Utah Securities Commission
Meeting Minutes
November 20th, 2014

Division of Securities Staff Present
Keith Woodwell, Division Director
Maria Skedros, Commission Secretary
Dave Hermansen, Enforcement Director
Benjamin Johnson, Licensing & Registration Director
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
Ann Skaggs, Securities Analyst
Charles Lyons, Securities Analyst
Adam Sweet, Lead Securities Investigator
Matt Edwards, Lead Securities Investigator
Kristi Wilkinson, Securities Investigator
Chris Hardy, Securities Investigator
Sally Stewart, Administrative Assistant
Andreo Micic, Securities Examiner

Other State of Utah Employees:
Francine Giani, Executive Director, Department of Commerce
Tom Brady, Deputy Director, Department of Commerce
Jennie Jonsson, Administrative Law Judge, Department of Commerce
Che Arguello, Assistant Attorney General
Tom Melton, Assistant Attorney General

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

Commissioners Absent
None

Public Present:
Christy Tribe, Executive Vice-President, Junior Achievement
Stephen D. Thaeler, Utah Financial Planning Association
Jerry Garrett, Utah Financial Planning Association
Doug Wheelwright, Division of Public Utilities
Stephen Christiansen, Counsel for Brent Morgan
Brent Morgan, Respondent

Minutes: At 9:02 am the meeting was called to order by Commissioner **Erik Christiansen**. Commissioner **Brent Baker** made the motion to approve the minutes from the September 25, 2014 Commission meeting and Commissioner **David Russon** seconded the motion and the motion was approved unanimously.

Director's Report: Director Woodwell reported that Andreo Micic has joined the Division as an examiner in the Compliance Section. Director Woodwell provided a brief introduction of Mr. Micic and of Nathan Summers who will begin work as an examiner in the Licensing and Registration Section on November 24, 2014. Director Woodwell also introduced Tom Melton as the new Assistant Attorney General representing the Division of Securities. Director Woodwell also gave an update on the balance in the Education Fund and the receipt of $100,000.00 in fines. Director Woodwell provided an update on the Electronic Filing Depository (EFD) filing system which is scheduled to go online sometime in late 2014. The Division will participate in the beta testing of the system. Director Woodwell also talked about proposed legislation regarding intrastate crowd funding, but indicated that the bill text is currently protected. Director Woodwell promised to keep the Commission informed on this legislation and the ongoing possibility of legislation on expungement of administrative enforcement actions as the new Legislative Session approaches. **Future Meetings Scheduled:** January 22, 2015, and March 26, 2015.

Licensing and Compliance Section Report: Ken Barton reported on the 52 audits initiated thus far by the Section in 2014. Fifteen audits were for-cause audits triggered by complaints; 15 were routine audits; 21 were Investment Adviser initial application audits; and one audit was prompted by a securities issuer filing. Mr. Barton also brought the Commission up to date on the administrative actions in progress including the two actions before the Commission pending approval today, one action in settlement negotiation, and two actions stayed pending criminal referral. He also reported that the criminal case filed in Third District Court against Scott Stewart has been bound over for trial following the preliminary hearing, which concluded on November 7, 2014.

Enforcement Section Report: Dave Hermansen reported that the Enforcement Section has worked through its backlog of complaints and is fully staffed. He commented that over the next two to three months there will be several criminal cases coming to trial. He reported on the upcoming cases and noted that several cases are with the AG's office and several are with other prosecutors throughout the State.

Investor Education Report: Karen McMullin provided the Commission with an update on the Division's education events thus far in 2014, noting that there have been 88 events providing education to an audience of approximately 10,000 people. There have been 63 joint investigations and 16 meetings involving the Division and the Insurance Department. She also updated the Commission with information on the current status on financial education and support for the Stock Market Game to continue for the 2014 – 2015 school year, with the support of Director Woodwell and Executive Director Francine Giani. She also updated the Commission on the investment fraud presentations with Utah Retirement System. She also

noted how well the whistle-blower award authorized by the Commission has been received and promoted. She provided information on the newest brochures and the plans for the future of the Investor Education program. The Commission recognized her efforts and the information provided.

Education and Training Fund Report: Benjamin Johnson reported that spending is following historical patterns. He noted several previous travel reimbursements have been made but that there is nothing unusual in the figures. There will be several requests for grants that will be addressed by Director Woodwell. Action to authorize expenses and actions will be taken after the grant requests have been presented.

Following the presentation of the grant requests, Commissioner **David Russon** made the motion to approve the proposed budget requests and Commissioner **Brent Baker** seconded the motion. The motion was passed unanimously.

Grant Request: Junior Achievement: Christy Tribe from Junior Achievement addressed the Commission and reviewed how the funds in the past have been used and how the current funds requested will be spent. Director Woodwell responded to questions and indicated support for the request. The grant request is for $5,000.

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

Grant Request: Utah FPA: Stephen D. Thaeler from the Utah Financial Planning Association (FPA) addressed the Commission and reviewed how the funds in the past have been used and how the current funds requested will be spent. He also introduced other members from Utah FPA in attendance. The grant request is for $2,500.

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

Consideration and Approval of Proposed Orders:

John Rex Pugmire: Recommended Order on Motion for Default: SD-11-0050 Dave Hermansen reported that a notice of agency action and order to show cause was filed in August of 2014. The Respondent was ordered to file a response with the Division, 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 $15,000 to the Division 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 **Gary Cornia** seconded the motion. The motion was passed unanimously.

James Mooring: Recommended Order on Motion for Default: SD-11-0048 Dave Hermansen reported that a notice of agency action and order to show cause was filed in June of 2011 and then stayed pending the resolution of the criminal case. The stay was lifted on September 3,

2014 and an initial hearing was held on October 8, 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 $20,000 to the Division 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 **Brent Baker** seconded the motion. The motion was passed unanimously.

Freestyle Holdings, LLC: Recommended Order on Motion for Default: SD-08-0055; Jason K. Vaughn: Recommended Order on Motion for Default: SD-08-0056 Dave Hermansen reported that a notice of agency action and order to show cause was filed in May of 2008 and then stayed pending the resolution of the criminal case. The stay was lifted on September 3, 2014 and an initial hearing held on October 8, 2014. The Respondents were ordered to file a response with the Division and appear, and to this date, the Respondents have failed to appear or respond. Therefore, the Division is seeking a default order against the Respondents. The Respondents are ordered to cease and desist from any further violations of the Act, ordered to pay a fine of $40,000 to the Division and that Respondent Vaughn be permanently barred from licensure in the securities industry in Utah.

