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2 **STATE OF CALIFORNIA**  
3 **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**  
4 **DEPARTMENT OF CORPORATIONS**

5 TO: Positive Return, Inc. Lavonne D. Hing, President  
6 Austin Greiner, President and CEO Acuity Financial Corporation  
7 3033 Gold Canal Drive AFC  
8 Rancho Cordova, CA 95670 P.O. Box 4997  
9 Foster City, Ca 94404

10 Positive Return, Inc. Randall Morgan Kilgore, President  
11 Rocco J. Digilio, Vice President of Finance Acuity Financial Corporation  
12 Gonzalo I. Vergara, Vice President of Negotiations Acuity Financial Corp.  
13 6545 Sunrise Blvd., Suite 202 AFC  
14 Citrus Heights, CA 95610 Acuity Financial  
15 Acuity  
16 949 University Ave., Suite 210  
17 Sacramento, CA 95825

18 **DESIST AND REFRAIN ORDER**  
19 **(For violations of section 12200 of the Financial Code)**

20 The California Corporations Commissioner finds that:

21 1. Positive Return, Inc., is a for profit entity that filed its articles of incorporation  
22 in the State of California showing its President as Austin Greiner and its mailing address located  
23 at 3033 Gold Canal Drive, Rancho Cordova, California 95670. Austin Greiner acts as its CEO.

24 2. During relevant times individuals Rocco J. Digilio and Gonzalo I. Vergara were  
25 officers of Positive Return, Inc. respectively, serving as its Vice President of Finance and Vice  
26 President of Negotiations and both did business at 6545 Sunrise Blvd, Suite 202, Citrus Heights,  
27 California 95610.

28 3. During 2003 Lavonne D. Hing was the President and registered agent for Acuity  
Financial Corporation, which did business as AFC. Acuity Financial Corporation's registered  
office was located at 1730 S. Amphlett Blvd., Suite 212, San Mateo, California 94402 but it  
ceased doing business at that location in 2003. According to the California Secretary of State's  
Office the mailing address for this entity is P.O. Box 4997, Foster City, California 94404.

1           4.       Randall Morgan Kilgore is the President of Acuity Financial Corporation,  
2 which also does business as Acuity Financial Corp., AFC, Acuity Financial and Acuity. The  
3 business address is currently at 949 University Ave., Suite 210, Sacramento, California 95825.

4           5.       The above-named individuals and entities, working in concert or participation  
5 among themselves or with others, engaged in the following activities in violation of the Check  
6 Sellers, Bill Payers and Proraters Law pursuant to the California Financial Code section 12000 et  
7 seq.

8           6.       The above-named individuals and entities offered their services to California  
9 consumers in advertisements, at their offices, via their telephone and facsimile numbers, including a  
10 toll-free number and by means of the Internet at a Web site, www.positivereturn.net.

11          7.       Positive Return, Inc. advertised as “A Faster Way to be Debt Free Without  
12 Bankruptcy.” Yet Positive Return, Inc.’s Vice President of Negotiations, Gonzalo I. Vergara,  
13 and Vice President of Finance, Rocco J. Digilio, had each recently filed for bankruptcy receiving  
14 a discharge or dismissal in July 2002 and June 2003, respectively.

15          8.       The individuals and/or entities named above state that their “Debt Elimination &  
16 Financial Wellness Services . . . can help you get out of debt quickly in a relatively painless  
17 way:”

- 18                   • Relieve your credit card debt burden immediately.
- 19                   • Stop creditor/collection agency harassment.
- 20                   • Lower your monthly payments.
- 21                   • Be totally out of debt within 1 to 2 years.
- 22                   • Settle your debt for 60% of what you owe. That includes our fees!

23          9.       The individuals and entities named above represent that their services include  
24 negotiations with one’s creditors to settle for an amount less than the debt claimed against one,  
25 which eliminates further interest and late charges. They further claim that they will provide free  
26 credit repair [sic] at the end of their program and return a consumer’s credit rating to an “A+”  
27 rating.

28       ///

1           10.     The above-named individuals and entities or others, acting in concert or  
2 participation with them, receive additional sums of money from a consumer for the purpose of  
3 negotiating with and/or paying a consumer's creditors. Specifically, the above named entities  
4 pay the bills of a consumer from the funds a consumer forwards to them for that purpose, by  
5 arranging for periodic electronic funds transferred through the Automated Clearing House  
6 (ACH), whereby they initiate withdrawals from a consumer's trust account(s) for payment to a  
7 consumer's creditors.

8           11.     To start the settlement process and in exchange for these services California  
9 consumers are charged and required to pay to the above-named entities an initial administrative fee  
10 of eight percent (8%) of the amount a consumer owes, but not less than \$500.00. In addition,  
11 consumers are required to pay "earned fees," which were fifteen percent (15%) of the amount by  
12 which the consumer's debt is reduced. After payment of the initial administrative fee, a consumer  
13 would pay monthly administrative fees to the above-named entities and earned fees that are  
14 included within the contracted monthly payment that a consumer would make to the above-named  
15 entities.

16           12.     The Department of Corporations has jurisdiction over and regulates bill payers and  
17 proraters under the Check Sellers, Bill Payers and Proraters Law set forth in California Financial  
18 Code section 12000 et seq. California Financial Code section 12200, states:

19                   No person shall engage in the business, for compensation, of selling  
20 checks, drafts, money orders, or other commercial paper serving the  
21 same purpose, or of receiving money as agent of an obligor for the  
22 purpose of paying bills, invoices, or accounts of such obligor, or  
23 acting as a prorater, nor shall any person, without direct  
24 compensation and not as an authorized agent for a utility company,  
accept money for the purpose of forwarding it to others in payment  
of utility bills, without first obtaining a license from the  
commissioner.

25           13.     The definition of proraters, found in Financial Code section 12002.1, states:

26                   A prorater is a person who, for compensation, engages in whole or in part  
27 in the business of receiving money or evidences thereof for the purpose  
28 of distributing the money or evidences thereof among creditors in  
payment or partial payment of the obligations of the debtor.

