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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
whether there has been a violation
of the Securities Act of Washington by:

Michelle Catherine Merceri,
Respondent

Order Number S-08-122-08-CO01

CONSENT ORDER

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Pursuant to the Securities Act of Washington, chapter 21.20 RCW, the Securities Division of the Department of Financial Institutions (“Securities Division”) and Respondent, Michelle Catherine Merceri, do hereby enter into this CONSENT ORDER in settlement of the matters alleged herein. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law stated below.

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FINDINGS OF FACT

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Respondent

1. Michelle Catherine Merceri (“Merceri”) was the sole member and the managing member of Avere Capital Finance, LLC (“Avere”), a Washington limited liability company. Avere was in the business of financing commercial and business loans that were to be secured by real estate. Avere was formed on July 24, 2007 under the name Avere Private Lending, LLC. On March 13, 2008, the company name was changed to Avere Capital Finance, LLC. Avere was dissolved on November 3, 2008. Merceri resides in Hunts Point, Washington, which was the principal place of business for Avere. Merceri is also a licensed loan originator and the managing member of Focus Mortgage, LLC, a licensed mortgage broker.

1 Offer and Sale of Investments

2 2. From October 2007 through January 2008, Merceri offered and sold three Avere investments,
3 totaling approximately \$228,000, to a Washington investor. When offering and selling the investments,
4 Merceri represented that the investor's funds would be used by Avere to finance specific commercial and
5 business loans. Merceri represented that the investor would earn annual returns, ranging from
6 approximately 15% to 22%, from the investments. The investor had no control over the use of the
7 invested funds and had no participation in the business or management of Avere. Only one of the
8 investments, with a principal amount of \$55,000 and a payoff amount of \$60,661, was repaid to the
9 investor, following the payoff of a specific loan.

10 Misrepresentations or Omissions

11 3. When offering and selling the investments, Merceri represented that the investor was
12 "guaranteed" to recoup the amount of the initial investments. Merceri failed to give the investor any
13 financial statements for Avere or for the borrowers whose loans were to be financed by the investor.
14 Merceri failed to disclose the operating history and the lending history of Avere. Merceri failed to
15 provide the investor with a credit report or a loan application for the borrowers whose loans were to be
16 financed by the investor. Merceri failed to provide the investor with property appraisals or with tax
17 valuations for the properties that ostensibly secured the investments. Merceri failed to provide the
18 investor with title insurance reports for the properties that ostensibly secured the investments. Merceri
19 failed to disclose exactly how the investor's funds would be used. Merceri failed to disclose the illiquid
20 nature of the investments. Merceri failed to disclose that the investor could be subject to creditor claims
21 against Avere.

22 Based upon the above Findings of Fact, the following Conclusions of Law are made:

1 **CONCLUSIONS OF LAW**

2 1. The offer and sale of the investments described above constitutes the offer and sale of a security
3 as defined in RCW 21.20.005(10) and (12), whether in the form of an investment contract or risk capital.

4 2. The offer and sale of said securities was made in violation of RCW 21.20.010 because the
5 Respondent made untrue statements of material fact or omitted to state material facts necessary in order to
6 make the statements made, in the light of the circumstances under which they were made, not misleading.

7 **CONSENT ORDER**

8 Based upon the foregoing and finding it in the public interest:

9 IT IS AGREED AND ORDERED that Respondent, Michelle Catherine Merceri, and her agents
10 and employees each shall cease and desist from offering or selling securities in violation of RCW
11 21.20.010, the anti-fraud section of the Securities Act of Washington.

12 IT IS FURTHER AGREED AND ORDERED that Respondent, Michelle Catherine Merceri, shall
13 pay investigative costs of \$1,500 to the Securities Division prior to the entry of this order.

14 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this order.

15 IT IS FURTHER AGREED that Respondent, Michelle Catherine Merceri, enters into this Consent
16 Order freely and voluntarily and with full understanding of its terms and significance.

17 IT IS FURTHER AGREED that, in consideration of the foregoing, Respondent, Michelle
18 Catherine Merceri, waives her right to a hearing in this matter and to judicial review of this order.

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22 SIGNED this __24th__ day of ____November__, 2008

23 CONSENT ORDER

24 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
25 **Securities Division**
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 Approved for entry by:

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3 /s/ Todd Van Siclen_____
4 Todd Van Siclen
5 Attorney for Respondent
6 New York Bar No. 3930070

7 Signed by:

8 /s/ Michelle Catherine Merceri_____
9 Michelle Catherine Merceri

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11 SIGNED and ENTERED this 16th day of January, 2009


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15 _____
16 MICHAEL E. STEVENSON
17 Securities Administrator

18 Approved by:

19 Presented by:

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23 Martin Cordell
24 Chief of Enforcement

25 _____
Janet So
Enforcement Attorney

CONSENT ORDER