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

Richard Jay Radcliffe: Recommended Order on Motion for Default: SD-14-0033 Dave Hermansen reported that a notice of agency action and order to show cause was filed in August 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 $15,000 to the Division with $3,000 payable immediately upon receipt of this Order and the balance subject to offset on a dollar to dollar basis for any restitution paid, and be permanently barred from licensure in the securities industry in Utah. Questions concerning companion criminal actions were addressed along with debt collection on default orders. Director Woodwell responded to the debt collection questions.

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

Bridget Banita Gaines: Recommended Order on Motion for Default: SD-14-0041; Gotween Group Inc.: Recommended Order on Motion for Default: SD-14-0042 Dave Hermansen reported that a notice of agency action and order to show cause was filed in August of 2014. It was noted that this is also in conjunction with a criminal case in Utah County. The Respondents were ordered to file a response with the Division and appear, and to this date, the Respondents have failed to appear or respond. Therefore, the Division is seeking a default order against the Respondents. The Respondents are ordered to cease and desist from any

further violations of the Act, ordered to pay a fine of $75,000 to the Division and that Respondent Gaines be permanently barred from licensure in the securities industry in Utah.

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

Andres Enrique Cerna: Stipulation and Consent Order: SD-14-0045 Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on September 22, 2014. The unlicensed Respondent is alleged to have offered and sold securities to at least one investor and collected a total of $10,000. 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 has paid restitution in the case and has agreed to cease and desist from any further violations of the Act, to pay a fine of $1,500 to the Division within five business days of the entry of this Order and 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.

Breakthrough Technologies: Stipulation and Consent Order: SD-12-0071;
Mark Andrew Jackson: Stipulation and Consent Order: SD-12-0073 Dave Hermansen reported that the Utah Attorney General's Office filed criminal charges in April of 2012. As a result of the criminal filing Mr. Jackson pled guilty to one count of securities fraud. Respondent Jackson was ordered to pay restitution in the amount of $225,000, fined $1,173, sentenced to 180 days in jail and placed on probation for a period of 36 months. Respondents were the subject of an investigation and action alleging the offer and sale of investment contracts to an investor in or from Utah. 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 are ordered to cease and desist from any further violations of the Act. As part of the stipulation negotiated with the Division, Respondent Jackson is ordered to pay restitution as ordered in the related criminal proceeding and be permanently barred from licensure in the securities industry in Utah. Director Woodwell responded to the Commission's questions and noted that the sanctions imposed in the criminal case constituted the monetary penalty and that when the securities fraud has already been addressed in a criminal case, the Division generally does not seek additional monetary penalties in the administrative case, just the securities bar.

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

Keith Lignell: Stipulation and Consent Order: SD-14-0032 Dave Hermansen noted that the investor and Respondent were both elderly, with the investor being age 92 and the Respondent being age 88. He reported that Respondent was the subject of an investigation and action was initiated against him alleging that from approximately June 2010 to March 2014 the Respondent offered and sold promissory notes and investment contracts and collected a total of $228,000 in or from Utah. 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. As part of the stipulation negotiated with the Division, the Respondent neither admits nor denies the allegations. The Respondent agreed to cease and desist from any further violations of the Act, to pay a fine of $205,000 to the Division, to be offset by payment of restitution to the investor and to be permanently barred from licensure in the securities industry in Utah. It was noted that the Respondent has sold his house and is prepared to make full restitution to the investor.

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

Robert W. Scott: Stipulation and Consent Order: SD-14-0006;
R. Scott National, Inc.: Stipulation and Consent Order: SD-14-0007
Scott Agency Inc.: Stipulation and Consent Order: SD-14-0008 Dave Hermansen reported that Respondents, a licensed Insurance Agent and two businesses connected with insurance, were the subject of an investigation and action was initiated against them alleging the offer and sale of securities in or from Utah, through the issuance of an Order to Show Cause and Notice of Agency Action dated April 10, 2014. The Respondents are alleged to have offered and sold two investment contracts for a total of $210,333. Respondent Scott has repaid the investors, an elderly couple, a total of $88,973.96. Respondent Scott has cooperated fully with the Division. 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. As part of the Stipulation negotiated with the Division, the Respondents neither admit nor deny the Division's allegations, findings and conclusions. The Respondents agreed to cease and desist from any further violations of the Act, to pay a fine of $268,500 to the Division, with the fine being reduced dollar-for-dollar up to $243,000 for restitution paid to the Investors as set forth in the Order, with satisfactory proof provided to the Division. Respondents agree to pay $10,000 of the remaining $25,000 fine to the Division within 30 days following the Order and the balance due within 24 months of the initial payment, with payments to be made monthly in the amount of $625.00 until paid in full. The Respondents are permanently barred from licensure in the securities industry in Utah. Dave Hermansen recognized the fine work done by Kristi Wilkinson in this case and the previously discussed case.

Commissioner **Erik Christiansen** recused himself from this matter due to conflicts. Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **David Russon** seconded the motion. The motion was passed unanimously.

Michael G. Isom: Stipulation and Consent Order: SD-14-0031 Ken Barton noted that this case is connected with Dee Randall and the Horizon entities. He reported that the Respondent is a licensed insurance agent but was never licensed in the securities industry. Respondent was the subject of an investigation and action was initiated against him, alleging that between 2003 and 2011 the Respondent solicited investment in securities for approximately $2,321,000 in or from Utah. 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. As part of the Stipulation negotiated with the Division, the

Respondent neither admits nor denies the allegations, but consents to the sanctions imposed by the Division. The Respondent is ordered to cease and desist from any further violations of the Act, ordered to pay a fine of $25,000 to the Division, with $7,500 due within thirty (30) days following the entry of the Order. The balance of the fine is due within twelve (12) months following the entry of the Order. The Respondent will receive dollar-for-dollar credit against the fine, up to $11,861, for restitution payments made to investors other than family members. The Division will accept proof in the form of cancelled checks, bank records, statements from investors or other proof of actual payment. The Respondent will be permanently barred from licensure in the securities industry in Utah.

