

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the matter of:

| | |
|---|----------------------|
| WOODBIDGE MORTGAGE INVESTMENT FUND 1, LLC, Unregistered; | Complaint No. 332973 |
| WOODBIDGE MORTGAGE INVESTMENT FUND 2, LLC, Unregistered; | Complaint No. 332976 |
| WOODBIDGE MORTGAGE INVESTMENT FUND 3, LLC, Unregistered; | Complaint No. 332977 |
| WOODBIDGE MORTGAGE INVESTMENT FUND 3A, LLC, Unregistered; | Complaint No. 332978 |
| WOODBIDGE MORTGAGE INVESTMENT FUND 4, LLC, Unregistered; and | Complaint No. 332979 |
| WOODBIDGE STRUCTURED FUNDING, LLC, Unregistered, | Complaint No. 332980 |

Respondents.

Issued and entered
this 13th day of September, 2018

ADMINISTRATIVE CONSENT AGREEMENT
AND ORDER

A. RELEVANT INFORMATION AND STATUTORY PROVISIONS, under the Michigan Uniform Securities Act (2002) (the "Act"), 2008 PA 551, MCL 451.2101 *et seq.*:

1. On August 8, 2017, the Director of the Corporations, Securities & Commercial Licensing Bureau of the Michigan Department of Licensing and Regulatory Affairs (the "Department"), as the Administrator of the Act (the

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"Administrator"), issued a separate Notice and Order to Cease and Desist against each of the above-captioned Respondents. For purposes of this Administrative Consent Agreement and Order ("Consent Order"):

- The above-captioned Respondents are referred to individually by name or generally as a "Woodbridge Entity," and are referred to collectively as the "Woodbridge Entities." The term "Woodbridge Entity" means and includes any successor business entity or any business entity owned, operated, or controlled by a Woodbridge Entity, including but not limited to any successor business entity that is formed or emerges as a result of the Woodbridge Bankruptcy (as defined in Paragraph A.7 below)
 - The six (6) separate Notices and Orders to Cease and Desist issued against each of the Woodbridge Entities on August 8, 2017 are referred to collectively as the "C&D Orders"; and
 - The Woodbridge Entities and Department staff are referred to individually as a "Party" and collectively as the "Parties."
2. The C&D Orders allege that the Woodbridge Entities:
- (a) Offered and sold products known as "First Position Commercial Mortgages" and "Secondary Market Annuities" in Michigan to approximately 230 Michigan residents that were within the Act's definition of a "security" and were not federally covered, exempt from registration, or registered, in violation of section 301 of the Act, MCL 451.2301; and
 - (b) Omitted material facts in connection with their offer and sale of the First Position Commercial Mortgages and Secondary Market Annuities to approximately 230 Michigan residents, in violation of section 501 of the Act, MCL 451.2501.
3. Based on these alleged violations of the Act, the C&D Orders, *inter*

alia:

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- (a) Ordered the Woodbridge Entities to immediately cease and desist from violating the Act; and
- (b) Notified the Woodbridge Entities of the Administrator's intention to impose a separate civil fine in the amount of \$500,000 each against Woodbridge Mortgage Investment Fund 1, 2, 3, 3A, and 4, LLC, and in the amount of \$20,000 against Woodbridge Structured Funding, LLC, pursuant to MCL 451.2604(4).

4. The C&D Orders were immediately effective pursuant to MCL 451.604(2); however, the Woodbridge Entities, through counsel, timely requested an administrative hearing on the C&D Orders pursuant to the Act (including section 604, MCL 451.2604) and the Michigan Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 *et seq.* (including section 71, MCL 24.271) (the "Hearing Request").

5. The Woodbridge Entities are not registered in any capacity under the Act. See MCL 451.2401 through MCL 451.2404.

6. The Parties and their legal counsel participated in a meeting on October 24, 2017 to discuss the C&D Orders and potential resolution, agreeing to hold the Hearing Request in abeyance during settlement negotiations. Thereafter, the Woodbridge Entities cooperated with the Department by providing requested documents, and the Parties engaged in ongoing discussions about resolving this matter through a consent agreement and order.

