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THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

SUSAN BITTER SMITH, Chairman
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2015 JUN -8 P 4: 20

AZ CORP COMMISSION
DOCKET CONTROL

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

**RESPONDENT CONCORDIA
FINANCE'S ANSWER TO 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**

ORIGINAL

Respondent Concordia Financing Company, Ltd., a/k/a Concordia Finance ("Concordia") submits its Answer to the Amended Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and for Other Affirmative Action (the "Amended Notice"). Concordia responds to the numbered paragraphs of the Amended Notice as follows:

I.

JURISDICTION

1. Concordia denies the allegations in paragraph 1.

II.

RESPONDENTS

2. The allegations in the first sentence of paragraph 2 are vague as to both definition and reference and are therefore denied. With no admission as to any requirement that Concordia do

Arizona Corporation Commission

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1 so, Concordia admits that during the period listed it did not apply to the Commission to do
2 business as a foreign corporation in Arizona.

3 3. Concordia is without sufficient knowledge or information to admit or deny the
4 allegations contained in paragraph 3, and, therefore denies those allegations.

5 4. Concordia is without sufficient knowledge or information to admit or deny the
6 allegations contained in paragraph 4, and, therefore denies those allegations.

7 5. Concordia is without sufficient knowledge or information to admit or deny the
8 allegations contained in paragraph 5, and, therefore denies those allegations.

9 6. Concordia is without sufficient knowledge or information to admit or deny the
10 allegations contained in paragraph 6, and, therefore denies those allegations.

11 7. Concordia is without sufficient knowledge or information to admit or deny the
12 allegations contained in paragraph 7, and, therefore denies those allegations.

13 8. Concordia is without sufficient knowledge or information to admit or deny the
14 allegations contained in paragraph 8, and, therefore denies those allegations.

15 9. Concordia is without sufficient knowledge or information to admit or deny the
16 allegations contained in paragraph 9, and, therefore denies those allegations.

17 III.

18 FACTS

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

20 10. Concordia admits the allegations in paragraph 10.

21 11. Concordia admits the allegations in paragraph 11 to the extent they allege certain
22 investor monies were placed in the same bank account. To the extent the term "pooled money" is
23 used to support an allegation that the Truck Financing Contracts were securities, Concordia denies
24 said allegation, such allegation is a statement of legal conclusion, and affirmatively alleges that
25 they are not securities.

26 1. Concordia's Promissory Notes

27

1 12. The allegations in paragraph 12 refer to documents that speak for themselves, and
2 require no answer.

3 13. The allegations in paragraph 13 refer to documents that speak for themselves, and
4 require no answer.

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

6 14. The allegations in paragraph 14 refer to documents that speak for themselves, and
7 require no answer. Concordia, however, does not dispute that investors entered into Servicing and
8 Custodial Agreements.

9 15. The allegations in paragraph 15 refer to documents that speak for themselves, and
10 require no answer.

11 16. The allegations in paragraph 16 refer to documents that speak for themselves, and
12 require no answer.

13 17. The allegations in paragraph 17 refer to documents that speak for themselves, and
14 require no answer.

15 18. The allegations in paragraph 18 refer to documents that speak for themselves, and
16 require no answer.

17 19. The allegations in paragraph 19 refer to documents that speak for themselves, and
18 require no answer.

19 20. The allegations in paragraph 20 refer to documents that speak for themselves, and
20 require no answer.

21 21. The allegations in paragraph 21 refer to documents that speak for themselves, and
22 require no answer.

23 22. The allegations in paragraph 22 refer to documents that speak for themselves, and
24 require no answer.

25 23. The allegations in paragraph 23 refer to documents that speak for themselves, and
26 require no answer.

27

1 24. The allegations in paragraph 24 refer to documents that speak for themselves, and
2 require no answer.

3 25. The allegations in paragraph 25 refer to documents that speak for themselves, and
4 require no answer.

