Utah Securities Commission
Meeting Minutes
March 26th, 2015

Division of Securities Staff Present
Keith Woodwell, Division Director
LeeAnn Clark Commission Secretary
Dave Hermansen, Enforcement Director
Kenneth Barton, Compliance Director
Benjamin Johnson, Licensing & Registration Director
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
Charles Lyons, Securities Analyst
Brooke Winters, Securities Analyst
Matt Edwards, Securities Investigator
Taylor Kauffman, Securities Investigator
Kristilyn Wilkinson, Securities Investigator
Russ Bulloch, Securities Examiner
Andreo Micic, Securities Examiner
Nathan Summers, Securities Examiner
Bryan Cowley, Securities Examiner
Heidie George, Securities Examiner
Nadene Adams, Administrative Assistant
Sally Stewart, Office Specialist II

Other State of Utah Employees:
Jennie Jonsson, Administrative Law Judge, Department of Commerce
Tom Melton, Assistant Attorney General
Julie Price, Executive Assistant, Department of Commerce

Commissioners Present
Erik Christiansen, Parsons Behle & Latimer
Tim Bangerter, Landmark Wealth Advisors
Gary Cornia, Brigham Young University (participated by telephone)
David Russon, Investment Management Consultants
Brent Baker, Clyde, Snow & Sessions

Minutes: At 9:07 am the meeting was called to order by Commissioner **Erik Christiansen**. Commissioner **Brent Baker** made the motion to approve the minutes from the January 22, 2015 Commission meeting. The motion was seconded and carried.

Director's Report:
Division of Securities Staff: Director Woodwell reported that the following new employees have joined the Division: (1) Bryan Cowley as an examiner in the Licensing and Registration Section; (2) Taylor Kauffman as a new investigator in the Enforcement Section; (3) Brooke Winters as a new analyst in the Enforcement Section; and (4) LeeAnn Clark as the new Commission Secretary. Director Woodwell provided a brief introduction of all the new Division employees. Director Woodwell noted that the Division is fully staffed.

The estimated audience total for the 12 opportunities is 3,093. Ms. McMullin also reported that the Division has 37 events presently booked for the remainder of 2015, 17 of which are URS Education Seminars for Public Employees in early to mid-career, pre-retirement and retirees. The Division recently received requests for presentations from the Osher Institute, the Utah Association of Certified Fraud Examiners, the Utah Financial Planning Association, and the Utah Judicial Institute. Outreach requests are increasing, especially in the area of Elder Financial Exploitation. Free resources continue to be available resulting in a significant savings to the Division. Ms. McMullin also updated the Commission on the current status of the Stock Market Game for the 2014 – 2015 school year. The Division of Securities will be taking over full administration of the Stock Market Game starting this fall. Ms. McMullin and Ms. Wilkinson will be attending training in New York in June to learn how to administer the Stock Market Game. Ms. McMullin reported that the Division held its first Stock Market Game teaching training seminar in February of this year. Going forward, the teacher training will be held in August at the Heber M. Wells building and there will be outreach training at two CTE conferences each year.

Grant Request for MountainWest Capital Network: Director Woodwell addressed the Commission and reviewed how previous grants to MountainWest Capital Network have been used and how the current funds requested will be spent. Director Woodwell responded to questions and indicated support for the request. The Commission approved the grant for the same amount as in the previous year: $2,500. Commissioner **Tim Bangerter** made the motion to approve the proposed grant request. The motion was seconded and carried.

Education and Training Fund Report: Benjamin Johnson reported that spending has been fairly light since the last meeting. Due to the addition of a new part-time Enforcement Investigator, Mr. Johnson asked the Commissioners to authorize an increase in the Employment/Law Clerk/Transcriptionist expenses by $26,327.23 for a total budget of $40,000. Following the presentation of the Education and Training Fund Report, Commissioner **Tim Bangerter** made the motion to approve the amount for the proposed grant request. The motion was seconded and carried.

Consideration and Approval of Proposed Orders:

Gregory K. Howell: Recommended Order on Motion for Default and Order on Motion for Default: SD-09-0026.

Dave Hermansen reported that the Order to Show Cause and Notice of Agency was filed on April 16, 2009. Thereafter, the proceedings were stayed for a time. The initial stay was lifted on January 2, 2015 and the Respondent was required to file response within the ensuing 30-day period, as of the date of this order the Respondent has not filed a response. An initial hearing was held on February 4, 2015. Respondent failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent securities bar for Mr. Howell and a fine of $312,500 to the Division.

Action: Commissioner **Erik Christiansen** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Dustin Endsley: Recommended Order on Motion for Default and Order on Motion for Default: SD-15-0002

Fusion Energy, LLC: Recommended Order on Motion for Default and Order on Motion for Default: SD-15-0001

Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on January 7, 2015. Respondents were required to file a response to the Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondents have not

filed a response. An initial hearing was held February 13, 2015. Respondents failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Endsley, and a fine of $246,877.97 to the Division.
Action: Commissioner **Dave Russon** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Andres Esquivel, dba XTAGGED: Recommended Order on Motion for Default and Order on Motion for Default: SD-11-0033
Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on May 11, 2011. Thereafter, the proceedings were stayed for a time, pending related criminal proceedings. The stay was lifted on December 16, 2014, and Respondent was required to file a response to the Division's Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response. An initial hearing was held on February 4, 2015. Respondent failed to appear. Therefore, the Division is seeking acease and desist order, a permanent securities bar against Mr. Esquivel, and a fine of $16,250 to the Division.
Action: Commissioner **Tim Bangerter** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Robert R. Ty: Recommended Order on Motion for Default and Order on Motion for Default: SD-08-0009
Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on December 8, 2008. Thereafter, the proceedings were stayed for a time, pending related criminal proceedings. The stay was lifted on December 16, 2014, and Respondent was required to file a response to the Division's Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response. An initial hearing was held on February 4, 2015. Respondent failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent bar against Mr. Ty, and a fine of $625,000 to the Division.
Action: Commissioner **Brent Baker** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Nolen Paul Isom: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0013
Senergy Technology, LC: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0014
Senergy Investments, LC: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0015
Senergy Systems, LC: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0016
Greenstep, LC: Recommended Order on Motion for Default and Order on Motion for Default: SD-14-0017
Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on June 2, 2014. Thereafter, the proceedings were stayed for a time, pending related criminal proceedings. The stay was lifted on January 12, 2015, and Respondents was required to file a response to the Division's Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response. An initial hearing was held on March 4, 2015; Respondents failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Isom, and a fine of $45,192 to the Division.
Action: Commissioner **Dave Russon** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Synergy Funding, LLC: Recommended Order on Motion for Default and Order on Motion for Default: SD-008-0045
Joshua Paul Chapman: Recommended Order on Motion for Default and Order on Motion for Default: SD-008-0046
Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was initially filed on April 22, 2008. Thereafter, the proceedings were stayed for a time, pending related criminal proceedings. The stay was lifted on December 16, 2014, and Respondents was required to file a response to the Division's Order to Show Cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response. An initial hearing was held on February 4, 2015; Respondents failed to appear. Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Chapman, and a fine of $262,500 to the Division.
Action: Commissioner **Dave Russon** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

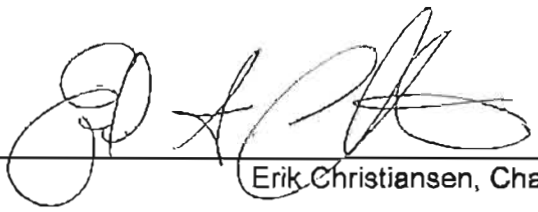
Jeffrey L. Miller: Order on Motion to Exclude Evidence and Other Relief and Recommended Order on Default. Order on Motion on Default: SD-14-0035.
Dave Hermansen reported that the Order to Show Cause and the Notice of Agency was filed on or about August 2, 2014. On October 1, 2014, a scheduling order was issued requiring the Respondent to file initial disclosures by October 15, 2014 and final disclosures by February 12, 2015. Respondent has not filed initial disclosures or final disclosures. In response to the Division's Motion to Exclude Evidence and Other Relief, on March 13, 2015, Respondent sent a short letter denying any knowledge of the proceedings or events involved. Therefore, the Division is seeking a cease and desist order, a permanent securities bar against Mr. Miller and a fine of $35,000.
Action: Commissioner **Brent Baker** made the motion to approve the Recommend Order on Motion for Default and Order on Motion for Default. The motion was seconded and carried.

Bradley Jackson Neufeld: Stipulation and Consent: SD-14-0061
Affinity Guidance Services, LLC: Stipulation and Consent: SD-14-0062
Kristilyn Wilkinson reported that the Order to Show Cause and the Notice of Agency was filed on or about December 12, 2014. The Division's investigation revealed that Respondent offered and sold a promissory note and an interest in a limited liability company to two investors, husband and wife, collecting a total of $20,000 in investment funds. Respondent is alleged to have made material misstatements and omissions to the investors. As part of the stipulation reached with the Respondents, they neither admit nor deny the Division's findings of fact and conclusions of the law but consent to the sanctions imposed in the Consent Order. The proposed Consent Order imposes a cease and desist order, a permanent securities bar against Mr. Neufeld, and a joint and several fine of $30,000 against the Respondents, to be offset by payments of restitution to the investors.
Action: Commissioner **Tim Bangerter** made the motion to approve the Stipulation and Consent. The motion was seconded and carried.

Yaede & Sons, LLC: Stipulation and Consent: SD-14-0057
Jeff S. Yaede: Stipulation and Consent: SD-14-0058
George H. Yaede, JR.: Stipulation and Consent: SD-14-0059
John R. Yaede: Stipulation and Consent: SD-14-0060
Kenneth Barton reported that the Division initiated an Order to Show Cause on or about December 11, 2014. The unlicensed Respondents are alleged to have offered and sold securities to one or more investors and collected a total of $352,511. Respondents are also

alleged to have made material misstatements and omissions. As part of the stipulation reached with the Respondents, they neither admit nor deny the Division's allegations, but agree to the sanctions imposed by the Consent Order. The proposed Consent Order imposes a cease and desist and desist order and imposes a jointly and several fine of $25,000 against all Respondents. The fine shall be reduced on a dollar-for-dollar basis up to $15,000 for any restitution payments Respondents make to the Utah investor.
Action: Commissioner **Brent Baker** made the motion to approve the Stipulation and Consent. The motion was seconded and carried.

Commissioner **Tim Bangerter** made the motion to adjourn the meeting. The motion was seconded and carried. The meeting was adjourned at 10:05am.

Approved: 
Erik Christiansen, Chairman

Date: 5/28/15

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS *v.* FEDERAL TRADE COMMISSION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 13–534. Argued October 14, 2014—Decided February 25, 2015

North Carolina's Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." The Board's principal duty is to create, administer, and enforce a licensing system for dentists; and six of its eight members must be licensed, practicing dentists.

The Act does not specify that teeth whitening is "the practice of dentistry." Nonetheless, after dentists complained to the Board that nondentists were charging lower prices for such services than dentists did, the Board issued at least 47 official cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Federal Trade Commission (FTC) filed an administrative complaint, alleging that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An Administrative Law Judge (ALJ) denied the Board's motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. After a hearing on the merits, the ALJ determined that the Board had unreasonably restrained trade in violation of antitrust law. The FTC again sustained the ALJ, and the Fourth Circuit affirmed the FTC in

all respects.

Held: Because a controlling number of the Board's decisionmakers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met. Pp. 5–18.

(a) Federal antitrust law is a central safeguard for the Nation's free market structures. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States' power to regulate. Therefore, beginning with *Parker* v. *Brown*, 317 U. S. 341, this Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. Pp. 5–6.

(b) The Board's actions are not cloaked with *Parker* immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if "'the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,' and . . . 'the policy . . . [is] actively supervised by the State'" *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (quoting *California Retail Liquor Dealers Assn.* v *Midcal Aluminum, Inc.*, 445 U. S. 97, 105). Here, the Board did not receive active supervision of its anticompetitive conduct. Pp. 6–17.

(1) An entity may not invoke *Parker* immunity unless its actions are an exercise of the State's sovereign power. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374. Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls. Limits on state-action immunity are most essential when a State seeks to delegate its regulatory power to active market participants, for dual allegiances are not always apparent to an actor and prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. Accordingly, *Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own. *Midcal*'s two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State's considered definition of the public good and engage in private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this

harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. Pp. 6–10.

(2) There are instances in which an actor can be excused from *Midcal*'s active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers, and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement. See *Hallie* v. *Eau Claire*, 471 U. S. 34, 35. That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons, however, all but confirms the rule's applicability to actors controlled by active market participants. Further, in light of *Omni*'s holding that an otherwise immune entity will not lose immunity based on ad hoc and *ex post* questioning of its motives for making particular decisions, 499 U. S., at 374, it is all the more necessary to ensure the conditions for granting immunity are met in the first place, see *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 633, and *Phoebe Putney, supra*, at ___. The clear lesson of precedent is that *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants. Pp. 10–12.

(3) The Board's argument that entities designated by the States as agencies are exempt from *Midcal*'s second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 791. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there was more like prototypical state agencies, not specialized boards dominated by active market participants. The latter are similar to private trade associations vested by States with regulatory authority, which must satisfy *Midcal*'s active supervision standard. 445 U. S., at 105–106. The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus,

the Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity. Pp. 12–14.

(4) The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. But this holding is not inconsistent with the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State. Further, this case does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure *Parker* immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity must be rejected, see *Patrick* v. *Burget*, 486 U. S. 94, 105–106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14–16.

(5) The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis. The Act delegates control over the practice of dentistry to the Board, but says nothing about teeth whitening. In acting to expel the dentists' competitors from the market, the Board relied on cease-and-desist letters threatening criminal liability, instead of other powers at its disposal that would have invoked oversight by a politically accountable official. Whether or not the Board exceeded its powers under North Carolina law, there is no evidence of any decision by the State to initiate or concur with the Board's actions against the nondentists. P. 17.

(c) Here, where there are no specific supervisory systems to be reviewed, it suffices to note that the inquiry regarding active supervision is flexible and context-dependent. The question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U. S., 100–101. The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see *id.*, at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state

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supervision is not an adequate substitute for a decision by the State," *Ticor*, *supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case. Pp. 17–18.

717 F. 3d 359, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 13–534

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, PETITIONER *v.* FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE KENNEDY delivered the opinion of the Court.

This case arises from an antitrust challenge to the actions of a state regulatory board. A majority of the board's members are engaged in the active practice of the profession it regulates. The question is whether the board's actions are protected from Sherman Act regulation under the doctrine of state-action antitrust immunity, as defined and applied in this Court's decisions beginning with *Parker* v. *Brown*, 317 U. S. 341 (1943).

I

A

In its Dental Practice Act (Act), North Carolina has declared the practice of dentistry to be a matter of public concern requiring regulation. N. C. Gen. Stat. Ann. §90–22(a) (2013). Under the Act, the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." §90–22(b).

The Board's principal duty is to create, administer, and enforce a licensing system for dentists. See §§90–29 to

90–41. To perform that function it has broad authority over licensees. See §90–41. The Board's authority with respect to unlicensed persons, however, is more restricted: like "any resident citizen," the Board may file suit to "perpetually enjoin any person from . . . unlawfully practicing dentistry." §90–40.1.

The Act provides that six of the Board's eight members must be licensed dentists engaged in the active practice of dentistry. §90–22. They are elected by other licensed dentists in North Carolina, who cast their ballots in elections conducted by the Board. *Ibid.* The seventh member must be a licensed and practicing dental hygienist, and he or she is elected by other licensed hygienists. *Ibid.* The final member is referred to by the Act as a "consumer" and is appointed by the Governor. *Ibid.* All members serve 3-year terms, and no person may serve more than two consecutive terms. *Ibid.* The Act does not create any mechanism for the removal of an elected member of the Board by a public official. See *ibid.*

Board members swear an oath of office, §138A–22(a), and the Board must comply with the State's Administrative Procedure Act, §150B–1 *et seq.*, Public Records Act, §132–1 *et seq.*, and open-meetings law, §143–318.9 *et seq.* The Board may promulgate rules and regulations governing the practice of dentistry within the State, provided those mandates are not inconsistent with the Act and are approved by the North Carolina Rules Review Commission, whose members are appointed by the state legislature. See §§90–48, 143B–30.1, 150B–21.9(a).

B

In the 1990's, dentists in North Carolina started whitening teeth. Many of those who did so, including 8 of the Board's 10 members during the period at issue in this case, earned substantial fees for that service. By 2003, nondentists arrived on the scene. They charged lower

prices for their services than the dentists did. Dentists soon began to complain to the Board about their new competitors. Few complaints warned of possible harm to consumers. Most expressed a principal concern with the low prices charged by nondentists.