7. On December 4, 2017, Woodbridge Group of Companies, LLC, the Woodbridge Entities, and other related entities filed voluntary petitions under

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chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). These bankruptcy cases remain pending and are being jointly administered under case number 17-12560 (the "Woodbridge Bankruptcy").

8. The Woodbridge Entities are authorized and continue to operate and manage their own property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, and are under the management and control of WGC Independent Manager LLC, the authorized representative of which for purposes of entering into this Consent Order is Bradley D. Sharp, its Chief Restructuring Officer.

9. Notwithstanding the Woodbridge Bankruptcy, the Parties have continued to negotiate a potential resolution and discussed outstanding issues to ensure that the terms of this Consent Order are consistent with applicable bankruptcy law and procedures.

10. The Woodbridge Entities were represented by, and had the advice of, legal counsel throughout the process of resolving the C&D Orders through this Consent Order.

B. AGREEMENT

The Parties agree to resolve the C&D Orders pursuant to the following terms and conditions:

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1. The Woodbridge Entities agree to permanently cease and desist all new and renewal offers and sales of First Position Commercial Mortgages and Secondary Market Annuities to Michigan residents.

2. The Woodbridge Entities agree to permanently cease and desist offering or selling any securities in Michigan that are not registered or exempt under the Act or the rules promulgated under the Act or the predecessor Act.

3. All claims of Michigan residents holding any First Position Commercial Mortgages, Secondary Market Annuities, or other Woodbridge Entity investments ("Michigan Claimants") are subject to the bankruptcy proof of claim and/or proof of interest resolution process in the Woodbridge Bankruptcy. All claims and interests asserted by Michigan Claimants are subject to the jurisdiction of the Bankruptcy Court. This Paragraph B.3 is not intended to and legally cannot waive, limit, or otherwise alter any rights of Michigan Claimants to pursue rescission and repayment through the Woodbridge Bankruptcy or under other applicable law.

4. The Department will impose no civil fines against the Woodbridge Entities as part of this Consent Order in an effort to maximize recoveries by Michigan and other consumer investors through the Woodbridge Bankruptcy.

5. The Department will report and publish this Consent Order according to its current policy, as follows:

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- This Consent Order is a public record required to be published and made available to the public, consistent with section 11 of the Michigan Freedom of Information Act, MCL 15.241. The Department will publish this Consent Order consistent with its current policy, whereby copies of orders issued under the Act are posted to the Department's website and a summary of order content is included in monthly disciplinary action reports separately published on the Department's website.

6. Notwithstanding the potential application of MCL 451.2412(9), this Consent Order expressly preserves the Department's and Administrator's ability to rely on and assert, in any future proceeding under the Act, all activities, conduct, and alleged Act violations by the Woodbridge Entities contained in or relating to the C&D Orders.

7. The Woodbridge Entities neither admit nor deny any allegations in the C&D Orders or any wrongdoing in connection with this matter, and consent to entry of this Consent Order only for the purpose of resolving the C&D Orders in an expeditious fashion that avoids the time and expense associated with an administrative proceeding on the Hearing Request and any appeals therefrom. The Parties agree that this Consent Order is automatically admissible in a proceeding to enforce its provisions or in any administrative proceeding under the Act.

As part of this Consent Order, and for purposes of the above statement that the Woodbridge Entities "neither admit nor deny any allegations in the C&D Orders or any wrongdoing in connection with this matter," the Woodbridge Entities agree that they:

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- (a) Will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Consent Order or creating the impression that the Consent Order is without factual basis; and
- (b) Will not make or permit to be made any public statement to the effect that the Woodbridge Entities do not admit the allegations of the Consent Order, or that this Consent Order contains no admission of the allegations, without also stating that Respondents do not deny the allegations.

