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9 Attorneys for Complainant

10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the:	)	OAH CASE NO.: 2020100742
)	
13 THE COMMISSIONER OF FINANCIAL	)	CFL LICENSE NO.: 603-G804
14 PROTECTION AND INNOVATION,)	
	)	SETTLEMENT AGREEMENT
15 Complainant,)	
	)	Hearing Date: February 25, 2021
16 v.	)	Hearing Time: 9:00 a.m.
	)	Location: OAH Los Angeles
17 EQUITIES FIRST HOLDINGS, LLC,	)	320 W. 4th Street
	)	Sixth floor, Suite 630
18 Respondent.	)	Los Angeles, CA 90013-2344
	)	ALJ: Unassigned
)	

21 This Settlement Agreement (the Settlement Agreement) is entered between the
22 Commissioner of Financial Protection and Innovation (Commissioner) (on September
23 30, 2020, the Department of Business Oversight was renamed the Department of
24 Financial Protection and Innovation under AB No. 107) and Respondent, Equities First
25 Holdings, LLC (Equities First), and is made with respect to the following facts.

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I.

Recitals

A. The Commissioner has jurisdiction over the licensing and regulation of persons engaged in the business of making or brokering loans under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.).

B. Equities First is a limited liability company in good standing, duly formed and existing under the laws of the state of Delaware and is authorized to conduct business in the state of California.

C. Equities First originates commercial loans secured by publicly traded securities and was licensed by the Commissioner under the CFL at all times relevant herein.

D. Equities First has its principal place of business located at 10 West Market Street, Suite 3050, Indianapolis, Indiana.

E. Alexander Christy, Jr. is Equities First's manager and president and, as such, is authorized to enter into the Settlement Agreement on behalf of the company.

F. On September 24, 2020, the Commissioner personally served Equities First's registered agent with his desist and refrain order dated September 21, 2020 (the Order).

G. Under the Order, the Commissioner found Equities First violated Financial Code section 22156 and California Code of Regulations, title 10, section 1426, when it failed to maintain balance sheets and financial statements prepared according to GAAP. Accordingly, the Commissioner was unable to determine Equities First's compliance with the minimum net worth requirements of the CFL under Financial Code section 22104.

H. Equities First neither admits nor denies any of the findings or recited facts contained in the Order or the Settlement Agreement.

I. Equities First maintains that, as a result of Equities First's unique transaction structure, the company cannot prepare financial statements prepared in accordance with GAAP that for all periods under consideration show a \$25,000.00 net

1 worth. This is because GAAP accounting requires Equities First to record the collateral
2 (*i.e.*, the securities) it receives under the transactions it originates as a liability, rather than
3 an asset, on its balance sheet, even though Equities First becomes the legal and beneficial
4 owner of all such securities when the parties enter into the transaction. At such time, the
5 counterparty receives a cash payment for the securities from Equities First and receives
6 the right to repurchase the same class and amount of securities from Equities First on a set
7 future date (*i.e.*, the counterparty acquires a European call option). Said otherwise, even
8 though Equities First is the legal and beneficial owner of all of the securities underlying its
9 transactions and a substantial percentage of counterparties never exercise their right to
10 repurchase the underlying securities, all such securities must be reflected as liabilities
11 rather than assets on Equities First's balance sheet. Accordingly, for certain periods, the
12 recording of all of the securities underlying Equities First's transactions as a liability
13 results in negative equity on Equity First's balance sheet, even though Equities First's
14 business is a profitable going concern. Equities First contends that it maintains a
15 substantial cash position at all times, and the transactions reflect no meaningful risk of
16 default by Equities First.

17 J. Equities First reports that it has two outstanding loan transactions in
18 California totaling \$2,103,718.00. The licensee does not plan on conducting any lending
19 activity in the state of California in the near future and a CFL license is not required to
20 service existing loans.

21 K. On October 19, under Government Code section 11506, Equities First
22 timely filed its hearing request with the Commissioner for the purpose of requesting an
23 administrative hearing in connection with the Order. The administrative hearing is
24 currently set to begin trial before the Office of Administrative Hearings, Los Angeles
25 (OAH) on February 25, 2021, OAH case number 2020100742.

