

Utah Securities Commission

Meeting Minutes

January 22nd, 2015

Division of Securities Staff Present

Keith Woodwell, Division Director
Sally A. Stewart, Acting Commission Secretary
Dave Hermansen, Enforcement Director
Benjamin Johnson, Licensing & Registration Director
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
Charles Lyons, Securities Analyst
Adam Sweet, Lead Securities Investigator
Kristi Wilkinson, Securities Investigator
Chris Hardy, Securities Investigator
Andreo Micic, Securities Examiner
Nathan Summers, Securities Examiner
Nadene Adams, Administrative Assistant
Heidie George, Securities Examiner

Other State of Utah Employees:

Jennie Jonsson, Administrative Law Judge, Department of Commerce
Tom Melton, Assistant Attorney General

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

Commissioners Absent/Excused

Brent Baker, Clyde, Snow & Sessions

Public Present:

David Bartholomew, Respondent
James Gilson, Counsel for David Bartholomew
R. Austin Christensen, Respondent
Bryan R. Farris, Counsel for R. Austin Christensen

Minutes: At 9:07 am the meeting was called to order by Commissioner Erik Christiansen. Commissioner Tim Bangerter made the motion to approve the minutes from the November 20, 2014 Commission meeting and Commissioner David Russon seconded the motion and the motion was approved unanimously.

Director's Report: Director Woodwell reported that Nathan Summers had joined the Division as an examiner in the Licensing and Registration Section. Director Woodwell provided a brief introduction of Mr. Summers. Director Woodwell noted the open positions within the Division, including Administrative Assistant, Enforcement Attorney/Analyst, and Securities Examiner in the Compliance Section. Director Woodwell noted that the Division hoped to fill all the positions shortly. Director Woodwell gave an update on proposed legislation for the 2015 Legislative session beginning on January 26, 2015. He discussed H.B. 50, regarding intrastate crowd-funding. The Division plans to take a neutral stance on the proposed crowdfunding bill as long as it is amended to include adequate disclosures and investor protections. Director Woodwell also discussed H.B. 62. The proposed bill would modify the definition of "security" in the Utah Uniform Securities Act to remove certain promissory notes and LLC interests from the definition. Director Woodwell expressed concern that the proposed changes in H.B. 62 would be inconsistent with Federal Law and the definition of "security" in other states. The Division plans to oppose H.B. 62. Director Woodwell also discussed H.B. 109 concerning treatment of agency records and administrative expungement. The bill would create a process for expunging administrative enforcement actions and would impact all state administrative agencies, not just the Division of Securities. The Department of Commerce plans to oppose this proposed bill. Director Woodwell promised to keep the Commission informed on this legislation and any hearings or meetings to be held on the proposed bills.

Enforcement Section Report: Dave Hermansen reported that the Enforcement Section has 35 active cases and 15 new cases which are currently unassigned. He gave a brief update on the status of the Division's hiring efforts for the vacant Attorney/Analyst position. He commented that the Division continues to work with the FBI, the SEC, the US Attorney's office, the Utah County Attorney's office and the Attorney General's office on several criminal cases coming to trial.

Compliance Section Report: Ken Barton reported there are 44 audits currently underway in the Compliance Section. Eleven audits were for-cause audits triggered by complaints; 14 were routine audits; and 19 were Investment Adviser initial application audits. Mr. Barton also brought the Commission up to date on the administrative actions currently in progress. He reported that there are 206 Investment Advisor Firms currently licensed in the state, a 41% increase.

Registration and Licensing Section Report: Benjamin Johnson reported that there has been an increase in filings for 2014; with a 7% increase in registrations, a 3% increase in mutual fund filings, and a significant increase of 22% in Regulation D, Rule 506 exemption filings. The multi-state, electronic corporate finance filing System (EFD) went online as of December 21, 2014. The Division rules currently allow for electronic filing but do not currently require it. He reported that EFD appears to be working well at this time, but there have been only three electronic filings at this time. There will be a 30-day advance notification when the electronic filing becomes mandatory under new Division rules.

Investor Education Report: Karen McMullin provided the Commission with an update on the Division's education events for calendar year 2014. She noted that there were 85 events providing education to an audience of approximately 11,610 people. There are already 31 events scheduled so far in 2015, with the calendar filling up quickly. She stated that the 2015 investor education goals for the Division included continued partnership with the Utah Retirement Systems, a focus on improper annuity sales and elder financial exploitation, and Investor Education programs working with educators. There is a Stock Market Game teacher training conference currently scheduled for February 5-6, 2015. She also updated the Commission on the planned addition of online education modules to the Division's website. Ms. McMullin also noted educational material was being received from FINRA, the FTC, and the Department of Labor to supplement the Division's Investor Education program. She updated the Commission on the current status of financial education and support for the Stock Market Game for the 2014 – 2015 school year. Administration of the "Stock Market Game" will change in June 2015 from the Department of Education to the Division of Securities. The first Stock Market Game Awards Banquet administered directly by the Division was held on January 16, 2015, with approximately 85 participants, including students, teachers, Division personnel and the media.