Commissioner **Erik Christiansen** recused himself from this matter due to conflicts. Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **David Russon** seconded the motion. The motion was passed unanimously.

David Burke Anglin: Stipulation and Consent Order: SD-14-0025 Ken Barton noted that this case is connected with Dee Randall and the Horizon entities. He reported that the Respondent was a licensed insurance agent and was licensed in the securities industry from May 1998 to October 2009 in various capacities, including as a broker-dealer agent and investment adviser representative. Respondent is not currently licensed in the securities industry in any capacity. Respondent was the subject of an investigation and action was initiated against him alleging the Respondent solicited investment in securities for approximately $1,168,226 in or from Utah. Respondent is also alleged to have made material misstatements and omissions. These actions constitute violations under the Act. As part of the Stipulation negotiated with the Division, the Respondent neither admits nor denies the allegations, but consents to the sanctions imposed by the Division. The Respondent is ordered to cease and desist from any further violations of the Act, ordered to pay a fine of $35,200 to the Division with $4,000 due within 90 days following the entry of the Order. The balance of the fine is payable in 16 quarterly payments of $1,950 beginning within 90 days of the initial payment. The Respondent will receive dollar-for-dollar credit against the fine, up to $30,380, for disgorging any compensation he received to the Randall Bankruptcy Trustee for distribution to investors as part of the bankruptcy estate if such payments are made by June 30, 2015. The Respondent will be permanently barred from licensure in the securities industry in Utah. Chip Lyons provided information concerning the current status in the case of Dee Randall and Horizon.

Commissioner **Erik Christiansen** recused himself from this matter due to conflicts. Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **David Russon** seconded the motion. The motion was passed unanimously.

Oral Arguments: Brent Allen Morgan: SD-14-0039;
Summit Development & Lending Group, Inc.: SD-14-0040 Stephen K. Christiansen was present on behalf of the Respondents. Oral Arguments on Respondents' Motion to Dismiss were presented by the Division's counsel and Respondents' counsel. Following the oral argument, the Commission concluded that the arguments and case law supported the Division's claims and the Commission ruled that the Respondents' Motion to Dismiss be denied. Chairman Christiansen commended the Counsel for both sides on the presentation.

Administrative Law Judge Jennie Jonsson noted for the record, that the Request for Oral Argument on the Motion to Dismiss was to be heard exclusively by the Commission with no involvement from an Administrative Law Judge, so Chairman Christiansen will prepare the Order.

Commissioner **Brent Baker** made the motion to deny the Motion to Dismiss and Commissioner **David Russon** seconded the motion. The motion was passed unanimously.

Commissioner **David Russon** made the motion to adjourn the meeting. Commissioner **Gary Cornia** seconded the motion and the meeting was adjourned at 11:32 am.

Approved:_____
Erik Christiansen, Chairman

Date: 1/22/15

LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: P. Owen ₵
₵ 12-18-14 10:09 AM ₵

SECURITIES EXEMPTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies securities provisions to address exemptions from certain registration and disclosure requirements.

Highlighted Provisions:

This bill:

- modifies an existing exemption to provide for an intrastate exemption from registration and disclosure requirements;
- modifies the division's authority with regard to the exemption;
- addresses intrastate portals or websites; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-1-14, as last amended by Laws of Utah 2010, Chapter 218

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **61-1-14** is amended to read:

H.B. 50

28 **61-1-14. Exemptions.**
29 (1) The following securities are exempt from Sections 61-1-7 and 61-1-15:
30 (a) a security, including a revenue obligation, issued or guaranteed by the United
31 States, a state, a political subdivision of a state, or an agency or corporate or other
32 instrumentality of one or more of the foregoing, or a certificate of deposit for any of the
33 foregoing;
34 (b) a security issued or guaranteed by Canada, a Canadian province, a political
35 subdivision of a Canadian province, an agency or corporate or other instrumentality of one or
36 more of the foregoing, or another foreign government with which the United States currently
37 maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer
38 or guarantor;
39 (c) a security issued by and representing an interest in or a debt of, or guaranteed by, a
40 depository institution organized under the laws of the United States, or a depository institution
41 or trust company supervised under the laws of a state;
42 (d) a security issued or guaranteed by a public utility or a security regulated in respect
43 of its rates or in its issuance by a governmental authority of the United States, a state, Canada,
44 or a Canadian province;
45 (e) (i) a federal covered security specified in the Securities Act of 1933, Section
46 18(b)(1), 15 U.S.C. [~~Section~~] Sec. 77r(b)(1), or by rule adopted under that provision;
47 (ii) a security listed or approved for listing on another securities market specified by
48 rule under this chapter;
49 (iii) any of the following with respect to a security described in Subsection (1)(e)(i) or
50 (ii):
51 (A) a put or a call option contract;
52 (B) a warrant; or
53 (C) a subscription right on or with respect to the security;
54 (iv) an option or similar derivative security on a security or an index of securities or
55 foreign currencies issued by a clearing agency that is:
56 (A) registered under the Securities Exchange Act of 1934; and
57 (B) listed or designated for trading on a national securities exchange, or a facility of a
58 national securities association registered under the Securities Exchange Act of 1934;

59 (v) an offer or sale, of the underlying security in connection with the offer, sale, or
60 exercise of an option or other security that was exempt when the option or other security was
61 written or issued; or
62 (vi) an option or a derivative security designated by the Securities and Exchange
63 Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. [~~Section~~] Sec.
64 78i(b);
65 (f) (i) a security issued by a person organized and operated not for private profit but
66 exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or
67 reformatory purposes, or as a chamber of commerce or trade or professional association; and
68 (ii) a security issued by a corporation organized under Title 3, Chapter 1, General
69 Provisions Relating to Agricultural Cooperative Associations, and a security issued by a
70 corporation to which that chapter is made applicable by compliance with Section 3-1-21;
71 (g) an investment contract issued in connection with an employees' stock purchase,
72 option, savings, pension, profit-sharing, or similar benefit plan;
73 (h) a security issued by an investment company that is registered, or that has filed a
74 registration statement, under the Investment Company Act of 1940; and
75 (i) a security as to which the director, by rule or order, finds that registration is not
76 necessary or appropriate for the protection of investors.
77 (2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:
78 (a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;
79 (b) a nonissuer transaction in an outstanding security, if as provided by rule of the
80 division:
81 (i) information about the issuer of the security as required by the division is currently
82 listed in a securities manual recognized by the division, and the listing is based upon such
83 information as required by rule of the division; or
84 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there
85 is no default during the current fiscal year or within the three preceding fiscal years, or during
86 the existence of the issuer and any predecessors if less than three years, in the payment of
87 principal, interest, or dividends on the security;
88 (c) a nonissuer transaction effected by or through a registered broker-dealer pursuant to
89 an unsolicited order or offer to buy;

