

**Utah Division of Securities Commission
Meeting Minutes
March 24, 2016**

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
Taylor Kauffman, Enforcement Investigator
Anna Crandall, Enforcement Investigator
John Bickmore, Enforcement Investigator
Heidie George, Securities Examiner
Andreo Micic, Securities Examiner
Nathan Summers, Securities Examiner
Richard Jaramillo, Securities Examiner
Bryan Cowley, Securities Examiner
Russ Bulloch, Securities Examiner
Nadene Adams, Administrative Assistant

Other State of Utah Employees

Gregory Soderberg, Administrative Law Judge, Department of Commerce
Tom Melton, Assistant Attorney General
Jennifer Korb, Assistant Attorney General

Commissioners Present

Erik Christiansen, Parsons Behle & Latimer
Gary Cornia, Brigham Young University
Brent Baker, Clyde, Snow & Sessions
Lyle White, Fidelity Investments

Public Present

Bryce Hansen, Salt Lake Community College Small Business Development Center
Christy Tribe, Junior Achievement of Utah

Minutes: At 9:00 am the meeting was called to order by Commissioner **Erik Christiansen**. Commissioner **Brent Baker** made the motion to approve the minutes from the January 28, 2016 Commission meeting and Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Director's Report: Director Woodwell reported that the 2016 Legislative session has wrapped-up. Two bills that directly impact the Securities Division and Securities Commission passed.

1. **HB106.** "Securities Amendments Bill", sponsored by Representative Cunningham. This bill was written and proposed by the Securities Division. There was one proposed amendment that was removed from the bill before final passage and would have granted the Division rule making authority to eventually pass a continuing education requirement for investment advisor representatives. This portion of the bill was amended out in the Senate Committee. The main reason was because of some discomfort from NAFA on the life insurance side. Some of their members are dual licensed and concerned with what the "continuing education requirement" will look like. There is a process in the works on the national level to propose a model rule for continuing education for investment advisor representatives. Director Woodwell reported that this portion of the bill *may be* added at a future date when there is a national model in place. The remainder of the bill passed and will become effective on May 8, 2016. These amendments include: a 10-year statute of limitations on the administrative actions that are brought before the commission; language defining securities fraud as a continuing offense; authority to directly order disgorgement, restitution, and rescission, in administrative enforcement cases.
2. **HB118.** "Expungement Amendments" sponsored by Representative Greene. Director Woodwell provided an update. This bill not only applies to the Securities Division but broadly to all administrative agencies within the State and is the quasi-administrative expungement process discussed in previous Commission meetings. Director Woodwell noted that there were several competing expungement bills that did not pass. This bill creates a process for any administrative agency that keeps a public record of actions/orders on a public website to remove those orders from the public website after ten years, or in some cases five years. This bill does not change the GRAMA status of the public records.
3. **Personnel update:** Director Woodwell reported that the Securities Division has two new Enforcement Investigators. John Bickmore came to the Division of Securities from Real Estate. He has been an investigator within the Department of Commerce for the last couple of years. Anna Crandall came to the Division of Securities from the Attorney General's office. She was working as a law clerk. Anna worked on developing the "white collar crime registry" for the Attorney General's Office.

Enforcement Section Report: Dave Hermansen provided the Securities Commission an update on Enforcement Section events. He reported that there have been significant personnel changes within the Section. The Enforcement staff will be attending training with the SEC. The training focus will be "*Ponzi Schemes and How to Evaluate Them.*" The Section has 13 administrative actions that are in progress, investigating 16 open cases, referred 21 cases to be filed criminally and screening five additional criminal cases with the Attorney General's Office. Mr. Hermansen gave the Commission Members an update on future preliminary hearings for April 2016 involving Clayton Cox

and Doug Merritt. Upcoming criminal trials involve Shane Baldwin (scheduled for June 6, 2016), Tonya Brown (scheduled for July 19, 2016) and Dee Randall (scheduled for August 1, 2016).

Compliance Section Report: Ken Barton provided the Securities Commission an update on Compliance Section events. YTD 2016 Audit Statistics- the Compliance Section initiated 16 audits. Nine audits were for-cause audits triggered by investor complaints; six were routine audits of both investment advisor firms and broker-dealer branch offices. We have seen a jump in audits triggered by complaints. Complaints are mostly concerning broker-deal firms, client account management issues involving suitability, unauthorized trading, and timely execution of transactions. The Compliance Section has eight administrative actions in progress. Two actions are on today's agenda for an approval of a Stipulation and Consent Order, in four actions an Order to Show Cause or Petition to Censure and Fine has been filed with the Respondent, and two administrative actions are stayed pending criminal actions. The Section has referred four cases to the Attorney General's office for criminal prosecution. A preliminary hearing has been scheduled for a securities fraud case involving defendants George Marshall and Michael Aitken on April 18, 2016. A preliminary hearing has been scheduled for a securities fraud case involving defendants Roger Taylor and Richard Smith. In February 2016, Clark Gardner, pled guilty to four counts of securities fraud, his sentencing hearing is scheduled for this Friday, March, 25th, 2016. Andreo Micic was the examiner on this case. A securities fraud case involving Scott Stewart scheduled for trial beginning March 1st 2016 was continued pending a motion in limine. The motion will be argued the end of April. Commissioner Baker asked how the Compliance Section schedules its exams. Mr. Barton explained that the Division has a pre-structured process that weighs various risk factors.