Responding to these filings, the Board opened an investigation into nondentist teeth whitening. A dentist member was placed in charge of the inquiry. Neither the Board's hygienist member nor its consumer member participated in this undertaking. The Board's chief operations officer remarked that the Board was "going forth to do battle" with nondentists. App. to Pet. for Cert. 103a. The Board's concern did not result in a formal rule or regulation reviewable by the independent Rules Review Commission, even though the Act does not, by its terms, specify that teeth whitening is "the practice of dentistry."

Starting in 2006, the Board issued at least 47 cease-and-desist letters on its official letterhead to nondentist teeth whitening service providers and product manufacturers. Many of those letters directed the recipient to cease "all activity constituting the practice of dentistry"; warned that the unlicensed practice of dentistry is a crime; and strongly implied (or expressly stated) that teeth whitening constitutes "the practice of dentistry." App. 13, 15. In early 2007, the Board persuaded the North Carolina Board of Cosmetic Art Examiners to warn cosmetologists against providing teeth whitening services. Later that year, the Board sent letters to mall operators, stating that kiosk teeth whiteners were violating the Dental Practice Act and advising that the malls consider expelling violators from their premises.

These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.

C

In 2010, the Federal Trade Commission (FTC) filed an

administrative complaint charging the Board with violating §5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 15 U. S. C. §45. The FTC alleged that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition. The Board moved to dismiss, alleging state-action immunity. An Administrative Law Judge (ALJ) denied the motion. On appeal, the FTC sustained the ALJ's ruling. It reasoned that, even assuming the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board is a "public/private hybrid" that must be actively supervised by the State to claim immunity. App. to Pet. for Cert. 49a. The FTC further concluded the Board could not make that showing.

Following other proceedings not relevant here, the ALJ conducted a hearing on the merits and determined the Board had unreasonably restrained trade in violation of antitrust law. On appeal, the FTC again sustained the ALJ. The FTC rejected the Board's public safety justification, noting, *inter alia*, "a wealth of evidence . . . suggesting that non-dentist provided teeth whitening is a safe cosmetic procedure." *Id.*, at 123a.

The FTC ordered the Board to stop sending the cease-and-desist letters or other communications that stated nondentists may not offer teeth whitening services and products. It further ordered the Board to issue notices to all earlier recipients of the Board's cease-and-desist orders advising them of the Board's proper sphere of authority and saying, among other options, that the notice recipients had a right to seek declaratory rulings in state court.

On petition for review, the Court of Appeals for the Fourth Circuit affirmed the FTC in all respects. 717 F. 3d 359, 370 (2013). This Court granted certiorari. 571 U. S. ___ (2014).

II

Federal antitrust law is a central safeguard for the Nation's free market structures. In this regard it is "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States* v. *Topco Associates, Inc.*, 405 U. S. 596, 610 (1972). The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market.

The Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. §1 *et seq.*, serves to promote robust competition, which in turn empowers the States and provides their citizens with opportunities to pursue their own and the public's welfare. See *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 632 (1992). The States, however, when acting in their respective realm, need not adhere in all contexts to a model of unfettered competition. While "the States regulate their economies in many ways not inconsistent with the antitrust laws," *id.*, at 635–636, in some spheres they impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives. If every duly enacted state law or policy were required to conform to the mandates of the Sherman Act, thus promoting competition at the expense of other values a State may deem fundamental, federal antitrust law would impose an impermissible burden on the States' power to regulate. See *Exxon Corp.* v. *Governor of Maryland*, 437 U. S. 117, 133 (1978); see also Easterbrook, Antitrust and the Economics of Federalism, 26 J. Law & Econ. 23, 24 (1983).

For these reasons, the Court in *Parker* v. *Brown* interpreted the antitrust laws to confer immunity on anticompetitive conduct by the States when acting in their sovereign capacity. See 317 U. S., at 350–351. That ruling

recognized Congress' purpose to respect the federal balance and to "embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution." *Community Communications Co.* v. *Boulder*, 455 U. S. 40, 53 (1982). Since 1943, the Court has reaffirmed the importance of *Parker*'s central holding. See, *e.g.*, *Ticor*, *supra*, at 632–637; *Hoover* v. *Ronwin*, 466 U. S. 558, 568 (1984); *Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S. 389, 394–400 (1978).

III

In this case the Board argues its members were invested by North Carolina with the power of the State and that, as a result, the Board's actions are cloaked with *Parker* immunity. This argument fails, however. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if it satisfies two requirements: "first that 'the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy,' and second that 'the policy . . . be actively supervised by the State.'" *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (2013) (slip op., at 7) (quoting *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97, 105 (1980)). The parties have assumed that the clear articulation requirement is satisfied, and we do the same. While North Carolina prohibits the unauthorized practice of dentistry, however, its Act is silent on whether that broad prohibition covers teeth whitening. Here, the Board did not receive active supervision by the State when it interpreted the Act as addressing teeth whitening and when it enforced that policy by issuing cease-and-desist letters to nondentist teeth whiteners.

A

Although state-action immunity exists to avoid conflicts

between state sovereignty and the Nation's commitment to a policy of robust competition, *Parker* immunity is not unbounded. "[G]iven the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, 'state action immunity is disfavored, much as are repeals by implication.'" *Phoebe Putney*, *supra*, at ___ (slip op., at 7) (quoting *Ticor*, *supra*, at 636).

An entity may not invoke *Parker* immunity unless the actions in question are an exercise of the State's sovereign power. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374 (1991). State legislation and "decision[s] of a state supreme court, acting legislatively rather than judicially," will satisfy this standard, and "*ipso facto* are exempt from the operation of the antitrust laws" because they are an undoubted exercise of state sovereign authority. *Hoover*, *supra*, at 567–568.

But while the Sherman Act confers immunity on the States' own anticompetitive policies out of respect for federalism, it does not always confer immunity where, as here, a State delegates control over a market to a nonsovereign actor. See *Parker*, *supra*, at 351 ("[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful"). For purposes of *Parker*, a nonsovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. See *Hoover*, *supra*, at 567–568. State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members"). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of

Parker's rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor*, 504 U. S., at 636.

Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. See *Midcal*, *supra*, at 106 ("The national policy in favor of competition cannot be thwarted by casting [a] gauzy cloak of state involvement over what is essentially a private price-fixing arrangement"). Indeed, prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. See, *e.g.*, *Allied Tube & Conduit Corp.* v. *Indian Head, Inc.*, 486 U. S. 492, 501 (1988); *Hoover*, *supra*, at 584 (Stevens, J., dissenting) ("The risk that private regulation of market entry, prices, or output may be designed to confer monopoly profits on members of an industry at the expense of the consuming public has been the central concern of . . . our antitrust jurisprudence"); see also Elhauge, The Scope of Antitrust Process, 104 Harv. L. Rev. 667, 672 (1991). So it follows that, under *Parker* and the Supremacy Clause, the States' greater power to attain an end does not include the lesser power to negate the congressional judgment embodied in the Sherman Act through unsupervised delegations to active market participants. See Garland, Antitrust and State Action: Economic Efficiency and the Political Process, 96 Yale L. J. 486, 500 (1986).

Parker immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own.

See *Goldfarb*, *supra*, at 790; see also 1A P. Areeda & H. Hovencamp, Antitrust Law ¶226, p. 180 (4th ed. 2013) (Areeda & Hovencamp). The question is not whether the challenged conduct is efficient, well-functioning, or wise. See *Ticor*, *supra*, at 634–635. Rather, it is "whether anticompetitive conduct engaged in by [nonsovereign actors] should be deemed state action and thus shielded from the antitrust laws." *Patrick* v. *Burget*, 486 U. S. 94, 100 (1988).

To answer this question, the Court applies the two-part test set forth in *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97, a case arising from California's delegation of price-fixing authority to wine merchants. Under *Midcal*, "[a] state law or regulatory scheme cannot be the basis for antitrust immunity unless, first, the State has articulated a clear policy to allow the anticompetitive conduct, and second, the State provides active supervision of [the] anticompetitive conduct." *Ticor*, *supra*, at 631 (citing *Midcal*, *supra*, at 105).

Midcal's clear articulation requirement is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals." *Phoebe Putney*, 568 U. S., at ___ (slip op., at 11). The active supervision requirement demands, *inter alia*, "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *Patrick*, *supra*, U. S., at 101.

The two requirements set forth in *Midcal* provide a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for a policy may

satisfy this test yet still be defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated. See *Ticor*, *supra*, at 636–637. Entities purporting to act under state authority might diverge from the State's considered definition of the public good. The resulting asymmetry between a state policy and its implementation can invite private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity.

Midcal's supervision rule "stems from the recognition that '[w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.'" *Patrick*, *supra*, at 100. Concern about the private incentives of active market participants animates *Midcal*'s supervision mandate, which demands "realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests." *Patrick*, *supra*, at 101.

B

In determining whether anticompetitive policies and conduct are indeed the action of a State in its sovereign capacity, there are instances in which an actor can be excused from *Midcal*'s active supervision requirement. In *Hallie* v. *Eau Claire*, 471 U. S. 34, 45 (1985), the Court held municipalities are subject exclusively to *Midcal*'s "'clear articulation'" requirement. That rule, the Court observed, is consistent with the objective of ensuring that the policy at issue be one enacted by the State itself. *Hallie* explained that "[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the

expense of more overriding state goals." 471 U. S., at 47. *Hallie* further observed that municipalities are electorally accountable and lack the kind of private incentives characteristic of active participants in the market. See *id.*, at 45, n. 9. Critically, the municipality in *Hallie* exercised a wide range of governmental powers across different economic spheres, substantially reducing the risk that it would pursue private interests while regulating any single field. See *ibid.* That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons all but confirms the rule's applicability to actors controlled by active market participants, who ordinarily have none of the features justifying the narrow exception *Hallie* identified. See 471 U. S., at 45.

Following *Goldfarb*, *Midcal*, and *Hallie*, which clarified the conditions under which *Parker* immunity attaches to the conduct of a nonsovereign actor, the Court in *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, addressed whether an otherwise immune entity could lose immunity for conspiring with private parties. In *Omni*, an aspiring billboard merchant argued that the city of Columbia, South Carolina, had violated the Sherman Act—and forfeited its *Parker* immunity—by anticompetitively conspiring with an established local company in passing an ordinance restricting new billboard construction. 499 U. S., at 367–368. The Court disagreed, holding there is no "conspiracy exception" to *Parker*. *Omni, supra*, at 374.

Omni, like the cases before it, recognized the importance of drawing a line "relevant to the purposes of the Sherman Act and of *Parker*: prohibiting the restriction of competition for private gain but permitting the restriction of competition in the public interest." 499 U. S., at 378. In the context of a municipal actor which, as in *Hallie*, exercised substantial governmental powers, *Omni* rejected a conspiracy exception for "corruption" as vague and unworkable, since "virtually all regulation benefits some

segments of the society and harms others" and may in that sense be seen as "'corrupt.'" 499 U. S., at 377. *Omni* also rejected subjective tests for corruption that would force a "deconstruction of the governmental process and probing of the official 'intent' that we have consistently sought to avoid." *Ibid.* Thus, whereas the cases preceding it addressed the preconditions of *Parker* immunity and engaged in an objective, *ex ante* inquiry into nonsovereign actors' structure and incentives, *Omni* made clear that recipients of immunity will not lose it on the basis of ad hoc and *ex post* questioning of their motives for making particular decisions.

Omni's holding makes it all the more necessary to ensure the conditions for granting immunity are met in the first place. The Court's two state-action immunity cases decided after *Omni* reinforce this point. In *Ticor* the Court affirmed that *Midcal*'s limits on delegation must ensure that "[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law, is the precondition for immunity from federal law." 504 U. S., at 633. And in *Phoebe Putney* the Court observed that *Midcal*'s active supervision requirement, in particular, is an essential condition of state-action immunity when a nonsovereign actor has "an incentive to pursue [its] own self-interest under the guise of implementing state policies." 568 U. S., at ___ (slip op., at 8) (quoting *Hallie*, *supra*, at 46–47). The lesson is clear: *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants.

C

The Board argues entities designated by the States as agencies are exempt from *Midcal*'s second requirement. That premise, however, cannot be reconciled with the Court's repeated conclusion that the need for supervision

turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade.

State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See Areeda & Hovencamp ¶227, at 226. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. See *Patrick*, 486 U. S., at 100–101.

The Court applied this reasoning to a state agency in *Goldfarb*. There the Court denied immunity to a state agency (the Virginia State Bar) controlled by market participants (lawyers) because the agency had "joined in what is essentially a private anticompetitive activity" for "the benefit of its members." 421 U. S., at 791, 792. This emphasis on the Bar's private interests explains why *Goldfarb*, though it predates *Midcal*, considered the lack of supervision by the Virginia Supreme Court to be a principal reason for denying immunity. See 421 U. S., at 791; see also *Hoover*, 466 U. S., at 569 (emphasizing lack of active supervision in *Goldfarb*); *Bates* v. *State Bar of Ariz.*, 433 U. S. 350, 361–362 (1977) (granting the Arizona Bar state-action immunity partly because its "rules are subject to pointed re-examination by the policymaker").

While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there, as was later the case in *Omni*, was an electorally accountable municipality with general regulatory powers and no private price-fixing agenda. In that and other respects the municipality was more like prototypical state agencies, not specialized boards dominated by active market participants. In important regards, agencies controlled by market partici-

pants are more similar to private trade associations vested by States with regulatory authority than to the agencies *Hallie* considered. And as the Court observed three years after *Hallie*, "[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and that the product standards set by such associations have a serious potential for anticompetitive harm." *Allied Tube*, 486 U. S., at 500. For that reason, those associations must satisfy *Midcal*'s active supervision standard. See *Midcal*, 445 U. S., at 105–106.

The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39 (rejecting "purely formalistic" analysis). *Parker* immunity does not derive from nomenclature alone. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. See Areeda & Hovencamp ¶227, at 226. The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity.

D

The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. If this were so—and, for reasons to be noted, it need not be so—there would be some cause for concern. The States have a sovereign interest in structuring their governments, see *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991), and may conclude there are substantial benefits to staffing their

agencies with experts in complex and technical subjects, see *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, 471 U. S. 48, 64 (1985). There is, moreover, a long tradition of citizens esteemed by their professional colleagues devoting time, energy, and talent to enhancing the dignity of their calling.

Adherence to the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State reaches back at least to the Hippocratic Oath. See generally S. Miles, The Hippocratic Oath and the Ethics of Medicine (2004). In the United States, there is a strong tradition of professional self-regulation, particularly with respect to the development of ethical rules. See generally R. Rotunda & J. Dzienkowski, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility (2014); R. Baker, Before Bioethics: A History of American Medical Ethics From the Colonial Period to the Bioethics Revolution (2013). Dentists are no exception. The American Dental Association, for example, in an exercise of "the privilege and obligation of self-government," has "call[ed] upon dentists to follow high ethical standards," including "honesty, compassion, kindness, integrity, fairness and charity." American Dental Association, Principles of Ethics and Code of Professional Conduct 3–4 (2012). State laws and institutions are sustained by this tradition when they draw upon the expertise and commitment of professionals.

Today's holding is not inconsistent with that idea. The Board argues, however, that the potential for money damages will discourage members of regulated occupations from participating in state government. Cf. *Filarsky* v. *Delia*, 566 U. S. ___, ___ (2012) (slip op., at 12) (warning in the context of civil rights suits that the "the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts"). But this case, which does not

present a claim for money damages, does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. See *Goldfarb*, 421 U. S., at 792, n. 22; see also Brief for Respondent 56. And, of course, the States may provide for the defense and indemnification of agency members in the event of litigation.

States, furthermore, can ensure *Parker* immunity is available to agencies by adopting clear policies to displace competition; and, if agencies controlled by active market participants interpret or enforce those policies, the States may provide active supervision. Precedent confirms this principle. The Court has rejected the argument that it would be unwise to apply the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity:

> "[Respondents] contend that effective peer review is essential to the provision of quality medical care and that any threat of antitrust liability will prevent physicians from participating openly and actively in peer-review proceedings. This argument, however, essentially challenges the wisdom of applying the antitrust laws to the sphere of medical care, and as such is properly directed to the legislative branch. To the extent that Congress has declined to exempt medical peer review from the reach of the antitrust laws, peer review is immune from antitrust scrutiny only if the State effectively has made this conduct its own." *Patrick*, 486 U. S. at 105–106 (footnote omitted).

The reasoning of *Patrick* v. *Burget* applies to this case with full force, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. See generally Edlin & Haw, Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny? 162 U. Pa. L. Rev. 1093 (2014).

E

The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis.

