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THE ARIZONA CORPORATION COMMISSION  
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2015 JUL 17 P 4: 44  
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Arizona Corporation Commission

DOCKETED

JUL 17 2015

DOCKETED BY  
MLB

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 AMENDED 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**

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

1 so, Concordia admits that during the period listed it did not apply to the Commission to do business  
2 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 they  
25 are not securities.  
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**1. Concordia's Promissory Notes**

12. The allegations in paragraph 12 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 12.

13. The allegations in paragraph 13 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 13.

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

14. The allegations in paragraph 14 refer to documents that speak for themselves. Concordia, however, does not dispute that investors entered into Servicing and Custodial Agreements. Accordingly, Concordia admits the allegations in paragraph 14.

15. The allegations in paragraph 15 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 15.

16. The allegations in paragraph 16 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 16.

17. The allegations in paragraph 17 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 17.

18. The allegations in paragraph 18 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 18.

19. The allegations in paragraph 19 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 19.

20. The allegations in paragraph 20 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 20.

21. The allegations in paragraph 21 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 21.

22. The allegations in paragraph 22 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 22.

23. The allegations in paragraph 23 refer to documents that speak for themselves. Accordingly, Concordia admits the allegations in paragraph 23.

- 1           24.    The allegations in paragraph 24 refer to documents that speak for themselves.  
2 Accordingly, Concordia admits the allegations in paragraph 24.
- 3           25.    The allegations in paragraph 25 refer to documents that speak for themselves.  
4 Accordingly, Concordia admits the allegations in paragraph 25.
- 5           26.    The allegations in paragraph 26 refer to documents that speak for themselves.  
6 Accordingly, Concordia admits the allegations in paragraph 26.
- 7           27.    The allegations in paragraph 27 include legal conclusions, and are therefore denied.
- 8           28.    The allegations in paragraph 28 include legal conclusions, and are therefore denied.
- 9           29.    Concordia is without sufficient knowledge or information to admit or deny the  
10 allegations contained in paragraph 29, and, therefore denies those allegations.
- 11          30.    The allegations in paragraph 30 refer to documents that speak for themselves, and  
12 require no answer. Accordingly, Concordia admits the allegations in paragraph 30.
- 13          31.    The allegations in paragraph 31 refer to documents that speak for themselves, and  
14 require no answer. Accordingly, Concordia admits the allegations in paragraph 31.
- 15          32.    The allegations in paragraph 32 refer to documents that speak for themselves, and  
16 require no answer. Accordingly, Concordia admits the allegations in paragraph 32.
- 17          33.    The allegations in paragraph 33 refer to documents that speak for themselves, and  
18 require no answer. Accordingly, Concordia admits the allegations in paragraph 33.
- 19          34.    The allegations in paragraph 34 are vague, as they do not define what “empower[ing]  
20 an investor to direct Concordia’s business operations” means. Accordingly, Concordia is without  
21 sufficient information to admit or deny the allegations in paragraph 34, which are therefore denied.
- 22          35.    Concordia admits the allegations in paragraph 35 to the extent they allege certain  
23 payments were made from a Chino Bank account, which received deposits from multiple sources.  
24 To the extent paragraph 35 is used to support an allegation that the Truck Financing Contracts were  
25 securities, the allegation is a legal conclusion, and Concordia denies said allegation and affirmatively  
26 alleges that they are not securities.  
27

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

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

11          38.     The allegations in paragraph 38 are an inaccurate, incomplete and misleading  
12 statement of the facts, and are therefore denied.

13          39.     The allegations in paragraph 39 are an inaccurate, incomplete and misleading  
14 statement of the facts, and are therefore denied.

15          40.     The allegations in paragraph 40 are vague and ambiguous regarding the term  
16 “performance of the Truck Financing Contracts...” and are therefore denied. Concordia admits that  
17 it made interest payments pursuant to the rate stated in the Servicing Agreements.

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

23           **B.     Berch’s and Wanzek’s Sale of Servicing Agreements and Custodial Agreements.**

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

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

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

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

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

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

9           48.    The allegations in paragraph 48 refer to documents that speak for themselves, and  
10 require no answer. Accordingly, Concordia admits the allegations in paragraph 48.

11          49.    The allegations in paragraph 49 refer to documents that speak for themselves, and  
12 require no answer. Accordingly, Concordia admits the allegations in paragraph 49.