5 26. The allegations in paragraph 26 refer to documents that speak for themselves, and
6 require no answer.

7 27. The allegations in paragraph 27 refer to statutes that speak for themselves and also
8 include legal conclusions, which are denied.

9 28. The allegations in paragraph 28 refer to statutes that speak for themselves and also
10 include legal conclusions, which are denied.

11 29. Concordia is without sufficient knowledge or information to admit or deny the
12 allegations contained in paragraph 29, and, therefore denies those allegations.

13 30. The allegations in paragraph 30 refer to documents that speak for themselves, and
14 require no answer.

15 31. The allegations in paragraph 31 refer to documents that speak for themselves, and
16 require no answer.

17 32. The allegations in paragraph 32 refer to documents that speak for themselves, and
18 require no answer.

19 33. The allegations in paragraph 33 refer to documents that speak for themselves, and
20 require no answer.

21 34. The allegations in paragraph 34 are vague, as they do not define what
22 “empower[ing] an investor to direct Concordia’s business operations” means. The documents
23 speak for themselves regarding what they do and do not include, and this allegation requires no
24 further answer.

25 35. Concordia admits the allegations in paragraph 35 to the extent they allege certain
26 payments were made from a Chino Bank account, which received deposits from multiple sources.
27 To the extent paragraph 35 is used to support an allegation that the Truck Financing Contracts

1 were securities, the allegation is a legal conclusion, and Concordia denies said allegation and
2 affirmatively alleges that they are not securities.

3 36. Concordia admits the allegations in paragraph 36 to the extent they allege money
4 from different sources was placed in one same bank account. To the extent the term “pooled” or
5 any other part of paragraph 36 is used to support an allegation that the Truck Financing Contracts
6 were securities, the allegation is a legal conclusion, and Concordia denies said allegation and
7 affirmatively alleges that they are not securities.

8 37. Concordia admits the allegations in paragraph 37 to the extent they allege money
9 from different sources was placed in one bank account and used to pay investors. To the extent the
10 term “pooled” or any other part of paragraph 37 is used to support an allegation that the Truck
11 Financing Contracts were securities, the allegation is a legal conclusion, and Concordia denies said
12 allegation and affirmatively alleges that they are not securities.

13 38. The allegations in paragraph 38 are an inaccurate, incomplete and misleading
14 statement of the facts. Concordia affirmatively alleges that if truckers did not pay consistently, as
15 they did for many years, it would not have been able to make payments to investors.

16 39. The allegations in paragraph 39 are an inaccurate, incomplete and misleading
17 statement of the facts. Concordia affirmatively alleges that if truckers did not pay consistently, as
18 they did for many years, it would not have been able to make payments to investors.

19 40. The rate of interest paid by Concordia is specified in documents that speak for
20 themselves and require no answer. Concordia affirmatively alleges that if truckers did not
21 “perform” consistently, as they did for many years, Concordia would not have been able to make
22 payments to investors.

23 41. Concordia admits the allegations in paragraph 41 to the extent they allege money
24 from different sources was placed in one bank account and used to pay investors. To the extent the
25 term “pooled” or any other part of paragraph 41 is used to support an allegation that the Truck
26 Financing Contracts were securities, the allegation is a legal conclusion, and Concordia denies said
27 allegation and affirmatively alleges that they are not securities.

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B. Berch's and Wanzek's Sale of Servicing Agreements and Custodial Agreements.

42. Concordia admits Bersch or Wanzek and/or ERF&AS sold most of the Agreements at issue.

43. Concordia is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 43, and, therefore denies those allegations.

44. Concordia is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 44, and, therefore denies those allegations.

45. Concordia is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 45, and, therefore denies those allegations.

46. Concordia is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 46, and, therefore denies those allegations.

47. Concordia admits that Bersch and Wanzek were on its Board of Directors, but does not know the exact dates.

48. The allegations in paragraph 48 refer to documents that speak for themselves, and require no answer.

49. The allegations in paragraph 49 refer to documents that speak for themselves, and require no answer.

50. Concordia admits the allegations in paragraph 50.

51. Concordia admits that Bersch and Wanzek were not its Investor Relations Office.

52. Concordia is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 52 of the Amended Notice, and, therefore denies those allegations.