By statute, North Carolina delegates control over the practice of dentistry to the Board. The Act, however, says nothing about teeth whitening, a practice that did not exist when it was passed. After receiving complaints from other dentists about the nondentists' cheaper services, the Board's dentist members—some of whom offered whitening services—acted to expel the dentists' competitors from the market. In so doing the Board relied upon cease-and-desist letters threatening criminal liability, rather than any of the powers at its disposal that would invoke oversight by a politically accountable official. With no active supervision by the State, North Carolina officials may well have been unaware that the Board had decided teeth whitening constitutes "the practice of dentistry" and sought to prohibit those who competed against dentists from participating in the teeth whitening market. Whether or not the Board exceeded its powers under North Carolina law, cf. *Omni*, 499 U. S., at 371–372, there is no evidence here of any decision by the State to initiate or concur with the Board's actions against the nondentists.

IV

The Board does not claim that the State exercised active, or indeed any, supervision over its conduct regarding nondentist teeth whiteners; and, as a result, no specific supervisory systems can be reviewed here. It suffices to note that the inquiry regarding active supervision is flexible and context-dependent. Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticom-

petitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick, supra,* at 100–101; see also *Ticor*, 504 U. S., at 639–640.

The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it, see *Patrick*, 486 U. S., at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state supervision is not an adequate substitute for a decision by the State," *Ticor, supra,* at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case.

* * *

The Sherman Act protects competition while also respecting federalism. It does not authorize the States to abandon markets to the unsupervised control of active market participants, whether trade associations or hybrid agencies. If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity under *Parker* is to be invoked.

The judgment of the Court of Appeals for the Fourth Circuit is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13–534

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, PETITIONER *v.* FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court's decision in this case is based on a serious misunderstanding of the doctrine of state-action antitrust immunity that this Court recognized more than 60 years ago in *Parker* v. *Brown*, 317 U. S. 341 (1943). In *Parker*, the Court held that the Sherman Act does not prevent the States from continuing their age-old practice of enacting measures, such as licensing requirements, that are designed to protect the public health and welfare. *Id.*, at 352. The case now before us involves precisely this type of state regulation—North Carolina's laws governing the practice of dentistry, which are administered by the North Carolina Board of Dental Examiners (Board).

Today, however, the Court takes the unprecedented step of holding that *Parker* does not apply to the North Carolina Board because the Board is not structured in a way that merits a good-government seal of approval; that is, it is made up of practicing dentists who have a financial incentive to use the licensing laws to further the financial interests of the State's dentists. There is nothing new about the structure of the North Carolina Board. When the States first created medical and dental boards, well before the Sherman Act was enacted, they began to staff

them in this way.[1] Nor is there anything new about the suspicion that the North Carolina Board—in attempting to prevent persons other than dentists from performing teeth-whitening procedures—was serving the interests of dentists and not the public. Professional and occupational licensing requirements have often been used in such a way.[2] But that is not what *Parker* immunity is about. Indeed, the very state program involved in that case was unquestionably designed to benefit the regulated entities, California raisin growers.

The question before us is not whether such programs serve the public interest. The question, instead, is whether this case is controlled by *Parker*, and the answer to that question is clear. Under *Parker*, the Sherman Act (and the Federal Trade Commission Act, see *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 635 (1992)) do not apply to state agencies; the North Carolina Board of Dental Examiners is a state agency; and that is the end of the matter. By straying from this simple path, the Court has not only distorted *Parker*; it has headed into a morass. Determining whether a state agency is structured in a way that militates against regulatory capture is no easy task, and there is reason to fear that today's decision will spawn confusion. The Court has veered off course, and therefore I cannot go along.

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[1] S. White, History of Oral and Dental Science in America 197–214 (1876) (detailing earliest American regulations of the practice of dentistry).

[2] See, *e.g.*, R. Shrylock, Medical Licensing in America 29 (1967) (Shrylock) (detailing the deterioration of licensing regimes in the mid-19th century, in part out of concerns about restraints on trade); Gellhorn, The Abuse of Occupational Licensing, 44 U. Chi. L. Rev. 6 (1976); Shepard, Licensing Restrictions and the Cost of Dental Care, 21 J Law & Econ. 187 (1978).

I

In order to understand the nature of *Parker* state-action immunity, it is helpful to recall the constitutional landscape in 1890 when the Sherman Act was enacted. At that time, this Court and Congress had an understanding of the scope of federal and state power that is very different from our understanding today. The States were understood to possess the exclusive authority to regulate "their purely internal affairs." *Leisy* v. *Hardin*, 135 U. S. 100, 122 (1890). In exercising their police power in this area, the States had long enacted measures, such as price controls and licensing requirements, that had the effect of restraining trade.[3]

The Sherman Act was enacted pursuant to Congress' power to regulate interstate commerce, and in passing the Act, Congress wanted to exercise that power "to the utmost extent." *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533, 558 (1944). But in 1890, the understanding of the commerce power was far more limited than it is today. See, *e.g.*, *Kidd* v. *Pearson*, 128 U. S. 1, 17–18 (1888). As a result, the Act did not pose a threat to traditional state regulatory activity.

By 1943, when *Parker* was decided, however, the situation had changed dramatically. This Court had held that the commerce power permitted Congress to regulate even local activity if it "exerts a substantial economic effect on interstate commerce." *Wickard* v. *Filburn*, 317 U. S. 111, 125 (1942). This meant that Congress could regulate many of the matters that had once been thought to fall exclusively within the jurisdiction of the States. The new interpretation of the commerce power brought about an expansion of the reach of the Sherman Act. See *Hospital*

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[3]See Handler, The Current Attack on the *Parker* v. *Brown* State Action Doctrine, 76 Colum. L. Rev. 1, 4–6 (1976) (collecting cases).

Building Co. v. *Trustees of Rex Hospital*, 425 U. S. 738, 743, n. 2 (1976) ("[D]ecisions by this Court have permitted the reach of the Sherman Act to expand along with expanding notions of congressional power"). And the expanded reach of the Sherman Act raised an important question. The Sherman Act does not expressly exempt States from its scope. Does that mean that the Act applies to the States and that it potentially outlaws many traditional state regulatory measures? The Court confronted that question in *Parker*.

In *Parker*, a raisin producer challenged the California Agricultural Prorate Act, an agricultural price support program. The California Act authorized the creation of an Agricultural Prorate Advisory Commission (Commission) to establish marketing plans for certain agricultural commodities within the State. 317 U. S., at 346–347. Raisins were among the regulated commodities, and so the Commission established a marketing program that governed many aspects of raisin sales, including the quality and quantity of raisins sold, the timing of sales, and the price at which raisins were sold. *Id.*, at 347–348. The *Parker* Court assumed that this program would have violated "the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons," and the Court also assumed that Congress could have prohibited a State from creating a program like California's if it had chosen to do so. *Id.*, at 350. Nevertheless, the Court concluded that the California program did not violate the Sherman Act because the Act did not circumscribe state regulatory power. *Id.*, at 351.

The Court's holding in *Parker* was not based on either the language of the Sherman Act or anything in the legislative history affirmatively showing that the Act was not meant to apply to the States. Instead, the Court reasoned that "[i]n a dual system of government in which, under the Constitution, the states are sovereign, save only as Con-

gress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." 317 U. S., at 351. For the Congress that enacted the Sherman Act in 1890, it would have been a truly radical and almost certainly futile step to attempt to prevent the States from exercising their traditional regulatory authority, and the *Parker* Court refused to assume that the Act was meant to have such an effect.

When the basis for the *Parker* state-action doctrine is understood, the Court's error in this case is plain. In 1890, the regulation of the practice of medicine and dentistry was regarded as falling squarely within the States' sovereign police power. By that time, many States had established medical and dental boards, often staffed by doctors or dentists,[4] and had given those boards the authority to confer and revoke licenses.[5] This was quintessential police power legislation, and although state laws were often challenged during that era under the doctrine of substantive due process, the licensing of medical professionals easily survived such assaults. Just one year before the enactment of the Sherman Act, in *Dent* v. *West Virginia*, 129 U. S. 114, 128 (1889), this Court rejected such a challenge to a state law requiring all physicians to obtain a certificate from the state board of health attesting to their qualifications. And in *Hawker* v. *New York*, 170 U. S. 189, 192 (1898), the Court reiterated that a law

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[4] Shrylock 54–55; D. Johnson and H. Chaudry, Medical Licensing and Discipline in America 23–24 (2012).

[5] In *Hawker* v. *New York*, 170 U. S. 189 (1898), the Court cited state laws authorizing such boards to refuse or revoke medical licenses. *Id.*, at 191–193, n. 1. See also *Douglas* v. *Noble*, 261 U. S. 165, 166 (1923) ("In 1893 the legislature of Washington provided that only licensed persons should practice dentistry" and "vested the authority to license in a board of examiners, consisting of five practicing dentists").

specifying the qualifications to practice medicine was clearly a proper exercise of the police power. Thus, the North Carolina statutes establishing and specifying the powers of the State Board of Dental Examiners represent precisely the kind of state regulation that the *Parker* exemption was meant to immunize.

II

As noted above, the only question in this case is whether the North Carolina Board of Dental Examiners is really a state agency, and the answer to that question is clearly yes.

- The North Carolina Legislature determined that the practice of dentistry "affect[s] the public health, safety and welfare" of North Carolina's citizens and that therefore the profession should be "subject to regulation and control in the public interest" in order to ensure "that only qualified persons be permitted to practice dentistry in the State." N. C. Gen. Stat. Ann. §90–22(a) (2013).
- To further that end, the legislature created the North Carolina State Board of Dental Examiners "as the agency of the State for the regulation of the practice of dentistry in th[e] State." §90–22(b).
- The legislature specified the membership of the Board. §90–22(c). It defined the "practice of dentistry," §90–29(b), and it set out standards for licensing practitioners, §90–30. The legislature also set out standards under which the Board can initiate disciplinary proceedings against licensees who engage in certain improper acts. §90–41(a).
- The legislature empowered the Board to "maintain an action in the name of the State of North Carolina to perpetually enjoin any person from . . . unlawfully practicing dentistry." §90–40.1(a). It authorized the Board to conduct investigations and to hire legal

counsel, and the legislature made any "notice or statement of charges against any licensee" a public record under state law. §§ 90–41(d)–(g).

- The legislature empowered the Board "to enact rules and regulations governing the practice of dentistry within the State," consistent with relevant statutes. §90–48. It has required that any such rules be included in the Board's annual report, which the Board must file with the North Carolina secretary of state, the state attorney general, and the legislature's Joint Regulatory Reform Committee. §93B–2. And if the Board fails to file the required report, state law demands that it be automatically suspended until it does so. *Ibid.*

As this regulatory regime demonstrates, North Carolina's Board of Dental Examiners is unmistakably a state agency created by the state legislature to serve a prescribed regulatory purpose and to do so using the State's power in cooperation with other arms of state government.

The Board is not a private or "nonsovereign" entity that the State of North Carolina has attempted to immunize from federal antitrust scrutiny. *Parker* made it clear that a State may not "'give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful.'" *Ante*, at 7 (quoting *Parker*, 317 U. S., at 351). When the *Parker* Court disapproved of any such attempt, it cited *Northern Securities Co.* v. *United States*, 193 U. S. 197 (1904), to show what it had in mind. In that case, the Court held that a State's act of chartering a corporation did not shield the corporation's monopolizing activities from federal antitrust law. *Id.*, at 344–345. Nothing similar is involved here. North Carolina did not authorize a private entity to enter into an anticompetitive arrangement; rather, North Carolina *created a state agency* and gave that agency the power to regulate a particular subject affecting public health and

safety.

Nothing in *Parker* supports the type of inquiry that the Court now prescribes. The Court crafts a test under which state agencies that are "controlled by active market participants," *ante*, at 12, must demonstrate active state supervision in order to be immune from federal antitrust law. The Court thus treats these state agencies like private entities. But in *Parker*, the Court did not examine the structure of the California program to determine if it had been captured by private interests. If the Court had done so, the case would certainly have come out differently, because California conditioned its regulatory measures on the participation and approval of market actors in the relevant industry.

Establishing a prorate marketing plan under California's law first required the petition of at least 10 producers of the particular commodity. *Parker*, 317 U. S., at 346. If the Commission then agreed that a marketing plan was warranted, the Commission would "select a program committee *from among nominees chosen by the qualified producers*." *Ibid.* (emphasis added). That committee would then formulate the proration marketing program, which the Commission could modify or approve. But even after Commission approval, the program became law (and then, automatically) only if it gained the approval of 65 percent of the relevant producers, representing at least 51 percent of the acreage of the regulated crop. *Id.*, at 347. This scheme gave decisive power to market participants. But despite these aspects of the California program, *Parker* held that California was acting as a "sovereign" when it "adopt[ed] and enforc[ed] the prorate program." *Id.*, at 352. This reasoning is irreconcilable with the Court's today.

III

The Court goes astray because it forgets the origin of the

Parker doctrine and is misdirected by subsequent cases that extended that doctrine (in certain circumstances) to private entities. The Court requires the North Carolina Board to satisfy the two-part test set out in *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), but the party claiming *Parker* immunity in that case was not a state agency but a private trade association. Such an entity is entitled to *Parker* immunity, *Midcal* held, only if the anticompetitive conduct at issue was both "'clearly articulated'" and "'actively supervised by the State itself.'" 445 U. S., at 105. Those requirements are needed where a State authorizes private parties to engage in anticompetitive conduct. They serve to identify those situations in which conduct *by private parties* can be regarded as the conduct of a State. But when the conduct in question is the conduct of a state agency, no such inquiry is required.

This case falls into the latter category, and therefore *Midcal* is inapposite. The North Carolina Board is not a private trade association. It is a state agency, created and empowered by the State to regulate an industry affecting public health. It would not exist if the State had not created it. And for purposes of *Parker*, its membership is irrelevant; what matters is that it is part of the government of the sovereign State of North Carolina.

Our decision in *Hallie* v. *Eau Claire*, 471 U. S. 34 (1985), which involved Sherman Act claims against a municipality, not a State agency, is similarly inapplicable. In *Hallie*, the plaintiff argued that the two-pronged *Midcal* test should be applied, but the Court disagreed. The Court acknowledged that municipalities "are not themselves sovereign." 471 U. S., at 38. But recognizing that a municipality is "an arm of the State," *id.*, at 45, the Court held that a municipality should be required to satisfy only the first prong of the *Midcal* test (requiring a clearly articulated state policy), 471 U. S., at 46. That municipalities

are not sovereign was critical to our analysis in *Hallie*, and thus that decision has no application in a case, like this one, involving a state agency.

Here, however, the Court not only disregards the North Carolina Board's status as a full-fledged state agency; it treats the Board less favorably than a municipality. This is puzzling. States are sovereign, *Northern Ins. Co. of N. Y.* v. *Chatham County*, 547 U. S. 189, 193 (2006), and California's sovereignty provided the foundation for the decision in *Parker*, *supra*, at 352. Municipalities are not sovereign. *Jinks* v. *Richland County*, 538 U. S. 456, 466 (2003). And for this reason, federal law often treats municipalities differently from States. Compare *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 71 (1989) ("[N]either a State nor its officials acting it their official capacities are 'persons' under [42 U. S. C.] §1983"), with *Monell* v. *City Dept. of Social Servs., New York*, 436 U. S. 658, 694 (1978) (municipalities liable under §1983 where "execution of a government's policy or custom . . . inflicts the injury").

The Court recognizes that municipalities, although not sovereign, nevertheless benefit from a more lenient standard for state-action immunity than private entities. Yet under the Court's approach, the North Carolina Board of Dental Examiners, a full-fledged state agency, is treated like a private actor and must demonstrate that the State actively supervises its actions.

The Court's analysis seems to be predicated on an assessment of the varying degrees to which a municipality and a state agency like the North Carolina Board are likely to be captured by private interests. But until today, *Parker* immunity was never conditioned on the proper use of state regulatory authority. On the contrary, in *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365 (1991), we refused to recognize an exception to *Parker* for cases in which it was shown that the defendants had

engaged in a conspiracy or corruption or had acted in a way that was not in the public interest. *Id.*, at 374. The Sherman Act, we said, is not an anticorruption or good-government statute. 499 U. S., at 398. We were unwilling in *Omni* to rewrite *Parker* in order to reach the allegedly abusive behavior of city officials. 499 U. S., at 374–379. But that is essentially what the Court has done here.

III

Not only is the Court's decision inconsistent with the underlying theory of *Parker*; it will create practical problems and is likely to have far-reaching effects on the States' regulation of professions. As previously noted, state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach. It is reasonable for States to decide that the individuals best able to regulate technical professions are practitioners with expertise in those very professions. Staffing the State Board of Dental Examiners with certified public accountants would certainly lessen the risk of actions that place the well-being of dentists over those of the public, but this would also compromise the State's interest in sensibly regulating a technical profession in which lay people have little expertise.

As a result of today's decision, States may find it necessary to change the composition of medical, dental, and other boards, but it is not clear what sort of changes are needed to satisfy the test that the Court now adopts. The Court faults the structure of the North Carolina Board because "active market participants" constitute "a controlling number of [the] decisionmakers," *ante*, at 14, but this test raises many questions.

