**Utah Securities Commission**

**Meeting Minutes**

**May 22nd, 2014**

**Division of Securities Staff Present**

Keith Woodwell, Division Director

Maria Skedros, Commission Secretary

Dave Hermansen, Enforcement Director

Ken Barton, Compliance Director

Benjamin Johnson, Licensing & Registration Director

Dee Johnson, Investor Education Director

Karen McMullin, Investor Education Coordinator

Ann Skaggs, Securities Analyst

Charles Lyons, Securities Analyst

Adam Sweet, Lead Securities Investigator

Matt Edwards, Lead Securities Investigator

Heidie George, Securities Examiner

Russ Bulloch, Securities Examiner

Nadene Adams, Office Specialist

**Other State of Utah Employees:**

Jennie Jonsson, Administrative Law Judge, Department of Commerce

Paul Amann, Assistant Attorney General

**Commissioners Present**

Tim Bangerter, Landmark Wealth Advisors

Erik Christiansen, Parsons Behle & Latimer

Brent Baker, Clyde, Snow & Sessions

Gary Cornia, Brigham Young University

**Commissioners Absent**

David Russon, Investment Management Consultants

**Public Present:**

Russell Walker

**Minutes:**  At 9:03 am the meeting was called to order and Commissioner **Brent Baker** made the motion to approve the minutes from the March 27th, 2014 and April 21st, 2014 Commission meetings. Commissioner **Tim Bangerter** seconded the motion and the motion was approved unanimously.

**Director’s Report:** Director Woodwell reported that the Division has three staffing vacancies currently from the departures of Jeff Draper, Brandon Henrie and Brandon Dalley. The Division has also undergone a reorganization with the motivation being to rebalance the workload amongst the sections. The most significant changes have been with the Licensing and Compliance section. Corporate Finance and Licensing are now under the direction of Director Benjamin Johnson.

**Future Meetings Scheduled:** August 11th, September 25th, and November 20th, 2014.

**Compliance Section Report:** Ken Barton reported that audit statistics for 2014 year to date. The section has conducted forty-four (44) audits. Eleven (11) audits were for-cause audits which were triggered by investor complaints. Fourteen (14) audits were routine, focusing on IA’s that switched from SEC registration to state registration as part of the Dodd-Frank Act, and nineteen (19) Investment Adviser initial application audits. The Compliance Section has six administrative actions in progress. Two actions have settlement agreements pending approval today. One action is in settlement negotiations and two actions are stayed pending a criminal referral. The section has three criminal cases filed and two case convictions through a guilty plea which are pending sentencing. One sentencing hearing is scheduled in June and one in July; the third criminal case has a preliminary hearing scheduled in June.

**Licensing & Registration Report:** Benjamin Johnson reported that filing statistics for Corporate Finance comparing 2014 to 2013 have remained relatively flat. However, out of the 585 Form D Filings that have come in from Sept 1st, 2013 only 21 of them have been the new Rule 506(c) variety, which is a lot fewer than the Division anticipated.

**Enforcement Section Report:** Dave Hermansen reported that with the restructuring of the Division, Matt Edwards and Adam Sweet have been promoted to Senior Investigators. Enforcement has 25 criminal cases that are at various stages with prosecutors. The section has 32 cases that are being investigated, 14 cases that are unassigned, 16 administrative cases that are waiting to be drafted, six Stipulation and Consent Orders and five Defaults for the Commission’s review today.

**Investor Education Report:** Karen McMullin reported that in April and May of 2014 the Division participated in 19 Investor Education events, and by the end of June, year to date the Division will have participated in 46 events. The Division is currently booking events for the fall and into 2015. The Division has established relationships with both the Elementary and Secondary School Principal Associations. The Division has enhanced its relationship with Utah Retirement Systems by participating in their pre-retirement and personal planning seminars. These seminars will reach approximately 2,500 individuals this year. The Division’s spring newsletter was sent out to over 400 people via email. The Division presentation folders have been well received and were printed through UCI print shop which is the prison’s print shop.

**Education and Training Fund Report:** Benjamin Johnson reported that the Division’s ordinary expenses from the Education and Training Fund were within typical parameters. Commissioner **Brent Baker** made the motion to approve the budget and Commissioner **Tim Bangerter** seconded the motion.

