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FSCO takes action relating to unlawful syndicated mortgage practices


The Financial Services Commission of Ontario (FSCO) is committed to protecting consumers. FSCO takes this role seriously, and we will continue to take enforcement action against individuals and entities who contravene the law.

With this in mind, the Superintendent of Financial Services has issued a [cease and desist order](#) against **Tier 1 Transaction Advisory Services Inc.**, and has [suspended the licences](#)  Size: ## kb of **Tier 1 Mortgage Corporation, First Commonwealth Mortgage Corporation, Bhaktraj Singh, Jude Cassimy, and Dave Balkissoon** for practices that contravene the [Mortgage Brokerages, Lenders and Administrators Act, 2006](#) , arising in certain syndicated mortgage transactions.

As a result of FSCO's enforcement actions, mortgage brokers and agents can no longer do business on behalf of these entities, effective immediately. If you are an agent or broker sponsored by Tier 1 Mortgage Corporation or First Commonwealth Mortgage Corporation, your licence will be considered 'inactive' until you become sponsored by a mortgage brokerage that is 'active' and 'authorized to sell'.

FSCO reminds all agents/brokers to review their responsibilities under the [Mortgage Brokerages, Lenders and Administrators Act, 2006](#) , especially those related to syndicated mortgage investments. This includes completing the [Lender/Investor Disclosure Statement form](#)  Size: ## kb and [Addendum for Construction and Development Loans](#)  Size: ## kb, with prospective lenders or investors who are considering an investment in a mortgage.

For more information regarding your consumer protection obligations, refer to FSCO's bulletin, [Requirements for Promoting Syndicated Mortgage Investments](#).

If you have questions about what these enforcement actions mean to your ability to conduct mortgage business in Ontario, please contact . For information relating to any contractual agreement you had with the entities involved in these enforcement actions, you are strongly encouraged to seek independent financial and legal advice.

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Interim Compliance Order to Cease and Desist Unlicensed Activity Against Tier 1 Transaction Advisory Services Inc.

REGARDING the Mortgage Brokerages, Lenders and Administrators Act, 2006, S.O. 2006, c.29, in particular sections 2 and 35;

AND REGARDING Tier 1 Transaction Advisory Services Inc.

Interim Compliance Order to Cease and Desist Unlicensed Activity

TO:

Tier 1 Transaction Advisory Services Inc.
7 Bowan Crt.
Toronto, ON M2K 3A8

Subsections 35(1) and (2) of the Mortgage Brokerages, Lenders and Administrators Act, 2006 (the "Act") provides that if the Superintendent of Financial Services (the "Superintendent") is of the opinion that a person or entity is committing or has committed any act or is pursuing or has pursued any course of conduct that contravenes or does not comply with a requirement established under the Act or that might reasonably be expected to result in a state of affairs that would contravene or not comply with a requirement established under the Act, the Superintendent may order a person or entity to cease committing an act or cease pursuing a course of conduct identified by the Superintendent or to perform such acts as, in the Superintendent's opinion, are necessary to remedy the situation.

Subsection 35(3) of the Act provides that where the Superintendent proposes to make a compliance order, the Superintendent shall give written notice of the proposal to the licensee, including the reasons for the proposal and to follow the other steps in section 35, including the holding of a hearing before the Financial Services Tribunal (the "Tribunal") if requested.

Subsection 35(7) of the Act provides that, if in the Superintendent's opinion, the interests of the public may be adversely affected by any delay in making an order as a result of the steps required by section 35, the Superintendent may, without notice, make an interim order and may do so before or after giving the notice required by subsection 35(3).

Tier 1 Transaction Advisory Services Inc. ("Tier 1 Transaction") is not licensed as a mortgage brokerage. However, it has carried on the business of dealing in mortgages by arranging and facilitating syndicated mortgage investment transactions in respect of several development projects.

The Superintendent has issued a Notice of Proposal to make a permanent compliance order against Tier 1 Transaction and to refuse the mortgage brokerage licence application of Tier 1 Transaction (the "NOP"). For the reasons outlined in the NOP and for the reasons set out below, the Superintendent is of the opinion that the interests of the public may be adversely affected

by any delay in the the making of a permanent compliance order. Accordingly, the criterion for the issuance of an interim suspension order under section 35 has been met.

