

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:

**FMD MORTGAGE, INC.
DJM, LLC
DANIEL JOHN MERRIMAN, CRD# 2502694**

RESPONDENTS.

ORDER TO SHOW CAUSE

**Docket No. SD-09-0036
Docket No. SD-09-0037
Docket No. SD-09-0038**

It appears to the Director of the Utah Division of Securities (Director) that FMD Mortgage, Inc., DJM, LLC and Daniel John Merriman 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 Respondents and the subject matter is appropriate because the Division alleges that they violated §§ 61-1-1 (securities fraud) and 61-1-7 (sale of unregistered

securities) of the Act while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. FMD Mortgage, Inc. (FMD) is a Utah corporation. FMD registered on April 3, 2003, and its current status is active. Daniel John Merriman is the president and registered agent of FMD. At all times relevant to the matters asserted herein, FMD conducted business in Salt Lake and Utah Counties, Utah.
3. DJM, LLC (DJM) is a Utah limited liability company. DJM registered on March 6, 2003 and its current status is active. Daniel John Merriman is the manager and registered agent of DJM. At all times relevant to the matters asserted herein, DJM conducted business in Utah County, Utah.
4. Daniel John Merriman (Merriman) at all times relevant to the matters asserted herein, was a resident of Utah County, Utah. He is currently a resident of Salt Lake County, Utah.

GENERAL ALLEGATIONS

5. From at least August 2005 through 2008, FMD, DJM and Merriman offered and sold promissory notes to at least two investors in or from Utah, and collected a total of at least \$1,322,000. A detailed narrative of the investments made by these two investors is included below.

6. Notes are securities under the Act.
7. Respondents told one investor that the principal would be used for a real estate project and principal plus 18% interest would be repaid in eighteen months.
8. Respondents told the other investor that the principal would be placed in a treasury bond and interest would be paid quarterly for one year, at which time the principal would be returned.
9. The two investors cited below lost all of their principal investments.

Investor WW

10. In October 2005, Merriman contacted WW, a North Carolina resident, about a real estate project his company, DJM, LLC, had in Maine. Merriman wanted to raise private money to fund the project and told WW that other projects of this nature paid 14% interest. Merriman said he was willing and able to pay 18% interest on investments in his project. Merriman contacted WW from Utah.
11. WW told Merriman that he was interested in the investment, but needed to withdraw money from an IRA. Merriman suggested to WW that, instead of withdrawing the money, he roll it over to a self-directed IRA with FISERV Investment Support Services, a company specializing in the management of self-directed IRAs, which would keep the investment in an IRA. WW rolled \$50,000 from his wife's Scott Trade IRA account to an IRA account at FISERV in November 2005, then instructed FISERV to invest the funds with DJM, LLC.

12. For his \$50,000 investment, WW received a promissory note issued by DJM, LLC. The note had an 18-month term with interest of 18% annually and was not secured by anything.
13. At some point in 2006 FISERV notified WW that Merriman was being investigated by the SEC. When WW contacted Merriman about it, Merriman told WW not to worry, saying it involved a different one of his companies. Also Merriman said it was just a misunderstanding and Merriman had settled with the SEC.
14. In July 2007, when the Promissory Note had reached its term, Merriman informed WW that he was unable to pay on the note. Merriman told WW that the loan was a general obligation loan to DJM, LLC, which meant Merriman did not have to repay it out of the money from the project into which WW originally invested since that project had been abandoned. Merriman said that was to WW's benefit since DJM, LLC was still in business. Since July 2007, Merriman has told WW he could repay the loan from many different possible sources, each within a very short time frame. When the time frame expired, Merriman always had an excuse why the funds were not forthcoming.
15. To date, WW has received no return from his investment with DJM and Merriman. He is still owed \$50,000.

Investor LD

16. In 2007, Merriman approached LD about an investment opportunity in FMD with the proceeds from the sale of several acres of farm land. Merriman claimed he was a

financial advisor, but that his practice was currently restricted to advising family members. LD attended a class Merriman presented for the LDS congregation. LD approached Merriman about helping her evaluate the investment opportunities she was being offered at that class.