13          50.    Concordia admits the allegations in paragraph 50.

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

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

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

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

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

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

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

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

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

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

16          61.     Concordia admits the allegations in paragraph 61.

17          62.     Paragraph 62 does not identify the specific documents to which it refers and the term  
18 “raised money” is vague and ambiguous. Accordingly, Concordia lacks sufficient information to  
19 admit or deny the allegations contained in paragraph 62 and therefore denies those allegations.

20          63.     Paragraph 63 does not identify the specific documents to which it refers.  
21 Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in  
22 paragraph 63 and therefore denies those allegations.

23          64.     Paragraph 64 does not identify the specific documents to which it refers.  
24 Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in  
25 paragraph 64 and therefore denies those allegations.

26          65.     Concordia is without sufficient knowledge or information to admit or deny the  
27 allegations contained in paragraph 65 and therefore denies those allegations.

1           66. Paragraph 66 does not identify the specific documents to which it refers.  
2 Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in  
3 paragraph 66 and therefore denies those allegations.

4           67. Paragraph 67 is the Securities Division's legal opinion and not a factual allegation.  
5 Concordia also lacks sufficient knowledge or information to admit or deny the allegations contained  
6 in paragraph 67 and therefore denies those allegations.

7           68. Paragraph 68 is the Securities Division's legal opinion and not a factual allegation.  
8 Concordia also lacks sufficient knowledge or information to admit or deny the allegations contained  
9 in paragraph 68 and therefore denies those allegations.

10          69. Concordia is without sufficient knowledge or information to admit or deny the  
11 allegations contained in paragraph 69 and therefore denies those allegations.

12          70. Concordia is without sufficient knowledge or information to admit or deny the  
13 allegations contained in paragraph 70 and therefore denies those allegations.

14          71. Concordia is without sufficient knowledge or information to admit or deny the  
15 allegations contained in paragraph 71, and therefore denies those allegations.

16          72. Paragraph 72 does not identify the specific documents to which it refers.  
17 Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in  
18 paragraph 72, and therefore denies those allegations.

19          73. Paragraph 73 does not identify the specific documents to which it refers.  
20 Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in  
21 paragraph 73, and therefore denies those allegations.

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

25          75. Concordia is without sufficient knowledge or information to admit or deny the  
26 allegations contained in paragraph 75 of the Amended Notice, and, therefore denies those  
27 allegations.



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**VI.**

**VIOLATION OF A.R.S. § 44-1991**

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

88. The allegations in paragraph 88 do not relate to Concordia. Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in paragraph 88, and therefore denies those allegations.

89. The allegations in paragraph 89 do not relate to Concordia. Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in paragraph 89, and therefore denies those allegations.

**VII.**

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

90. The allegations in paragraph 90 do not relate to Concordia. Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in paragraph 90, and therefore denies those allegations.

91. The allegations in paragraph 91 do not relate to Concordia. Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in paragraph 91, and therefore denies those allegations.

92. The allegations in paragraph 92 do not relate to Concordia. Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in paragraph 92, and therefore denies those allegations.

93. The allegations in paragraph 93 do not relate to Concordia. Accordingly, Concordia lacks sufficient information to admit or deny the allegations contained in paragraph 93, and therefore denies those allegations.

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



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Tenth Affirmative Defense

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

Eleventh Affirmative Defense

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

Twelfth Affirmative Defense

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

Thirteenth Affirmative Defense

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

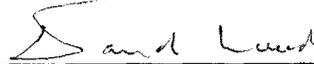
Concordia alleges such other affirmative defenses set forth in the Arizona Rules of Civil Procedure 8(c) as may be determined to be applicable during discovery.

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RESPECTFULLY SUBMITTED this 17th day of July, 2015.

BASKIN RICHARDS PLC

By   
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Concordia Finance

ORIGINAL and thirteen copies of the foregoing  
filed this 17th day of July, 2015 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

COPY of the foregoing hand-delivered  
this 17th day of July, 2015 to:

Matthew J. Neubert  
Director of Securities  
Securities Division  
Arizona Corporation Commission  
1300 W. Washington Street, 3<sup>rd</sup> Floor  
Phoenix, AZ 85007

Hearing Officer  
Hearing Division  
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1200 W. Washington Street  
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COPY of the foregoing e-mailed/mailed  
this 17th day of July, 2015 to:

James Burgess  
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