If the Woodbridge Entities breach the agreement in this immediate paragraph, the Administrator may vacate this Consent Order and restore the administrative proceeding under the C&D Orders.

Nothing in this Paragraph B.7 affects the Woodbridge Entities': (a) testimonial obligations; or (b) right to take differing legal or factual positions in litigation or other legal proceedings. Moreover, nothing in this Consent Order shall be, or deemed to be, an admission or a declaration against interest by the Woodbridge Entities or used in any way by the Woodbridge Entities or any party to their cases in the Woodbridge Bankruptcy to prejudice any rights or claims made by any party in these cases, including but not limited to the Woodbridge Entities, the Ad Hoc Unit Holders Committee, the Ad Hoc Noteholders Committee, or the Creditors Committee, all of which rights are expressly preserved.

8. By consenting to the entry of this Consent Order, the Woodbridge Entities preserve all rights under Section 1145 of the U.S. Bankruptcy Code.

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9. This Consent Order is not intended by the Department or the Administrator to subject the Woodbridge Entities or the entity that obtained managerial control of the Woodbridge Entities on December 1, 2017, WGC Independent Manager LLC, or any of its officers, employees, service providers, or agents, to any disqualifications under the laws of the United States, any state, the District of Columbia, or Puerto Rico, including, without limitation, any disqualifications from current or future reliance upon applicable state or federal registration exemptions or safe harbor provisions, including but not limited to 17 CFR §§ 230.506(d)(1) or 230.262(a). The application of this Paragraph B.9 is limited solely to this Consent Order and the conduct resolved in connection therewith, and it does not otherwise limit or affect application of the referenced laws and rules in any other respect.

10. The Woodbridge Entities agree that, effective upon entry of this Consent Order, their Hearing Request is automatically revoked without further action by the Parties.

11. The Woodbridge Entities agree to cooperate with the Department and comply with any reasonable investigative demands made by the Department in the future for purposes of ensuring compliance with this Consent Order or the Act.

12. The Woodbridge Entities acknowledge and agree that: (a) the Administrator has jurisdiction and authority to enter this Consent Order; (b) the Administrator may enter this Consent Order without any further notice to the

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Woodbridge Entities; and (c) upon entry of this Consent Order, it is final and binding (pending Bankruptcy Court approval as provided in Paragraph B.13 below), and the Woodbridge Entities waive any right to a hearing or appeal of this Consent Order and the C&D Orders under the Act, the rules promulgated under the Act or the predecessor Act, the Michigan Administrative Procedures Act of 1969, the U.S. Bankruptcy Code, or other applicable law.

13. This Consent Order shall become fully effective and binding upon the entry of an order by the Bankruptcy Court authorizing the Woodbridge Entities' entry into this Order. As soon as practicable after the entry of this Consent Order, the Woodbridge Entities will file a *Notice of Filing of Consent Order* ("Notice") with the Bankruptcy Court, pursuant to the Bankruptcy Court's April 3, 2018 *Order Setting Expedited Procedures for the Approval of Certain Consent Orders* [Docket No. 888], Federal Rule of Bankruptcy Procedure 9019, and other applicable law, seeking such Bankruptcy Court authorization and to have the Notice heard on an expedited basis. The Parties acknowledge that the effectiveness of this Consent Order as to the Woodbridge Entities is subject in all respects to the Bankruptcy Court's approval.

14. The Parties acknowledge and agree that the Administrator retains the right to pursue any action or proceeding permitted by law to enforce the provisions of this Consent Order.

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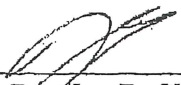
15. The Parties agree that facsimile or electronically-transmitted signatures may be submitted in connection with this Consent Order and are binding on that Party to the same extent as an original signature.

[This space left intentionally blank; Signature Page and Order follow]

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Through their signatures, the Parties agree to the above terms and conditions.