90 (d) a transaction between the issuer or other person on whose behalf the offering is
91 made and an underwriter, or among underwriters;
92 (e) a transaction in a bond or other evidence of indebtedness secured by a real or
93 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the
94 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
95 indebtedness secured thereby, is offered and sold as a unit;
96 (f) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in
97 bankruptcy, guardian, or conservator;
98 (g) a transaction executed by a bona fide pledgee without a purpose of evading this
99 chapter;
100 (h) an offer or sale to one of the following whether the purchaser is acting for itself or
101 in a fiduciary capacity:
102 (i) a depository institution;
103 (ii) a trust company;
104 (iii) an insurance company;
105 (iv) an investment company as defined in the Investment Company Act of 1940;
106 (v) a pension or profit-sharing trust;
107 (vi) other financial institution or institutional investor; or
108 (vii) a broker-dealer;
109 (i) an offer or sale of a preorganization certificate or subscription if:
110 (i) no commission or other remuneration is paid or given directly or indirectly for
111 soliciting a prospective subscriber;
112 (ii) the number of subscribers acquiring a legal or beneficial interest therein does not
113 exceed 10;
114 (iii) there is no general advertising or solicitation in connection with the offer or sale;
115 and
116 (iv) no payment is made by a subscriber;
117 (j) subject to Subsection (6), a transaction pursuant to an offer by an issuer of its
118 securities to its existing securities holders, if:
119 (i) no commission or other remuneration, other than a standby commission is paid or
120 given directly or indirectly for soliciting a security holder in this state; and

121 (ii) the transaction constitutes:
122 (A) the conversion of convertible securities;
123 (B) the exercise of nontransferable rights or warrants;
124 (C) the exercise of transferable rights or warrants if the rights or warrants are
125 exercisable not more than 90 days after their issuance;
126 (D) the purchase of securities under a preemptive right; or
127 (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:
128 (I) the division is furnished with:
129 (Aa) a general description of the transaction;
130 (Bb) the disclosure materials to be furnished to the issuer's securities holders in the
131 transaction; and
132 (Cc) a non-refundable fee; and
133 (II) the division does not, by order, deny or revoke the exemption within 20 working
134 days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;
135 (k) an offer, but not a sale, of a security for which a registration statement is filed under
136 both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and
137 no public proceeding or examination looking toward such an order is pending;
138 (l) a distribution of securities as a dividend if the person distributing the dividend is the
139 issuer of the securities distributed;
140 (m) a nonissuer transaction effected by or through a registered broker-dealer where the
141 broker-dealer or issuer files with the division, and the broker-dealer maintains in the
142 broker-dealer's records, and makes reasonably available upon request to a person expressing an
143 interest in a proposed transaction in the security with the broker-dealer information prescribed
144 by the division under its rules;
145 (n) a transaction not involving a public offering;
146 (o) an offer or sale of "condominium units" or "time period units" as those terms are
147 defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by
148 installment contract, if the following are complied with:
149 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in
150 another state, the condominium act of that state;
151 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

152 (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and
153 (iv) Title 70C, Utah Consumer Credit Code;
154 (p) a transaction or series of transactions involving a merger, consolidation,
155 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for
156 which, in whole or in part, is the issuance of securities of a person or persons, and if:
157 (i) the transaction or series of transactions is incident to a vote of the securities holders
158 of each person involved or by written consent or resolution of some or all of the securities
159 holders of each person involved;
160 (ii) the vote, consent, or resolution is given under a provision in:
161 (A) the applicable corporate statute or other controlling statute;
162 (B) the controlling articles of incorporation, trust indenture, deed of trust, or
163 partnership agreement; or
164 (C) the controlling agreement among securities holders;
165 (iii) (A) one person involved in the transaction is required to file proxy or
166 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or
167 Section 20 of the Investment Company Act of 1940 and has so filed;
168 (B) one person involved in the transaction is an insurance company that is exempt from
169 filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or
170 informational materials with the appropriate regulatory agency or official of its domiciliary
171 state; or
172 (C) all persons involved in the transaction are exempt from filing under Section
173 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or
174 informational material as the division requires by rule;
175 (iv) the proxy or informational material is filed with the division and distributed to all
176 securities holders entitled to vote in the transaction or series of transactions at least 10 working
177 days prior to any necessary vote by the securities holders or action on any necessary consent or
178 resolution; and
179 (v) the division does not, by order, deny or revoke the exemption within 10 working
180 days after filing of the proxy or informational materials;
181 (q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an
182 issuer if:

183 (i) the transaction is part of an issue in which [~~there are not more than 15 purchasers in~~
184 ~~this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;~~]
185 the issuer does not accept more than $5,000 from a non-accredited investor, and has no limit
186 for an accredited investor, as defined by Rule 501 of Securities Exchange Commission
187 Regulation D, 17 C.F.R. 230.501, except the total limit under Subsection (2)(q)(v);
188 [~~(ii) no general solicitation or general advertising is used in connection with the offer~~
189 ~~to sell or sale of the securities;~~]
190 (ii) as part of the transaction, the issuer may offer, advertise, solicit, and sell the
191 security through the issuer's own efforts, the efforts of its owners, members, officers,
192 employees, and affiliates and may advertise through any medium, including television, radio,
193 newspaper, or the issuer's own or third party websites or portals;
194 (iii) no commission or [~~other similar~~] compensation based on the offering size or dollar
195 amount of the transaction is given, directly or indirectly, to a person other than a broker-dealer
196 or agent licensed under this chapter[~~, for soliciting a prospective purchaser in this state~~];
197 (iv) the seller reasonably believes that all the purchasers in this state are purchasing the
198 security for investment purposes; [~~and~~]
199 [~~(v) the transaction is part of an aggregate offering that does not exceed $1,000,000, or~~
200 ~~a greater amount as prescribed by a division rule, during any 12 consecutive months;~~]
201 (v) the sum of all cash and other consideration to be received for sales of the securities
202 in a 12-month period does not exceed $2,000,000;
203 (vi) the transaction meets the requirements of Section 3(a)(11) of the Securities Act of
204 1933, 15 U.S.C. Sec. 77c(a)(11);
205 (vii) the purchaser is a resident of the state;
206 (viii) the issuer provides the following disclosures to a prospective purchaser of the
207 security:
208 (A) a description of the issuer's company, its entity type, and the address and phone
209 number of the issuer's principal office;
210 (B) the identity of the executive officers, directors, managing members, and other
211 persons occupying a similar status or performing similar functions in the name of and on behalf
212 of the issuer;
213 (C) the terms and conditions of the securities being offered, any outstanding securities