The unlicensed activities of Tier 1 Transaction include:

- a. soliciting persons or entities to borrow or lend money on the security of real property;
- b. providing information about a prospective borrower to a prospective lender;
- c. assessing prospective borrowers on behalf of prospective lenders;
- d. negotiating or arranging a mortgage on behalf of another person or entity; and/or
- e. provided fees and remuneration to licensed and unlicensed individuals.

Tier 1 Transaction solicits borrowers and originates the construction development deals that are marketed and sold by two brokerages, First Commonwealth Mortgage Corporation and Tier 1 Mortgage Corporation and a network of agents. A series of referral agreements, redirection agreements and co-brokerage agreements facilitate the investments in the development projects and direct the flow of fees and commissions associated with the solicitation and acquisition of investors. The brokering process in which investors are solicited and procured to invest in the syndicated loans for the various development projects is rife with contraventions of the Act by the brokerages, their principal brokers, and Tier 1 Transaction.

The syndicated mortgage investments facilitated by Tier 1 Transaction pose a significant risk to current and potential future investors. The value of the properties against which the mortgages are secured are likely not of sufficient present value to satisfy the investments by the individual lenders/investors. Although many of these projects are fully funded, as the syndicated mortgages approach their renewal or termination dates, efforts to secure renewal of the existing investments and, potentially, additional investments from new investors threatens to prolong the risk exposure of existing investors and incorporate further investors into these risky investments. Syndicated investors are also actively being sought for at least one new development project.

Bhaktraj Singh ("Mr. Singh") is the director, officer and shareholder of Tier 1 Transaction and has conflicting interests in other entities in the syndicated mortgage transactions. Mr. Singh also has an ownership interest in the borrowers under the syndicated mortgages. As part of the syndicated scheme, the mortgage is held in trust for the group of investors by a special purpose trustee corporation, of which Mr. Singh is also the director, officer and shareholder. In contravention of the Act, these conflicts of interest and interrelationships were not disclosed to investors and give rise to significant risks to investors because Mr. Singh, through the special purpose trustee corporations, is required to administer and enforce the mortgages on behalf of the investor as against the borrower entities in which he enjoys an economic interest.

For the reasons contained in the NOP and for the above reasons, the Superintendent is of the opinion that the interests of the public may be adversely affected by any delay in making a permanent compliance order against Tier 1 Transaction. Accordingly, the criterion for the issuance of an interim compliance order under section 35 against Tier 1 Transaction has been met.

Interim Compliance Order to Cease and Desist Unlicensed Activity

IT IS ORDERED THAT that pursuant to sections 2 and 35 of the Act, and for the reasons described above, **Tier 1 Transaction Advisory Services Inc.:**

1. Immediately cease soliciting persons or entities to borrow or lend money on the security of real property in Ontario, or holding itself out as doing so;
2. Immediately cease providing information about a prospective borrower to a prospective mortgage lender or holding itself out as doing so, in respect of real property in Ontario;
3. Immediately cease negotiating or arranging a mortgage in respect of real property in Ontario on behalf of another person or entity, or attempting or holding itself out as doing so;
4. Immediately cease accepting any fees or funds in connection with the solicitation, negotiation, or arrangement of a mortgage in respect of real property in Ontario;
5. Immediately cease using a description that might reasonably be expected to lead to the belief that it is a mortgage brokerage in respect of real property in Ontario;
6. Immediately cease advertising as a mortgage brokerage or as associated with a mortgage brokerage in Ontario;
7. Immediately cease making any claims or representations in relation to mortgages that are false or misleading; and
8. Immediately notify all entities and individuals with whom Tier 1 Transaction Advisory Services Inc. has a referral arrangement of this Interim Compliance Order and that Tier 1 Transaction Advisory Services Inc. is prohibited from paying any referral and/or other fees.

TAKE NOTICE THAT this Interim Order takes effect immediately and will remain in effect until the expiry of the period for requesting a hearing in respect of the Superintendent's Notice of Proposal as detailed in that Notice of Proposal (15 days after the Notice of Proposal is given, or deemed to have been delivered).