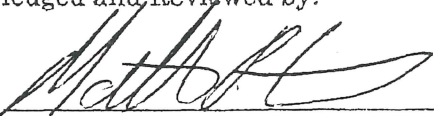
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WOODBIDGE MORTGAGE INVESTMENT FUND 2, LLC
WOODBIDGE MORTGAGE INVESTMENT FUND 3, LLC
WOODBIDGE MORTGAGE INVESTMENT FUND 3A, LLC
WOODBIDGE MORTGAGE INVESTMENT FUND 4, LLC
WOODBIDGE STRUCTURED FUNDING, LLC

By: 
Bradley D. Sharp

Dated: 7-31-18

Title: Chief Restructuring Officer,
WGC Independent Manager LLC

Acknowledged and Reviewed by:

Signed: 
Matthew P. Allen
Attorney for the Woodbridge Entities

Dated: 9-6-18

Approved by:

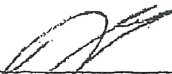
Signed: _____
Timothy L. Teague
Securities & Audit Division Director
Corporations, Securities & Commercial
Licensing Bureau

Dated: _____

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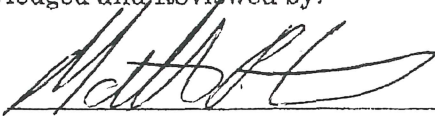
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WOODBIDGE MORTGAGE INVESTMENT FUND 3A, LLC
WOODBIDGE MORTGAGE INVESTMENT FUND 4, LLC
WOODBIDGE STRUCTURED FUNDING, LLC

By: 
Bradley D. Sharp

Dated: 7-31-18

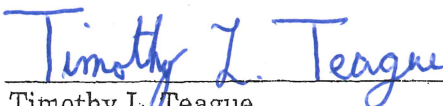
Title: Chief Restructuring Officer,
WGC Independent Manager LLC

Acknowledged and Reviewed by:

Signed: 
Matthew P. Allen
Attorney for the Woodbridge Entities

Dated: 9-6-18

Approved by:

Signed: 
Timothy L. Teague
Securities & Audit Division Director
Corporations, Securities & Commercial
Licensing Bureau

Dated: 9.6.18

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C. ORDER

The Administrator NOW, THEREFORE, ORDERS:

THE TERMS AND CONDITIONS IN THE FOREGOING FULLY EXECUTED
CONSENT AGREEMENT ARE INCORPORATED BY REFERENCE AND MADE
BINDING AND EFFECTIVE THROUGH THIS CONSENT ORDER.

By: 

Julia Dale

Administrator and Director

Corporations, Securities & Commercial Licensing Bureau

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the Matter of:

Complaint No. 332978

WOODBIDGE MORTGAGE INVESTMENT FUND 3A, LLC
Unregistered

Respondent.

_____ /

Issued and entered
This 8th day of August, 2017

NOTICE AND ORDER TO CEASE AND DESIST

Julia Dale, the Director ("Administrator") of the Corporations, Securities & Commercial Licensing Bureau ("the Bureau"), pursuant to her statutory authority and responsibility to administer and enforce the Michigan Uniform Securities Act (2002), 2008 PA 551, as amended, MCL 451.2101 *et seq* ("Securities Act"), hereby orders Woodbridge Mortgage Investment Fund 3A, LLC ("Respondent") to cease and desist from offering or selling unregistered securities, and to cease and desist from omitting to state material facts necessary to make other statements made, in light of the circumstances under which they were made, not misleading, contrary to the Securities Act. Respondent is also notified of the opportunity to request a hearing in this matter.

I. BACKGROUND

A. The Respondent

1. Woodbridge Mortgage Investment Fund 3A, LLC is a Delaware-organized limited liability company that was formed in or around 2015. Respondent has not filed a certificate of authority to do business in Michigan, holds no registrations pursuant to the Securities Act in Michigan, and has not registered any securities products pursuant to the Securities Act in Michigan.