214 of the company, the percentage ownership of the company represented by the offered securities
215 or the valuation of the company implied by the price of the offered securities, the price per
216 share, unit, or interest of the securities being offered, the general proposed use of the proceeds
217 of the offering, the reporting to be provided to purchasers, any restrictions on the transfer of the
218 securities being offered, and any anticipated future issuance of securities that may dilute the
219 value of the securities being offered;
220 (D) a description of any litigation, legal proceedings, or pending regulatory action
221 involving the issuer or the issuer's management;
222 (E) whether the issuer or any person affiliated with the issuer or offering is subject to
223 disqualification by rule contained in the Securities Act of 1933, 17 C.F.R. 230.262; and
224 (F) a narrative of any material or significant risk factors that might have a negative
225 effect on the securities being offered that includes the following statement: "In making an
226 investment decision, purchasers must rely on their own examination of the issuer and the terms
227 of the offering, including the merits and risks involved. These securities have not been
228 registered under federal or state law, nor have these securities been recommended or approved
229 by any federal or state regulatory authority. Furthermore, no government authority has
230 confirmed the accuracy or determined the adequacy of any disclosures pertaining to these
231 securities."; and
232 (ix) the issuer of the securities:
233 (A) is a business entity organized under the laws of this state authorized to do business
234 in the state;
235 (B) is not an investment company, as defined in the Investment Company Act of 1940,
236 either before or as a result of the offering;
237 (C) not less than 10 days before commencement of any solicitation or general
238 advertising of an offering of securities, files a one-page notification form created by the
239 division that is restricted to a description of the company, its entity type, the address and phone
240 number of its principal office, the identity of the executive officers, directors, managing
241 members, and other persons occupying a similar status or performing similar functions in the
242 name of and on behalf of the issuer, and the dollar amount of the offering; and
243 (D) not less than 10 days before the commencement of any solicitation or general
244 advertising of an offering of securities, and notwithstanding Section 61-1-18.4, pays a filing fee

245 to the division of $120;
246 (r) a transaction involving a commodity contract or commodity option;
247 (s) a transaction in a security, whether or not the security or transaction is otherwise
248 exempt if:
249 (i) the transaction is:
250 (A) in exchange for one or more outstanding securities, claims, or property interests; or
251 (B) partly for cash and partly in exchange for one or more outstanding securities,
252 claims, or property interests; and
253 (ii) the terms and conditions are approved by the director after a hearing under Section
254 61-1-11.1;
255 (t) a transaction incident to a judicially approved reorganization in which a security is
256 issued:
257 (i) in exchange for one or more outstanding securities, claims, or property interests; or
258 (ii) partly for cash and partly in exchange for one or more outstanding securities,
259 claims, or property interests;
260 (u) a nonissuer transaction by a federal covered investment adviser with investments
261 under management in excess of $100,000,000 acting in the exercise of discretionary authority
262 in a signed record for the account of others; and
263 (v) a transaction as to which the division finds that registration is not necessary or
264 appropriate for the protection of investors.
265 (3) A person filing an exemption notice or application shall pay a filing fee as
266 determined under Section 61-1-18.4.
267 (4) Upon approval by a majority of the commission, the director, by means of an
268 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
269 Procedures Act, may deny or revoke an exemption specified in Subsection (1)(f) or (g) or in
270 Subsection (2) with respect to:
271 (a) a specific security, transaction, or series of transactions; or
272 (b) a person or issuer, an affiliate or successor to a person or issuer, or an entity
273 subsequently organized by or on behalf of a person or issuer generally and may impose a fine if
274 the director finds that the order is in the public interest and that:
275 (i) the application for or notice of exemption filed with the division is incomplete in a

276 material respect or contains a statement which was, in the light of the circumstances under
277 which it was made, false or misleading with respect to a material fact;
278 (ii) this chapter, or a rule, order, or condition lawfully imposed under this chapter has
279 been willfully violated in connection with the offering or exemption by:
280 (A) the person filing an application for or notice of exemption;
281 (B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar
282 status or performing similar functions, or a person directly or indirectly controlling or
283 controlled by the issuer, but only if the person filing the application for or notice of exemption
284 is directly or indirectly controlled by or acting for the issuer; or
285 (C) an underwriter;
286 (iii) subject to Subsection (8), the security for which the exemption is sought is the
287 subject of an administrative stop order or similar order, or a permanent or temporary injunction
288 or a court of competent jurisdiction entered under another federal or state act applicable to the
289 offering or exemption;
290 (iv) the issuer's enterprise or method of business includes or would include activities
291 that are illegal where performed;
292 (v) the offering has worked, has tended to work, or would operate to work a fraud upon
293 purchasers;
294 (vi) the offering is or was made with unreasonable amounts of underwriters' and sellers'
295 discounts, commissions, or other compensation, or promoters' profits or participation, or
296 unreasonable amounts or kinds of options;
297 (vii) an exemption is sought for a security or transaction that is not eligible for the
298 exemption; or
299 (viii) the proper filing fee, if required, has not been paid.
300 (5) (a) An order under Subsection (4) may not operate retroactively.
301 (b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
302 reason of an offer or sale effected after the entry of an order under this Subsection (5) if the
303 person sustains the burden of proof that the person did not know, and in the exercise of
304 reasonable care could not have known, of the order.
305 (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a
306 security to an existing securities holder who has acquired the holder's security from the issuer