What is a "controlling number"? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circum-

stances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?

Who is an "active market participant"? If Board members withdraw from practice during a short term of service but typically return to practice when their terms end, does that mean that they are not active market participants during their period of service?

What is the scope of the market in which a member may not participate while serving on the board? Must the market be relevant to the particular regulation being challenged or merely to the jurisdiction of the entire agency? Would the result in the present case be different if a majority of the Board members, though practicing dentists, did not provide teeth whitening services? What if they were orthodontists, periodontists, and the like? And how much participation makes a person "active" in the market?

The answers to these questions are not obvious, but the States must predict the answers in order to make informed choices about how to constitute their agencies.

I suppose that all this will be worked out by the lower courts and the Federal Trade Commission (FTC), but the Court's approach raises a more fundamental question, and that is why the Court's inquiry should stop with an examination of the structure of a state licensing board. When the Court asks whether market participants control the North Carolina Board, the Court in essence is asking whether this regulatory body has been captured by the entities that it is supposed to regulate. Regulatory capture can occur in many ways.[6] So why ask only whether

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[6]See, *e.g.*, R. Noll, Reforming Regulation 40–43, 46 (1971); J. Wilson, The Politics of Regulation 357–394 (1980). Indeed, it has even been

the members of a board are active market participants? The answer may be that determining when regulatory capture has occurred is no simple task. That answer provides a reason for relieving courts from the obligation to make such determinations at all. It does not explain why it is appropriate for the Court to adopt the rather crude test for capture that constitutes the holding of today's decision.

IV

The Court has created a new standard for distinguishing between private and state actors for purposes of federal antitrust immunity. This new standard is not true to the *Parker* doctrine; it diminishes our traditional respect for federalism and state sovereignty; and it will be difficult to apply. I therefore respectfully dissent.

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charged that the FTC, which brought this case, has been captured by entities over which it has jurisdiction. See E. Cox, "The Nader Report" on the Federal Trade Commission vii–xiv (1969); Posner, Federal Trade Commission, Chi. L. Rev. 47, 82–84 (1969).

R164. Commerce, Securities.

R164-32. Codification of Precedent.

R164-32-1. Codification of Precedent.

(1) Authority and purpose.

(a) The Division enacts this rule pursuant to Utah Code Subsections 63G-3-201(2), (3), (6) and Section 61-1-24.

(b) This rule incorporates the principles of law:

(i) that are established by final adjudicative decisions by the Utah Securities Commission, the Division Director, or an Administrative Law Judge; and

(ii) where:

(A) agency action meets criteria requiring rulemaking as set forth in the Utah Administrative Rulemaking Act; or

(B) the Division issues a written interpretation of a state or federal legal mandate.

(2) Limited liability company exemption, Section 61-1-13(1)(ee)(ii)(B). Pursuant to SD-12-0076 (Aug. 8, 2013), a material issue of fact as to whether a respondent may claim the limited liability company exemption is created by a single investor's sworn statement that the investor:

(a) purchased shares in an LLC solely for investment purposes;

(b) took no part in the management of the LLC; or

(c) was geographically distant from the activities through which the LLC was managed.

(3) Common enterprise, Section 61-1-13(1)(s)(i). Pursuant to SD-13-0018, 0019, 0020 (Nov. 8, 2013), a common enterprise includes a circumstance in which value tendered by an offeree is:

(a) deposited into the offerer's personal or business financial account(s); and

(b) subjected to the offerer's personal control and oversight.

(4) False statement or material omission, Section 61-1-1(2).

(a) Pursuant to SD-13-0018, 0019, 0020 (Nov. 8, 2013), a rebuttable presumption of material omission is created by an investor's sworn statement that, had a certain piece of information been provided, it would have caused the investor to:

(i) question or disbelieve representations made by the offerer in connection with the transaction; or

(ii) decline to purchase the offered security.

(b) Pursuant to SD-11-0041, 0042 (April 7, 2014), an offerer makes a material omission by failing to disclose:

(i) specific information about the investment itself, including:

(A) the identity of the person to whom funds will be entrusted;

(B) the track record of the investment; or

(C) risk factors; or

(ii) the offerer's:

(A) criminal history;

(B) regulatory history; or

(C) financial history, including:

(I) bankruptcies; or

(II) civil judgments.

(c) Pursuant to SD-13-0030 (Oct. 14, 2014), an offerer makes a material omission by failing to disclose:

(i) specific information about the investment itself, including:

(A) financial statements of the common enterprise;

(B) history of late or missed payments to investors;

(C) methodology for valuing shares or similar investment units;

(D) basis for any unit value that is represented or anticipated as deriving from:

(I) future sale of the units;

(II) future sale or acquisition of the common enterprise; or

(II) any similar future event; or

(E) registration status of the security being offered; or

(ii) the offerer's:

(A) tax liens; or

(B) licensure or lack thereof.

(d) Pursuant to SD-11-0041, 0042 (April 7, 2014), it is not necessary that money change hands or that an investor suffer a financial loss before an administrative action may be taken against an offerer for false statement or material omission.

(e) Pursuant to SD-11-0041, 0042 (April 7, 2014), liability for a false statement or material omission is not limited to the person who creates or first promotes an investment.

(5) Statutes of limitation, including Section 61-1-21.1.

(a) Pursuant to SD-12-0001 (March 27, 2014), the statute of limitation specified in Section 61-1-21.1 is inapplicable to an administrative disciplinary hearing.

(b) Pursuant to SD-14-0039, 0040 (Jan. 6, 2015), there is no statute of limitation applicable to administrative actions filed by the Division under the Uniform Securities Act where no civil complaint is filed.

KEY: securities regulation, precedent, statutory interpretation
Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: 61-1-24; 63G-3-201(2); 63G-3-201(3); 63G-3-201(6); 61-1-13(1)(ee)(ii)(B); 61-1-13(1)(s)(i); 61-1-1(2); 61-1-21.1

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Utah Division of Securities
Education Fund Expenditure Request
3rd & 4th Qtrs. FY 2015
Expenses as of April 30, 2015

Description	Prior Approved Balances 03/26/15	Amounts Spent By Division To 04/30/15	Remaining Balances 04/30/15	Requests For Commission Authorization 05/28/15	Total Approved Balances 5/28/15
Public Investor Education					
Stock Market Game	0.00	0.00	0.00	0.00	0.00
AAA Fair Credit	0.00	0.00	0.00	0.00	0.00
Jump Start Coalition	0.00	0.00	0.00	0.00	0.00
AARP Grant	20,000.00	20,000.00	0.00	0.00	0.00
Junior Achievement	5,000.00	5,000.00	0.00	0.00	0.00
Utah State University	0.00	0.00	0.00	0.00	0.00
Utah Financial Planners	2,500.00	2,500.00	0.00	0.00	0.00
Pamphlets, Books, etc.	4,689.61	0.00	4,689.61	0.00	4,689.61
TV/Radio Spots	0.00	0.00	0.00	0.00	0.00
Utah Aging Services	0.00	0.00	0.00	0.00	0.00
WISE Financial	15,000.00	0.00	15,000.00	0.00	15,000.00
Miscellaneous / Presentations	1,876.19	0.00	1,876.19	0.00	1,876.19
SUB TOTAL	$ 49,065.80	$ 27,500.00	$ 21,565.80	$ 0.00	$ 21,565.80
Industry Education					
Mountain West Capital Network	2,500.00	0.00	2,500.00	0.00	2,500.00
Wayne Brown Institute	0.00	0.00	0.00	0.00	0.00
Pamphlets, Books, etc.	0.00	0.00	0.00	0.00	0.00
Industry Outreach	0.00	0.00	0.00	0.00	0.00
Miscellaneous / Presentations	1,000.00	0.00	1,000.00	0.00	1,000.00
SUB TOTAL	$ 3,500.00	$ 0.00	$ 3,500.00	$ 0.00	$ 3,500.00
Investigation & Litigation					
Enforcement Investigation & Litigation	30,000.00	6,898.97	23,101.03	6,898.97	30,000.00
Licensing Investigation & Litigation	28,000.00	594.05	27,405.95	594.05	28,000.00
Registration Examination Expense	5,000.00	0.00	5,000.00	0.00	5,000.00
Expert Witnesses	20,000.00	0.00	20,000.00	0.00	20,000.00
Training	5,000.00	1,082.30	3,917.70	1,082.30	5,000.00
Computers	2,408.77	2,043.26	365.51	0.00	365.51
Software	674.23	256.71	417.52	0.00	417.52
Cellular Charges	3,000.00	1,804.02	1,195.98	1,804.02	3,000.00
Office Equipment & Supplies	6,000.00	2,337.59	3,662.41	2,337.59	6,000.00
Subscriptions & Publications	2,000.00	1,762.61	237.39	2,262.61	2,500.00
Remodel and Furniture	7,155.63	0.00	7,155.63	0.00	7,155.63
Enforcement Database Maintenance	7,000.00	0.00	7,000.00	0.00	7,000.00
Employees/Law Clerk/Transcriptionist	40,000.00	26,868.80	13,131.20	26,868.80	40,000.00
SUB TOTAL	$ 156,238.63	$ 43,648.31	$ 112,590.32	$ 41,848.34	$ 154,438.66
GRAND TOTAL	**$ 208,804.43**	**$ 71,148.31**	**$ 137,656.12**	**$ 41,848.34**	**$ 179,504.46**

Education Fund Balance as of 3/07/2016: **$242,667.00**

Approval:

5/28/15
Division Director — Date

Commission Chair — 5/28/15 Date

Executive Director — 5/28/15 Date

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF	**ORDER ON MOTION TO EXCLUDE EVIDENCE AND OTHER RELIEF** **and** **RECOMMENDED ORDER ON DEFAULT**
ARPEGGIO INVESTMENTS, LLC; **STANLEY DUANE PARRISH;** **TYSON D. WILLIAMS,** RESPONDENT	**CASE NO.** SD-10-0065 **CASE NO.** SD-10-0067 **CASE NO.** SD-10-0069

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a September 30, 2010 notice of agency action and order to show cause. Thereafter, the administrative proceedings were stayed for a time. On February 13, 2013, the stay was lifted, and on March 18, 2013 the parties were ordered to file initial disclosures by April 1, 2013. Thereafter, the initial disclosure deadline was extended to April 15, 2013 by agreement of the parties. On April 11, 2013, the Division served its initial disclosures on Respondents' counsel. Thereafter, the parties stipulated to a second stay

of the proceedings. On September 3, 2014, the stay was lifted and on October 8, 2014, Respondents were ordered to file initial disclosures by November 15, 2014. Respondents failed to comply with the disclosure deadline. In addition, Respondents have allowed the final disclsoure deadline of April 21, 2015 to pass without providing the Division with any notice as to the evidence that they intend to bring at hearing.

On April 18, 2015, the Division, having complied with the initial disclosure requirement, filed a motion to prohibit Respondent from introducing witnesses and exhibits at hearing. In addition, the Division requested that its alleged facts be taken as established and that such other relief as might be warranted be afforded.

Respondent was given an opportunity to respond to the Division's motion to exclude. As of the date of this order, Respondent has not filed a response.

Given the foregoing, the presiding officer finds that, pursuant to Utah Administrative Code § R151-4-516(2), proper factual and legal bases exist for granting the Division's motion to exclude.

ORDER ON MOTION TO EXCLUDE EVIDENCE AND OTHER RELIEF

Respondents' witnesses and exhibits, if any, are hereby excluded from hearing.

The Division's alleged facts are hereby taken as established, to wit:

1. The investment opportunities offered and sold by Respondents are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);
2. In connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondents directly or indirectly made false statements to one or more investors;

3. In connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondents directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading; and
4. Respondents' actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

Pursuant to Utah Administrative Code § R151-4-516(2)(a)(ii)(F), judgment by default is appropriately rendered against Respondents.

RECOMMENDED ORDER ON DEFAULT

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission enter a default order against Respondents, requiring:

1. That Respondents cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;
2. That Respondents pay a fine of $29,687 to the Utah Division of Securities, with $5,937 of the fine due and payable in full upon receipt of the final order and the remaining $23,750 subject to offset for a period of 30 days following the date of the final order on a dollar-to-dollar basis for any restitution paid to investors;
3. That, should Respondents fail to provide proof of restitution payment(s) to investors within the 30-day period following the date of the final order, the full $29,687 fine become immediately due and payable, and subject to collection; and
4. That Respondents Parrish and Williams be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in Utah; and from being licensed in any capacity in the securities industry in Utah.

Finally, the presiding officer recommends that, upon entering the default order, the Utah Securities Commission dismiss any further proceedings in this case.

These orders shall be effective on the signature date below.

DATED this 11th day of May, 2015.

UTAH DEPARTMENT OF COMMERCE

Jennie T. Jonsson
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 11th day of May, 2015, the undersigned provided a true and correct copy of the foregoing ORDER ON MOTION TO EXCLUDE EVIDENCE AND OTHER RELIEF and RECOMMENDED ORDER ON MOTION FOR DEFAULT as follows:

by first class mail, postage pre-paid to:

ARPEGGIO INVESTMENTS, LLC ET AL
C/O MARCUS MUMFORD
15 W SOUTH TEMPLE STE 1000
SALT LAKE CITY UT 84101

by hand delivery to:

Utah Division of Securities
Attn.: Thomas Melton, Assistant Attorney General
Attn.: Dave Hermansen, Chief Investigator

Utah Securities Commission
c/o Keith Woodwell, Director, Utah Division of Securities
Heber M. Wells Building, 2nd Floor
Salt Lake City, UT

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF	**ORDER ON DEFAULT**
ARPEGGIO INVESTMENTS, LLC; **STANLEY DUANE PARRISH;** **TYSON D. WILLIAMS,**	**CASE NO.** SD-10-0065 **CASE NO.** SD-10-0067 **CASE NO.** SD-10-0069
RESPONDENTS	

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's May 11, 2015 recommended order on default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

ORDER

Respondents are hereby ordered cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq.

Respondents is hereby ordered to pay a fine of $29,687 to the Utah Division of Securities. Of this total fine, $5,937 is due and payable immediately upon receipt of this final order. The remaining $23,750 is subject to offset during the 30-day period following the date of this order on a dollar-to-dollar basis for any restitution paid to investors.

Should Respondents fail to provide proof of restitution payment(s) to investors within the 30-day period following the date of this order, the full $29,687 fine becomes immediately due and payable, and subject to collection.

Respondents Parrish and Williams are hereby permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in Utah; and from being licensed in any capacity in the securities industry in Utah.

All further proceedings in this case are dismissed. This dismissal does not relieve Respondent from complying with the terms of the default order.

This order shall be effective on the signature date below.

DATED this 28th day of May, 2015

UTAH SECURITIES COMMISSION:

Tim Bangerter

Erik Anthony Christiansen

Brent Baker

Gary Cornia

David Russon

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Agency review of this order may be obtained by filing a request for agency review with the Executive Director of the Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of this order. A motion to set aside the order may also be filed with the presiding officer. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Section 63G-4-101 et seq. of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2015 the undersigned served a true and correct copy of the foregoing ORDER ON DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

ARPEGGIO INVESTMENTS, LLC ET AL
C/O MARCUS MUMFORD
15 W SOUTH TEMPLE STE 1000
SALT LAKE CITY UT 84101

and caused a copy to be hand delivered to:

Tom Melton, Assistant Attorney General
Office of the Attorney General of Utah
Fifth Floor, Heber M. Wells Building
Salt Lake City, Utah

Utah Division of Securities
Second Floor, Heber M. Wells Building
Salt Lake City, Utah

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
ADAM CALVIN LEFFLER,	**Docket No. SD-14-0051**
Respondent.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Adam Calvin Leffler ("Leffler"), ("Leffler" or "Respondent") hereby stipulate and agree as follows:

1. Respondent was the subject of an investigation conducted by the Division into allegations that he violated certain provisions of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the "Act").

2. On or about October 23, 2014, the Division initiated an administrative action against Respondent, through the issuance of an Order to Show Cause and Notice of Agency Action. The Order to Show Cause alleged that Respondent violated § 61-1-1 (securities

fraud) of the Act, while engaging in the offer and sale of securities in or from Utah.

3. Respondent now seeks to enter into this Stipulation and Consent Order ("Order") in settlement of the Division's action.

4. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf. Respondent understands that by waiving a hearing, he is waiving the requirement that the Division prove the allegations against him by a preponderance of the evidence, waiving his right to confront and cross-examine witnesses who may testify against him, to call witnesses on his own behalf, and any and all rights to appeal the findings, conclusions and sanctions set forth in this Order.

5. Respondent is represented by attorney Dana Facemyer and is satisfied with his representation in this matter.

6. Respondent has read this Order, understands its contents and submits to it voluntarily. No promises, threats or other forms of inducement have been made by the Division, nor by any representative of the Division, to encourage them to enter into this Order, other than as set forth in this document.