AND TAKE NOTICE THAT pursuant to subsections 48(4) and 49(1) and (2) of the Act, **every person who fails to comply with an order made under this Act is guilty of an offence and every individual convicted of an offence** under the Act is liable to a fine of not more than \$100,000.00 or imprisonment for a term of not more than a year or both a fine and imprisonment. Every corporation convicted of an offence under the Act is liable to a fine of not more than \$200,000.00.

Pursuant to subsection 48(5) of the Act, every director or officer of a corporation that commits an offence under this Act who directed, authorized, assented to, acquiesced in or participated in the commission of the offence, or who failed to take reasonable care to prevent the corporation from committing the offence, is guilty of an offence, whether or not the corporation is prosecuted or convicted.

Subsection 48(6) of the Act provides that every partner of a partnership and every individual who is a member of the directing body of an entity, other than a person or partnership, who directed, authorized, assented to, acquiesced in or participated in the commission of an act or omission by the partnership or entity which, if committed by a person, would be an offence under the Act, is guilty of an offence.

Si vous désirez recevoir cet ordre en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, 14em, Toronto ON M2N 6L9.

DATED at Toronto, Ontario, October 20, 2016.

original signed by "Anatol Monid"

Brian Mills
Superintendent of Financial Services
Financial Services Commission of Ontario

Disclaimer

An order that is made regarding a licence holder reflects a situation at a particular point in time. The status of a licence holder can change. Readers should check the current status of a person's or entity's licence on the Licensing Link section of FSCO's website. Readers may also wish to contact the person or entity directly to get additional information or clarification about the events that resulted in the order.

Superintendent of
Financial
Services



Surintendant des
services
financiers

REGARDING the *Mortgage Brokerages, Lenders and Administrators Act*, 2006, S.O. 2006, c.29, in particular section 19;

AND REGARDING First Commonwealth Mortgage Corporation, Tier 1 Mortgage Corporation, Bhaktraj Singh, Jude Cassimy, and Dave Balkissoon.

INTERIM ORDER SUSPENDING LICENCE

TO:

First Commonwealth Mortgage Corporation
337 Castlemore Ave.
Markham, ON L6C 2Y1

AND TO:

Tier 1 Mortgage Corporation
604 Four Winds Way
Mississauga, ON L5R 3M4

AND TO:

Bhaktraj Singh

AND TO:

Jude Cassimy

AND TO:

Dave Balkissoon

Subsection 19(1) of the *Mortgage Brokerages, Lenders and Administrators Act*, 2006 (the "Act") provides that the Superintendent of Financial Services (the "Superintendent") may, by order, revoke a licence in certain specified circumstances provided the Superintendent follows the steps required by section 21 including the issuance of a Notice of Proposal and, if requested, the holding of a hearing before the Financial Services Tribunal (the "Tribunal").

Subsection 19(3) of the Act provides that, if in the Superintendent's opinion, the interests of the public may be adversely affected by any delay in the revocation of a licence as a result of the steps required by section 21, the Superintendent may, without notice, make an interim order suspending the licence.

First Commonwealth Mortgage Corporation ("First Commonwealth") and Tier 1 Mortgage Corporation ("Tier 1 Mortgage") are licensed mortgage brokerages under the Act. Jude Cassimy ("Mr. Cassimy") and Dave Balkissoon ("Mr. Balkissoon") are licensed mortgage brokers under the Act and the principal brokers of First Commonwealth and Tier 1 Mortgage respectively. Bhaktraj Singh ("Mr. Singh") is a licensed mortgage agent under the Act and a director, officer and sole shareholder of Tier 1 Transaction Advisory Services Inc. ("Tier 1 Transaction").

The Superintendent has issued a Notice of Proposal to revoke the licences Tier 1 Mortgage, First Commonwealth, Mr. Balkissoon, Mr. Cassimy and Mr. Singh (the "NOP"). For the reasons outlined in the NOP and for the reasons set out below, the Superintendent is of the opinion that the interests of the public may be adversely affected by any delay in the revocation of these licences. Accordingly, the criterion for the issuance of an interim suspension order under section 19 has been met.