307 in a transaction in violation of Section 61-1-7.
308 (7) As to a security, a transaction, or a type of security or transaction, the division
309 may[~~: (a) withdraw or further condition the exemption described in Subsection (2)(q); or (b)~~]
310 waive one or more of the conditions described in Subsection (2)(q).
311 (8) (a) The director may not institute a proceeding against an effective exemption under
312 Subsection (4)(b) more than one year from the day on which the order or injunction on which
313 the director relies is issued.
314 (b) The director may not enter an order under Subsection (4)(b) on the basis of an order
315 or injunction entered under another state act unless that order or injunction is issued on the
316 basis of facts that would constitute a ground for a stop order under this section at the time the
317 director enters the order.
318 (9) An intrastate portal or website described in Subsection (2)(q) through which an
319 offer or sale of securities under Subsection (2)(q) is made is not subject to the broker-dealer,
320 investment advisor, or investment adviser representative registration requirements under this
321 chapter if the intrastate portal or website:
322 (a) does not offer investment advice or recommendations;
323 (b) is a business entity organized under the laws of Utah and authorized to do business
324 in the state;
325 (c) acts as a conduit for money invested by purchasers of issuer securities, and does not
326 hold, manage, or possess purchaser money or securities;
327 (d) does not receive compensation based on the offering size or dollar amount of the
328 transaction, but may charge the issuer and receive a reasonable fee for services such as the
329 posting and processing of the offering, vetting an issuer, advertising the website, verifying
330 resident status of a potential purchaser, processing transactions, or other similar acts;
331 (e) files a simple one-page notification form with the division before advertising or
332 posting its first offering that is a one-time filing and is restricted to a description of the
333 company, its entity type, the address and phone number of its principal office, the identity of
334 the executive officers, directors, managing members, and other persons occupying similar
335 status or performing similar functions in the name of and on behalf of the company;
336 (f) notwithstanding Section 61-1-18.4, pays a one-time filing fee of $250 to the
337 division before advertising or posting its first offering; and

338 (g) prominently displays on the intrastate portal or website in clear language a notice to
339 potential purchasers that the website is intended only for residents of this state.

Legislative Review Note
as of 11-13-14 2:36 PM

Office of Legislative Research and General Counsel

1 **SECURITIES AMENDMENTS**
2 2015 GENERAL SESSION
3 STATE OF UTAH
4 **Chief Sponsor: Brian M. Greene**
5 Senate Sponsor: _____
6

7 **LONG TITLE**
8 **General Description:**
9 This bill modifies the Utah Uniform Securities Act to address securities issues.
10 **Highlighted Provisions:**
11 This bill:
12 ▸ modifies the definition of "security";
13 ▸ repeals provisions related to the burden of proving an exemption or an exception
14 from a definition; and
15 ▸ makes technical amendments.
16 **Money Appropriated in this Bill:**
17 None
18 **Other Special Clauses:**
19 None
20 **Utah Code Sections Affected:**
21 AMENDS:
22 **61-1-13**, as last amended by Laws of Utah 2011, Chapters 317, 319, and 354
23 REPEALS:
24 **61-1-14.5**, as enacted by Laws of Utah 1983, Chapter 284
25

26 *Be it enacted by the Legislature of the state of Utah:*
27 Section 1. Section **61-1-13** is amended to read:

H.B. 62

28 **61-1-13. Definitions.**
29 (1) As used in this chapter:
30 (a) "Affiliate" means a person that, directly or indirectly, through one or more
31 intermediaries, controls or is controlled by, or is under common control with a person
32 specified.
33 (b) (i) "Agent" means an individual other than a broker-dealer who represents a
34 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.
35 (ii) "Agent" does not include an individual who represents:
36 (A) an issuer, who receives no commission or other remuneration, directly or
37 indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and
38 who effects transactions:
39 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);
40 (II) exempted by Subsection 61-1-14(2);
41 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the
42 Securities Act of 1933; or
43 (IV) with existing employees, partners, officers, or directors of the issuer; or
44 (B) a broker-dealer in effecting transactions in this state limited to those transactions
45 described in Section 15(h)(2) of the Securities Exchange Act of 1934.
46 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
47 similar status or performing similar functions, is an agent only if the partner, officer, director,
48 or person otherwise comes within the definition of "agent."
49 (iv) "Agent" does not include a person described in Subsection (3).
50 (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions
51 in securities for the account of others or for the person's own account.
52 (ii) "Broker-dealer" does not include:
53 (A) an agent;
54 (B) an issuer;
55 (C) a depository institution or trust company;
56 (D) a person who has no place of business in this state if:
57 (I) the person effects transactions in this state exclusively with or through:
58 (Aa) the issuers of the securities involved in the transactions;

59 (Bb) other broker-dealers;
60 (Cc) a depository institution, whether acting for itself or as a trustee;
61 (Dd) a trust company, whether acting for itself or as a trustee;
62 (Ee) an insurance company, whether acting for itself or as a trustee;
63 (Ff) an investment company, as defined in the Investment Company Act of 1940,
64 whether acting for itself or as a trustee;
65 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
66 (Hh) another financial institution or institutional buyer, whether acting for itself or as a
67 trustee; or
68 (II) during any period of 12 consecutive months the person does not direct more than
69 15 offers to sell or buy into this state in any manner to persons other than those specified in
70 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
71 (E) a general partner who organizes and effects transactions in securities of three or
72 fewer limited partnerships, of which the person is the general partner, in any period of 12
73 consecutive months;
74 (F) a person whose participation in transactions in securities is confined to those
75 transactions made by or through a broker-dealer licensed in this state;
76 (G) a person who is a principal broker or associate broker licensed in this state and
77 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel
78 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire
79 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
80 indebtedness secured thereby, is offered and sold as a unit;
81 (H) a person effecting transactions in commodity contracts or commodity options;
82 (I) a person described in Subsection (3); or
83 (J) other persons as the division, by rule or order, may designate, consistent with the
84 public interest and protection of investors, as not within the intent of this Subsection (1)(c).
85 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or
86 acquisition of a security or interest in a security for value.
87 (e) "Commission" means the Securities Commission created in Section 61-1-18.5.
88 (f) "Commodity" means, except as otherwise specified by the division by rule:
89 (i) an agricultural, grain, or livestock product or byproduct, except real property or a