53. Concordia is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 53 of the Amended Notice, and, therefore denies those allegations.

1 54. Concordia is without sufficient knowledge or information to admit or deny the
2 allegations contained in paragraph 54 of the Amended Notice, and, therefore denies those
3 allegations.

4 55. Concordia is without sufficient knowledge or information to admit or deny the
5 allegations contained in paragraph 55 of the Amended Notice, and, therefore denies those
6 allegations.

7 56. Concordia is without sufficient knowledge or information to admit or deny the
8 allegations contained in paragraph 56 of the Amended Notice, and, therefore denies those
9 allegations.

10 57. Concordia is without sufficient knowledge or information to admit or deny the
11 allegations contained in paragraph 57 of the Amended Notice, and, therefore denies those
12 allegations.

13 58. Concordia is without sufficient knowledge or information to admit or deny the
14 allegations contained in paragraph 58 of the Amended Notice, and, therefore denies those
15 allegations.

16 59. Concordia is without sufficient knowledge or information to admit or deny the
17 allegations contained in paragraph 59 of the Amended Notice, and, therefore denies those
18 allegations.

19 60. Concordia admits that the Servicing Agreements were not liquid. The other
20 allegations in paragraph 60, including allegations of mens rea, are an inaccurate, incomplete and
21 misleading statement of the facts and are therefore denied.

22 61. Concordia admits the allegations in paragraph 61.

23 62. Paragraph 62 does not identify the specific documents to which it refers, and those
24 documents speak for themselves, and require no answer.

25 63. Paragraph 63 does not identify the specific documents to which it refers, and those
26 documents speak for themselves, and require no answer.

27

1 64. Paragraph 64 does not identify the specific documents to which it refers, and those
2 documents speak for themselves, and require no answer.

3 65. Concordia is without sufficient knowledge or information to admit or deny the
4 allegations contained in paragraph 65 of the Amended Notice, and, therefore denies those
5 allegations.

6 66. Paragraph 66 does not identify the specific documents to which it refers, and those
7 documents speak for themselves, and require no answer.

8 67. Paragraph 67 is the Securities Division's legal opinion and not a factual allegation
9 and requires no response.

10 68. Paragraph 68 is the Securities Division's legal opinion and not a factual allegation
11 and requires no response.

12 69. Concordia is without sufficient knowledge or information to admit or deny the
13 allegations contained in paragraph 69 of the Amended Notice, and, therefore denies those
14 allegations.

15 70. Concordia is without sufficient knowledge or information to admit or deny the
16 allegations contained in paragraph 70 of the Amended Notice, and, therefore denies those
17 allegations.

18 71. Concordia is without sufficient knowledge or information to admit or deny the
19 allegations contained in paragraph 71 of the Amended Notice, and, therefore denies those
20 allegations.

21 72. Paragraph 72 does not identify the specific documents to which it refers, and those
22 documents speak for themselves, and require no answer.

23 73. Paragraph 73 does not identify the specific documents to which it refers, and those
24 documents speak for themselves, and require no answer.

25 74. Concordia is without sufficient knowledge or information to admit or deny the
26 allegations contained in paragraph 74 of the Amended Notice, and, therefore denies those
27 allegations.

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87. Concordia denies the allegations in paragraph 87 of the Amended Notice.

VI.

VIOLATION OF A.R.S. § 44-1991

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

88. The allegations in paragraph 88 of the Amended Notice do not relate to Concordia and require no response.

89. The allegations in paragraph 89 of the Amended Notice do not relate to Concordia and require no response.

VII.

