts, Concordia pooled money it raised from
20 investors with revenue Concordia received from (i) truckers' installment payments on their Truck
21 Financing Contracts and (ii) sales of repossessed trucks.

22 **1. Concordia's Promissory Notes**

23 12. Concordia sold Promissory Notes to Arizona residents in at least five transactions
24 between September 10, 2002 and February 28, 2007. Of those five transactions, (i) Bersch offered
25 and sold Promissory Notes on September 10, 2002 in the amount of \$100,000, and on November 6,
26

1 2006 in the amount of \$225,000; and (ii) Wanzek sold a Promissory Note on November 6, 2006 in
2 the amount of \$53,109.

3 13. Through the Promissory Notes, Concordia promised to pay the investors monthly
4 interest payments for the two-year term of the Notes. The interest rates offered through the Notes
5 varied between 0.833 percent per month to 12 percent per year. Upon the expiration of the two-
6 year term, Concordia promised to pay any unpaid interest and return any unpaid principal.

7 **2. Concordia's Servicing Agreements and Custodial Agreements**

8 14. Several dozen Arizona residents, most of whom lived in Lake Havasu City, invested
9 by entering Servicing Agreements and accompanying Custodial Agreements.

10 15. Pursuant to the Servicing Agreements, in exchange for the investor's investment
11 amount, Concordia agreed to sell, assign and transfer to the investor Truck Financing Contracts
12 from Concordia's inventory of such Contracts. Concordia warranted to the investor that, prior to
13 purchasing the Contracts to be assigned and transferred to the investor, Concordia had conducted a
14 credit check of the truck purchaser to determine the payment risk.

15 16. In Section 4.1 of the Servicing Agreements, Concordia represented that it would
16 deliver to a Custodian "the originally executed Contracts and all evidences of title with respect to
17 the vehicles covered by the Contracts, with separate assignments executed by Concordia which
18 effect the assignment and transfer of the Contracts and title to Investor...."

19 17. The investor agreed to hire Concordia to service the assigned Truck Financing
20 Contracts by sending monthly invoices to truck purchasers for payment, collecting payments,
21 imposing late payment fees and NSF charges, and at Concordia's sole discretion, initiating "all
22 collection decisions, actions and activities, including repossession, retention of attorneys or collection
23 agents, making repairs to damaged vehicles, reselling repossessed vehicles and all other matters and
24 decisions relating to the Contracts and vehicles covered by the Contracts, as if in all respects
25 Concordia remained the owner of the Contracts and had sole authority with respect to the collection
26 and disposition of the Contracts."

1 18. If one of an investor's assigned Truck Financing Contracts went into default,
2 Concordia agreed it would replace it by assigning and transferring to the investor a substitute Truck
3 Financing Contract of an equal or lesser principal balance than the defaulting Contract.

4 19. Concordia agreed to send investors monthly checks for the amounts due to them
5 under the Servicing Agreements. For the Servicing Agreements sold prior to January 2004,
6 Concordia offered a twelve percent (12%) annual return. For Servicing Agreements sold after January
7 2004, Concordia reduced the annual return it agreed to pay investors to ten percent (10%).

8 20. Section 6.3 of the Servicing Agreement explained how Concordia was to profit from
9 the arrangement:

10 "As its fee for servicing each [Truck Financing] Contract, Concordia shall be
11 entitled to retain, during the entire term of the Contract, (a) all late payment
12 fees, (b) all NSF charges, and (c) all interest and other fees or charges in
13 excess of that amount required to pay Investor a ... return ... on the then
existing principal balance due under the Contracts."

14 21. Each Servicing Agreement referenced an accompanying Custodial Agreement
15 between Concordia, the investor and a Custodian.

16 22. Each Custodial Agreement provided that it incorporated by reference "all the terms
17 and provisions" of the associated Servicing Agreement.

18 23. The Custodian was to hold the Truck Financing Contracts, vehicle titles and any
19 substitute Contracts that Concordia represented in Section 4.1 that it had assigned to the investor
20 and would deliver to the Custodian.

21 24. The Custodian was obligated to hold the Contracts for the benefit of Concordia and
22 the investor.