Registration and Licensing: Benjamin Johnson provided the Securities Commission an update on Registration and Licensing Events. The Division's Rule governing Tier 2 Notice Filings for Regulation "A" offerings has been submitted to the Division of Administrative Rules. This Rule will be effective next month. Mr. Johnson stated that the Division needs to obtain authorization from the Legislature to charge the fee, which was approved in the 2016 Legislative Session. At the beginning of the new fiscal year (FY17, July 1, 2016), these charges will be assessed for Tier 2 Regulation "A" Notice Filings. NASAA is moving to amend the statement of policy for REIT offerings to include a concentration limitation. Specifically, the current proposal would limit the amount of an investor's liquid net worth that can be invested to 10% of that investor's liquid net worth (liquid net worth being defined as cash, cash equivalents, and readily marketable securities). Utah has not previously had its own concentration limit. The NASAA statement of policy would change how the State of Utah reviews REITs.

Investor Education: Karen McMullin provided the Securities Commission an update on Investor Education events. Since January 1st, eight individuals or couples have approached the Division as a result of an investor education presentation to request more information about their present financial products, an ad they saw in the newspaper, or wanted to check out a firm or individual or security offering. This help

was given both via phone and through an in-person meeting at the Division. Four of these inquiries have resulted in further investigation of the individuals or firms involved in the sales practices. Ms. McMullin also provided updates on the Division's three investor education goals for 2016: (1) Stock Market Game marketing and management; (2) increased education efforts about Elder Financial Exploitation; and (3) the Division's continued partnership with the Utah Retirement Systems.

Grant Request: Junior Achievement of Utah: Christy Tribe addressed the Commission on behalf of Junior Achievement of Utah. She reviewed how the previous grant funds have been used and how the current funds requested will be spent. Director Woodwell remained neutral in regards to support for this grant proposal. The grant amount requested was \$5,000; however, because of funding constraints the Commissioners choose to reduce the amount to \$2,500. Commissioner **Brent Baker** made the motion to approve the proposed grant request. Commissioner **Dave Russon** seconded the motion and the motion was approved unanimously.

Grant Request: Salt Lake Community College Small Business Development Center: Bryce Hansen addressed the Commission on behalf of the Salt Lake Community College Small Business Development Center. He reviewed how the grant funds will be used. Director Woodwell remained neutral in regards to his support for this grant proposal. The grant amount requested was \$5,000; however because of funding constraints the amount was reduced to \$1,000. Commissioner **Gary Cornia** made the motion to deny the proposed grant request. Commissioner **Lyle White** seconded the motion and the grant request was denied.

Education and Training Fund Report: Following the presentation of the Education and Training fund, Commissioner **Gary Cornia** made the motion to approve the funding requests from the Education and Training Fund and Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Consideration and Approval of Proposed Orders

Dan Arlan Newbold, Doublevault Technologies: SD-16-0001, SD-16-0002

Recommended Order on Motion for Default.

Jennifer Korb reported that on January 5, 2016, an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondents were ordered to file a response to the order within 30 days. Respondents failed to respond. An initial hearing was held on February 3, 2016, Respondents failed to appear. Because Respondents failed to file a Response it is recommended that a default judgement against the Respondents be entered. In the recommended default order, Respondents are ordered to pay fine of \$148,125 to the Division, with \$29,625 of the fine due and payable in full upon receipt of the Final Order. The remaining \$118,500 subject to offset for a period of 30 days of the Final Order, on a dollar-for-dollar basis for any restitution paid to investors. If Respondent fails to provide proof of restitution payments within the 30-day period of Final Order; the full \$148,125 fine becomes due immediately and

subject to collection. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondents.

Commissioner **Brent Baker** made the motion to approve the proposed Order on Default. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Nathan Dewayne Nearman, Nebulae Corporation, Nebulae Entertainment, Inc. and Janus Project Film, LLC: SD-15-0065, SD-15-0067, SD-15-0066, SD-15-0068: Stipulation and Consent Order.

Dave Hermansen reported that on or about December 8, 2015 the Division initiated an administrative action against Respondents, through the issuance of a Notice of Agency Action and Order to Show Cause. The Order to Show Cause alleged that Respondents violated findings of the Act, while engaged in the offer and sale of securities in or from Utah. Respondents now seek to enter into this Stipulation and Consent Order in settlement of the Division's action. The Division imposes a joint and several fine of \$262,500 against Respondents, \$250,000 of which may offset by payments of restitution to the investor. Each dollar paid by Respondents to the investor shall be credited by the Division toward payment of the fine. Failure to comply with these payment provisions in the Order may result in referral of the fine to the State Office of Debt Collections. The Stipulation and Consent Order also includes a cease and desist order and a permanent securities bar against the Respondents.