**Grant Request: Mountain West Capital Network:** Keith Woodwell reported that this is the annual request from Mountain West Capital Network for their Deal Flow Report which provides details on private equity, merger and acquisition and IPO activity in the state of Utah. The amount is $2,500.00.

Commissioner **Gary Cornia** made the motion to approve the grant request and Commissioner **Tim Bangerter** seconded the motion. The motion was approved unanimously.

**Application for Award under The Securities Fraud Reporting Program Act:** Keith Woodwell reported that this program is to incentivize individuals in the industry to come forward if they suspect investor fraud. Dee Johnson was the investigator on the Richard Loveday case and he reported that Mr. Lamond Syphus, an Investment Advisor, had approached the victim in this case, with the possibility of her becoming his client. Through their conversation, Mr. Syphus was able to detect that the victim may have been a victim of affinity fraud. Mr. Syphus contacted the Division and a case was later opened. Mr. Loveday was later arrested, pleaded guilty and then paid restitution back in full to the victim.

Commissioner **Brent Baker** made the motion to award $15,000.00 to Mr. Lamond Syphus and Commissioner **Gary Cornia** seconded the motion. The motion was approved unanimously.

**Consideration and Approval of Proposed Orders:**

**H & H Services, Inc. and Steven Wayne Harker SD-12-0021, SD-12-0022, Stipulation and Consent Order:** Dave Hermansen reported that from August 2009 to September 2010, the Respondent offered and sold investment contracts to investors and collected at least $100,000.00. The investors lost over $90,000.00 of their principal. The victims were told that the money was to be used in investment opportunities with FOREX trading. The Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investors. In March of 2012, the Attorney General’s office filed criminal charges against Mr. Harker for securities fraud, theft and a pattern of unlawful activity. Mr. Harker entered a plea of guilty and was ordered to pay restitution. The Division’s Stipulation and Consent Order requires that Mr. Harker admit to the Division’s findings, cease and desist from violating the Act, bars him from the industry and orders him to pay restitution in the criminal case.

Commissioner **Gary Cornia** made the motion to approve the proposed Order and Commissioner **Tim Bangerter** seconded the motion. The motion was passed unanimously.

**Brace Robinson SD-10-0076 Recommended Order on Motion for Default:** Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on November 2nd, 2010. The administrative proceedings were stayed for a time, and lifted on February 11th, 2014. There was an initial hearing on March 12, 2014 and the Respondent failed to appear. Therefore a default order is being recommended. The Respondent is ordered to cease and desist from any further violations of the Act and to pay a fine of $10,000.00 to the Division. The Respondent is permanently barred from the industry.

Commissioner **Gary Cornia** made the motion to approve the proposed Order and Commissioner **Brent Baker** seconded the motion. The motion was passed unanimously.

**Tamarin Advisors, LLC; Clear Voice Studios, Inc.; Hypernova Films, LLC; The Vacuum Law, LP; Denny Roger Pehrson SD-10-0017, SD-10-0019, SD-10-0020, SD-10-0021, SD-10-0022 Recommended Order on Motion for Default:** Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on April 10th, 2010. Thereafter, the administrative proceedings were stayed to allow a related criminal case against the Respondent to conclude. The criminal case was resolved on June 3rd, 2013, and the administrative proceedings resumed. An initial hearing was set for March 5th, 2014 which required the Respondent to file an answer, which he has failed to do. Therefore, a default order is recommended. The Respondent is ordered to cease and desist from any future violations of the Act, pays a fine of $45,000.00 to the Division, and is permanently barred from the industry.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Tim Bangerter** seconded the motion. The motion was passed unanimously.

**Mark Meersman SD-14-0002, Recommended Order on Motion for Default:** Dave Hermansen reported that an Order to Show Case and Notice of Agency Action was filed on January 17th, 2014. The Respondent was required to file an answer to the Division’s Order to Show Cause within 30 days. The Respondent failed to do so. Therefore, a default order is being recommended. The Respondent is ordered to cease and desist from any further violations of the Act, pays a fine of $265,816.78 to the Division, and is permanently barred from the industry.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**Home and Business Networks, LLC, Christopher Sterling Belliston SD-09-0020, SD-09-0021, Order on Motion for Default:** Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on March 17th, 2009. The Respondent filed a response to the Order on April 15th, 2009. Criminal proceedings concluded on September 16th, 2013 and an initial hearing was scheduled. The Respondent failed to attend or participate in the initial hearing. Therefore a default order is recommended. The Respondent is ordered to cease and desist from any further violations of the Act, a permanent bar from the industry and pay a fine of $50,000.00 to the Division.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Brent Baker** seconded the motion. The motion was passed unanimously.