Examinations of the First Commonwealth and Tier 1 Mortgage and other enquiries by FSCO staff revealed a number of serious contraventions of the Act. The contraventions are widespread and reveal systemic disregard for the basic consumer protection measures set out in the Act. The most serious contraventions relate to the failure to provide written disclosure of material risks, disclosure of conflicts of interest, the failure to ensure that syndicated mortgage investments ("SMIs") (a mortgage for which there is more than one lender or investor) were suitable for the investor to whom they were presented and the provision of false and misleading information as to the characterization of appraisals as reflecting the "as is" value of the relevant properties when such appraisals were actually premised on the successful completion of the proposed development.

These contraventions exacerbate the risk inherent to the type of SMIs sold by the brokerages in this case. Such SMIs function as a form of mezzanine-like financing provided by individual, consumer lenders, which allows the developer to finance early development costs. Where the value of the property is misrepresented to investors whose security will be subordinated to senior ranking construction loans and where investors are provided with incomplete disclosure, the risks to investors are significant.

As the principal brokers of First Commonwealth and Tier 1 Mortgage respectively, Mr. Balkissoon and Mr. Cassimy have a statutory duty to take reasonable steps to ensure that their brokerage, and each broker and agent authorized to deal or trade in mortgages on its behalf, complies with every requirement established under the Act. They must also ensure that the brokerage itself takes reasonable steps to deal with any contravention of the Act by the brokerage or an authorized broker or agent. Mr. Balkissoon and Mr. Cassimy have neglected these obligations as several of the brokerages' agents have not performed statutory duties, including duties respecting suitability analyses, review of materials risks, timing of disclosure, providing required documentation, and false or misleading information in disclosure forms. Further, Mr. Balkissoon and Mr. Cassimy are themselves in violation of the standards of practice expected of mortgage brokers as both have signed investor disclosure documents that are incomplete or inaccurate.

Mr. Singh fills several roles in respect of both the development projects and the syndicated mortgage transactions. He is a director, officer and sole shareholder of Tier 1 Transaction, which is engaged in unlicensed activity including the solicitation of borrowers and lenders on the security of real property, the provision of information about a prospective borrower to a

prospective lender, the assessment a prospective borrower on behalf of a prospective lender and the negotiation or arrangement of a mortgage. Mr. Singh is also a licensed mortgage agent authorized to deal or trade in mortgages for First Commonwealth, a shareholder of several of the borrower development companies in the syndicated mortgage transactions. He is the sole director, officer and shareholder of the special purpose trustee corporations incorporated to hold and administer the mortgage on behalf of the investors. Finally, Mr. Singh has an ownership interest in the borrower companies. In contravention of the Act, these conflicts of interest and interrelationships were not disclosed to investors and give rise to significant risks to investors because Mr. Singh, through the special purpose trustee corporations, is required to administer and enforce the mortgages on behalf of the investor as against the entities in which he enjoys an economic interest.

Although additional investments are not currently being sought in respect of many of the projects, as the syndicated mortgages approach their renewal or termination dates efforts to secure renewal of the existing investments and, potentially, additional investments from new investors threatens to prolong the risk exposure of existing investors and expose new investors to these same risks. Syndicated investors are also actively being sought for at least one new development project. Consequently, there is ongoing risk to the public.

Further, the issuance of this interim suspension order is the only remedy available to the Superintendent to protect the public from these ongoing risks. The Superintendent cannot, absent the consent of the licensees, amend the licences to impose conditions prohibiting the marketing and sale of Tier 1 SMI's without also following the Notice of Proposal and hearing process. Even if more targeted measures were legally available to the Superintendent, the licensees' business activities are limited to Tier 1 SMIs. Consequently, the practical impact on the licensees' businesses of more targeted measures may not be materially different than the impact of this interim order.

For the reasons outlined in the NOP and for the above reasons, the Superintendent is of the opinion that the interests of the public may be adversely affected by any delay in the revocation of these licences.

Accordingly, the criterion for the issuance of an interim suspension order has been met.