23 25. Pursuant to § 4.1 of the Servicing Agreements and Custodial Agreements, the
24 Custodian would return a Contract to Concordia upon Concordia's written representation to the
25 Custodian and the investor that the Contract "either (a) has been paid in full and must be returned to
26 the [truck purchaser], or (b) has incurred a Contract Default and is to be concurrently replaced with

1 a substitute Contract.”

2 26. Pursuant to § 4.2 of the Servicing Agreements and Custodial Agreements, following
3 any default under the Servicing Agreement by Concordia and its failure to cure the default within
4 30 days, upon the investor’s instructions, the Custodian was obligated “to release to Investor the
5 originally executed Contracts and all executed assignments then in the possession of the
6 Custodian.”

7 27. With respect to the investments for which the Custodian held Truck Financing
8 Contracts, vehicle titles and any substitute Contracts in Arizona, the Custodian acted as an escrow
9 agent within the meaning of A.R.S. § 6-801(4) and (5).¹ As such, the Custodian was required to be
10 licensed by the Arizona Department of Financial Institutions pursuant to A.R.S. § 6-813.

11 28. A.R.S. § 6-813 prohibited any designated Custodian from “engag[ing] in or
12 carry[ing] on ... the escrow business or act[ing] in the capacity of an escrow agent in [Arizona]
13 without first obtaining a license.”

14 29. The individual or entity who signed the Custodial Agreement for the designated
15 Custodian was in almost all instances also the salesperson who presented the investor with the
16 Servicing Agreements and Custodial Agreements for execution.

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19 ¹ A.R.S. § 6-801(4) provides:

20 “Escrow” means any transaction in which any escrow property is delivered with
21 or without transfer of legal or equitable title, or both, and irrespective of whether a
22 debtor-creditor relationship is created, to a person not otherwise having any right,
23 title or interest therein in connection with the sale, transfer, encumbrance or lease
24 of real or personal property, to be delivered or redelivered by that person upon the
25 contingent happening or nonhappening of a specified event or performance or
26 nonperformance of a prescribed act, when it is then to be delivered by such person
to a grantee, grantor, promisee, promisor, obligee, obligor, bailee or bailor, or any
designated agent or employee of any of them. Escrow includes subdivision trusts
and account servicing.

A.R.S. § 6-801(5) provides: “Escrow agent’ means any person engaged in the business of accepting
escrows.”

1 30. Pursuant to Section 6 of the Custodial Agreement, Concordia agreed to pay the
2 Custodian “a fee for his [or her] services in the amount of 0.25% per month of the principal balance
3 [of the underlying investment], payable monthly.”

4 31. In the Servicing Agreements, the investors had to acknowledge that delinquencies in
5 the assigned Truck Financing Contracts “will not be unusual and there may be a large number of
6 Substitute Contracts.” For those reasons, investors had to further acknowledge “the importance of
7 utilizing an experienced servicing agent for such Contracts” and agree that Concordia would be the
8 servicing agent during the entire term of the Truck Financing Contracts.

9 32. Under the Servicing Agreements, the investors also granted Concordia an
10 “irrevocable power of attorney ... to do any and all things Concordia deems necessary and proper
11 to carry out the purpose(s) of [the] Agreement.”

12 33. The investors did not have any input as to which Truck Financing Contracts and
13 vehicle titles were assigned to them under the Servicing Agreements and Custodial Agreements.

14 34. Neither the Promissory Notes nor the Servicing Agreements and Custodial
15 Agreements empowered an investor to direct Concordia’s business operations.

16 35. Concordia paid investors their monthly interest payments from its account at Chino
17 Bank. Concordia’s deposits into that account came from a variety of sources, including installment
18 payments from truckers with Truck Financing Contracts.

19 36. Concordia did not segregate within its Chino Bank account revenue received on one
20 Truck Financing Contract versus another. Rather, it pooled those revenues together with revenues
21 from other sources, such as its sales of repossessed trucks and dealer discount reserves.

22 37. Concordia used those pooled funds to make its interest payments to investors.