7. Respondent acknowledges that this Order does not affect any enforcement action that may be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.

8. Respondent admits the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

9. Leffler was, at all times relevant to the matters asserted herein, a resident of the state of Utah. Leffler has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

10. From approximately September 2007 to March 2009, while conducting business in or from Utah, Respondent offered and sold a promissory note and/or investment contract to at least one investor, a resident of Hawaii, and collected a total of $100,000 in connection therewith.

11. Promissory notes and investment contracts are defined as securities in § 61-1-13 of the Act.

12. In connection with the offer and sale of a security, Respondent made material misstatements and omissions to the investor.

13. To date, Respondent has repaid the investor a total of $37,057.26, leaving an outstanding balance of $62,942.74 in principal alone.

INVESTOR F.M.

FIRST OFFER AND SALE OF A SECURITY

14. In or around September 2007, Jared Muir ("Muir"), who was working with F.M. as his real estate investment coach, referred F.M. to a business acquaintance, Leffler, to learn about possible investment opportunities

15. Specifically, Muir told F.M. that he worked with Leffler in prior hard-money lending deals and that Leffler could provide F.M. with an opportunity to earn a decent return in the real estate market.

16. Muir then provided Leffler with F.M.'s contact information.

17. On or about September 13, 2007, Leffler reached out to F.M. via email [1]

18. Through that email, Leffler made the following representations:

    a. He had properties across the United States and in Costa Rica;

    b. He had participated in national real estate elite events and seminars as a guest speaker;

    c. His investment opportunities provided safe, solid returns in the real estate market;

    d. All deals would be secured by real estate;

    e. At that time, he had two projects in need of funding, one of which involved a subdivision development in Hamilton, Illinois;[2]

    f. Half of that project already had lot holds from prospective buyers;

    g. The cost of the buy-in was $175,000;

    h. Returns ranged from 10% - 30% annually; and

    i. He expected that the project would be funded by September 30th of that year, so interested investors would need to act quickly.

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1 At that time and all times relevant to the matters asserted herein, Leffler was living and working in Utah, and F.M. was a resident of the state of Hawaii.

2 The other project involved a six-unit condominium conversion located in Salt Lake City, Utah. It had a $250,000 buy-in. However, F.M. was not interested in this project. As a result, the rest of F.M.'s conversations with Leffler focused on the project located in Hamilton, Illinois.

19. In response to this solicitation, F.M. contacted Leffler via email, expressing interest in the opportunity.

20. On or about October 4, 2007, Leffler responded to F.M.'s email, providing him with additional information regarding the project.

21. Leffler's email included the following representations:

    a. Leffler needed an additional $167,000 to complete the project;

    b. Those funds would be used as follows:

        i. $66,000 to cash out debt on the land;

        ii. $25,000 to finish engineering costs;

        iii. $35,000 to finish infrastructure and permits;

        iv. $15,000 to complete amenities;

        v. $10,000 to start the homeowners' association;

        vi. $14,000 to cover final marketing costs; and

        vii. $2,000 to cover miscellaneous administrative costs.

    c. Leffler also stated that $146,786 had already been invested in acquiring the land and completing soil samples, partial engineering, and other requirements of the project;

    d. Eight lots had been tentatively approved, with an estimated sales price of $90,000 each;

    e. Three lots were currently on hold;

    f. Investment funds would be wired to a designated account to be dispensed at the

discretion of the project manager, Leffler;

g. Investors could choose between two options for investment.

   i. Option one: In exchange for $167,000, the investor would receive a first-position lien on the underlying property and a 20% interest rate; or

   ii. Option two: In exchange for $101,000, the investor would receive a second position lien on the underlying property and a 14% interest rate;

h. Both options involved a twelve-month payout, with the possibility of a six-month extension;

i. In the event the extension became necessary, the investor would receive an additional 5% return in the last six months, with a guaranteed closure by the eighteenth-month mark; and

j. Investors could choose to receive a six-month dividend payout, instead of the twelve-month payout; however, they would sacrifice 2.5% on their return in exchange for this option.

22. On or about October 25, 2007, in an effort to memorialize the agreement between Leffler and F.M., Leffler drafted a document entitled "Promissory Note" that included the following provisions:

a. The agreement was between Leffler, acting on behalf of Leverage Investments B,

LLC ("LIB"),[3] as borrower, and F.M., as lender;

b. Lender would provide $175,000 to borrower for the purpose of completing "all remaining and necessary phases of development and sale of 10.14 acres of land into 8 residential lots, located at 1515 North CSR 800 E, Hamilton, IL 62314";

c. In exchange, lender would receive 20% simple interest for the duration of the project, which would last no longer than eighteen months from the date of execution;

d. In the event lender provided an amount less than the $175,000, but equal to or greater than the $100,000 minimum, borrower would provide lender with 14% interest on the investment;

e. In the event the borrower had not sold at least four of the eight lots by the eighteen-month deadline, borrower would refinance, substitute, or otherwise see that the note was paid in full, in accordance with the agreement;

f. Should lender choose to fund the full amount, $175,000, and the six-month extension became necessary, borrower would provide a 5% increase in interest at the one-year mark;

g. Borrower pledged as collateral the underlying property being developed in Illinois; and

h. In the event the lender fully funded the loan, he would receive a first-position lien on the property; otherwise, he would be entitled to a second-position lien.

3 LIB was Utah-based limited liability company that registed with the Utah Division of Corporations ("Corporations") on or about December 4, 2003. As of April 5, 2010, its status with corporations expired for failure to file a renewal. During its existence, Leffler served as registered agent and manager of the entity.

23. Based on these representations, F.M. agreed to invest $100,000 in the project.

24. On or about October 28, 2007 F.M. signed the document entitled "Promissory Note."

25. On or about October 31, 2007, F.M. wired $100,000 to Leffler's LIB business account at JPMorgan Chase Bank, N.A.

26. Leffler signed the document on or about January 29, 2008.

27. Additionally, on or about March 11, 2008, Leffler had a document entitled "Second and Junior Real estate Mortgage" prepared and filed with the Hancock County recorder's office in Carthage, Illinois.[4]

28. A source and use analysis of the relevant bank records reflects a misuse of at least $18,960 of F.M.'s investment, as Leffler used those funds for purposes other than the completion of land development located in Hamilton, Illinois. Approximately $18,500 of those funds went toward the creation and production of education materials used in one of Leffler's other business ventures. The remaining $460 wen to Leffler's business U.S. Tiger, LLC, an entity that was the subject of a separate Division investigation, involving allegations of securities fraud.[5]

---

4 While this lien, which was eventually provided to F.M. attempted to convey an interest in the underlying property to support F.M 's investment, a review of the Hancock County recorder's office records revealed that the fair cash value of the underlying property was $52,602 for tax year 2007 and $54,585 for tax year 2008. Additionally, Leffler later admitted to F M that the first-position lien on the property totaled $65,000. The resulting lack of equity in the property nullified the purpose of the conveyance, leaving F.M unsecured in his investment

5 That action ended with a Stipulation and Consent Order approved by the Securities Commission on or about September 26, 2013. At that time, Leffler and U.S. Tiger, LLC agreed to cease and desist from violating the terms of the Act, Leffler agreed to a permanent bar from the securities industry in Utah, and the Division imposed a fine of $93,750 against Leffler, with up to $70,000 available to be offset by payments of restitution to the investors referenced therein. For additional information, refer to Division action SD-13-0007 and SD-13-0009

SECOND OFFER AND SALE OF A SECURITY

29. Following the investment, Leffler initially made payments to F.M., in accordance with their agreement.

30. However, Leffler eventually began having difficulty making said payments.

31. On or about March 21, 2009, Leffler send an email to F.M. explaining the delay in greater detail.

32. In that email, Leffler made the following statements:

a. As a result of the downturn in the economy, the real estate market had dried up, and the Illinois project had a negative cash flow;

b. He would not be able to sell the subdivision or the land for what he had put into it;

c. Therefore, he was letting the property go to the first-position lienholder, who had an interest of approximately $65,000 in the property;

d. Further, Leffler was generally unable to meet his financial obligations, and would, most likely, be filing for bankruptcy;

e. The business involved in F.M.'s loan, LIB, may also file for bankruptcy;

f. However, he wanted to make good on his arrangement with F.M.;

g. In an effort to do so, he would be willing to enter into another contract with F.M. that would supersede their original agreement;

h. The new agreement would be with Leverage Investments, LLC ("Leverage"),[6] the parent company of LIB;

i. For collateral, Leffler offered to pledge his personal residence, following a loan modification and assuming he did not lose the home in bankruptcy, or his interest in a triplex located in Montrose, Iowa, in the event he did not lose it in bankruptcy;

j. Additionally, he would allow F.M. to place a lien on two duplexes located in Keokuk, Iowa, as they were owned by Leverage;

k. In exchange for F.M.'s agreement to enter into this modified arrangement, Leffler promised to pay 8% interest on $114,000, the stated balance of the prior investment;

l. Leffler also mentioned that he was working on selling educational materials and services, and any success he had with that venture would allow him to repay F.M. at a faster rate; and

m. Should F.M. choose to move forward with this arrangement, Leffler would send F.M. as much as he could by April 1, 2009, which should be close to $2,000, with regular payments beginning in May of that year.

33. Based on Leffler's statements, F.M. rolled the principal and interest from his first investment LIB into the proposed investment contract with Leverage.

34. Specifically, on or about March 23, 2009, F.M. sent Leffler an email accepting the terms Leffler proposed

6 Leverage was a Utah-based limited liability company that registered with corporations on or about September 30, 2003. As of January 5, 2010, its status with corporations was expired. During its existence, Leffler served as registered agent and manager.

35. Leffler then provided F.M. with confirmation of the acceptance via email that same day.

36. To date, Leffler has paid F.M. a total of $37,057.26, with the last payment occurring in or around July 2013.

37. To date, F.M. is owed $62,942.74 in principal alone.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act (First Offer and Sale of a Security)

38. The Division incorporates and re-alleges paragraphs 1 through 37.

39. The promissory note and/or investment contract offered and sold by Respondent qualifies as a security under § 61-1-13 of the Act.

40. In connection with the offer and sale of a security to investor F.M., Respondent, directly or indirectly, made false statements, including, but not limited to, the following:

    a. F.M.'s investment would be used to develop and sell eight residential lots located on roughly ten acres of land in Hamilton, Illinois, when, in fact, a source and use analysis of the relevant bank records reflect a misuse of at least $18,960 of F.M.'s investment funds.

41. In connection with the offer and sale of a security to investor F.M., Respondent directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:

    a. An estimated value of the underlying property that Leffler intended to use as security for the investment;

b. The fact that the fair cash value of the underlying property was significantly less than the amount owed on the first-position lien attached thereto;

c. How Leffler could guarantee full repayment of the investment, plus interest, within eighteen months;

d. Proof or documentation supporting the representation of three existing lot holds on the property;

e. The basis for the representation that returns on Leffler's projects ranged from 10% to 30% annually; and

f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent and/or any entity associated therewith, such as:

    i. Business and operating history;

    ii. Financial statements;

    iii. Risk factors;

    iv. Conflicts of interest;

    v. Suitability factors for the investment;

    vi. Whether Respondent was licensed to sell securities in the state of Utah; and

    vii. Whether the offering was registered, federally covered, or exempt from registration in the state of Utah.

Securities Fraud under § 61-1-1 of the Act
(Second Offer and Sale of a Security)

42. The Division incorporates and re-alleges paragraphs 1 through 37.

43. The promissory note and/or investment contract offered and sold by Respondent qualifies as a security under § 61-1-13 of the Act.

44. In connection with the offer and sale of a security to investor F.M., Respondent, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary to in order to make statements made not misleading:

a. The fact that Leffler had used at least a portion of F.M.'s funds for unauthorized expenses;

b. How Leffler would be able to pay 8% on $114,000, given his existing financial situation;

c. Information about the market for the educational materials, including his past performance with such sales;

d. The existence of any other debt obligations that Leffler intended to prioritize going forward, including those with other investors; and

e. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent and/or any entity associated therewith, such as:

i. Business and operating history;

ii. Financial statements;

iii. Risk factors;

iv. Conflicts of interest;

v. Suitability factors for the investment;

vi. Whether Respondent was licensed to sell securities in the state of Utah; and

vii. Whether the offering was registered, federally covered, or exempt from registration in the state of Utah.

II. THE DIVISION'S CONCLUSIONS OF LAW

45. Based on the Division's investigative findings, the Division concludes that:

a. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.

b. Respondent violated § 61-1-1(2) of the Act by making untrue statements of material facts and/or omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

42. Respondent admit to the Division's findings of fact and conclusions of law.

43. Respondent agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.

44. Respondent agree to be barred from (i) associating[7] with any broker-dealer or investment

[7] "Associating" includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser

adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah; and (iii) from being licensed in any capacity in the securities industry in Utah.

45. Pursuant to § 61-1-20(1)(f) of the Act and in consideration of the guidelines set forth in Utah Administrative Code Rule R164-31-1, the Division imposes a total fine of $78,678.74 against Respondent, to be offset by payments of restitution to the investor in the amount of $62,942.74. The fine amount shall be paid in accordance with the following schedule:

a. $500 per month commencing June 1, 2015 for a period of 12 months;

b. $1,000 per month commencing June 1, 2016 for a period of 36 months;

c. $1,745.22 per month commencing June 1, 2019 for a period of 12 months;

d. A final payment of $15,736 is due and payable on June 1, 2020;

e. At such time the final $15,736 is due, and subject to the condition that Respondent not be found in violation of any terms of this Order, the Division shall waive $15,736 of the total fine, reducing the total fine from $78,678.74 to $62,942.74; and

46. If the Division finds that Respondent materially violated any term of this Order, thirty days after notice and an opportunity to be heard before an administrative officer solely as to the issue of a material violation, Respondent consents to a judgment ordering the unpaid balance of the fine immediately due and payable.

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representative licensed in Utah. "Associating" does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

47. Each dollar paid by Respondent to the investor as restitution shall be credited by the Division toward payment of the fine. Respondent shall send to the Division the cancelled check or confirmation of wire transfer for each monthly payment made to the investor. Failure to comply with this provision of the Order, or the payment provisions included in paragraph 45 above, may result in the referral of the fine to the State Office of Debt Collection.

48. For the entire time the fine and/or restitution remains outstanding, Respondent agrees to notify the Division of any change in mailing address, within thirty days from the date of such change

IV. FINAL RESOLUTION

49. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter.

50. Respondent further acknowledges that if the Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

51. If Respondent materially violates any term of this Order, thirty days after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondent consents to entry of an order in which Respondent admits the Division's Findings of Fact and Conclusions of Law as set forth in this Order. The Order may be issued upon motion of the Division, supported by an affidavit verifying the

violation. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act, or under any other applicable law, to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

52. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledge that any civil, criminal, arbitration or other causes of action brought by third parties against him have no effect on, and do not bar, this administrative action by the Division. If Respondent materially violates this Order, however, the Findings of Fact and Conclusions of Law set forth in this Order are deemed admitted as described in paragraph 45 above, and may be introduced as evidence against Respondent in any arbitration, civil, criminal, or regulatory actions.

53. Respondent acknowledges that a willful violation of this Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.

54. The Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements

between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way. The Order may be docketed in a court of competent jurisdiction. Upon entry of the Order, any further scheduled hearings are canceled.

Utah Division of Securities:

Date: 05-27-2015

By: _____
Dave R. Hermansen
Director of Enforcement

Respondent:

Date: _____

By: _____
Adam Calvin Leffler
Respondent

Approved:

_____
Thomas M. Melton
Assistant Attorney General

_____
Dana Facemyer
Attorney for Respondent

between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way. The Order may be docketed in a court of competent jurisdiction. Upon entry of the Order, any further scheduled hearings are canceled.

Utah Division of Securities:

Date: _____

By: _____
Dave R. Hermansen
Director of Enforcement

Respondent:

Date: 5/22/15

By: _____
Adam Calvin Leffler
Respondent

Approved:

_____
Thomas M. Melton
Assistant Attorney General

_____
Dana Facemyer
Attorney for Respondent

between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way. The Order may be docketed in a court of competent jurisdiction. Upon entry of the Order, any further scheduled hearings are canceled.

Utah Division of Securities:

Date: _____

By: _____
Dave R. Hermansen
Director of Enforcement

Respondent:

Date: _____

By: _____
Adam Calvin Leffler
Respondent

Approved:

_____
Thomas M. Melton
Assistant Attorney General

_____
Dana Facemyer
Attorney for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.

2. Respondent cease and desist from violating the Act.

3. Respondent is barred from (i) associating with any broker-dealer or investment adviser licensed in Utah, (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.