90 timber, agricultural, or livestock product grown or raised on real property and offered or sold
91 by the owner or lessee of the real property;
92 (ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair
93 market value is at least 15% greater than the value of the metal it contains;
94 (iii) a gem or gemstone, whether characterized as precious, semi-precious, or
95 otherwise;
96 (iv) a fuel, whether liquid, gaseous, or otherwise;
97 (v) a foreign currency; and
98 (vi) all other goods, articles, products, or items of any kind, except a work of art
99 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
100 owner of the work.
101 (g) (i) "Commodity contract" means an account, agreement, or contract for the
102 purchase or sale, primarily for speculation or investment purposes and not for use or
103 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
104 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
105 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
106 contract, installment or margin contract, leverage contract, or otherwise.
107 (ii) A commodity contract offered or sold shall, in the absence of evidence to the
108 contrary, be presumed to be offered or sold for speculation or investment purposes.
109 (iii) (A) A commodity contract may not include a contract or agreement that requires,
110 and under which the purchaser receives, within 28 calendar days from the payment in good
111 funds any portion of the purchase price, physical delivery of the total amount of each
112 commodity to be purchased under the contract or agreement.
113 (B) A purchaser is not considered to have received physical delivery of the total
114 amount of each commodity to be purchased under the contract or agreement when the
115 commodity or commodities are held as collateral for a loan or are subject to a lien of any
116 person when the loan or lien arises in connection with the purchase of each commodity or
117 commodities.
118 (h) (i) "Commodity option" means an account, agreement, or contract giving a party to
119 the option the right but not the obligation to purchase or sell one or more commodities or one
120 or more commodity contracts, or both whether characterized as an option, privilege, indemnity,

121 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.
122 (ii) "Commodity option" does not include an option traded on a national securities
123 exchange registered:
124 (A) with the Securities and Exchange Commission; or
125 (B) on a board of trade designated as a contract market by the Commodity Futures
126 Trading Commission.
127 (i) "Depository institution" is as defined in Section 7-1-103.
128 (j) "Director" means the director of the division appointed in accordance with Section
129 61-1-18.
130 (k) "Division" means the Division of Securities established by Section 61-1-18.
131 (l) "Executive director" means the executive director of the Department of Commerce.
132 (m) "Federal covered adviser" means a person who:
133 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or
134 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of
135 the Investment Advisers Act of 1940.
136 (n) "Federal covered security" means a security that is a covered security under Section
137 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of
138 the Securities Act of 1933.
139 (o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.
140 (p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
141 securities, or dividends as to equity securities.
142 (q) (i) "Investment adviser" means a person who:
143 (A) for compensation, engages in the business of advising others, either directly or
144 through publications or writings, as to the value of securities or as to the advisability of
145 investing in, purchasing, or selling securities; or
146 (B) for compensation and as a part of a regular business, issues or promulgates
147 analyses or reports concerning securities.
148 (ii) "Investment adviser" includes a financial planner or other person who:
149 (A) as an integral component of other financially related services, provides the
150 investment advisory services described in Subsection (1)(q)(i) to others for compensation and
151 as part of a business; or

152 (B) holds the person out as providing the investment advisory services described in
153 Subsection (1)(q)(i) to others for compensation.
154 (iii) "Investment adviser" does not include:
155 (A) an investment adviser representative;
156 (B) a depository institution or trust company;
157 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is
158 solely incidental to the practice of the profession;
159 (D) a broker-dealer or its agent whose performance of these services is solely
160 incidental to the conduct of its business as a broker-dealer and who receives no special
161 compensation for the services;
162 (E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or
163 business or financial publication or service, of general, regular, and paid circulation, whether
164 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
165 the rendering of advice on the basis of the specific investment situation of each client;
166 (F) a person who is a federal covered adviser;
167 (G) a person described in Subsection (3); or
168 (H) such other persons not within the intent of this Subsection (1)(q) as the division
169 may by rule or order designate.
170 (r) (i) "Investment adviser representative" means a partner, officer, director of, or a
171 person occupying a similar status or performing similar functions, or other individual, except
172 clerical or ministerial personnel, who:
173 (A) (I) is employed by or associated with an investment adviser who is licensed or
174 required to be licensed under this chapter; or
175 (II) has a place of business located in this state and is employed by or associated with a
176 federal covered adviser; and
177 (B) does any of the following:
178 (I) makes a recommendation or otherwise renders advice regarding securities;
179 (II) manages accounts or portfolios of clients;
180 (III) determines which recommendation or advice regarding securities should be given;
181 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;
182 or

183 (V) supervises employees who perform any of the acts described in this Subsection
184 (1)(r)(i)(B).
185 (ii) "Investment adviser representative" does not include a person described in
186 Subsection (3).
187 (s) "Investment contract" includes:
188 (i) an investment in a common enterprise with the expectation of profit to be derived
189 through the essential managerial efforts of someone other than the investor; or
190 (ii) an investment by which:
191 (A) an offeree furnishes initial value to an offerer;
192 (B) a portion of the initial value is subjected to the risks of the enterprise;
193 (C) the furnishing of the initial value is induced by the offerer's promises or
194 representations that give rise to a reasonable understanding that a valuable benefit of some kind
195 over and above the initial value will accrue to the offeree as a result of the operation of the
196 enterprise; and
197 (D) the offeree does not receive the right to exercise practical and actual control over
198 the managerial decisions of the enterprise.
199 (t) "Isolated transaction" means not more than a total of two transactions that occur
200 anywhere during six consecutive months.
201 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has
202 outstanding a security that it has issued.
203 (ii) With respect to a preorganization certificate or subscription, "issuer" means the one
204 or more promoters of the person to be organized.
205 (iii) "Issuer" means the one or more persons performing the acts and assuming duties
206 of a depositor or manager under the provisions of the trust or other agreement or instrument
207 under which the security is issued with respect to:
208 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and
209 certificates of deposit for securities; or
210 (B) shares in an investment company without a board of directors.
211 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
212 similar securities serving the same purpose, "issuer" means the person by whom the equipment
213 or property is to be used.