**Kenneth Day SD-13-0021, Stipulation and Consent Order:** Dave Hermansen reported that from June 2009 to August 2009, the Respondent offered and sold securities to an investor and collected a total of at least $75,000.00. The Respondent violated the Act by making untrue statements of material facts or omitting to state material facts in connection with the sale of securities. Mr. Day is ordered to cease and desist from violating the Act, barred from the industry, and assessed a fine of $37,500, of which $35,000 may be offset by payments of restitution.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**West States Investments, Inc., Jason Kim Brown SD-10-0063, SD-10-0064 Stipulation and Consent Order:** Dave Hermansen reported that in 2007 Respondent offered and sold a security to one investor and collected a total of $250,000. The Respondent made material misstatements and omissions in connection with the offer and sale of a security. The victim lost all of her investment. The Utah Attorney General’s office filed charges against the Respondent, and the Respondent was ordered to pay restitution back to the investor, which he did. The Respondent admits to the Division’s findings and agrees of cease and desist from any conduct that violates the Act. The Respondent is barred from the industry and the Division imposes a fine of $10,000.00.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**Manchester Development Holdings Corp.; National Entertainment, Inc.; Cary K. Beagley SD-11-0066, SD-11-0067, SD-11-0068 Recommended Order on Motion for Default:** Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on August 29th, 2011. Thereafter, the proceedings were stayed due to criminal proceedings against the Respondent. On March 12th, 2014, the stay was lifted and the Respondent was required to respond to the Division within 30 days, which he failed to do. An initial hearing was set for May 7th, 2014 and the Respondent failed to appear. Therefore, a default order is recommended. The Respondent is ordered to pay a fine of $20,000.00 and is permanently barred from licensure in the industry.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Tim Bangerter** seconded the motion. The motion was passed unanimously.

**Michael J. Hansen and CEMA Group, LLC SD-13-0022, SD-13-0023 Stipulation and Consent Order:** Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was entered on March 6th, 2013. The Respondent violated the Act by making false statements and misrepresentations, while engaged in the offer and sale of securities. The Salt Lake County District Attorney’s Office filed charges against the Respondent. The Respondent is ordered to cease and desist from violating the Act and is barred from the securities industry. Mr. Hansen is ordered to pay restitution as ordered in the criminal case against him.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**Chad Bennett Reid SD-13-0030 Stipulation and Consent Order:** Adam Sweet reported that from approximately March 2005 to February 2009, the Respondent offered and sold securities to at least eight investors, collecting approximately $320,500.00. The Utah Attorney General’s Office filed criminal charges against the Respondent on November 8th; 2012. The charges included three counts of securities fraud and one count of pattern of unlawful activity. The Respondent agreed to pay $282,205.07 in restitution to the investors. The Respondent made complete payment of restitution upon entry of his plea. The proposed Stipulation and Consent Order provides that the Respondent neither admits nor denies the findings and conclusions of law, and orders Respondent to cease and desist from any further violations of the Act, bars him from the industry, and imposes a fine of $20,000.00. Commissioner Brent Baker expressed concern that the Respondent does not have to admit to the findings and conclusions of law. Commissioner Erik Christiansen also agreed that the Respondent’s acts were egregious and expressed a lack of support for the proposed Stipulation.

Commissioner **Brent Baker** made the motion to deny the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion passed unanimously and it is recommended that this case moves to renegotiations or a hearing.

**Christian Oesch SD-13-0046 Recommended Order on Motion for Default:** Dave Hermansen reported that on October 31st, 2013 a Notice of Agency Action and Order to Show Cause was entered. The Respondent was required to file a response within 30 days and failed to do so. An initial hearing was held on December 4th, 2013 and the Respondent failed to appear. Therefore, a default order is recommended. The Respondent is ordered to cease and desist from engaging in any further violations of the Act, pay a fine of $72,693.00 to the Division, and barred from the industry.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Brent Baker** seconded the motion. The motion was passed unanimously.