26 NOW, THEREFORE, in consideration of the foregoing and the terms and
27 conditions set forth herein, the parties agree as follows.

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II.

Terms

1. Purpose. The Settlement Agreement resolves the matters before the Commissioner in a manner that avoids the expense of a hearing and other possible court proceedings, protects consumers, is in the public interest, and is consistent with the purposes and provisions of the CFL.

2. Acknowledgment. Equities First acknowledges that the Commissioner issued and served it with the Order, as set forth above.

3. Investigative Costs. Equities First shall pay investigative costs of \$2,500.00 to the Commissioner. The Commissioner acknowledges receipt of payment of the investigative costs from Equities First before or contemporaneous with the execution of the Settlement Agreement.

4. Surrender of License. Equities First shall surrender its CFL license to the Commissioner in accordance with Financial Code section 22711. The Commissioner acknowledges the surrender of Equities First’s license before or contemporaneous with the execution of the Settlement Agreement. In connection with the surrender of its CFL license, Equities First shall:

a. Submit a letter signed (wet-ink signature) by an authorized officer on file with the Commissioner, which states the license number and a request to surrender the license (the surrender letter).

b. The surrender letter shall provide the location where the records will be maintained and the name, address, and phone number of the individual(s) responsible for the safekeeping of the books and records subsequent to the license surrender.

c. The surrender letter shall provide the name, address, and phone number of the individual(s) responsible for winding down the operations at the location and for handling consumer complaints.

1 d. With the surrender letter, Equities First shall enclose the original
2 license as issued by the Commissioner. If the license has been lost or
3 misplaced, Equities First shall provide the Commissioner with an
4 attestation to that effect.

5 5. Waiver of Hearing Rights. Equities First agrees that the Settlement
6 Agreement shall have the effect of withdrawing its request for an administrative hearing
7 in connection with the Order. Equities First acknowledges its right to an administrative
8 hearing under the CFL in connection with the Order and hereby waives such right to a
9 hearing and to any reconsideration, appeal, or other rights which may be afforded it
10 under the CFL, the Administrative Procedure Act (the APA) (Gov. Code, § 11340 et
11 seq.), the Code of Civil Procedure (the CCP) (Code Civ. Proc., § 1 et seq.), or any
12 provision of law in connection with this matter. In withdrawing its hearing request,
13 Equities First agrees that the Order is now final.

14 6. Full and Final Settlement. The parties hereby acknowledge and agree that
15 the Settlement Agreement is intended to constitute a full, final, and complete resolution
16 of any violations by Equities First of the CFL as identified herein. No further
17 proceedings or actions will be brought by the Commissioner in connection with the
18 Order under the CFL, or any other provision of law, excepting any proceeding to enforce
19 compliance with the terms of the Settlement Agreement.

20 7. Information Willfully Withheld. The Settlement Agreement may be
21 revoked, and the Commissioner may pursue any and all remedies under the CFL against
22 Equities First if the Commissioner discovers Equities First knowingly or willfully
23 withheld information used for and relied upon in the Settlement Agreement.

24 8. Assisting Other Agencies. The parties further acknowledge and agree that
25 nothing in the Settlement Agreement shall limit the Commissioner's ability to assist any
26 other agency (city, county, state, or federal) with any prosecution, administrative, civil,
27 or criminal, brought by any such agency against Equities First or any other entity or
28 person based upon any of the activities alleged in this matter or otherwise.

1 9. Binding. The Settlement Agreement is binding on all heirs, assigns, or
2 successors in interest.

3 10. Independent Legal Advice. Each of the parties represents, warrants, and
4 agrees that he, she, or it has received independent advice from its attorney(s) or
5 representative(s) with respect to the advisability of executing the Settlement Agreement.

6 11. Counterparts. The parties agree that the Settlement Agreement may be
7 executed in one or more separate counterparts, each of which shall be deemed an original
8 when so executed. Such counterparts shall together constitute and be one and the same
9 instrument.