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

90. The allegations in paragraph 90 of the Amended Notice do not relate to Concordia and require no response.

91. The allegations in paragraph 91 of the Amended Notice do not relate to Concordia and require no response.

92. The allegations in paragraph 92 of the Amended Notice do not relate to Concordia and require no response.

93. The allegations in paragraph 93 of the Amended Notice do not relate to Concordia and require no response.

94. Concordia denies each and every allegation not specifically denied therein.

AFFIRMATIVE DEFENSES

The following affirmative defenses nullify any potential claims asserted by the Division. Concordia reserves the right to amend this Answer to assert additional defenses after completion of discovery.

First Affirmative Defense

The ACC cannot meet the applicable standards for any of the relief it is seeking in the Amended Notice.

Second Affirmative Defense

1 The Amended Notice fails to state a claim upon which relief can be granted.

2 Third Affirmative Defense

3 Concordia did not offer or sell securities within the meaning of the Arizona Securities Act.

4 Fourth Affirmative Defense

5 Concordia did not engage in any activity that required registration with the Arizona
6 Corporation Commission's Securities Division.

7 Fifth Affirmative Defense

8 If the program at issue is determined to be a security, it was exempt from registration
9 and/or sold in an exempt transaction.

10 Sixth Affirmative Defense

11 The alleged investors suffered no injuries or damages as a result of Concordia's alleged
12 acts.

13 Seventh Affirmative Defense

14 The alleged investors alleged injuries or damages are the result of acts or omissions
15 committed by non-parties.

16 Eighth Affirmative Defense

17 Neither Restitution, nor an administrative penalty are appropriate remedies.

18 Ninth Affirmative Defense

19 To the extent an award of restitution is ordered, the ACC should use its discretion to reduce
20 the amount, if any, Concordia must pay.

21 Tenth Affirmative Defense

22 Concordia did not violate A.R.S. §§ 44-1841 or 44-1842.

23 Eleventh Affirmative Defense

24 The ACC's claims are barred by all applicable statutes of limitations.

25 Twelfth Affirmative Defense

26 The ACC's' claims are barred by prosecutorial delay.

27 Thirteenth Affirmative Defense

BASKIN RICHARDS PLC
2901 NORTH CENTRAL AVENUE
SUITE 1150
PHOENIX, ARIZONA 85012
TELEPHONE NO 602-812-7979
FACSIMILE 602-595-7800

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The ACC's claims are barred by the doctrines of waiver and estoppel.

Fourteenth Affirmative Defense

The ACC's claims are barred by the doctrine of laches.

Fifteenth Affirmative Defense

The ACC's claims are barred as either vague, ambiguous, overbroad, or a combination of the three.

Sixteenth Affirmative Defense

The ACC's claims are barred as a violation of due process.

Seventeenth Affirmative Defense

Any damages are due to the fault of others.

Eighteenth Affirmative Defense

The prosecution of this action is harmful to the interests of the investors.

Nineteenth Affirmative Defense

Concordia alleges such other affirmative defenses set forth in the Arizona Rules of Civil Procedure 8(c) as may be determined to be applicable during discovery.

RESPECTFULLY SUBMITTED this 8th day of June, 2015.

BASKIN RICHARDS PLC

By David Wood
Alan S. Baskin
David E. Wood
2901 North Central Avenue, Suite 1150
Phoenix, Arizona 85012
Attorneys for Respondent
Concordia Finance

ORIGINAL and thirteen copies of the foregoing
filed this 8th day of June, 2015 with:

Docket Control
Arizona Corporation Commission

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PHOENIX, ARIZONA 85012
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1 1200 West Washington Street
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2 COPY of the foregoing hand-delivered
3 this 8th day of June, 2015 to:

4 Matthew J. Neubert
5 Director of Securities
6 Securities Division
7 Arizona Corporation Commission
1300 W. Washington Street, 3rd Floor
Phoenix, AZ 85007

8 COPY of the foregoing e-mailed/mailed
9 this 8th day of June, 2015 to:

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11 Securities Division
12 Arizona Corporation Commission
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