Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: **NON-PERFORMING NOTES, LLC** **MARK ALAN KEMP** **Respondents.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-08-0087 **Docket No.** SD-08-0088

It appears to the Director of the Utah Division of Securities (Director) that Non-Performing Notes, LLC and Mark Alan Kemp have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over the Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of a security in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Non-Performing Notes, LLC (Non-Performing Notes) is a Nevada limited liability company. The company registered in Nevada on September 13, 2004, but its registration was revoked November 1, 2007 for failure to renew. Mark Alan Kemp and Angela Marie DiGiovanni were members of Non-Performing Notes. Non-Performing Notes has never been registered as a business entity in Utah.

3. Mark Alan Kemp (Kemp) is a resident of Utah County, Utah.

GENERAL ALLEGATIONS

4. In January 2006, after LM attended Kemp's real estate seminar in Arizona, Kemp contacted LM about investing in foreclosures. Communications between Kemp, in Utah County, Utah, and LM, in Arizona, took place by both telephone and e-mail.

5. Kemp told LM he could earn an 18-20% profit in a short period of time by buying properties that are in foreclosure then quickly selling them for a profit.

6. Kemp said turn-around on the homes could happen in nine months, so profit could be realized in a short period of time.

7. Kemp told LM for an investment to purchase the foreclosures, Non-Performing Notes would issue LM a Promissory Note secured by a Trust Deed on the property purchased, so no risk was involved.

8. Kemp did not provide LM with any of the information typically provided in an offering

circular or prospectus regarding Non-Performing Notes.

9. Kemp also failed to disclose to LM that five civil judgments had been entered against him totaling $338,610, that Kemp filed for bankruptcy in 1999, and that Kemp was convicted of embezzlement and theft in 1992.

10. On January 19, 2006, LM wired $20,000 to the Non-Performing Notes account at Wells Fargo Bank. For this investment, LM received a "Promissory Note Secured by Deed of Trust" dated January 19, 2006, signed by Kemp on behalf of Non-Performing Notes, LLC on February 1, 2006. At LM's request, the note was issued to LM's wife.

11. The note promised to pay principal plus interest of 20% per year in one balloon payment on or before October 19, 2006. The note further stated that it is secured by a trust deed on the real property at 1201 Valencia Drive NE, Albuquerque, NM 87110.

12. LM believed his investment was being used to purchase the property. He did not authorize its use for any other purpose.

13. Kemp and LM remained in contact with each other, both by telephone and e-mail. In an e-mail dated March 2, 2006, LM asked Kemp to send him information on Kemp's April real estate training and additional investment opportunities.

14. Kemp responded the same day with a training flyer and information on two properties, one in California and one in Maine. LM immediately responded, "This is great! I can have the $65K wired to you tomorrow or Monday. Would you recommend one of these deals over the other? Please do the promissory note in my wife's name again."

15. In the final e-mail on March 2, 2006, Kemp stated, "The Maine deal is better protection. I'll get the Promissory done and sent over. Here are the wiring instructions incase [sic] you don't have them from last time."

16. On March 4, 2006, LM wired $65,000 to the Non-Performing Notes account at Wells Fargo Bank, to be applied to the Maine property (38 Larrabee's Landing Rd., Yarmouth, ME 04096). This note was also to pay principal plus 20% annual interest in one balloon payment nine months after issuance.

17. Although he has asked for it many times, LM has not received the Promissory Note for this investment. LM has also asked repeatedly for copies of the Trust Deeds supposedly securing his notes, but has not received them.

18. LM believed his investment was being used to purchase the property. He did not authorize its use for any other purpose.

19. When Kemp failed to pay the $20,000 Promissory Note on October 19, 2006, LM made e-mail inquiries about payment. Kemp finally responded to the third such inquiry on November 1, 2006, stating the owners had filed bankruptcy and he was "still in those deals". Kemp asked LM for wiring instructions so Kemp could make interest payments to LM with money from "another deal."

20. On November 2, 2006, LM received a wire transfer from the Non-Performing Notes account at Wells Fargo for $8,549.97. LM has received no additional payments.

21. After sending repeated e-mails over several months with no response, LM retained an attorney and filed suit against Kemp in Arizona. The suit resulted in a default judgment

against Kemp.

Properties

22. Records of the Bernalillo County, New Mexico Clerk's Office were searched on-line for the address 1201 Valencia Drive NE, Albuquerque, New Mexico.

23. There is no recording giving Non-Performing Notes any right, title or interest in the New Mexico property. There is no recording giving LM any right, title or interest in the New Mexico property.

24. Records of the Cumberland County, Maine Register of Deeds were searched on-line for the address 38 Larrabee's Landing Road, Yarmouth, Maine. Recorded documents reveal the property is owned by Donald and Donna Bialek.

25. On November 15, 2004, a "Corporate Assignment of Mortgage" was executed assigning the Bialek's mortgage with Greenpoint Mortgage Funding, Inc. to Non-Performing Notes, LLC. This document was recorded on July 27, 2005.

26. On April 13, 2006 Non-Performing Notes, LLC executed an "Assignment of Mortgage" which assigned the mortgage to Allyson Ray, who has an address in Cumberland, Maine.

27. The assignment was signed on behalf of Non-Performing Notes by Angela DiGiovanni. Mark Kemp signed as witness. The assignment was recorded on April 28, 2006.

28. There is no recording giving LM any right, title or interest in the Maine property.

Bank Records

29. Both of LM's investments were deposited to a checking account for Non-Performing

Notes, LLC at Wells Fargo Bank. Angela DiGiovanni is the only person with signature authority on this account.