4. The Division imposes a total fine of $78,678.74 against Respondent, to be offset by restitution payments to the investor in the amount of $62,942.74. The fine amount, or restitution offsets, shall be paid in accordance with the following schedule:

   a. $500 per month commencing June 1, 2015 for a period of 12 months;

   b. $1,000 per month commencing June 1, 2016 for a period of 36 months;

   c. $1,745.22 per month commencing June 1, 2019 for a period of 12 months;

   d. A final payment of $15,736 is due and payable on June 1, 2020;

   e. The final payment of $15,736 will be waived if the fine is paid as outlined in the Stipulation.

5. If Respondent materially violates any term of this Order, the unpaid balance of the fine

amount shall be imposed and become due immediately.

6. For the entire time the fine and/or restitution remains outstanding, Respondent must notify the Division of any change in mailing address, within thirty days from the date of such change.

DATED this 28th day of May, 2015.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

Certificate of Mailing

I certify that on the 28th day of May, 2015, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

ADAM CALVIN LEFFLER
C/O DANA FACEMYER
2155 N. FREEDOM BLVD.
PROVO, UT 84604
danafacemyer@gmail.com

Executive Secretary

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF	**ORDER ON MOTION TO EXCLUDE EVIDENCE AND OTHER RELIEF** **and** **RECOMMENDED ORDER ON DEFAULT**
JORGEN MARC BAILEY, RESPONDENT	**CASE NO.** SD-14-0049

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to an October 20, 2014 notice of agency action and order to show cause. On December 4, 2014, the presiding officer issued a scheduling order requiring Respondent to file initial disclosures by December 17, 2014 and final disclosures by April 14, 2015.

On May 12, 2015, the Division, having complied with the initial disclosure deadline, filed a motion to prohibit Respondent from introducing witnesses and exhibits at hearing. In

addition, the Division requested that its alleged facts be taken as established and that such other relief as might be warranted be afforded.

Respondent was given an opportunity to respond to the Division's motion to exclude. As of the date of this order, Respondent has not filed a response.

Given the foregoing, the presiding officer finds that, pursuant to Utah Administrative Code § R151-4-516(2), proper factual and legal bases exist for granting the Division's motion to exclude.

ORDER ON MOTION TO EXCLUDE EVIDENCE AND OTHER RELIEF

Respondent's witnesses and exhibits, if any, are hereby excluded from hearing.

The Division's alleged facts are hereby taken as established, to wit:

1. The investment opportunities offered and sold by Respondent are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);
2. In connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly made false statements to one or more investors;
3. In connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading; and
4. Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

Pursuant to Utah Administrative Code § R151-4-516(2)(a)(ii)(F), judgment by default is appropriately rendered against Respondent.

RECOMMENDED ORDER ON DEFAULT

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission enter a default order against Respondent, requiring:

1. That Respondent cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;
2. That Respondent pay a fine of $194,750 to the Utah Division of Securities, with $38,950 of the fine due and payable in full upon receipt of the final order and the remaining $155,800 subject to offset for a period of 30 days following the date of the final order on a dollar-to-dollar basis for any restitution paid to investors;
3. That, should Respondent fail to provide proof of restitution payment(s) to investors within the 30-day period following the date of the final order, the full $194,750 fine becomes immediately due and payable, and subject to collection; and
4. That Respondent be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in Utah; and from being licensed in any capacity in the securities industry in Utah.

Finally, the presiding officer recommends that, upon entering the default order, the Utah Securities Commission dismiss any further proceedings in this case.

These orders shall be effective on the signature date below.

DATED this 26th day of May, 2015.

UTAH DEPARTMENT OF COMMERCE

Jennie T. Jonsson
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 26th day of May, 2015, the undersigned provided a true and correct copy of the foregoing ORDER ON MOTION TO EXCLUDE EVIDENCE AND OTHER RELIEF and RECOMMENDED ORDER ON MOTION FOR DEFAULT as follows:

by first class mail, postage pre-paid to:

[redacted]

by hand delivery to:

Utah Division of Securities
Attn.: Thomas Melton, Assistant Attorney General
Attn.: Dave Hermansen, Chief Investigator

Utah Securities Commission
c/o Keith Woodwell, Director, Utah Division of Securities
Heber M. Wells Building, 2nd Floor
Salt Lake City, UT

Lisa Ann Clark

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF	**ORDER ON DEFAULT**
JORGEN MARC BAILEY,	**CASE NO.** SD-14-0049
RESPONDENT	

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's May 26, 2015 recommended order on default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

ORDER

Respondent is hereby ordered cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq.

Respondent is hereby ordered to pay a fine of $194,750 to the Utah Division of Securities. Of this total fine, $38,950 is due and payable immediately upon receipt of this final order. The remaining $155,800 is subject to offset during the 30-day period following the date of this order on a dollar-to-dollar basis for any restitution paid to investors.

Should Respondent fail to provide proof of restitution payment(s) to investors within the 30-day period following the date of this order, the full $194,750 fine becomes immediately due and payable, and subject to collection.

Respondent is hereby permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in Utah; and from being licensed in any capacity in the securities industry in Utah.

All further proceedings in this case are dismissed. This dismissal does not relieve Respondent from complying with the terms of the default order.

This order shall be effective on the signature date below.

DATED this 28th day of May, 2015

UTAH SECURITIES COMMISSION:

Tim Bangerter

Erik Anthony Christiansen

Brent Baker

Gary Cornia

David Russon

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Agency review of this order may be obtained by filing a request for agency review with the Executive Director of the Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of this order. A motion to set aside the order may also be filed with the presiding officer. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Section 63G-4-101 et seq. of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2015 the undersigned served a true and correct copy of the foregoing ORDER ON DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

[redacted]

and caused a copy to be hand delivered to:

Tom Melton, Assistant Attorney General
Office of the Attorney General of Utah
Fifth Floor, Heber M. Wells Building
Salt Lake City, Utah

Utah Division of Securities
Second Floor, Heber M. Wells Building
Salt Lake City, Utah

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF: **ACLAIME ASSET MANAGEMENT, LLC** **IARD#159661** **JUSTIN WARREN LUETTGERODT,** **CRD#6013672** **Respondents.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-15-0007** **Docket No. SD-15-0008**

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and the Respondents (collectively referred to at times as "Respondents") hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*

2. On or about February 20, 2015, the Division initiated an administrative action against Respondents by filing a Petition to Censure Licensees and Impose a Fine.

3. Respondents hereby agree to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all

claims the Division has against Respondents pertaining to the Petition.

4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.

5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

6. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.

7. Respondents are represented by attorney J. Martin Tate and are satisfied with the representation they have received.

I. FINDINGS OF FACT

8. AAM is a Utah limited liability company that has been licensed as an investment adviser in Utah since May 28, 2014. Its principal place of business is located in Sandy, Utah.

9. Luettgerodt is the majority owner, managing director, and designated official of AAM. He has been licensed in Utah as an investment adviser representative of AAM since May 30, 2014. Luettgerodt has taken and passed the Series 65, Uniform Investment Adviser Law Examination.

10. Aclaime Mortgage Fund, LP ("AMF" or "the fund") is a Utah limited partnership,[1] formed in October 2011, with its place of business in Sandy, Utah.

[1]On August 1, 2014, AMF's name was changed to Aclaime Credit Strategies Fund, L.P.

11. Aclaime Managers, LLC ("Aclaime Managers")[2] is a Utah limited liability company owned and controlled by Luettgerodt, and is the general partner of AMF.

12. On April 9, 2012, the Division's Corporate Finance section ("Corporate Finance") received a Form D notice filing[3] for AMF, which identified AMF as a hedge fund. The Form D reported that AMF's first sale in Utah had occurred on November 15, 2011.

13. Following review of the Form D, the Division sent an initial letter to AMF inquiring about the licensing status of the hedge fund's manager, which at the time was identified as Aclaime Managers.[4]

14. AMF's response through legal counsel indicated that it did not believe Aclaime Managers needed to be licensed as an investment adviser because AMF's business was to provide "funding for residential mortgage loans...and as such does not engage in the types of activities commonly associated with investment advisers."

15. However, according to AMF's March 2012 Private Placement Memorandum ("PPM"), through the sale of limited partnership interests, AMF uses investor monies "to invest primarily in real estate secured debt and similar securities." The fund's general partner, Aclaime Managers "is also acting as the investment manager of [AMF] and as such, has discretionary investment authority over [AMF's] assets and is responsible for all

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[2]Records maintained by the Utah Division of Corporations show more than two dozen "Aclaime" entities which are owned and controlled by Luettgerodt. Aclaime Managers is owned by AAM, which is owned by The Aclaime Group LLC, which is owned by the The Aclaime Group Management LLC, which is owned by Luettgerodt.

[3]Regulation D of the 1933 Securities Act provides a federal exemption from state securities registration but requires a notice filing in states where the exempted securities are sold.

[4]Aclaime Managers later contractually assigned those duties to its manager, AAM.

investment decisions and activities of [AMF]."[5]

16. Following additional discussions with the Division as to licensing requirements, on August 13, 2012, AAM filed an application to become licensed as an investment adviser by filing Form ADV[6] through the Investment Adviser Registration Depository ("IARD").[7]

17. During the Division's review of the application, it was discovered that AAM and Loettgerodt had acted as an investment adviser and investment adviser representative prior to submitting the application and throughout the time the application was pending.[8]

18. The Division ultimately approved the application but indicated to Respondents that an administrative action would be required to address the unlicensed activity.

Review of Application

19. Although AAM did not apply with the Division until August 2012, information contained

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[5]A March 2013 version of the PPM identifies AAM as the investment manager responsible for the same activities.

[6]Form ADV is the uniform form used by investment advisers to register with both the United States Securities & Exchange Commission ("SEC") and state securities regulators.

[7]IARD is an electronic filing system that facilitates investment adviser registration, regulatory review, and the public disclosure information of investment adviser firms. The Financial Industry Regulatory Authority ("FINRA") is the developer and operator of the IARD system. The system has been developed according to the requirements of its two sponsors, the SEC and the North American Securities Administrators Association ("NASAA"), along with those of an Industry Advisory Council representing investment adviser firms.

[8]AAM's legal counsel indicated to the Division that he had erroneously advised his client that: a) no licensed was required when AAM began operating (due to his misinterpretation of a licensing exemption); and b) AAM could continue operating without a license during the application process.

in its application represented it was organized in 2011, and that Luettgerodt had been employed by The Aclaime Group since March 2008.

20. On February 6, 2013, the Division sent a comment letter which outlined numerous deficiencies with AAM's Form ADV that needed to be resolved before the Division could approve the application.

21. The issues, questions, and concerns addressed in the comment letter included:

a. Luettgerodt had not passed his Series 65 exam and failed to appear for a scheduled exam;

b. Luettgerodt reported 11 financial disclosures in which he compromised with creditors for debts totaling $337,135, which raised concerns about solvency;

c. AMF's PPM failed to disclose the financial information described in subparagraph b about its principal, Luettgerodt;

d. contradictory information about the ownership and management relationships among the numerous Aclaime entities;

e. requesting information about unlicensed activity of AAM and/or Luettgerodt while managing AMF;

f. concerns about the performance-based fee practices and assets under management fees being charged; and

g. insufficient disclosures regarding fees, other financial industry activities, personal trading, brokerage practices, custody, financial information, client referrals, other compensation, Luettgerodt's educational background, business experience and other business activities.

22. In response, AAM provided some of the requested information and made changes to Form ADV, the PPM and its compensation structure as required by the Division.

23. From May through November 2013, the Division requested and received from AAM additional information about the Aclaime business model, its complex structure, and the numerous related Aclaime entities.

24. Much of the information submitted raised additional questions and concerns, including further disclosure issues and financial discrepancies which required the Division to analyze numerous financial records. In addition, Form ADV did not accurately describe information as presented by AAM to the Division.

25. By April 2014, Respondents successfully resolved a majority of outstanding issues with AAM's application, including the financial discrepancies (the most significant of which had occurred as a result of a mismatched spreadsheet table).

26. The Division sent a final comment letter on May 15, 2014, highlighting remaining issues, including Firm Brochure[9] disclosure of the pooled investment vehicles AAM had discretionary control over and those managed on a non-discretionary basis, disclosing the Utah rules for performance-based fees, Luettgerodt's affiliated companies, and the need to meet the financial requirements for advisers with custody.

27. Following the resolution of those issues, the Division approved the application on May 28, 2014.

28. The Division's review of AAM's investment adviser application found that AAM and

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[9]The Firm Brochure, which is Part 2 of Form ADV, contains information about the advisory firm and is required to be provided to clients.

Luettegerodt acted as an investment adviser and investment adviser representative to three privately-offered pooled investment vehicles: AMF, AI, and HTI.[10]

29. In the offering of securities, AAM, Luettgerodt and the issuers (AMF and other Aclaime-related entities) failed to disclose Luettgerodt's prior compromises with creditors and failed to disclose that AAM and Luettgerodt were not licensed as required by the Act.

30. AAM acted as an unlicensed investment adviser to AMF and its investors. Among other findings:

a. AMF had 25 investors during the Division's review period, which spanned from inception in November 2011 through August 2013[11];

b. during the review period, AAM managed AMF and did not incur any investor losses;

c. during the review period, AAM charged $116,357 in management fees to AMF, which is based on an annual 1% of assets under management;

d. during the review period, AAM charged $367,380 in performance-based fees to AMF, which is based on 20% of net profits.

e. AMF paid the performance-based fees to AAM prior to the one-year holding period required under Utah Admin. Code Rule R164-2-1.

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[10]AAM's activities with AI and HTI, however do not constitute unlicensed investment adviser services because AAM charges no fees or compensation for services provided; AI is a pooled vehicle for AAM employees to invest in AMF; and HTI is a pooled vehicle designed to allow two indvidual investors to retain discretion over their monies while investing in AMF.

[11]Because the Division decided in a September 2013 meeting with the Respondents that it would not prohibit AAM and Luettgerodt from obtaining licenses, the period of time for the Division's final information requests was through the end of August 2013 despite the application review process extending to May 2014.

II. CONCLUSIONS OF LAW

31. Through the private offering of AMF, AAM acted as an unlicensed investment adviser with Luettgerodt acting as the investment adviser representative responsible for the management of AMF and its investments in securities (notes and private securities offerings).

32. The unlicensed activity occurred from November 2011 until AAM's investment adviser application was approved in May 2014 (31 months). AAM operated for its first six months before filing a Form D at which time AAM and Luettgerodt were warned about their obligation to license. AAM continued to manage AMF for another five months after the Division's warning before filing Form ADV and beginning the licensing process. AAM charged AMF $116,357 in management fees (equal to 1 % of assets under management per annum) and $367,380 in performance-based fees (equal to 20% of net profits) from the inception of AMF (November 2011) through August 2013.

33. As described herein, from the inception of AMF in November 2011, AAM charged AMF and its limited partners a monthly performance-based fee equal to 20% of net profits. Those fees were charged in violation of Utah Admin. Code Rule R164-2-1(E)(1)(c), which requires investor monies to be "in the client's account for a period of not less than one year." Failing to comply with R164-2-1 constitutes an unlawful act under Section 61-1-2(2)(a)(i) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

34. Respondents neither admit nor deny the Division's findings and conclusions, but consent to the sanctions below being imposed by the Division.

35. Respondents represent that the information they have provided to the Division as part of the Division's investigation is accurate and complete.

36. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.

37. Respondents represent that as of the date of this Order they have disgorged to investors $287,007 of performance-based fees to which they were not entitled. Within thirty (30) days following entry of the Order, Respondents agree to disgorge to investors an additional $80,373 in performance-based fees, for a total of $367,380.

38. Pursuant to Utah Code Ann. Section 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of $30,000.00, jointly and severally. The fine shall be reduced on a dollar-for-dollar basis, up to $25,000.00, for disgorgement payments made within thirty (30) days following entry of the Order. Respondents' counsel shall provide proof of those payments to the Division.

39. The remaining fine of $5,000.00 shall be paid to the Division within forty-five (45) days following entry of this Order.

IV. FINAL RESOLUTION

40. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondents acknowledge that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondents expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

41. If Respondents materially violate any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which:

a. Respondents admit the Division's Findings of Fact and Conclusions of Law as set forth in this Order; and

b. any payments owed by Respondents pursuant to this Order become immediately due and payable.

The order may be issued upon ex parte motion of the Division, supported by an affidavit verifying the violation. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

42. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them. If Respondents materially violate this Order, however, the Findings of Fact and Conclusions of Law set forth in this Order are deemed admitted as described in paragraph 41 above, and may be introduced as evidence against Respondents in any arbitration,

civil, criminal, or regulatory actions.

43. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 28 day of April, 2015

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 22 day of April, 2015

Justin W. Luettgerodt
Aclaime Asset Management, LLC

Approved:

Thomas M. Melton
Assistant Attorney General
Counsel for Division

Approved:

J. Martin Tate
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondents, are hereby entered.
2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondents represent that as of the date of this Order they have disgorged to investors $287,007 of performance-based fees to which they were not entitled. Within thirty (30) days following entry of the Order, Respondents shall disgorge to investors an additional $80,373 in performance-based fees, for a total of $367,380.
4. Pursuant to Utah Code Ann. Section 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of $30,000.00, jointly and severally. The fine shall be reduced on a dollar-for-dollar basis, up to $25,000.00, for disgorgement payments made within thirty (30) days following entry of the Order. Respondents' counsel shall provide proof of those payments to the Division.
5. The remaining fine of $5,000.00 shall be paid to the Division within forty-five (45) days following entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this 28th day of May, 2015

Brent R. Baker

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David A. Russon

Certificate of Mailing

I certify that on the 28th day of May, 2015, I mailed, by certified mail, a true and correct copy of the fully executed Stipulation and Consent Order to:

J. Martin Tate
CARMAN LEHNOF ISRAELSEN LLP
299 S. Main Street, Suite 1300
Salt Lake City, UT 84111

Certified Mail # 7003 2260 0003 2351 1467

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: **MICHAEL EDWARD LOGAN, CRD#2618789** **Respondent.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-15-0006**

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and the Respondent Michael Edward Logan ("Logan" or "Respondent") hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*
2. On or about February 19, 2015, the Division initiated an administrative action against Respondent by filing an Order to Show Cause.
3. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the Order to Show Cause.
4. Respondent admits that the Division has jurisdiction over him and the subject matter of

this action.

5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.

7. Respondent understands that he may be represented by counsel in this matter, understands the role that counsel would have in defending and representing his interests in this case, and hereby knowingly, freely and voluntarily waives his right to have counsel represent him in this proceeding.

I. FINDINGS OF FACT

8. Logan is a resident of Tooele, Utah.

9. Logan entered the securities industry in June 1995 when he became licensed in Utah as a broker-dealer agent with H&R Block Financial Advisors, Inc., CRD#5979, until he was discharged on June 1, 2001 for failing to follow company policy.

10. Logan subsequently licensed as an agent of three other firms before joining Brokers International Financial Services, LLC ("BIFS"), CRD#139627, where he was licensed from August 13, 2007 until March 4, 2009, when he left voluntarily.

11. Logan has taken and passed the FINRA Series 7, General Securities Representative Examination; Series 63, Uniform Securities Agent State Law Examination; and Series 65, Uniform Investment Adviser Law Examination.

12. On March 8, 2011, Logan became licensed as a broker-dealer agent with Securities Management & Research, Inc., CRD#759, where he remained until October 5, 2012 when he voluntarily terminated. Logan has not been licensed in the securities industry in any capacity since that time.

13. On or about March 21, 2014, the Division received notice of a FINRA regulatory action against Logan.[1] Based upon the conduct described therein the Division opened an investigation, which revealed the following:

14. In December 2007, Logan recommended and facilitated the purchase of a Pacific Life Insurance Company ("Pacific Life") variable annuity for a family member, R.M.

15. On or about December 20, 2007, R.M. opened an account with BIFS through Logan.

16. On or about January 2, 2008, R.M. funded the annuity by making a $40,000 withdrawal from his Credit Union One IRA account.

17. Thereafter, without R.M.'s authorization, knowledge, or consent, Logan opened a joint account with Credit Union One, naming both R.M. and Logan as account holders.

18. From approximately October 2008 to October 2009, through nineteen separate transactions, Logan made unauthorized withdrawals from R.M.'s Pacific Life annuity. Logan deposited the proceeds into the joint Credit Union One account, and used the money for personal expenses. Logan made the withdrawal requests online through Pacific Life's web site in amounts that did not require a client signature.

19. While employed with BIFS, Logan withdrew approximately $17,239.50 from the annuity

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[1] *See* FINRA Case #2013036075901. http://disciplinaryactions.finra.org/Search/ViewDocument/34822

through nine separate transactions.

20. After leaving BIFS in March 2009, Logan withdrew an additional $11,442.87 from the annuity over the course of ten separate transactions. Again, Logan submitted the withdrawal requests online through Pacific Life's web site, in amounts that did not require a client signature.

21. Logan made the final withdrawal on October 8, 2009, which exhausted the remaining $4,258.17 balance in the account, incurred a surrender fee of $845.38 and resulted in the surrender of the policy. In that transaction, Logan submitted a written withdrawal form on which he fraudulently signed R.M.'s signature.

22. In addition to Logan's withdrawals which totaled $28,682.37, withdrawal and surrender fees totaled $2,168.52, for a total of $30,850.89.[2] R.M. also incurred income tax liabilities as a result of the withdrawals.

23. Logan used R.M.'s monies to pay his mortgage and for other personal expenses.

24. To conceal the unauthorized transactions from R.M., on or about February 11, 2009, Logan changed R.M.'s address of record with Pacific Life from R.M.'s residential address to Logan's BIFS office address. That change was made online through Pacific Life's web site.

25. On or about October 8, 2009, after leaving BIFS, Logan changed the address on record with Pacific Life from his BIFS office address to Logan's personal post office box. That change was also made online through Pacific Life's web site.

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[2]A decline in market value accounts for the remaining $9,149.11 of R.M.'s original invested principal of $40,000.00.

II. CONCLUSIONS OF LAW

26. Logan engaged in an act, practice, or course of business which operated as a fraud or deceit on R.M., his broker-dealer BIFS, and Pacific Life, and exposed his broker-dealer to civil liability, in violation of Section 61-1-1(3), by:

a. Converting R.M.'s monies for personal use;

b. Changing the address of record with Pacific Life from R.M.'s home address to Logan's office address, and then to Logan's post office box; and

c. falsifying investor account documents to withdraw R.M.'s monies.

III. REMEDIAL ACTIONS/SANCTIONS

27. Respondent admits the Division's findings and conclusions and consents to the sanctions below being imposed by the Division.

28. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.

29. Respondent agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.

30. Pursuant to Utah Code Ann. Section 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of $12,500.00. The fine shall be reduced on a dollar-for-dollar basis, up to $10,000.00, for restitution payments made to R.M.[3] Proof of those payments must be provided to the Division. Acceptable proof includes canceled checks, bank records, statements from the investor,

[3]As of the date of this Order, Respondent has repaid approximately $3,900 to R.M. and is currently making payments in the amount of $200.00 per month.

or other proof of actual payments.

31. In consideration of Respondent's financial situation and ongoing restitution payments to R.M. the fine shall be due thirty-six (36) months following entry of this Order. If, at that time, Respondent has paid at least $10,000.00 to R.M., the Division may, in its sole discretion, reduce the remaining fine from $2,500.00 to $1,250.00.

32. Respondent agrees to be barred from associating with any broker-dealer or investment adviser licensed in Utah, or acting as an agent for any issuer soliciting investor funds in Utah.

33. Respondent shall notify the Division of any address changes within thirty (30) days.

IV. FINAL RESOLUTION

34. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

35. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondent consents to entry of an order in which any remaining fine becomes immediately due and payable.

The order may be issued upon ex parte motion of the Division, supported by an affidavit

verifying the violation. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

36. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

37. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 27 day of May, 2015

K Barton

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 19 day of May, 2015

Michael E. Logan

Approved:

Thomas M. Melton
Assistant Attorney General
Counsel for Division

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted by the Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Pursuant to Utah Code Ann. Section 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent shall pay a fine of $12,500.00. The fine shall be reduced on a dollar-for-dollar basis, up to $10,000.00, for restitution payments made to R.M. Proof of those payments must be provided to the Division. Acceptable proof includes canceled checks, bank records, statements from the investor, or other proof of actual payments.
4. In consideration of Respondent's financial situation and ongoing restitution payments to R.M. the fine shall be due thirty-six (36) months following entry of this Order. If, at that time, Respondent has paid at least $10,000.00 to R.M., the Division may, in its sole discretion, reduce the remaining fine from $2,500.00 to $1,250.00.
5. Respondent is barred from associating with any broker-dealer or investment adviser licensed in Utah, or acting as an agent for any issuer soliciting investor funds in Utah.

6. Respondent shall notify the Division of any address changes within thirty (30) days.

BY THE UTAH SECURITIES COMMISSION:

DATED this 28th day of May, 2015

Brent R. Baker

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David A. Russon

Certificate of Mailing

I certify that on the 28th day of May, 2015, I mailed, by certified mail, a true and correct copy of the fully executed Stipulation and Consent Order to:

[redacted]

Certified Mail # 70032260 0003 2351 1474

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: **KELLY T. SCOTT, CRD #2199834; and RETIREMENT ADVISORS** **Respondents.**	**ADDENDUM TO CONSENT ORDER** **Docket No. SD-07-0031** **Docket No. SD-07-0034**

Pursuant to the terms of the Stipulation and Consent Order ("Order") entered in this matter on October 16, 2007, the Utah Division of Securities enters this Addendum to the Order:

1. In the Order, the Division and Scott agreed that after three (3) years following the entry of the Order, Scott could approach the Division to modify the limitations set forth therein. The Division retained full discretion to grant or deny such request.

2. More than three (3) years have passed and Scott has requested that the Division modify the limitations set forth in the Order.

3. Following entry of the Order, Scott paid his fine in its entirety, complied with the remedial actions set forth in the Order, and made a genuine and sustained effort to work with the Division to remedy the issues that gave rise to the Order.

4. The Division, having considered Scott's request, in its discretion has determined to modify the limitations of the Order as follows:

a. All limitations on securities-related seminars as set forth in paragraph 34 (b) of the Order are lifted.

b. All limitations on the sale or promotion of variable annuities as set forth in paragraph 34 (e) of the Order are lifted.

5. Any activities resulting from the lifting of restrictions set forth in paragraph 4 require Scott's licensure with the Division as a necessary prerequisite.

Dated this 27th day of May, 2015

Keith M. Woodwell
Director, Utah Division of Securities

ORDER

IT IS HEREBY ORDERED:

1. The limitations contained in the October 16, 2007 Order are hereby modified as set forth in paragraph 4, above. Any activities resulting from the lifting of those restrictions require Scott's licensure with the Division as a necessary prerequisite.

BY THE UTAH SECURITIES COMMISSION:

DATED this 28th day of May, 2015

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David A. Russon

Certificate of Mailing

I certify that on the 28th day of May 2015, I mailed a true and correct copy of the Addendum to Consent Order to:

Stephen K. Christiansen
311 S. State, Ste. 250
Salt Lake City, UT 84111
Attorney for Respondents

Executive Secretary

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146760
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF:	**NOTICE OF TIME AND PLACE FOR HEARING**
RICHARD MONROY (CRD# 4617740); **MARK L. RABIN (CRD# 4939140);** **MILLENNIUM EXPLORATION COMPANY, LLC,**	**CASE NO.** SD-14-0046 **CASE NO.** SD-14-0047 **CASE NO.** SD-14-0048
RESPONDENTS	

TO ALL PARTIES:

Please take notice that the May 28, 2015 hearing in this matter will begin at 10:00 A.M. in Room 451 of the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

DATED this 26th day of May, 2015.

UTAH DEPARTMENT OF COMMERCE

Jennie T. Jonsson, Presiding Officer

Certificate of Service

I hereby certify that on the 26th day of May, 2015, the undersigned served a true and correct copy of the foregoing document by electronic mail to:

Richard Monroy
Mark L. Rabin
Millennium Exploration Company, LLC
c/o Rebecca L. Morley, Esq.
Kane Russell Coleman & Logan PC
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: **RICHARD MONROY (CRD# 4617740), MARK L. RABIN (CRD# 4939140), and MILLENNIUM EXPLORATION COMPANY, LLC,** **Respondents.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-14-0046** **Docket No. SD-14-0047** **Docket No. SD-14-0048**

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Richard Monroy ("Monroy"), Mark L. Rabin ("Rabin"), and Millennium Exploration Company, LLC ("MEC" and, collectively with Monroy and Rabin, the "Respondents"), hereby stipulate and agree as follows:

1. Respondents were the subject of an investigation conducted by the Division regarding allegations that Respondents violated the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, (the "Act").

2. In connection therewith, the Division initiated an administrative action against Respondents, by issuing an Order to Show Cause ("OSC") and Notice of Agency Action

("NOAA"), both dated September 25, 2014. The Division alleges in that OSC that Respondents Monroy and Rabin violated § 61-1-1 (securities fraud), § 61-1-3(1) (unlicensed activity), and § 61-1-7 (sale of unregistered securities) and Respondent MEC violated § 61-1-1 (securities fraud), § 61-1-3(2)(a) (employing unlicensed agents), and § 61-1-7 (sale of unregistered securities) of the Act while engaged in the offer and sale of securities in or from Utah.

3. In settlement of the Division's action, Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf. Respondents understand that by waiving a hearing, they are waiving the requirement that the Division prove the allegations against them by a preponderance of the evidence, waiving their right to confront and cross-examine witnesses who may testify against them, to call witnesses on their own behalf, and any and all rights to appeal the findings, conclusions, and sanctions set forth in the Stipulation and Consent Order ("Order").

4. Respondents are represented by attorneys Craig G. Ongley of Kane Russell Coleman & Logan PC and Mark W. Pugsley of Ray Quinney & Nebeker P.C. Respondents are satisfied with the advice and representation they have received in this matter.

5. Respondents acknowledge that this Order does not affect any enforcement action that may be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.

6. Respondents admit the jurisdiction of the Division over Respondents and over the subject

matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

7. Monroy was, at all times relevant to the matters asserted herein, a resident of the state of Texas. From January 16, 2003 through February 2, 2006, Monroy was licensed in the securities industry. Since February 2006, Monroy has not been licensed in the securities industry. Monroy has never been licensed with the Division.[1]

8. Rabin was, at all times relevant to the matters asserted herein, a resident of the state of Texas. From April 28, 2005 through July 2007, Rabin was licensed in the securities industry. Since July 2007, Rabin has not been licensed in the securities industry. Rabin has never been licensed with the Division.[2]

9. MEC is a Texas-based limited liability company that registered with the Texas Secretary of State's Office on or about July 28, 2006. Monroy currently serves as a member and registered agent for the company. MEC has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

10. From approximately October 2012 to January 2013, while conducting business in or from

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1 Monroy has taken and passed the FINRA Series 22 and 63 examinations. From 2003 to 2005, Monroy was licensed as a broker-dealer agent of The Sonterra Group, Inc. (CRD# 120187). From 2005 to 2006, Monroy was licensed as a broker-dealer agent of Trinity Securities, Inc. (CRD# 44857) (Trinity).

2 Rabin has taken and passed the FINRA Series 22 and 63 examinations. From June 2005 to August 2005, Rabin was licensed as a broker-dealer agent of Geo Securities, Inc. (CRD# 44830). For one month, August 2005, Rabin was licensed as a broker-dealer of American Landmark Securities, Inc. (CRD# 42187). From January 2006 to July 2007, Rabin was licensed as a broker-dealer of M & W Financial, Inc. (CRD# 131743).

Utah, Respondents offered and sold investment contracts for Lake Alaska Joint Venture ("Lake Alaska") and Rhinehart Shallow Development Joint Venture ("Rhinehart") to at least two investors and collected a total of $67,667.19 in connection therewith.

11. The joint venture interest that Respondents offered and/or sold to investors are investment contracts, which qualify as securities pursuant to § 61-1-13(1)(ee)(i)(K) of the Act.

12. Rabin is not currently, and has never been, licensed to transact business in the state of Utah as an agent of MEC.

13. MEC employed or engaged Rabin as an agent of MEC by compensating him for effecting or attempting to effect the purchase and/or sale of securities in or from Utah.

14. Between about December 2012 to November 2014, MEC returned approximately $8,053.45 to the investors as their share of Lake Alaska and Rhinehart production profits.[3]

15. In or about November 2014, Respondents offered to rescind and repurchase the investors' Lake Alaska and Rhinehart interests.

16. In or about December 2014, the investors accepted the rescission offer and Respondents repurchased the interests for approximately $56,613.74.[4]

INVESTORS B.M. AND C.M. (HUSBAND AND WIFE)

3 During that time period, MEC retuned B.M. approximately $6,690.18 and C.M. approximately $1,363.27 in production profits.

4 In the rescission and repurchase agreement, the Respondents offered to repurchase each interest for the purchase price minus the production payments that had been distributed to the investors. Accordingly, MEC purchased B.M. and C.M.'s interests in Lake Alaska for $34,585.90 and $7,034.68, respectively. And MEC returned $7,496.58 to each investor for the Rhinehart interests.

FIRST OFFER AND SALE OF A SECURITY

17. In or about October 2012, B.M. received an unsolicited call from Rabin about an investment opportunity with MEC.[5]

18. During that telephone conversation, Rabin made the following statements:

a. MEC was an oil and gas company with various joint venture projects in Texas;

b. The company financed its exploration and production activities by selling ownership interests in its joint ventures;

c. MEC would sell enough interests during each phase of a joint venture to move the project forward; and

d. MEC had low, moderate, and high pay out investment opportunities.