10 12. Waiver, Modification, and Qualified Integration. The waiver of any
11 provision of the Settlement Agreement shall not operate to waive any other provision set
12 forth herein. No waiver, amendment, or modification of the Settlement Agreement shall
13 be valid or binding to any extent unless it is in writing and signed by all the parties
14 affected by it.

15 13. Third-Party Actions. The Settlement Agreement does not create any
16 private rights or remedies against Equities First, create any liability for Equities First,
17 affect or limit Equities First's testimonial obligations, or limit Equities First's right to
18 take any legal or factual position with respect to any person or entity not a party to the
19 Settlement Agreement.

20 14. Headings and Governing Law. The headings to the paragraphs of the
21 Settlement Agreement are inserted for convenience only and will not be deemed a part
22 hereof or affect the construction or interpretation of the provisions hereof. The
23 Settlement Agreement shall be construed and enforced in accordance with and governed
24 by California law.

25 15. Full Integration. Each of the parties represents, warrants, and agrees that
26 in executing the Settlement Agreement he, she, or it has relied solely on the statements
27 set forth herein and the advice of its own counsel. Each of the parties further represents,
28 warrants, and agrees that in executing the Settlement Agreement he, she, or it has placed

1 no reliance on any statement, representation, or promise of any other party, or any other
2 person or entity not expressly set forth herein, or upon the failure of any party or any
3 other person or entity to make any statement, representation, or disclosure of anything
4 whatsoever. The parties have included this clause (1) to preclude any claim that any
5 party was in any way fraudulently induced to execute the Settlement Agreement and (2)
6 to preclude the introduction of parol evidence to vary, interpret, supplement, or
7 contradict the terms of the Settlement Agreement.

8 16. Presumption from Drafting. In that the parties have had the opportunity to
9 draft, review, and edit the language of the Settlement Agreement, no presumption for or
10 against any party arising out of drafting all or any part of the Settlement Agreement will
11 be applied in any action relating to, connected to, or involving the Settlement
12 Agreement. Accordingly, the parties waive the benefit of Civil Code section 1654 and
13 any successor or amended statute, providing that in cases of uncertainty, language of a
14 contract should be interpreted most strongly against the party that caused the uncertainty
15 to exist.

16 17. Voluntary Agreement. Equities First enters into the Settlement Agreement
17 voluntarily and without coercion and acknowledges that no promises, threats, or
18 assurances have been made by the Commissioner, or any officer or agent thereof, about
19 the Settlement Agreement.

20 18. Effective Date. The Settlement Agreement shall become final and
21 effective when signed by all parties and delivered by the Commissioner’s agent via e-
22 mail to Equities First at rplesnarski@omm.com.

23 19. Notice. Any notice required under the Settlement Agreement shall be
24 provided to each party at the following addresses:

25 If to Respondent to: Robert Plesnarski, Esq.
26 O’Melveny & Myers LLP
27 1625 Eye Street, NW
28 Washington, D.C. 20006-4061

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If to the Commissioner to: Blaine A. Noblett
 Senior Counsel
 Department of Financial Protection and Innovation
 320 W. 4th Street, Suite 750
 Los Angeles, California 90013-2344

20. Authority to Execute. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into the Settlement Agreement.

[Signature page to follow.]

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IN WITNESS WHEREOF, the parties hereto have approved and executed the Settlement Agreement on the dates set forth opposite their respective signatures.

MANUEL P. ALVAREZ
Commissioner of Financial Protection and
Innovation

Dated: January 26, 2021

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

EQUITIES FIRST HOLDINGS, LLC,
Respondent

Dated: January 20, 2021

By _____
ALEXANDER CHRISTY, JR., Manager and
President, on behalf of EQUITIES FIRST
HOLDINGS, LLC

APPROVED AS TO FORM:

By _____
ROBERT PLESNARSKI, ESQ.,
O'MELVENY & MYERS LLP, attorneys for
EQUITIES FIRST HOLDINGS, LLC