17. The first investment Merriman proposed to LD involved the purchase of real estate parcels. LD declined this investment as she did not want to own any more real estate. Merriman then proposed she lend \$1,222,000 to Merriman's company, FMD. Of that amount, Merriman would purchase a Treasury Bond with \$1 million. The other \$222,000 would be invested in a manner that would allow for the principal to be returned to her in March 2007, so she could pay the capital gains taxes incurred from the sale of the land. Merriman was to pay her 8% interest, paid quarterly. Any interest the investment earned above 8% Merriman would retain as his fee.
18. LD thought the Treasury Bond sounded like a safe investment and agreed to invest her money on the above terms. On September 1, 2006, LD met Merriman at the Highland Branch of Bank of American Fork. Per Merriman's instructions, LD wrote a check to Asset Administrative Services, LLC in the amount of \$1,222,000. She gave the check to Merriman who immediately deposited it to an account in the same bank. Merriman then gave LD a Promissory Note stating for the loan to FMD Mortgage, Inc. LD would receive 8% simple interest, paid at the rate of 2%, or \$24,440, quarterly. The note had a one year term but stated there would be no penalty if FMD paid the note in full before the

expiration of one year.

19. LD also received a "Payment Schedule for L***** D**" on FMD letterhead. It showed interest payments on December 1, 2006 and March 1, 2007, each in the amount of \$24,440. A principal payment of \$222,000 was listed for April 1, 2007, followed by an interest payment of \$21,480 on June 1, 2007. Finally, there was to be a payment to include \$1 million principal and \$20,000 interest on September 1, 2007.
20. Merriman made the December 2006 interest payment on December 14, 2006, causing the funds to be directly deposited to LD's account. A few days later, Merriman contacted LD, stating he needed additional funds for a real estate deal that would make him "really good money." Merriman told LD, if she loaned him \$50,000, he would be able to return her principal and pay a significant return within fourteen days. LD agreed to loan Merriman the money.
21. On December 29, 2006, LD again met Merriman at the Bank of American Fork in Highland. She wrote a check for \$10,000 from her checking account and withdrew \$40,000 from her savings account and gave the \$50,000 to Merriman. Merriman did not immediately issue a promissory note on this amount.
22. Merriman failed to repay LD the \$50,000 in fourteen days, as promised. His explanation was that the government agencies that needed to approve the deal were delaying the approvals. Merriman committed to repay LD as soon as the deal was approved.
23. Merriman failed to make the March 2007 interest payment on the first investment.

Merriman claimed that a mistake was made investing LD's funds, the \$1.2 million had been invested in a security that did not pay interest as originally anticipated. Merriman told LD he would pay both the March interest payment and the April principal payment in April, 2007. About this time, Merriman gave LD a copy of a Promissory Note issued to FMD Mortgage by I.T.C. (signed by Nick Kreker) in the amount of \$1,222,000.

24. Merriman failed to make the principal and interest payment on April 1, 2007. Merriman reiterated that the delay was due to the earlier mistake, but that payment should be made soon. Merriman claimed he was in contact with the individual who held LD's money "every day" and that he believed payment would be forthcoming "any day now." LD advised Merriman that the principal payment was needed to pay her capital gains taxes and without those funds interest and penalties would accrue on both federal and state taxes. Merriman verbally agreed that he would assume responsibility for the interest and penalty payments, and would reimburse LD in full for any additional amounts she was required to pay due to Merriman's default.
25. Merriman failed to make the June 2007 interest payment, proffering the same excuse as he used in March and April. Merriman implored LD to be patient.
26. After Merriman defaulted on payment for the third time, Merriman finally prepared a promissory note for the \$50,000 loan, along with a Trust Deed on a property in Maine owned by DJM, LLC (another one of Merriman's companies), both dated July 13, 2007. Merriman stated the property would secure the note but made no disclosures about the

value of the property or the position on the property LD would hold. The note has no term and calls for the repayment of \$50,000 principal and \$500 per month interest commencing January 2007 “onward until the loan is paid.”

27. Merriman remained steadfast in his assertions that LD’s \$1,222,000 loan funds had been delivered to Nick Kreker, who had invested them in US Government-backed securities which were due to expire in September 2007. At that time the entire loan, together with interest, fees and penalties, would be repaid. Merriman refused, however, to provide any documentation or information about the nature of the US Government-backed investment.
28. Merriman defaulted on principal and interest payments due in September 2007,
29. To date, LD has received only the first interest payment on her first investment and has received no return of principal from her first or second investment with FMD and Merriman. She is still owed \$1,272,000 in principal.
30. Both of LD’s investments were deposited to a checking account for Asset Administrative Services, LLC at Bank of American Fork opened on August 30, 2006 with \$100 cash. Matthew C. Howcroft is the only person with signature authority on this account. Howcroft states all the checks and wire transfers were initiated at Merriman’s instructions.
31. LD’s \$1,222,000 investment was deposited to the Asset Administrative Services account on September 1, 2006. By October 2, 2006, the entire amount had been disbursed as

follows:

- a. Payments of principal and interest to prior Merriman investors totaling \$391,320.56;
- b. Payments to an entity named Folly Fort Ltd with an account at Hong Kong and Shanghai Banking Corporation Ltd. totaling \$530,000;
- c. Payments to Wealth Systems Coaching, LLC, a company Merriman set up with Shannon Tolley, totaling \$108,500;
- d. Payments on various credit cards totaling \$110,890.74;
- e. Payments to Total Debt Solutions, a company of Edward Baker's, Merriman's uncle and partner in FMD Mortgage, totaling \$13,200;
- f. Payments to ACHBL, LLC, a company of Joelle Merriman's, Merriman's wife, totaling \$11,600;
- g. Payment to an international travel company for \$5,000;
- h. Payments to Self Mastery Martial Arts, another one of Howcroft's companies, totaling \$420;
- i. Payment for construction on Merriman's home for \$40,000;
- j. Payments to Sallie Mae for student loans totaling \$4,553.59;
- k. Payment to Merriman's dentist for \$1,842;
- l. Payment on a HELOC for \$996.21;
- m. Payment to R. C. Willey for \$588.66; and

- n. Bank fees totaling \$200.40.
32. LD's \$50,000 investment was deposited to the Asset Administrative Services account on December 29, 2006. The balance in the account at the time of the deposit was \$53,052.46. By January 4, 2007, the entire amount had been disbursed as follows:
- a. Payments of principal and interest to prior Merriman investors totaling \$21,950;
 - b. Payment to an entity named Ever Global Ltd with an account at Hong Kong and Shanghai Banking Corporation Ltd. for \$60,000;
 - c. Payments to Wealth Systems Coaching, LLC, a company Merriman set up with Shannon Tolley, totaling \$16,500;
 - d. Payment to Self Mastery Martial Arts, another one of Howcroft's companies, for \$500;
 - e. Cash withdrawals totaling \$6,250; and
 - f. Bank fees totaling \$95.

CAUSES OF ACTION

COUNT I

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

- 33. The Division incorporates and re-alleges paragraphs 1 through 32.
- 34. The promissory notes offered and sold by Respondents are a securities under § 61-1-13 of the Act.
- 35. In connection with the offer and sale of a security, Respondents, directly or indirectly,

made false statements, including, but not limited to, the following:

- a. With respect to investor WW, that he was able to pay 18% interest on an eighteen month note, when he had no reasonable expectation that he would have sufficient funds pay that rate at the note's maturity;
 - b. With respect to investor LD, that \$1 million of LD's \$1,222,000 investment would be used to purchase a Treasury Bond, when in fact, none of the money was invested into a Treasury Bond;
 - c. With respect to investor LD, that \$222,000 of LD's \$1,222,000 investment would be used in a short-term investment that would allow return of the principal by April 1, when in fact the money would be used to pay debts;
 - d. With respect to investor LD, that LD's \$50,000 investment would be used in a real estate deal, when in fact it was used to pay off debts and support other companies;
 - e. With respect to investor LD, that Day's \$50,000 investment would be repaid in 14 days when there was no reasonable expectation that repayment could happen in that time frame.
36. In connection with the offer and sale of a security, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
- a. With respect to all investors, that Daniel Merriman and FMD Mortgage Inc. have

- a history of civil litigation;
- b. With respect to all investors, that Merriman was heavily involved with Tri Energy Inc. and its principals, defendants in an SEC suit for securities fraud;
- c. With respect to all investors, that Merriman defaulted on investor ST's investment in gold trading.
- d. With respect to investor LD, that some of LD's funds would be used to pay principal and interest to investors in one or more of Merriman's other companies;
- e. With respect to investor LD, that some of LD's funds would be used to pay personal debts;
- f. Some or all of the information typically provided in an offering circular or prospectus regarding FMD and/or DJM, such as:
 - i. The identity of FMD or DJM's principals along with their experience in the business;
 - ii. FMD or DJM's financial statements;
 - iii. The market for FMD or DJM's service(s);
 - iv. The nature of the competition for the service(s);
 - v. The track record of FMD or DJM to other investors;
 - vi. The number of other investors;
 - vii. The risk factors for FMD or DJM's investors;
 - viii. Discussion of pertinent suitability factors for the investment;

- ix. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment;
 - x. Agent commissions or compensation for selling the investment;
 - xi. Any involvement of FMD or DJM or its principals in certain legal proceedings, including bankruptcy or prior violations of state or federal securities laws;
 - xii. Whether the investment is a registered security or exempt from registration; and
 - xiii. Whether the person selling the investment is licensed.
37. Based upon the foregoing, FMD, Inc., DJM, LLC and Daniel John Merriman violated § 61-1-1 of the Act.