Grant Request: Working in Support of Education Inc. (W\$E): Director Woodwell addressed the Commission and reviewed how previous grants to W\$E 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 support of the grant for the same amount as in the previous year rather than the requested increase to \$20,000. The grant was approved for \$15,000.

Commissioner Tim Bangerter made the motion to approve the reduced amount for the proposed grant request and Commissioner David Russon seconded the motion. The motion was passed unanimously.

Grant Request: AARP Utah: Laura Polacheck addressed the Commission on behalf of AARP Utah and reviewed how the funds in the past have been used and how the current funds requested will be spent. She discussed the partnership between the Division and AARP and the types of presentations that are funded through this partnership. The grant request is for \$20,000.

Commissioner Tim Bangerter made the motion to approve the grant request and Commissioner David Russon seconded the motion. The motion was passed unanimously.

Education and Training Fund Report: Benjamin Johnson reported that spending is following historical patterns. He noted that there is nothing unusual in the figures. Action to authorize expenses and actions outlined in the written report, including the approved grant requests was requested.

Following the presentation of the Education and Training Fund Report, Commissioner **Tim Bangerter** made the motion to approve the proposed budget requests and Commissioner **David Russon** seconded the motion. The motion was passed unanimously.

Consideration and Approval of Proposed Orders:

David Bartholomew: Stipulation and Consent Order: SD-11-0049

Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on June 28, 2011. The unlicensed Respondent is alleged to have offered and sold securities to at least seven investors and collected a total of \$3,902,353.53. Respondent is also alleged to have made material misstatements and omissions. These actions constitute violations under the Act. Therefore, the Division is seeking an order against the Respondent. The Respondent neither admits nor denies the Division's findings of fact and conclusions of law but consents to the sanctions in the case. Respondent has agreed to cease and desist from any further violations of the Act; to pay a fine of \$10,000, with \$5,000 of that fine due within five days of the entry of this Order and the remaining \$5,000 due one year from that date; and to be permanently barred from licensure in the securities industry in Utah.

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

Terry Eugene Leib: Stipulation and Consent Order: SD-14-0028;

William Owen Martineau: Stipulation and Consent Order: SD-14-0029;

Martineau Financial Services, LLC: Stipulation and Consent Order: SD-14-0030

Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on July 21, 2014. The unlicensed Respondents are alleged to have offered and sold securities to at least one investor and collected a total of approximately \$300,000. Respondents are also alleged to have made material misstatements and omissions. These actions constitute violations under the Act. Therefore, the Division is seeking an order against the Respondents. The Respondents neither admit nor deny the Division's findings of fact and conclusions of law but consent to the sanctions in the case. Respondents have agreed to cease and desist from any further violations of the Act; to pay a joint and several fine of \$20,000, with \$10,000 of that fine due within thirty days of the entry of this Order and the remaining \$10,000 due within two years from that date; and to be permanently barred from licensure in the securities industry in Utah.

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

Geoffrey William Watson: Stipulation and Consent Order: SD-11-0042

Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on June 9, 2011. On or about April 7, 2014 the Securities Commission in the administrative action entered a final order in the case, requiring Respondent to cease and desist, imposing a \$10,000 fine and permanently barring Respondent from the securities industry in the state of

Utah. Following subsequent cooperation by Mr. Watson in a separate Division investigation, the Division is seeking a modification of the previous Commission order against Mr. Watson, waiving the fine of \$10,000. All other provisions of the original Commission Order remain in effect.

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

Michael Kevin Landon: Stipulation and Consent Order: SD-14-0036;

Property Network, Inc.: Stipulation and Consent Order: SD-14-0037;

American Property Investments, LLC: Stipulation and Consent Order: SD-14-0038

Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on or about August 19, 2014. The unlicensed Respondents are alleged to have offered and sold securities to at least two investors and collected a total of \$417,399.87. Respondents are also alleged to have made material misstatements and omissions. These actions constitute violations under the Act. Therefore, the Division is seeking an order against the Respondents. The Respondents neither admit nor deny the Division's findings of fact and conclusions of law but consent to the sanctions in the case. Respondents have agreed to cease and desist from any further violations of the Act; to pay a joint and several fine of \$150,000, to be offset by payments of restitution to the investors. Payment of \$5,000 of the fine amount, or restitution offsets, shall be due within five days of the entry of this Order; \$2,500 due on or before April 27, 2015; \$2,500 due on or before July 27, 2015; \$500 monthly payments due between the lump-sum payments and continuing after such payments for a period of five years from the entry of the Order; with a final payment due on January 27, 2020 in an amount that covers any portion of the fine that has not been paid to the Division or provided to the investors as restitution on or before that date. Respondent Landon is to be permanently barred from licensure in the securities industry in Utah.