19. At the conclusion of that conversation, Rabin informed B.M. that he would receive additional information about investing in a MEC joint venture.

20. Shortly thereafter, B.M. received an information packet about Lake Alaska.[6]

21. About one week later, Rabin contacted B.M. to review the Lake Alaska packet with him.

22. At that time, Rabin clarified the geological data and diagrams included in the information packet and explained why MEC wanted to drill at a particular site, what the well was expected to cost, and the potential output of the well, ranging from low to high.

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5 B.M. and C.M.'s telephone number was obtained by Rabin from leads lists purchased by MEC. Rabin routinely cold called potential investors to solicit investments for MEC's various joint venture oil and gas projects.

6 Lake Alaska Joint Venture's right to transact business in Texas is active. The Texas Secretary of State does not have information on file regarding the effective registration date with the State of Texas and does not have the registered agent's information on file. Lake Alaska is a joint venture oil and gas exploration project located in Brazoria County, Texas. At the time Respondents offered and/or sold securities to the investors, MEC was listed as the managing venturer and 20% owner of Lake Alaska.

23. During that telephone conversation, Rabin also indicated that a joint venture interest in Lake Alaska could be acquired for $125,391.48 per interest; however, investors had the option of purchasing partial interests for a prorated amount.

24. Shortly thereafter, Rabin introduced B.M. to Monroy, chief executive officer of MEC.

25. For several months thereafter, Monroy and Rabin frequently communicated with B.M. and C.M. via email and telephone regarding investing in one of MEC's joint ventures.

26. Monroy and Rabin, on behalf of MEC, made the following statements about investing in an MEC joint venture:

a. An investment in a joint venture was done in separate phases;[7]

b. Investment funds were only solicited or drawn from investors for a particular phase once a joint venture reached that phase of the project and those funds would only be used for that specific project;

c. Investing in a joint venture involved risk, including the risk that a well may not end up being a "good well";

d. Based on MEC's geological research and operating history, MEC had an 80% accuracy rate with regards to the success of its wells;

e. From the point a well is deemed a "good well," the risk was whether the well would be a high, medium, or low producing well;

f. Oil and gas taken from the wells would be stored in tanks until it was sold at market

7 The various phases of a joint venture included, but are not limited to, the subscription agreements, drilling and testing the well sites, and well completion. Well completion costs were only charged after MEC determined that it was a "good well."

price;

g. Investors would receive monthly payouts from the profits generated from selling the oil and gas according to each investor's proportional ownership interest in the joint venture; and

h. An investment in an MEC joint venture project involved a non-traditional security that did not need to be registered with a securities regulator.

27. At or about the same time, Monroy advised B.M. that he and his wife could self-direct their Roth IRAs to purchase joint venture interests.

28. Shortly thereafter, Monroy provided B.M. and C.M. additional documentation, including the Lake Alaska Private Placement Memorandum and Lake Alaska Subscription Agreement.

29. After reviewing all of the information provided by Respondents, B.M. and C.M. decided to purchase a combined total of a 0.375 interest in Lake Alaska.[8]

30. From December 2012 to September 2013, B.M. made periodic payments to Lake Alaska totaling $32,408.13. All payments were deposited in the Lake Alaska account at Broadway National Bank in San Antonio, Texas (the "Lake Alaska Account").[9]

31. In exchange for his $32,408.13 investment, B.M. received a 0.25 interest in Lake Alaska.

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8 B.M. and C.M. initially agreed to purchase the 0.375 interest in Lake Alaska for $47,021.81. However, after various fees were added the total amount invested by B.M. and C.M. to acquire their 0.375 interest in Lake Alaska was $49,317.19.

9 On or about December 20, 2012, B.M. sent a personal check for $5,836.75 to Lake Alaska for the subscription agreement phase of the project. On or about January 31, 2013, B.M. wired $19,546.47 to the Lake Alaska Account for the drilling and testing phase of the project. On or about July 9, 2013, B.M. sent a check for $5,926.40 to the Lake Alaska Account for the well completion phase. On or about September 27, 2013, B.M. sent a check for $1,071.51 to Lake Alaska for other charges related to the Lake Alaska project.

32. On or about December 18, 2012, B.M. completed and signed the Lake Alaska Subscription Agreement, documenting his 0.25 interest in Lake Alaska.

33. From January 2013 to September 2013, B.M. utilized Equity Trust Company ("Equity Trust") to periodically direct a total of $8,102.03 from his Roth IRA to the Lake Alaska Account.[10]

34. In exchange for his $8,102.03 investment, B.M. received a 0.0625 interest in Lake Alaska.

35. On or about December 18, 2012, B.M. completed and signed the Lake Alaska Subscription Agreement, documenting his 0.0625 interest in Lake Alaska.

36. From January 2013 to September 2013, C.M. utilized Equity Trust to periodically direct a total of $8,102.03 from her Roth IRA to the Lake Alaska Account.[11]

37. In exchange for her $8,102.03 investment, C.M. received a 0.0625 interest in Lake Alaska.

38. On or about December 20, 2012, C.M. completed and signed the Lake Alaska Subscription Agreement, documenting her 0.0625 interest in Lake Alaska.

39. Between about December 2012 to November 2014, Respondents returned approximately

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10 On or about January 30, 2013, B.M. directed $1,465.94 to Lake Alaska for the subscription agreement phase of the project. On or about January 23, 2013, B.M. directed $4,886.62 to Lake Alaska for the drilling and testing phase of the project. On or about July 12, 2013, B.M. directed $1,481.60 to the Lake Alaska for the well completion phase. In or about September 27, 2013, B.M. directed $1,071.51 to Lake Alaska for other charges related to the Lake Alaska project.

11 On or about January 30, 2013, C.M. directed $1,465.94 to Lake Alaska for the subscription agreement phase of the project. On or about January 23, 2013, C.M. directed $4,886.62 to Lake Alaska for the drilling and testing phase of the project. On or about July 12, 2013, C.M. directed $1,481.60 to the Lake Alaska for the well completion phase. On or about September 27, 2013, C.M. directed $1,071.51 to Lake Alaska for other charges related to the Lake Alaska project.

$6,511.76 to B.M. as his share of Lake Alaska production profits.

40. Between about December 2012 to November 2014, Respondents returned approximately $1,184.85 to C.M. as her share of Lake Alaska production profits.

41. In or about November 2014, Respondents offered to rescind and repurchase the investors' Lake Alaska interests.

42. In or about December 2014, the investors accepted the rescission offer and Respondents repurchased the Lake Alaska interests for approximately $41,620.58.

SECOND OFFER AND SALE OF A SECURITY

43. Prior to investing in Lake Alaska, B.M. expressed his concerns about solely investing in Lake Alaska to Monroy. He was specifically concerned about losing his entire investment in the event Lake Alaska failed.

44. In response, Monroy advised B.M. that he should diversify his investment with MEC by also investing in Rhinehart.[12]

45. Additionally, Monroy made the following statements about the Rhinehart joint venture project:

a. The Rhinehart well was a deep well at approximately nine to ten thousand feet in depth;

b. The Rhinehart well had less oil than Lake Alaska but large amounts of natural gas at depths around three to four thousand feet;

12 Rhinehart Shallow Joint Venture's right to transact business in Texas is active. The Texas Secretary of State does not have information on file regarding the effective registration date with the State of Texas and does not have the registered agent's information on file.

c. It would take MEC up to ten years to extract the oil at the lower depths of the well before it could extract the natural gas at the shallower levels;

d. MEC was considering drilling another well that would allow MEC to tap into the natural gas reserves immediately; and

e. Although the payout for Rhinehart was not expected to be as high as Lake Alaska, it was a more guaranteed investment than Lake Alaska.

46. On or about November 29, 2012, B.M. and C.M. received information packets about Rhinehart.

47. Additionally, Monroy provided B.M. and C.M. other documentation about Rhinehart, including the Rhinehart Private Placement Memorandum and Rhinehart Subscription Agreement.

48. After reviewing all of the information provided by Respondents, B.M. and C.M. decided to purchase a combined total of a 0.250 interest in Rhinehart.[13]

49. From January 2013 to October 2013, B.M. utilized Equity Trust to periodically direct a total of $7,675 from his Roth IRA to the Rhinehart account at Broadway National Bank in San Antonio, Texas (the "Rhinehart Account").[14]

50. In exchange for his $7,675 investment, B.M. received a 0.125 interest in Rhinehart.

51. On or about December 18, 2012, B.M. completed and signed the Rhinehart Subscription Agreement, documenting his 0.125 interest in Rhinehart.

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13 B.M. and C.M. agreed to purchase their 0.250 interest in Rhinehart for $15,350.

14 On or about January 25, 2013, B.M. directed $1,800 to Rhinehart for the subscription agreement phase of the project. On or about October 23, 2013, B.M. directed $4,150 to Rhinehart for the drilling and testing phase of the project. On January 16, 2014, B.M. directed $1,725 to Rhinehart for the well completion phase of the project.

52. From January 2013 toFebruary 2014, C.M. utilized Equity Trust to periodically direct a total of $7,675 from her Roth IRA to the Rhinehart Account.[15]

53. In exchange for her $7,675 investment, C.M. received a 0.125 interest in Rhinehart.

54. On or about December 20, 2012, C.M. completed and signed the Rhinehart Subscription Agreement, documenting her 0.125 interest in Rhinehart.

55. Between about December 2012 to November 2014, Respondents returned approximately $356.84 to the investors as their combined share of Rhinehart production profits.

56. In or about November 2014, Respondents offered to rescind and repurchase the investors' Rhinehart interests.

57. In or about December 2014, the investors accepted the rescission offer and Respondents repurchased the Rhinehart interests for approximately $14,993.16.

CAUSES OF ACTION

Unlicensed Activity under § 61-1-3(1) of the Act (Respondent Rabin)

58. The Division incorporates and re-alleges paragraphs 1 through 57.

59. Rabin was not licensed as a broker-dealer or agent at the time he represented MEC in effecting and/or attempting to effect the purchase or sale of securities in or from Utah.

60. MEC compensated or otherwise remunerated Rabin, directly or indirectly, for representing MEC in effecting and/or attempting to effect the offer or sale of securities in

15 On or about January 25, 2013, C.M. directed $1,800 to Rhinehart for the subscription agreement phase of the project. On or about October 23, 2013, C.M. directed $4,150 to Rhinehart for the drilling and testing phase of the project. On or about February 12, 2014, C.M. directed $1,725 to Rhinehart for the well completion phase of the project.

or from Utah.

61. It is unlawful for persons to transact business in this state as an agent of a broker-dealer or issuer unless appropriately licensed in accordance with the Act.

62. Based on the foregoing, each offer and/or sale of securities by Rabin violated § 61-1-3(1) of the Act.

Unlicensed Activity under § 61-1-3(2)(a) of the Act
(Respondent MEC)

63. The Division incorporates and re-alleges paragraphs 1 through 57.

64. MEC issued or proposed to issue securities in or from Utah.

65. Rabin was not licensed as a broker-dealer or agent at the time of he represented MEC in effecting and/or attempting to effect the purchase or sale of securities in or from Utah.

66. It is unlawful for a broker-dealer or issuer to employ or engage an agent in this state unless the agent is appropriately licensed in accordance with the Act.

67. Based on the foregoing, MEC violated § 61-1-3(2) of the Act.

Sale of Unregistered Securities under § 61-1-7 of the Act
(Respondents Monroy, Rabin, and MEC)

68. The Division incorporates and re-alleges paragraphs 1 through 57.

69. The investment opportunities that Respondents offered and sold in or from Utah are securities under § 61-1-13 of the Act.

70. Respondents offered and sold securities in or from Utah without registering or notice filing the securities with the Division and without making any claim that the securities

were exempt from registration under the Act.

71. It is unlawful for any person to offer and/or sell any securities in or from this state unless the securities are registered with the Division, the securities or transactions are exempted pursuant to the Act, or the security is a federally covered security for which a notice filing has been made with the Division.

72. Based on the foregoing, Respondents violated § 61-1-7 of the Act.

II. THE DIVISION'S CONCLUSIONS OF LAW

73. Based on the Division's investigative findings, the Division concludes that:

a. The investment opportunities that Respondents offered and sold are securities under § 61-1-13(1)(ee)(i)(K) of the Act;

b. Rabin violated § 61-1-3(1) of the Act by transacting business in this state as an unlicensed agent;

c. MEC violated § 61-1(2)(i) of the Act by employing or engaging Rabin as an unlicensed agent; and

d. Monroy, Rabin, and MEC violated § 61-1-7 of the Act by offering and selling securities in or from this state without registering or notice filing the securities with the Division and without claiming an exemption from registration under the Act.

III. ACTIONS & SANCTIONS

74. Respondents neither admit nor deny the Division's findings of fact and conclusions of

law and consent to the sanctions below being imposed by the Division.

75. Respondents agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.

76. Respondents agree that they will not transact securities business in or from this state until they are properly licensed broker-dealers, investment advisors, or agents in accordance with the Act.

77. Respondents agree that they will not offer and/or sell any security in this state unless the security is registered with the Division, Respondents have claimed a valid exemption from registration under the Act, and/or the security is a federally covered security for which a proper notice filing has been made with the Division pursuant to the Act.

78. The Division acknowledges that this Order is not intended to be and shall not be construed as a disqualifying event for any purpose related to 17 C.F.R. § 230.506(d)(1)(iii).

79. Pursuant to § 61-1-20(1)(f) of the Act and in consideration of the guidelines set forth in Utah Admin. Code R164-31-1, the Division imposes a joint and several fine of $10,000 against Respondents. The fine amount shall be paid directly to the Division within fifteen (15) days from the entry of this Order.

80. Failure to comply with the payment provision included in paragraph 79, above, may result in the referral of the fine to the State Office of Debt Collection and shall be deemed a violation of this Order.

81. Respondents shall notify the Division of any address change until the fine is paid in full.

IV. FINAL RESOLUTION

82. Respondents acknowledge that this Order, upon approval by the Securities Commission, shall be the final compromise and settlement of this matter.

83. Respondents further acknowledge that if the Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

84. If Respondents materially violate any term of this Order, fifteen days (15) after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which Respondents admit the Division's Findings of Fact and Conclusions of Law as set forth in this Order. The Order may be issued upon motion of the Division, supported by an affidavit verifying the violation. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act, or under any other applicable law, to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

85. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as

a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration, or other causes of action brought by third parties against them have no effect on, and do not bar, this administrative action by the Division. If Respondents materially violate this Order, however, the Findings of Fact and Conclusions of Law set forth in this Order are deemed admitted as described in paragraph 84 above, and may be introduced as evidence against Respondents in any arbitration, civil, criminal, or regulatory actions.

86. Respondents acknowledge that a willful violation of this Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.

87. The Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way. The Order may be docketed in a court of competent jurisdiction. Upon entry of the Order, any further scheduled hearings are canceled.

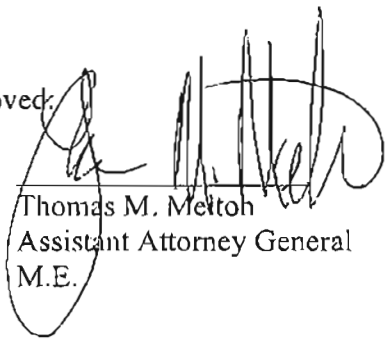
Utah Division of Securities:

Date: 05-28-2015

By: 

Dave R. Hermansen
Director of Enforcement

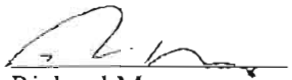
Approved:



Thomas M. Melton
Assistant Attorney General
M.E.

Respondents:

Date: 5/28/2015

By: 

Richard Monroy,
individually and on behalf
of all Respondents

Mark W. Pugsley
Ray Quinney & Nebeker P.C.
Attorney for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondents cease and desist from violating the Act.
3. The Division shall impose a joint and several fine of $10,000 against Respondents. The fine amount shall be paid in full directly to the Division within fifteen (15) days from the entry of the Order.
4. If Respondents materially violate any term of this Order, the unpaid balance of the fine amount shall be imposed and become due immediately.
5. For the entire time the fine remains outstanding, Respondents notify the Division of any change in mailing address, within fourteen (14) days from the date of such change.

DATED this 28th day of May, 2015.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

Certificate of Mailing

I certify that on the 28th day of May, 2015, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

RICHARD MONROY
MARK L. RABIN
MILLENNIUM EXPLORATION COMPANY, LLC
c/o CRAIG G. ONGLEY & REBECCA L. MORLEY
KANE RUSSELL COLEMAN & LOGAN PC
1601 ELM STREET, SUITE 3700
DALLAS, TEXAS 75201

MARK W. PUGSLEY
RAY QUINNEY & NEBEKER P.C.
36 SOUTH STATE STREET, SUITE 1400
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SALT LAKE CITY, UT 84145

Executive Secretary