

**Ruth Nettles**

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**Sent:** Friday, February 13, 2009 1:09 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Katherine Fleming; servicemanagementsystems@gmail.com  
**Subject:** e-filing (090019-WS)  
**Attachments:** Objection by Compass Bank.pdf

a. Person responsible for the electronic filing:

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b. The docket number and title: 090019-WS -- In re: Application for transfer of majority organizational control of Service Management Systems, Inc., holder of water Certificate No. 517-W and wastewater Certificate 450-S, in Brevard County, from IRD Osprey, LLC to Oak Lodge Utility, LLC.

c. The name of the party on whose behalf the document is filed: Compass Bank

d. The total number of pages in each attached document: 4

e. Document attached is: Compass Bank's Objection To Application For Transfer Of Majority Organizational Control

Thank you.

**Holland + Knight**

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for transfer of majority organizational control of Service Management Systems, Inc., holder of water Certificate No. 517-W and wastewater Certificate 450-S, in Brevard County, from IRD Osprey, LLC to Oak Lodge Utility, LLC.	Docket No. 090019-WS Filed: February 13, 2009
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**COMPASS BANK'S OBJECTION TO APPLICATION FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL**

Compass Bank ("Bank"), pursuant to Florida Administrative Code Rule 25-30.031, files this objection to the Application for Transfer of Majority Organizational Control of Service Management System Inc. ("SMS" or the "Utility") from IRD Osprey, LLC to Oak Lodge Utility, LLC. (the "Application"), and states:

1. SMS currently holds water Certificate 547-W and wastewater Certificate 450-S for its utility operations in Brevard County, Florida. On January 8, 2009, SMS filed its Application with the Commission seeking approval to transfer majority organizational control of the Utility pursuant to a Stock Purchase Agreement dated October 3, 2008 ("SPA") among and between SMS, IRD Osprey, LLC and Oak Lodge Utility, LLC. ("Oak Lodge").

2. SMS provided notice of the Application on January 15, 2009, and advised that objections must be filed with the Commission within thirty (30) days of the notice, i.e., by February 16, 2009.

3. Commission approval of the transfer of control is required by Section 367.071, Florida Statutes, which in pertinent part provides:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee or transferee will fulfill the commitments, obligations, and representations of the utility.

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§ 367.071(1), Fla. Stat.

4. On or about December 19, 2003, the Bank loaned SMS \$1,000,000 for a reverse osmosis plant and other utility facilities (the "Loan"). The Loan is secured by, among other things, a Mortgage, Security Agreement and Financing Statement recorded in Official Records Book 5161, page 3750 of the public records of Brevard County, Florida, a UCC Financing Statement and Guaranty Agreements from Robert A. Levy, S. Martin Sadkin, Nathan Kalichman and IRD Osprey, LLC. The Loan was subsequently modified and renewed by a Renewal Promissory Note dated December 19, 2006, in the original principal amount of \$918,382.39. The Renewal Promissory Note matured on March 19, 2007, and has not been repaid.

5. On July 10, 2007, SMS, the Guarantors and the Bank entered into a Forbearance Agreement to provide SMS and Guarantors additional time to pay off the Renewal Promissory Note. As consideration, in part, and to induce the Bank to enter into the Forbearance Agreement, SMS and the Guarantors waived defenses, claims and causes of action against the Bank under the Loan. SMS and the Guarantors have failed to make the payments under the Forbearance Agreement due on September 7, 2007, and all subsequent payments. Therefore, despite notice and an opportunity to cure, SMS and the Guarantors are in default of the Forbearance Agreement. Accordingly, on October 6, 2008, the Bank filed its foreclosure action which is currently pending in Compass Bank v. Service Management Systems, Inc. et al., Case No. 05-2008-CA-61639, in the Circuit Court for Brevard County, Florida.

6. Pursuant to Florida law, Commission approval of the transfer of control is conditioned upon finding by the Commission that the transferee -- Oak Lodge -- will "fulfill the commitments, obligations and representations of the utility." § 367.071, Fla. Stat.

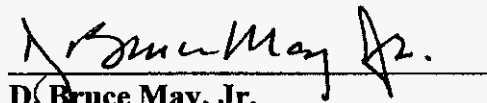
7. There has been no showing in this docket that Oak Lodge will fulfill the Utility's obligations to the Bank. In fact, the SPA indicates that Oak Lodge has no intention to fulfill the Utility's loan obligations and instead is intent only to "restructure or refinance the indebtedness in a way that is acceptable to [Oak Lodge] in its sole discretion." See § 6(a) of the SPA.

8. As lender to the Utility and mortgagee of Utility property, the Bank's substantial interests are clearly affected by the proposed transfer where the transferee – Oak Lodge -- has given no assurance that it will fulfill the Utility's outstanding loan obligations to the Bank as required by Section 367.071. Moreover, Oak Lodge's failure to give adequate assurances that it will fulfill the Utility's loan obligations casts doubt on Oak Lodge's financial ability to operate the Utility and its alleged ownership of the property on which utility facilities are located.

WHEREFORE, the Bank respectfully requests that the Commission defer voting on the Application until the pending foreclosure action involving the Utility has been finally resolved and Oak Lodge has given adequate assurances that it will fulfill the Utility's obligations to the Bank under the Loan.

Respectfully submitted this 13<sup>th</sup> day of February, 2009.

**HOLLAND & KNIGHT LLP**

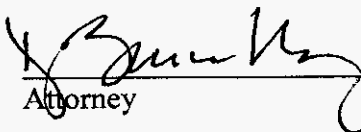


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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by electronic transmission and U.S. Mail to Katherine Fleming, Esq., Office of General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and Kathleen Freel, Service Management Systems, Inc., Post Office Box 510388, Melbourne Beach, FL 32951-0388, this 13<sup>th</sup> day of February, 2009.

  
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Attorney

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