**Timothy A. Nemeckay and Nemeckay Group Incorporated SD-14-0009, SD-14-0010 Stipulation and Consent Order:** Matthew Edwards reported that from approximately 2011 to 2013, the Respondent offered and sold limited liability company interest to at least twelve investors and collected a total of $3,697,142. A Notice of Agency Action and an Order to Show Cause was entered on April 14, 2014. The Respondent violated the Act by engaging in the offer and sale of securities, while not being licensed. The Respondent is ordered to cease and desist from violating the Act, barred from the industry and ordered to pay a fine of $350,000 with $313,710 of that fine amount be offset by restitution.

Commissioner **Erik Christiansen** and Commissioner **Brent Baker** recused themselves due to conflicts of interest. The motion to approve or deny this order was differed until Commissioner **David Russon** is available.

**Ira Sorensen SD-13-0039 Stipulation and Consent Order**: Ken Barton reported that the Respondent is a licensed insurance agent in Utah and at one time was a licensed broker-dealer agent. Mr. Sorensen was affiliated with Dee Randall’s Horizon entities and he referred insurance clients to Randall for the purchase of private placement securities in the form of “Horizon Notes”. Mr. Sorensen received $10,500.00 in direct compensation for the sale of Horizon Notes. Mr. Sorensen referred investors to Mr. Randall without prior approval of his broker-dealer firm, a practice known as “selling away”. Mr. Sorensen is ordered to disgorge $10,500.00 to the Randall/Horizon Bankruptcy Trustee and pay a fine of $15,000 to the Division. $10,000 of the fine may be offset by restitution. Mr. Sorensen agrees to not seek a Utah securities license for five years.

Commissioner **Erik Christiansen** recused himself due to conflicts of interest.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**John A. Gervasi SD-14-0001 Stipulation and Consent Order**: Ken Barton reported that Mr. Gervasi is an agent with Brookville Capital Partners, a New York broker-dealer firm licensed to do business in Utah. Mr. Gervasi has never been licensed as a broker-dealer agent in Utah. On April 12, 2013, the Respondent contacted by phone, the home of the Division of Securities Director of Enforcement, Mr. Dave Hermansen. Mr. Gervasi’s phone call concerned investing money at Brookville through Mr. Gervasi. On April 24th, 2013, Mr. Hermansen called the Respondent requesting more information on the investment opportunity that the Respondent was selling. In connection with the solicitation of the sale of securities Mr. Gervasi made several misrepresentations and omissions of material facts and acted as an unlicensed agent. Mr. Gervasi neither admits or denies the Division’s findings, agrees to cease and desist from further violations of the Act, and pay a fine of $10,000.00 to the Division.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**Gregory S. Blackbourn SD-14-0004 Stipulation and Consent Order**: Ken Barton reported that Mr. Blackbourn is a licensed insurance agent in Utah and at one time was a licensed broker-dealer in Utah, which limited him to selling mutual funds and variable insurance products. Mr. Blackbourn was never licensed as a broker-agent for securities such as Horizon Notes. Mr. Blackbourn referred insurance clients to Mr. Randall for the purchase of private placement securities in the form of Horizon Notes, receiving approximately $7,246.00 in compensation for the sale of the Notes. When referring an investor to Randall, Mr. Blackbourn made material misrepresentations and omissions. Mr. Blackbourn neither admits or denies the Division’s findings, agrees to cease and desist from further violations of the Act, disgorge his commission to the Randall/Horizon Bankruptcy Trustee, and pay a fine of $15,000.00 to the Division.

Commissioner **Erik Christiansen** recused himself due to conflicts of interest.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**Evidentiary Hearing: NevWest Corp., Brisam Corp., Brain A. Kitts SD-07-0049, SD-07-0050, SD-07-0051**

Both parties presented opening arguments and put on evidence with respect to the Division’s administrative action against Respondent.

Commissioner **Gary Cornia** made the motion to adjourn the meeting

Commissioner **Brent Baker** seconded the motion and the meeting was adjourned at 12:00 pm.