23 38. Prior to 2009, when Concordia stopped making interest payments to investors, if the
24 trucker on a Truck Financing Contract defaulted, that default did not impact whether or not
25 Concordia continued to make its monthly interest payments to the investor to whom the defaulted
26 Contract had been assigned.

1 39. Concordia's monthly interest payments to an investor were not tied to a trucker's
2 payment or non-payment of amounts due under the assigned Truck Financing Contract.

3 40. Concordia made its monthly interest payments to investors pursuant to the rate
4 stated in the Servicing Agreements, not pursuant to the performance of the Truck Financing
5 Contracts assigned under the Servicing Agreements.

6 41. The source of Concordia's interest payments to investors was the revenue it pooled
7 together from a variety of sources, including installment payments from truckers with Truck
8 Financing Contracts, proceeds from its sales of repossessed trucks, and dealer discount reserves.

9 **B. Bersch's and Wanzek's Sale of Servicing Agreements and Custodial**
10 **Agreements**

11 42. Investment in Concordia was primarily offered and sold by Bersch or Wanzek,
12 individually or through ERF&AS.

13 43. From at least February 18, 1998 through at least March 2010, Bersch and Wanzek
14 were certified public accountants licensed in the State of Arizona and business partners in an
15 accounting practice in Lake Havasu City, Arizona.

16 44. By at least February 18, 1998, Bersch and Wanzek began offering and selling
17 investment in Concordia to others, including their own accounting clients. Bersch and Wanzek did
18 business as "ER Financial and Advisory Service", which they represented at various times was "an
19 Arizona business" or "an Arizona company."

20 45. The Commission does not have any record of "ER Financial and Advisory Service"
21 ever being organized as an Arizona limited liability company, registered as a foreign limited
22 liability company authorized to transact business in Arizona, or otherwise as an entity registered
23 with the Commission to do business in Arizona.

24 46. In October 2001, Bersch and Wanzek organized ERF&AS as a member-managed
25 limited liability company and established themselves as ERF&AS's sole members.

26 47. Bersch and Wanzek served on Concordia's Board of Directors from at least 2000
through approximately 2007.

1 48. In 2000 and/or 2001 and beyond, Bersch and Wanzek held themselves out as
2 Concordia's "Investor Relations Office." In one marketing piece dated either 2000 or 2001, Bersch
3 or Wanzek wrote:

4 Concordia invites interested investors to contact them for more
5 information. The main office is located in Ontario, California. Investor
6 relations is *[sic]* handled by the office in Lake Havasu City, Arizona. You
7 may wish to contact either Michael Bersch, CPA or David Wanzek, CPA at
ER Finance – Investor Relations.

8 The marketing piece then provided the address and phone number of Bersch's and Wanzek's
9 accounting firm in Lake Havasu City.

10 49. In another marketing piece dated 2000 or 2001, Bersch or Wanzek wrote:

11 Concordia Finance invites interested investors to contact them for more
12 information. Our Investor Relations Office is located in Lake Havasu City,
Arizona.

13 CONTACTS:

14 Investor Relations:

15 Michael Bersch, CPA

16 David Wanzek, CPA

17 Concordia Finance [address and phone number of Bersch's and
18 Wanzek's accounting firm in Lake Havasu City, Arizona].

19 50. According to Concordia, however, it never had an "Investor Relations Office" or
20 any other office in Lake Havasu City. Concordia was unaware that Bersch and Wanzek held
21 themselves out as Concordia's "Investor Relations Office."

22 51. According to Concordia, the statements by Bersch and Wanzek that they were
23 Concordia's "Investor Relations Office" were false statements.

24 52. Bersch and Wanzek, individually or through ERF&AS, repeatedly sold Servicing
25 Agreements and accompanying Custodial Agreements by representing that the investor's
26 investment in Concordia would be "liquid."