B. Findings of Fact

1. The Bureau received information that Respondent may be offering and selling securities in the State of Michigan, and initiated an investigation to review Respondent's activities under the Securities Act.
2. The investigation developed evidence that Respondent offered and sold "First Position Commercial Mortgages" (hereafter "notes") in Michigan that fell within the definition of "security"; approximately 230 investors invested more than \$14,000,000.00 with Respondent and its affiliated companies. The notes were not federally covered, exempt from registration, or registered. (Exhibit 1 – Sample Note).
3. The investigation developed evidence that Respondent described the securities it issued as being "safer" than other securities and as having "higher yields and lower risk" than other investments; however, Respondent failed to provide relevant financial information to demonstrate its ability to pay returns promised by its advertisements. (Exhibit 2 – Respondent Website Printouts).
4. Respondent identified its securities as being "safer" than other securities and as having "higher yields and lower risk" than other investments; however, Respondent failed to inform investors of various cease and desist orders to which it or its affiliate was subject from the Commonwealth of Massachusetts (Exhibit 3 – Massachusetts Consent Order), State of Texas (Exhibit 4 – Texas Order), and State of Arizona (Exhibit 5 – Arizona Cease and Desist Order).

II. RELEVANT STATUTORY PROVISIONS

1. Section 102c(c) of the Securities Act, MCL 451.2102c(c) defines "Security", in part, as:

a note¹¹; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or

¹ A promissory note is presumed to be a security under the "Family Resemblance Test" adopted by the Supreme Court in *Reves v Ernst & Young*, 494 US 56, 64-67 (1990) (Attachment 6 – *Reves v Ernst & Young*). The presumption may be rebutted by analyzing four factors to determine if the notes have non-security characteristics. Those factors as applied here support the fact that the notes are securities: (1) The notes were sold to multiple purchasers across the country with the intent that they act as a safe and high-yield investment for the note purchasers; (2) the plan of distribution of the instrument was broadly spread across not just Michigan, but across the country; (3) the investors would reasonably expect the notes to be securities, as the notes were described as investments that would produce high yields with little risk; (4) no other regulatory scheme exists to provide a safeguard for investors in these notes, though they are purportedly secured. *Id.* Weighing all the factors, the notes fall within the definition of "security" under the Securities Act.

subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest in or based on the value of that put, call, straddle, option, or privilege on that security, certificate of deposit, or group or index of securities, put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, an investment in a viatical or life settlement agreement; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing...

2. Section 301 of the Securities Act, MCL 451.2301, states:

A person shall not offer or sell a security in this state unless 1 or more of the following are met:

- (a) The security is a federal covered security.
- (b) The security, transaction, or offer is exempted from registration under section 201 to 203.
- (c) The security is registered under this act.

3. Section 501 of the Securities Act, MCL 451.2501, states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security or the organization or operation of a Michigan investment market under article 4A, to directly or indirectly do any of the following:...

- (b) Make an untrue statement of a material^[2] fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading...

4. Section 503(1) of the Securities Act, MCL 451.2503(1), states:

In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the exemption, exception, preemption, or exclusions.

^[2] A "material" fact is one that a reasonable investor might consider important to his or her investment decision. *People v Cook*, 89 Mich App 72 (1979).]