INTERIM ORDER SUSPENDING LICENCE

IT IS ORDERED THAT pursuant to subsection 19(3) of the Act and for the reasons described above, **the mortgage brokerage licence of First Commonwealth Mortgage Corporation is suspended.** During the suspension, **First Commonwealth Mortgage Corporation is not authorized to deal or trade in mortgages in Ontario.**

IT IS ORDERED THAT pursuant to subsection 19(3) of the Act and for the reasons described above, **the mortgage brokerage licence of Tier 1 Mortgage Corporation is suspended.** During the suspension, **Tier 1 Mortgage Corporation is not authorized to deal or trade in mortgages in Ontario.**

IT IS ORDERED THAT, pursuant to subsection 19(3) of the Act, and for the reasons described above, **the mortgage agent licence of Bhaktraj Singh is suspended.** During the suspension, **Bhaktraj Singh is not authorized to deal or trade in mortgages in Ontario.**

IT IS ORDERED THAT, pursuant to subsection 19(3) of the Act, and for the reasons described above, **the mortgage broker licence of Jude Cassimy is suspended.** During the suspension, **Jude Cassimy is not authorized to deal or trade in mortgages in Ontario.**

IT IS ORDERED THAT, pursuant to subsection 19(3) of the Act, and for the reasons described above, **the mortgage broker licence of Dave Balkissoon is suspended**. During the suspension, **Dave Balkissoon is not authorized to deal or trade in mortgages in Ontario**.

TAKE NOTICE THAT this Interim Order takes effect immediately and will remain in effect until the expiry of the period for requesting a hearing in respect of the Superintendent's Notice of Proposal as detailed in that Notice of Proposal (15 days after the Notice is given, or deemed to have been delivered).

AND TAKE NOTICE THAT pursuant to subsections 48(4) and 49(1) and (2) of the Act, **every person who fails to comply with an order made under this Act is guilty of an offence** and every individual convicted of an offence under the Act is liable to a fine of not more than \$100,000.00 or imprisonment for a term of not more than a year or both a fine and imprisonment. Every corporation convicted of an offence under the Act is liable to a fine of not more than \$200,000.00.

AND TAKE NOTICE THAT subsection 17(3)(b) of the Act states that a mortgage broker's or agent's licence is suspended if the brokerage's licence is suspended.

AND TAKE FURTHER NOTICE THAT subsection 17(4)(a) and (b) state that the suspension of the mortgage broker's or agent's licence is terminated when the licence suspension of the specified mortgage brokerage on whose behalf the broker or agent is authorized to deal or trade in mortgage is terminated or when the mortgage broker or agent becomes authorized by another mortgage brokerage to deal in mortgages or trade in mortgages on its behalf and his or her licence has been amended accordingly.

Pursuant to subsection 48(5) of the Act, every director or officer of a corporation that commits an offence under this Act who directed, authorized, assented to, acquiesced in or participated in the commission of the offence, or who failed to take reasonable care to prevent the corporation from committing the offence, is guilty of an offence, whether or not the corporation is prosecuted or convicted.

Subsection 48(6) of the Act provides that every partner of a partnership and every individual who is a member of the directing body of an entity, other than a person or partnership, who directed, authorized, assented to, acquiesced in or participated in the commission of an act or omission by the partnership or entity which, if committed by a person, would be an offence under the Act, is guilty of an offence.

Si vous désirez recevoir cet ordre en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, 14^{em}, Toronto ON M2N 6L9.

DATED at Toronto, Ontario, October 20, 2016.

Original signed by

Anatol Monid
Executive Director, Licensing and Market Conduct Division

By delegated authority from the Superintendent of Financial Services

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Requirements for Promoting Syndicated Mortgage Investments

Bulletin

No. M-01/15

Mortgage Brokering

To all mortgage brokerages who are dealing in syndicated mortgages

NOTE: The bulletins that are posted on this website are provided for historical reference purposes. The information in these bulletins is accurate on the date the information is published, but is subject to change and may be replaced by more recent bulletins.

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These bulletins may include forms that are no longer up-to-date or accurate. Readers should visit the [forms](#) section of the FSCO website, to ensure they are using the most recent version of a FSCO form.

The Financial Services Commission of Ontario (FSCO) has noted that a number of mortgage brokerages have entered into arrangements with developers and promoters that want to attract investors for syndicated mortgage investments.

FSCO is cautioning mortgage brokerages that have such arrangements with unlicensed businesses that they may be exposing their brokerages to contraventions of the Mortgage Brokerages, Lenders and Administrators Act, 2006 (MBLAA).