1 53. Bersch or Wanzek, individually or through ERF&AS, showed presentation materials
2 to at least some potential investors. The presentation materials stated, among other things, the
3 following:

4 a. “Since 1994, Concordia Finance has purchased over \$10,000,000 in
5 conditional truck sales contracts from commercial truck dealers.... These dealers sell their
6 truck financing contracts to Concordia at a discount rate so as to receive immediate cash to
7 replenish their truck inventory.... Concordia raises capital to purchase these contracts from
8 investors in the form of Servicing Agreements (many of which are held by our present
9 clients);”

10 b. “These notes meet our client’s needs regarding... [s]afety of principal[,]
11 higher guaranteed interest [and] [l]iquidity;”

12 c. “Servicing Agreements provide a safety of principal guarantee and 100%
13 liquidity in the event of emergency need;” and

14 d. “Higher guaranteed yield to offset inflation, safety of principal backed by
15 collateral and 100% liquidity has made Concordia Servicing Agreements the preferred fixed
16 income investment for many of our clients.”

17 54. The above-described presentation materials explained how an investor would invest
18 in a Concordia Servicing Agreement and Custodial Agreement, stating:

19 a. “Inform us of what amount you would like to invest...;”

20 b. ““We complete a Concordia Sales and Servicing Agreement specifying the
21 investment amount and whether interest is to be paid monthly or left to accrue;”

22 c. ““We send the check and agreement to them. Concordia then begins sending
23 you monthly interest checks along with a monthly report;” and

24 d. The “[c]ustodian holds contracts and assigned vehicle titles as investor
25 collateral.”

26 55. At a minimum, Bersch sold Servicing Agreements and accompanying Custodial

1 Agreements within or from Arizona on or about the following dates in the following amounts by
 2 representing to the investor[s] that their investment in Concordia would be “liquid”:

Date	Amount
05/11/2004	\$100,000
11/25/2005	\$100,000
12/01/2005	\$100,000
04/01/2008	\$100,000

11
 12 56. In at least the sales identified in the preceding paragraph dated 11/25/2005 and
 13 12/1/2005, Bersch presented the investors with a flowchart of how investments in Concordia
 14 worked and the relationships between Concordia; ER Financial, CPAs Bersch and Wanzek; and the
 15 investor. The flowchart indicated that a Concordia investment was a “product approved by” a
 16 third-party insurance company.

17 57. At a minimum, Wanzek sold Servicing Agreements and accompanying Custodial
 18 Agreements within or from Arizona on or about the following dates in the following amounts by
 19 representing to the investor[s] that their investment in Concordia would be “liquid”:

Date	Amount
11/02/2002	\$50,000
02/17/2004	\$50,000
03/06/2004	\$75,000
09/01/2004	\$250,000
12/08/2004	\$100,000

10/24/2005	\$100,000
12/01/2005	\$150,000
12/05/2005	\$100,000

58. In at least the sales identified in the preceding paragraph dated 11/02/2002, 10/24/2005 and 12/01/2005, Wanzek presented the investors with the flowchart referenced above in Paragraph 49, which indicated that a Concordia investment was a “product approved by” a third-party insurance company.

59. Contrary to what Bersch and Wanzek represented in connection with the sales of Servicing Agreements and Custodial Agreements identified above, investments in Concordia were never liquid. To the contrary, the Servicing Agreements restricted the investor’s ability to liquidate the investment by selling or assigning the assigned Truck Financing Contracts to a third party. An investor who needed cash and wanted to sell or assign the Contracts to a third party had to first offer to sell the Contracts back to Concordia for only 95% of the then existing principal balance due under the Contracts, and give Concordia 90 days to accept or reject the offer.

60. Nor did Concordia intend for the Servicing Agreements and Custodial Agreements to be liquid investments. According to Concordia, it lacked the readily-available resources to refund the investors’ principal. It needed the investors’ principal to purchase additional Truck Financing Contracts, pay its overhead and operate its business.

61. Despite what was stated in the flowchart, the third-party insurer identified in the flow chart never insured, underwrote, guaranteed or in any other way “approved” investment in Concordia.

62. According to its records, Concordia raised at least \$27,103,887 from 142 investors between 1997 and 2013. Concordia paid those investors a total of \$27,934,228, which consisted of interest payments due under the Promissory Notes and Servicing Agreements and some repayments of principal.

1 63. Specifically, Concordia's records reflect that with respect to eighty-four (84)
2 investors who invested a total of \$14,368,597, it repaid them \$18,277,848.