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

Fortius Group, LLC: Stipulation and Consent Order: SD-11-0069;

Fortius Fund, LLC: Stipulation and Consent Order: SD-11-0070;

Powder Ridge Land, LLC: Stipulation and Consent Order: SD-11-0071;

Powder Ridge Developers I, Ltd.: Stipulation and Consent Order: SD-11-0072;

Powder Ridge Management, Inc.: Stipulation and Consent Order: SD-11-0073;

Chamonix Capital I, LLC: Stipulation and Consent Order: SD-11-0074;

Amsterdam Capital XII, LLC: Stipulation and Consent Order: SD-11-0075;

David Ryan Barlow: Stipulation and Consent Order: SD-13-0002;

Blue Diamond II, LLC: Stipulation and Consent Order: SD-13-0001

Dave Hermansen reported that Orders to Show Cause and Notices of Agency Action were filed on or about September 21, 2011 and December 26, 2012. The Commission approved an Order of Default against the Fortius Respondents on or about October 29, 2012, which imposed a \$377,000 fine and a cease and desist order. The administrative action against Respondents

Barlow and Blue Diamond was stayed on March 6, 2013, pending resolution of a parallel criminal proceeding against Barlow. Barlow pleaded guilty to one count of securities fraud, a second degree felony and was ordered to make complete restitution in the amount of \$243,444. In light of the criminal resolution, the stay imposed on the administrative action was lifted on or about September 23, 2014. Respondents will admit to the findings of fact and conclusions of law and consent to the sanctions to be imposed. Respondents have agreed to cease and desist from any further violations of the Act. Respondent Barlow is permanently barred from associating, acting as an agent for any issuer soliciting investor funds in Utah and licensing in any capacity in the securities industry in Utah. Respondent Barlow is to pay restitution, as ordered in the criminal case *State of Utah v. David Ryan Barlow*, Case No. 121401766, Fourth Judicial District of Utah (2012). Respondents shall pay a fine of \$35,000, with \$15,000 due at such time as Respondent Barlow completes restitution payments in the related criminal case and the remaining \$20,000 due one year from that date. The Division's prior Default Order, dated October 29, 2012, will be vacated and the new Order shall stand as the final resolution between the parties.

Commissioner **David Russon** made the motion to approve the proposed Order and Commissioner **Tim Bangert** seconded the motion. The motion was passed unanimously

**Rational Capital Management, LLC: Stipulation and Consent Order: SD-11-0057;
Alan Herbert Oviatt: Stipulation and Consent Order: SD-11-0058**

Dave Hermansen reported that the Washington County Attorney's Office filed criminal charges against Respondent Oviatt on or about March 16, 2010. Respondent Oviatt was found guilty on or about August 21, 2013 and sentenced to jail time and restitution in the amount of \$123,000, to be paid in monthly payments of \$1,000. Based upon similar conduct, an Order to Show Cause and Notice of Agency Action was filed on or about July 26, 2011. Therefore, the Division is seeking an order against the Respondents. As part of the stipulation negotiated with the Division, the Respondents admit to the Division's findings. The Respondents are ordered to cease and desist from any further violations of the Act. Respondent Oviatt is permanently barred from associating, acting as an agent for any issuer soliciting investor funds in Utah and licensing in any capacity in the securities industry in Utah. Respondent Oviatt is to pay \$123,000 in restitution as ordered in the criminal case *State of Utah v. Alan Herbert Oviatt*, Case No. 101500457, Fifth Judicial District of Utah (2010). Respondents shall pay a fine of \$30,000 to the Division, with \$10,000 due on or before the date Respondent Oviatt completes restitution payments in the related criminal case and the remaining \$20,000 due two years from the date of the initial payment.

Commissioner **David Russon** made the motion to approve the proposed Order and Commissioner **Tim Bangert** seconded the motion. The motion was passed unanimously.

Jason Lee Borup: Recommended Order on Motion for Default: SD-14-0055

Dave Hermansen reported that a Notice of Agency Action and Order to Show Cause was filed on or about December 2, 2014. The Respondent was ordered to file a response with the Division and appear, and to this date, the Respondent has failed to appear or respond.