30. LM's $20,000 investment was deposited to the Non-Performing Notes account on January 20, 2006. That same day, two transfers totaling $5,000 were made to two unknown accounts.

31. On January 23, 2006 payment was made to John Adams with notation "NM property" in the amount of $8,000. Other expenditures from the account are personal, such as Latter-Day Creations, Golden Corral, Burger King and Chili's Grill.

32. Other expenditures could be personal or could be business related, such as Dee R. Taylor, LLC with notation "rent," Office Max, FedEx Shop and Comcast Cable. The entire $20,000 was expended by February 1, 2006.

33. LM's $65,000 investment check was deposited to the Non-Performing Notes account at Wells Fargo Bank on March 8, 2006. The entire amount was transferred to another unknown account that same day with a notation, "Hold for Deals."

CAUSES OF ACTION

COUNT I
Securities Fraud under § 61-1-1 of the Act

34. The Division incorporates and re-alleges paragraphs 1 through 33.

35. The promissory notes offered and sold by Non-Performing Notes, LLC and Mark Alan Kemp are securities under § 61-1-13 of the Act.

36. In connection with the offer and sale of a security, Non-Performing Notes and Kemp, directly or indirectly, made false statements, including, but not limited to, the following:

a. That the investment of $20,000 would be secured by a trust deed on a specific property in Albuquerque, New Mexico, when neither Kemp nor Non-Performing Notes had a legal interest in that property;

b. That the investment of $65,000 would be secured by a trust deed on a specific property in Yarmouth, Maine, when Non-Performing Notes' interest in that property was an Assignment of Mortgage, therefore no trust deed could be executed; and

c. That there was no risk to the investments when in fact all investments involve some risk.

37. In connection with the offer and sale of a security, Non-Performing Notes and Kemp, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made in light of the circumstances under which they were made, not misleading:

a. That Mark Kemp had at least five unpaid civil judgments filed against him totaling over $300,000;

b. That Mark Kemp filed for Chapter 13 bankruptcy protection in 1999;

c. That Mark Kemp was convicted of embezzlement and theft in Contra Costa County, California in 1992;

d. That invested funds would be used for personal and general business expenditures and not for purchase of the specific properties discussed;

e. LM's suitability for these investments;

f. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment; and

g. Whether the investment was a registered security or exempt from registration.

38. Based upon the foregoing, Non-Performing Notes, LLC and Mark Alan Kemp violated § 61-1-1 of the Act.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders the Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur on Tuesday, October 7th, 2008, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If the Respondent fails to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63-46b-11. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, the Respondent may show cause, if any he has:

a. Why Non-Performing Notes, LLC and Mark Alan Kemp should not be found to

have engaged in the violations alleged by the Division in this Order to Show Cause;

b. Why Non-Performing Notes, LLC and Mark Alan Kemp should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act;

c. Why Non-Performing Notes, LLC should not be ordered to pay a fine of one hundred thousand dollars ($100,000) to the Division of Securities, which may be reduced by restitution paid to the victim; and

d. Why Mark Alan Kemp should not be ordered to pay a fine of one hundred thousand dollars ($100,000) to the Division of Securities, which may be reduced by restitution paid to the victim.

DATED this 13th day of August, 2008.

KEITH WOODWELL
Director, Utah Division of Securities

Approved:

JEFF BUCKNER
Assistant Attorney General

S. J.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:	NOTICE OF AGENCY ACTION
NON-PERFORMING NOTES, LLC MARK ALAN KEMP	Docket No. SD-08-0087 Docket No. SD-08-0088
Respondents.	

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include the information required by Utah Code § 63-46b-6 (1). In addition, you are required by § 63-46b-6 (3) to state: a) by paragraph, whether

you admit or deny each allegation contained in the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission; b) any additional facts or documents which you assert are relevant in light of the allegations made; and c) any affirmative defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Order to Show Cause are not disputed in your Answer, they will be deemed admitted.

Your Answer, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:	A copy to:
Administrative Court Clerk c/o Pam Radzinski Division of Securities 160 E. 300 S., Second Floor Box 146760 Salt Lake City, UT 84114-6760 (801) 530-6600	Jeff Buckner Assistant Attorney General 160 E. 300 S., Fifth Floor Box 140872 Salt Lake City, UT 84114-0872 (801) 366-0310

A hearing date has been set for Tuesday, October 7th, 2008, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah.

If you fail to file an Answer, as set forth herein, or fail to appear at the hearing, the Division of Securities may hold you in default, and a fine and other sanctions may be imposed

against you in accordance with Utah Code Ann. § 63-46b-11, without the necessity of providing you with any further notice. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, you may appear and be heard and present evidence on your behalf. You may be represented by counsel during these proceedings.

The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. Pursuant to U.C.A. Subsection 63-46b-2(1)(h), Mr. Eklund is hereby designated as presiding officer for the purpose of conducting this formal administrative proceeding. Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

DATED this 13th day of August, 2008.

KEITH WOODWELL
Director, Division of Securities

Certificate of Mailing

I certify that on the 14TH day of August, 2008, I mailed, via certified and regular mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

NON-PERFORMING NOTES, LLC
51 W Center Street
Orem, Utah 84057

Certified Mailing # 70072560 00005773 1783

MARK ALAN KEMP
711 East 550 South
Orem, Utah 84097

Certified Mailing # 70072560 00005773 1790

PAMALA RADZINSKI
Executive Secretary