III. CONCLUSIONS OF LAW

1. Respondent Woodbridge Mortgage Investment Fund 3A, LLC offered and sold note securities labeled as "First Position Commercial Mortgages" in Michigan which were not federally covered, exempt from registration, or registered, in violation of section 301 of the Securities Act, MCL 451.2301.
2. Respondent Woodbridge Mortgage Investment Fund 3A, LLC omitted material information in connection with the offer and sale of securities when it advertised the notes as being "safer" and offering "higher yields and lower risks" than other investments, but failed to disclose relevant financial information to demonstrate to investors that the issuer had the ability to pay the promised return. A reasonable investor may have considered the issuer's financial information important to his or her investment decision, meaning that the omission was material. The material information was necessary to make the statements made regarding the safety and higher yield nature of the investments not misleading, but was omitted, contrary to section 501 of the Securities Act, MCL 451.2501.
3. Respondent Woodbridge Mortgage Investment Fund 3A, LLC omitted material information in connection with the offer and sale of securities when it advertised the various positive aspects of the investments, such as the statements regarding their safety and high yields, but failed to disclose to investors that Respondent had been ordered by multiple jurisdictions to cease and desist from offering the notes for sale. A reasonable investor may have considered the cease and desist orders issued by Massachusetts, Texas, and Arizona important to his or her investment decision, meaning that the omission was material. The material information was necessary to make the positive statements about the investments not misleading, but was omitted, contrary to section 501 of the Securities Act, MCL 451.2501.

IV. ORDER

IT IS THEREFORE ORDERED, pursuant to section 604 of the Securities Act, MCL 451.2604, that:

- A. Respondent shall immediately CEASE AND DESIST from offering or selling unregistered securities and from omitting material information in connection with the offer and sale of securities, contrary to the Securities Act.
- B. Pursuant to section 604(2) of the Securities Act, this Notice and Order to Cease and Desist is IMMEDIATELY EFFECTIVE.
- C. In her Final Order, the Administrator, under section 604(4) of the Securities Act, MCL 451.2604(4), intends to impose a civil fine of \$500,000.00 against Respondent.

- D. Pursuant to section 508 of the Securities Act, MCL 451.2508, a person that willfully violates the Securities Act, or an order issued under the Securities Act, is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$500,000.00 for each violation, or both. An individual convicted of violating a rule or order under this act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

V. NOTICE OF OPPORTUNITY FOR HEARING

Section 604 of the Securities Act, MCL 451.2604, provides that Respondent has 30 days beginning with the first day after the date of service of this Notice and Order to Cease and Desist to submit a written request to the Administrator asking that this matter be scheduled for a hearing. If the Administrator receives a written request in a timely manner, the Administrator shall schedule a hearing within 15 days after receipt of the request. The written request for a hearing must be addressed to:

Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909

VI. ORDER FINAL ABSENT HEARING REQUEST

- A. Under section 604 of the Securities Act, MCL 451.2604, the Respondent's failure to submit a written request for a hearing to the Administrator within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** shall result in this order becoming a **FINAL ORDER** by operation of law. The **FINAL ORDER** includes the imposition of the fines cited described in section IV.C., and the fine amounts set forth below will become due and payable to the Administrator within sixty (60) days after the date this order becomes final:

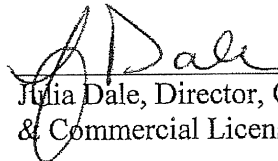
\$500,000.00 – Woodbridge Mortgage Investment Fund
3A, LLC, under section 604 of the Securities Act, MCL
451.2604.

- B. CIVIL FINE payments should be payable to the STATE OF MICHIGAN and contain identifying information (e.g., names and complaint numbers) and mailed to the following address:

Corporations, Securities & Commercial Licensing Bureau
Final Order Monitoring
P.O. Box 30018
Lansing, MI 48909

- C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including the summary suspension or continued suspension of all registrations held by Respondent under the Securities Act, the denial of any registration renewal, and/or the denial of any future applications for registration, until full compliance is made. Respondent may voluntarily surrender or withdraw a registration under the Securities Act; however, the surrender or withdrawal will not negate the summary suspension or continued suspension of the relevant registrations or any additional administrative proceedings if a violation of this Order or the Securities Act occurred.
- D. Failure to pay the civil fines within six (6) months after this Order becomes final may result in the referral of the civil fines to the Michigan Department of Treasury for collection action against Respondents.

CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU



Julia Dale, Director, Corporations, Securities
& Commercial Licensing Bureau

8/8/17
Date