



May 6, 2004

Mr. Joel Winston  
Associate Director  
Division of Financial Practices  
Federal Trade Commission  
601 New Jersey Ave., N.W.  
Washington, D.C. 20580

RE: Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp. reached in *United States of America v. Fairbanks Capital Corp. et. al.*

Dear Mr. Winston:

Since the Federal Trade Commission's November 12, 2003 announcement of its settlement with Fairbanks Capital Holding Corp. and Fairbanks Capital Corp. (hereinafter collectively as "Fairbanks"), some advocates have suggested to members of the Mortgage Bankers Association ("MBA")<sup>1</sup> that the Commission has created federal rules relating to the servicing of mortgage loans that are set forth in the Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp. (hereinafter "the Order"). These advocates suggest that a mortgage servicer that fails to follow the rules set forth in the Order will be subject to legal liability.

MBA and its members have concerns regarding this assertion because several provisions of the Order appear to be either inconsistent with federal regulations, judicial opinions, and/or state law or not supported by those regulations, opinions, or state laws. While a detailed analysis of the Order is beyond the scope of this letter, we would be more than happy to provide you with a detailed analysis of the provisions upon your request.

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 400,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership prospects through increased affordability; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters excellence and technical know-how among real estate finance professionals through a wide range of educational programs and technical publications. Its membership of approximately 2,700 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: [www.mortgagebankers.org](http://www.mortgagebankers.org).

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MBA and its members would appreciate you providing us with the Commission's position regarding the scope of the Order and the application of the provisions contained therein to other mortgage companies that were not a party to the agreement. If you have any questions, do not hesitate to contact me at (202)557-2701.

Most sincerely,

A handwritten signature in black ink, reading "Jonathan L. Kempner". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

Jonathan L. Kempner  
President and Chief Executive Officer