3 64. Fifty-eight (58) other investors who invested a total of \$12,735,289 have only
4 received payments back from Concordia of \$9,656,380 according to Concordia's records.
5 Concordia has not repaid \$3,078,909 of the principal those fifty-eight (58) investors invested.

6 65. Of those fifty-eight (58) investors, Bersch was the salesman for at least 27 of them
7 and Wanzek was the salesman for at least 20 of them.

8 66. ERF&AS or "ER Financial and Advisory Service" were the designated Custodians
9 in the Custodial Agreements for at least 132 investments, including those by the fifty-eight (58)
10 investors who are still owed \$3,078,909 of principal.

11 67. As the designated Custodians for those investments, ERF&AS or Bersch and
12 Wanzek doing business as "ER Financial and Advisory Service" engaged in and carried on an
13 escrow business and acted in the capacity of escrow agents within the meaning of A.R.S. § 6-801
14 and A.R.S. § 6-813.

15 68. As the designated Custodians for those investments, ERF&AS or Bersch and
16 Wanzek doing business as "ER Financial and Advisory Service" were required to be licensed by
17 the Arizona Department of Financial Institutions pursuant to A.R.S. § 6-813.

18 69. Neither ERF&AS, nor Bersch nor Wanzek were licensed by the Arizona Department
19 of Financial Institutions to engage in or and carry on an escrow business, or to act in the capacity of
20 escrow agents.

21 70. The Securities Division is not aware of any instance in which ERF&AS, Bersch or
22 Wanzek disclosed to an investor that by serving as a Custodian, they were engaged in the conduct
23 of an unlicensed escrow business.

24 71. Upon information and belief, neither ERF&AS, nor Bersch nor Wanzek ever
25 disclosed to any investor that by serving as a Custodian, they were engaged in the conduct of an
26 unlicensed escrow business.

1 72. According to Concordia's records, Concordia paid Bersch and Wanzek, through
2 ERF&AS, custodian fees of at least \$2,529,337.

3 73. According to Concordia's records, it also paid Bersch and Wanzek, through
4 ERF&AS, finders' fees of at least \$565,424. This compensation was calculated as a percentage of
5 the principal invested as a result of the sales efforts of Bersch and Wanzek and their company,
6 ERF&AS.

7 74. Bersch, Wanzek and ERF&AS did not disclose to at least several investors that
8 Concordia was going to pay ERF&AS a finder's fee if the investor invested.

9 75. For three investments by her relatives and in-laws, Linda Wanzek was the
10 designated Custodian.

11 76. According to Concordia's records, Concordia paid Linda Wanzek custodian fees of
12 at least \$493,158.

13 77. Concordia began experiencing financial problems by about 2008. By 2009,
14 Concordia could no longer continue making interest payments without jeopardizing its ability to
15 remain in business. To address these problems, about February 1, 2009, Concordia sought investor
16 approval to amend the Servicing Agreements and Promissory Notes to discontinue the monthly
17 "interest payments" as promised and to begin making only monthly returns on principal.

18 78. The first amendment, however, did not resolve Concordia's financial problems.
19 Concordia found itself insolvent. So, about December 1, 2011, Concordia sought investor approval
20 to amend the Servicing Agreements and Promissory Notes for a second time. The purpose of the
21 second amendment was to further reduce Concordia's costs by cancelling as "bad debt" 55% of the
22 principal owed investors.

23 79. When Concordia struggled financially in 2009-2011, Bersch and Wanzek assisted
24 Concordia in its efforts to get investors to accept the first and second amendments to the Servicing
25 Agreements and Promissory Notes.
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VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

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4 88. From at least February 18, 1998 through July 18, 2008, in connection with the offer or
5 sale of securities within or from Arizona, ERF&AS, and Bersch or Wanzek, individually or through
6 ERF&AS, directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue
7 statements of material fact or omitted to state material facts that were necessary in order to make the
8 statements made not misleading in light of the circumstances under which they were made; and/or (iii)
9 engaged in transactions, practices, or courses of business that operated or would operate as a fraud or
10 deceit upon offerees and investors. Specifically, the conduct by Bersch and/or Wanzek, individually
11 or through ERF&AS, includes:

12 a. Representing to offerees and investors that they were Concordia's "Investor
13 Relations Office" in Lake Havasu City, Arizona, when Concordia never had such an office;

14 b. Representing to offerees and investors that their investments in Concordia
15 would be liquid, although Concordia lacked readily-available resources to refund the
16 investors' principal, Concordia did not intend for the investments to be liquid because it
17 needed the investors' principal to operate, and the Servicing Agreements restricted the
18 investors' ability to liquidate their investments by selling or assigning the assigned Truck
19 Financing Contracts to third parties;

20 c. Representing to offerees and investors that investment in Concordia was
21 "approved" by a third-party insurer, leading investors to believe the insurer insured,
22 underwrote or in some other way guaranteed the investment, when that was never the case;

23 d. Failing to disclose to offerees that Concordia would pay a finder's fee to
24 Bersch's and Wanzek's company, ERF&AS, if the offeree invested; and
25
26

1 e. Failing to disclose to offerees and investors that by serving as a Custodian,
2 ERF&AS was engaged in the conduct of an unlicensed escrow business in violation of Arizona
3 law.

4 89. This conduct violates A.R.S. § 44-1991(A).

5 **VII.**

6 **Control Person Liability Pursuant to A.R.S. § 44-1999(B)**

7 90. ERF&AS's Articles of Organization filed with Commission on October 9, 2001,
8 provided that management of ERF&AS was reserved to its members.

9 91. From October 9, 2001 through at least September 20, 2012, Bersch and Wanzek were
10 the sole members of ERF&AS.

11 92. October 9, 2001 through at least September 20, 2012, Bersch and Wanzek directly or
12 indirectly controlled ERF&AS within the meaning of A.R.S. § 44-1999(B).

13 93. Pursuant to A.R.S. § 44-1999(B), Bersch and Wanzek are jointly and severally
14 liable to the same extent as ERF&AS for its violations of A.R.S. § 44-1991(A).

15 **VIII.**

16 **REQUESTED RELIEF**

17 The Division requests that the Commission grant the following relief:

18 1. Order Concordia, Bersch, Wanzek and ERF&AS to permanently cease and desist
19 from violating the Securities Act pursuant to A.R.S. §§ 44-2032, 44-1961 and 44-1962;

20 2. Order Concordia, Bersch, Wanzek and ERF&AS to take affirmative action to
21 correct the conditions resulting from Respondents' acts, practices, or transactions, including a
22 requirement to make restitution in the principal amount of \$3,078,909 pursuant to A.R.S. §§ 44-
23 2032, 44-1961 and 44-1962; and for Bersch and Wanzek to forfeit to the Commission the
24 \$2,529,337 in custodial fees and the \$565,424 in finder's fees Concordia paid them through
25 ERF&AS;

26

1 Bernal, ADA Coordinator, by calling 602-542-3931 or emailing sabernal@azcc.gov. Requests
2 should be made as early as possible to allow time to arrange the accommodation. Additional
3 information about the administrative action procedure may be found at [http://www.azcc.gov/
4 divisions/securities/enforcement/AdministrativeProcedure.asp](http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp).

5 **X.**

6 **ANSWER REQUIREMENT**

7 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
8 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing
9 to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona
10 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be
11 obtained from Docket Control by calling 602-542-3477 or the Commission's Internet web site at
12 <http://www.azcc.gov/divisions/hearings/docket.asp>.

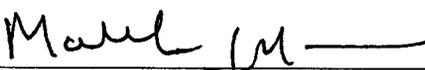
13 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
14 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
15 copy of the Answer to the Division at 1300 West Washington Street, 3rd Floor, Phoenix, Arizona,
16 85007, addressed to James D. Burgess.

17 The Answer shall contain an admission or denial of each allegation in this Notice and the
18 original signature of the answering respondent or respondent's attorney. A statement of a lack of
19 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
20 denied shall be considered admitted.

21 When the answering respondent intends in good faith to deny only a part or a qualification
22 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
23 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

24 The officer presiding over the hearing may grant relief from the requirement to file an
25 Answer for good cause shown.
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Dated this May 7, 2015.


Matthew J. Neubert
Director of Securities

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