Commissioner **Brent Baker** made the motion to approve the proposed Order on Default. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Jake Daniel McKittrick, SD-12-0049: Stipulation and Consent Order.

Dave Hermansen reported that on or about August 13, 2012 the Division initiated an administrative action against Respondent, through the issuance of a Notice of Agency Action and Order to Show Cause. The Order to Show Cause alleged that Respondent violated the Act, while engaged in the offer and sale of securities in or from Utah. Respondent neither admits nor denies the Division's findings and conclusions of the law. Respondent now seeks to enter into this Stipulation and Consent Order in settlement of the Division's action. The Division imposes a total fine of \$5,000 against Respondent. The fine shall be paid by Respondent to the Division in 24 consecutive monthly payments of \$208.33 each, beginning the first day of the month. Failure to comply with these payment provisions in the Order may result in referral of the fine to the State Office of Debt Collections. The Stipulation and Consent Order also includes a cease and desist order against the Respondent. The Respondent shall not seek licensure or apply to be licensed by the Division as an agent for any issuer soliciting funds from investors in the State of Utah.

Commissioner **Gary Cornia** made the motion to approve the proposed Order on Default. Commissioner **Brent Baker** seconded the motion and the motion was approved unanimously.

Acadia Capital Advisors, LLC, Michael Brent Petersen: SD-15-0046, SD-15-0047: Stipulation and Consent Order.

Richard Jaramillo reported that on or about August 31, 2015 the Division initiated an administrative action against Respondents, through the issuance of a Petition to Censure, Bar and Impose a Fine. The Petition alleged that Respondents violated the Act, while engaged in the offer and sale of securities in or from Utah. Respondents neither admit nor deny the Division's findings and conclusions of the law. Respondents now seek to enter into this Stipulation and Consent Order in settlement of the Division's action. The Division imposes a total fine of \$2,500 jointly and severally against Respondents. The fine shall be paid by Respondents to the Division within six months of the order. Failure to comply with these payment provisions in the Order may result in referral of the fine to the State Office of Debt Collections. The Stipulation and Consent Order also includes a cease and desist order against the Respondents. The Respondents are barred from associating with any broker-dealer or investment advisor licensed in Utah and from acting as an agent for any issuer soliciting investor funds in the State of Utah.

Commissioner **Lyle White** made the motion to approve the proposed Order on Default. Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Steven W. Thorne, SD-15-0055: Stipulation and Consent Order.

Ken Barton reported that on or about November 20, 2015 the Division initiated an administrative action against Respondent, through the issuance of a Petition to Censure, Bar and Impose a Fine. The Petition alleged that Respondent violated the Act, while engaged in the offer and sale of securities in or from Utah. Respondent neither admits nor denies the Division's findings and conclusions of law. Respondent represents that the information he has provided to the Division as part of its investigation is accurate and complete. Respondent now seeks to enter into this Stipulation and Consent Order in settlement of the Division's action. The Division imposes a total fine of \$40,000 against Respondent. The fine shall be paid by Respondent to the Division within 30 days of the order. Failure to comply with these payment provisions in the Order may result in referral of the fine to the State Office of Debt Collections. The Stipulation and Consent Order also includes a cease and desist order against the Respondent.

Commissioner **Lyle White** made the motion to approve the proposed Order on Default. Commissioner **Brent Baker** seconded the motion and the motion was approved unanimously.

John Rogers Martin: SD-09-0028: Addendum to Consent Order.

Ken Barton reported that the Respondent and the Division previously entered into a Stipulation and Consent Order on May 11, 2009. The Division of Securities and the Respondent now have mutually agreed to an Addendum to the original Consent Order. In the original Consent Order Martin was barred from associating with any broker-dealer or investment advisor licensed in Utah and from acting as an agent for any issuer soliciting investor funds in Utah. The Order stated that the bar did not preclude Martin from "acting as an agent selling non-variable products (excluding indexed annuities) for

an insurance company regardless of whether that company also acts as a broker-dealer or is related to a broker-dealer.” At the time the Order was entered, the United States Securities and Exchange Commission (SEC) had proposed a rule classifying indexed annuities as securities under federal law. The rule was later withdrawn by the SEC. As a result, indexed annuities are classified as insurance products rather than securities products. Therefore, the Division lacks jurisdiction to bar Martin from selling indexed annuities. This Addendum makes it clear Martin may act as an agent selling indexed annuities and other insurance products not defined as securities provided he has the necessary insurance licenses. All other provisions of the Order remain in place. Commissioner **Gary Cornia** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Future Meeting Schedule:

- May 26, 2016, room 451, starting at 9am
- August 4, 2016, room 403, starting at 9am
- September 22, 2016, room 403, starting at 9am
- December 1, 2016, room 403, starting at 9am

Commissioner **Erik Christiansen** called for a motion to adjourn the March 24, 2016 Division of Securities Commission Meeting. Commissioner **Gary Cornia** made a motion adjourn the Commission meeting and Commissioner **Lyle White** seconded the motion and the motion was approved unanimously. Meeting adjourned at 11:10 am.

Approved:  _____
Erik Christiansen, Chairman
Brent R. Baker

Date: 5/26/16