Soliciting or Providing Information

Under section 2 of the MBLAA, businesses that solicit investors or provide information about syndicated mortgage investments must be licensed as mortgage brokerages. This requirement applies even if the unlicensed business that is promoting a syndicated mortgage investment refers investors to a licensed mortgage brokerage to close the transaction.

Soliciting or providing information includes:

- having websites;
- presenting at informational seminars;

- promotional booths at investor trade shows; or
- advertising on radio, television and in newspapers.

A business that provides information about syndicated mortgage investments must be licensed as a mortgage brokerage. Mortgage agents and brokers cannot operate an unlicensed business in order to provide information about syndicated mortgage investments, nor can they operate outside of their licensed mortgage brokerage's oversight.

It should be noted that the appearance of a mortgage brokerage's name on websites or promotional materials that are controlled and distributed by an unlicensed business may expose the brokerage to non-compliance with the MBLAA.

FSCO has taken action against licensed mortgage agents and brokers that own and/or operate unlicensed businesses providing information about syndicated mortgage investments. FSCO will continue to take such action and potentially against the mortgage brokerages that were required to supervise them.

Fees or Payments

O. Reg. 188/08, s. 44(1) and (2)

A mortgage brokerage may only pay another brokerage for dealing in mortgages. In other words, paying fees to any unlicensed business that is dealing in mortgages (e.g., an unlicensed business that has solicited syndicated mortgage investments) contravenes the regulation prohibiting the payment of fees to unlicensed businesses.

A mortgage brokerage that receives payment for referring an investor to another brokerage must disclose to the investor: O. Reg. 188/08, s. 23.

- that the mortgage brokerage will receive a payment for the referral; and
- the nature of the mortgage brokerage's relationship with the other brokerage.

The brokerage must disclose this information before the referral is made or when making the referral.

Suitability of the Investment

O. Reg. 188/08, s. 24 (1). , O. Reg. 188/08, s. 25 (1). and O. Reg. 188/08, s. 27 (1).

The MBLAA requires mortgage brokerages to take reasonable steps to ensure that the mortgage investment they recommend is suitable based on the client's needs and circumstances.

The MBLAA also requires brokerages to advise a client of the material risks of the investment and disclose information about potential conflicts of interest and evidence of the borrower's ability to meet the mortgage payments.

Mortgage brokerages must ensure that investors in syndicated mortgage investments understand potential risks, such as:

- Early withdrawals. It may be difficult for investors to withdraw money early from a syndicated mortgage investment. The investor may need to find another investor to take over the

syndicated mortgage investment.

- The additional risks of construction loans. If a syndicated mortgage is for a construction loan, investors need to understand the current value of an undeveloped property and the projected value of the project upon completion.
- Unforeseen circumstances. Investors need to understand what would happen if the project cost more than expected and the developer runs out of money and cannot complete the project.
- The position of the mortgage. Investors need to know whether the syndicated mortgage investment is a first, second or subsequent mortgage. Investors should also be aware if the position of this mortgage may change in the future.
- Requirements to invest more money. Investors need to understand situations where they may be required to put in more money. For example, if the borrower defaults on the mortgage, investors may incur additional costs to take legal action against the borrower.

Proof of Investor Disclosure

O. Reg. 188/08, s. 46

FSCO will not consider evidence of the investor's signature on relevant documentation, on its own, as sufficient proof that the client was adequately informed about the investment and its risks.

Mortgage brokerages must keep appropriate documentation on file. This includes records that detail their discussions with clients.

Advertising

O. Reg. 188/08, s. 7 and O. Reg. 188/08, s. 16

FSCO is also cautioning that it is misleading to advertise syndicated mortgage investments if the advertisement fails to reflect the information that must be provided on the Investor/Lender Disclosure Statement. For example, it is misleading to advertise syndicated mortgage investments that promote the projected value of a completed construction project without also providing the project's current value.

The MBLAA also prohibits a brokerage from guaranteeing a mortgage investment. This includes using the word "guarantee" and other words that may suggest to an investor that the investment is risk-free.

Brian Mills
Chief Executive Officer and Superintendent of Financial Services

June 30, 2015