Therefore, the Division is seeking a default order against the Respondent. The Respondent is ordered to cease and desist from any further violations of the Act, ordered to pay a fine of \$712,500 to the Division with \$142,500 payable immediately upon receipt of this Order and the remaining \$570,000 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 the investors, and be permanently barred from licensure in the securities industry in Utah.

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

John Patrick Laing: Recommended Order on Motion for Default: SD-11-0051

Dave Hermansen reported that a Notice of Agency Action and Order to Show Cause was filed on or about June 29, 2011. The proceedings were stayed, pending possible criminal prosecution, with the stay lifted on October 23, 2014. The Respondent was ordered to file a response with the Division within 30 days, and to this date, the Respondent has failed to respond. An initial hearing was held on December 3, 2014 at which the Respondent failed to appear. Therefore, the Division is seeking a default order against the Respondent. The Respondent is ordered to cease and desist from any further violations of the Act, ordered to pay a fine of \$60,000 to the Division payable immediately upon receipt of this Order and be permanently barred from licensure in the securities industry in Utah.

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

Dean Loren Casutt: Recommended Order on Motion for Default: SD-14-0050

Dave Hermansen reported that a Notice of Agency Action and Order to Show Cause was filed on or about October 20, 2014. The Respondent was ordered to file a response with the Division, and to this date, the Respondent has failed to respond. An initial hearing was held on December 3, 2014, at which the Respondent failed to appear. Therefore, the Division is seeking a default order against the Respondent. The Respondent is ordered to cease and desist from any further violations of the Act, ordered to pay a fine of \$153,625 to the Division with \$30,725 payable immediately upon receipt of this Order and the remaining \$122,900 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 the investors, and be permanently barred from licensure in the securities industry in Utah. Commissioner **Gary Cornia** made the motion to approve the proposed Order and Commissioner **Tim Bangerter** seconded the motion. The motion was passed unanimously.

Bruce Luckett Dyson: Recommended Order on Motion for Default: SD-14-0027

Dave Hermansen reported that a Notice of Agency Action and Order to Show Cause was filed on or about July 22, 2014. On September 3, 2014, the Respondent was ordered to file initial disclosures by October 1, 2014 and final disclosures by December 5, 2014. The final disclosure deadline was extended to December 15, 2014. On January 9, 2015, the Division, having complied with all required disclosure deadlines, filed a motion to prohibit Respondent from

introducing witnesses and exhibits at hearing and requested that the Division's alleged facts be taken as established and that such other relief as might be warranted be afforded. To this date, the Respondent has failed to respond. Therefore, the Division is seeking a default order against the Respondent. The Respondent is ordered to cease and desist from any further violations of the Act, ordered to pay a fine of \$375,000 to the Division with \$75,000 payable immediately upon receipt of this Order and the remaining \$300,000 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 the investors, and be permanently barred from licensure in the securities industry in Utah.

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

Merlin Victor Fish: Stipulation and Consent Order: SD-14-0021;
Aquapower, LC: Stipulation and Consent Order: SD-14-0022

Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on or about July 7, 2014. The unlicensed Respondents are alleged to have offered and sold securities to at least two investors and collected a total of \$60,000 in cash and \$15,000 in rent credits. Respondents are also alleged to have made material misstatements and omissions. These actions constitute violations under the Act. Therefore, the Division is seeking an order against the Respondents. The Respondents neither admit nor deny the Division's findings of fact and conclusions of law but consent to the sanctions in the case. Respondents have agreed to cease and desist from any further violations of the Act; to pay a joint and several fine of \$70,000, to be offset by payments of restitution to the investors C.M. and D.R., up to \$60,000. The fine amount, and/or restitution offsets, shall be paid within 15 days of the date of this Order. Respondent Fish is to be permanently barred from licensure in the securities industry in Utah.

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

Evidentiary Hearing: R. Austin Christensen: SD-14-0023;

Bryan R. Farris was present on behalf of the Respondent. An evidentiary hearing was conducted by the Commission. Following the presentation of evidence, the Commission deliberated in closed session and indicated that ALJ Jonsson would prepare a final order for the Commission's signature.

Commissioner **Erik Christiansen** recused himself from this matter due to conflicts.

Commissioner **David Russon** made the motion to adjourn the meeting prior to deliberation. Commissioner **Tim Bangerter** seconded the motion and the meeting was adjourned at 3:02 pm.

Approved: _____


Erik Christiansen, Chairman

Date: _____

3/26/15