COUNT II
Sale of Unregistered Securities under § 61-1-7 of the Act

38. The Division incorporates and re-alleges paragraphs 1 through 43.
39. The notes offered and sold by the Respondents are securities under § 61-1-13 of the Act.
40. The securities were offered and sold in this state.
41. The securities offered and sold by the Respondents were not registered under the Act, and Respondents did not file any claim of exemption relating to the investment opportunity.
42. Based on the foregoing, FMD, Inc., DJM, LLC and Daniel John Merriman violated § 61-

1-7 of the Act.

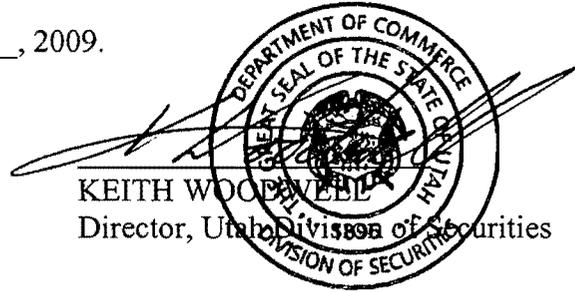
ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders 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, August 4, 2009, 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 Respondents fail 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, Respondents may show cause, if any they have:

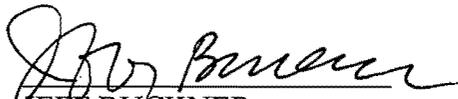
- a. Why FMD, Inc., DJM, LLC and Daniel John Merriman should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why FMD, Inc., DJM, LLC and Daniel John Merriman should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act;
- c. Why FMD, Inc., DJM, LLC and Daniel John Merriman should not be ordered to pay a fine, jointly and severally, of \$1,350,000 to the Division of Securities,

which may be reduced by restitution paid to the investors.

DATED this 17th day of June, 2009.



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

IN THE MATTER OF:

FMD MORTGAGE, INC.
DJM, LLC
DANIEL JOHN MERRIMAN, CRD# 2502694

Respondents.

NOTICE OF AGENCY ACTION

Docket No. SD-09-0036
Docket No. SD-09-0037
Docket No. SD-09-0038

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. *See Utah Code Ann.* §§ 63G-4-201 and 63G-4-204 through 209; *see also Utah Admin. Code* R151-46b-1, et seq. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. *Utah Admin. Code* R151-46b-6.

You must file a written response with the Division within (30) days of the mailing date of this notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and the name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. *Utah Code Ann.* § 63G-4-204(1). In addition, pursuant to *Utah Code Ann.* § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, 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:

Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

Jeff Buckner
Assistant Attorney General
160 E. 300 S., Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing date in this matter has been set for August 4, 2009 at the Utah Division of Securities, Room 210, 160 East 300 South, Salt Lake City, Utah at 9:00 a.m.

If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. *Utah Code Ann.* § 63G-4-209; *Utah Admin. Code* R151-46b-10(11). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. *Utah Code Ann.* § 63G-4-209(4); *Utah Admin. Code* R151-46b-10(11)(b). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

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. This adjudicative proceeding will be heard by Mr. Eklund and the Utah Securities Commission. At any hearings, the Division will be represented by the Attorney General's Office. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause should be directed to Jeffrey Buckner, Assistant Attorney General, 160 E.300 South, Fifth Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 17th day of June, 2009.


KEITH WOOD
Director, Division of Securities


Certificate of Mailing

I certify that on the 17th day of June, 2009, I mailed, via certified and regular mail,
a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

FMD Mortgage, Inc.
230 West 200 South, Suite 2500
Salt Lake City, UT 84101

Certified Mailing # 7004116000301960655

DJM, LLC
4918 S. Frieze Circle
Taylorsville, UT 84118

Certified Mailing # 7004116000301960662

Daniel John Merriman
4918 S. Frieze Circle
Taylorsville, UT 84118

Certified Mailing # 7004116000301960679



Executive Secretary