214 (v) With respect to interests in partnerships, general or limited, "issuer" means the
215 partnership itself and not the general partner or partners.
216 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or
217 leases or in payment out of production under the titles or leases, "issuer" means the owner of
218 the title or lease or right of production, whether whole or fractional, who creates fractional
219 interests therein for the purpose of sale.
220 (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any
221 of the following that is the subject of a life settlement:
222 (A) a policy; or
223 (B) the death benefit under a policy.
224 (ii) "Life settlement interest" does not include the initial purchase from the owner by a
225 life settlement provider.
226 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.
227 (x) "Person" means:
228 (i) an individual;
229 (ii) a corporation;
230 (iii) a partnership;
231 (iv) a limited liability company;
232 (v) an association;
233 (vi) a joint-stock company;
234 (vii) a joint venture;
235 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
236 (ix) an unincorporated organization;
237 (x) a government; or
238 (xi) a political subdivision of a government.
239 (y) "Precious metal" means the following, whether in coin, bullion, or other form:
240 (i) silver;
241 (ii) gold;
242 (iii) platinum;
243 (iv) palladium;
244 (v) copper; and

245 (vi) such other substances as the division may specify by rule.
246 (z) "Promoter" means a person who, acting alone or in concert with one or more
247 persons, takes initiative in founding or organizing the business or enterprise of a person.
248 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
249 is:
250 (A) inscribed in a tangible medium; or
251 (B) (I) stored in an electronic or other medium; and
252 (II) retrievable in perceivable form.
253 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
254 including when "record" is used in the following phrases:
255 (A) "of record";
256 (B) "official record"; or
257 (C) "public record."
258 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
259 a security or interest in a security for value.
260 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of
261 an offer to buy, a security or interest in a security for value.
262 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):
263 (A) a security given or delivered with or as a bonus on account of a purchase of a
264 security or any other thing, is part of the subject of the purchase, and is offered and sold for
265 value;
266 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
267 on the stock;
268 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
269 or subscribe to another security of the same or another issuer is an offer or sale of that security,
270 and also an offer of the other security, whether the right to convert or acquire is exercisable
271 immediately or in the future;
272 (D) a conversion or exchange of one security for another constitutes an offer or sale of
273 the security received in a conversion or exchange, and the offer to buy or the purchase of the
274 security converted or exchanged;
275 (E) securities distributed as a dividend wherein the person receiving the dividend

276 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or
277 sale;
278 (F) a dividend of a security of another issuer is an offer or sale; or
279 (G) the issuance of a security under a merger, consolidation, reorganization,
280 recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the
281 security issued as well as the offer to buy or the purchase of a security surrendered in
282 connection therewith, unless the sole purpose of the transaction is to change the issuer's
283 domicile.
284 (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:
285 (A) a good faith gift;
286 (B) a transfer by death;
287 (C) a transfer by termination of a trust or of a beneficial interest in a trust;
288 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or
289 (E) a securities split or reverse split.
290 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment
291 Company Act of 1940" mean the federal statutes of those names as amended before or after the
292 effective date of this chapter.
293 (dd) "Securities Exchange Commission" means the United States Securities Exchange
294 Commission created by the Securities Exchange Act of 1934.
295 (ee) (i) "Security" means a:
296 (A) note <u>if the conditions of Subsection (1)(ee)(ii)(E) are met</u>;
297 (B) stock;
298 (C) treasury stock;
299 (D) bond;
300 (E) debenture;
301 (F) evidence of indebtedness;
302 (G) certificate of interest or participation in a profit-sharing agreement;
303 (H) collateral-trust certificate;
304 (I) preorganization certificate or subscription;
305 (J) transferable share;
306 (K) investment contract;

307 (L) burial certificate or burial contract;
308 (M) voting-trust certificate;
309 (N) certificate of deposit for a security;
310 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
311 payments out of production under such a title or lease;
312 (P) commodity contract or commodity option;
313 (Q) interest in a limited liability company if the condition in Subsection (1)(ee)(ii)(B)
314 or (C) is met;
315 (R) life settlement interest; or
316 (S) in general, an interest or instrument commonly known as a "security," or a
317 certificate of interest or participation in, temporary or interim certificate for, receipt for,
318 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
319 (1)(ee)(i)(A) through (R).
320 (ii) "Security" does not include:
321 (A) an insurance or endowment policy or annuity contract under which an insurance
322 company promises to pay money in a lump sum or periodically for life or some other specified
323 period;
324 (B) an interest in a limited liability company in which the limited liability company is
325 formed as part of an estate plan [~~where~~] when all of the members are related by blood or
326 marriage[~~, or the person claiming this exception can prove that all of the members are actively~~
327 ~~engaged in the management of the limited liability company; or~~];
328 (C) an interest in a limited liability company unless it can be established that it is a
329 common enterprise between members and that the member holding the interest in the limited
330 liability company does so with the expectation of profit and is not actively engaged in the
331 management of the limited liability company so that the expectation of profits to be derived
332 from the limited liability company is primarily from the efforts of a person other than the
333 member holding the interest in the limited liability company;
334 [~~(C)~~] (D) (I) a whole long-term estate in real property;
335 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
336 fewer owners; or
337 (III) an undivided fractionalized long-term estate in real property that consists of more

338 than 10 owners if, when the real property estate is subject to a management agreement:
339 (Aa) the management agreement permits a simple majority of owners of the real
340 property estate to not renew or to terminate the management agreement at the earlier of the end
341 of the management agreement's current term, or 180 days after the day on which the owners
342 give notice of termination to the manager;
343 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
344 proceeds earned from the real property estate or the use or pledge of its assets to a person or
345 entity affiliated with or under common control of the manager; and
346 (Cc) the management agreement complies with any other requirement imposed by rule
347 by the Real Estate Commission under Section 61-2f-103[~~.~~]; or
348 [~~(iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have~~
349 ~~the right to vote, or the right to information concerning the business and affairs of the limited~~
350 ~~liability company, or the right to participate in management, may not establish, without more,~~
351 ~~that all members are actively engaged in the management of the limited liability company.~~]
352 (E) a note, unless it is established that it is an investment after considering the
353 following factors:
354 (I) the motivation for a reasonable seller and buyer to enter into the transaction is to
355 raise money for the general use of a business enterprise or to finance substantial investments;
356 (II) the plan of distribution of the note involves common trading for speculation or
357 investment;
358 (III) the investing public's reasonable expectations are that the note is an investment;
359 and
360 (IV) there is no other regulatory scheme other than this chapter that reduces the risk of
361 the instrument.
362 (iii) For purposes of Subsection (1)(ee)(ii)(C), factors to consider include the
363 distribution of power, whether the member is so inexperienced and unknowledgeable in the
364 business affairs that the member is incapable of exercising power in the limited liability
365 company, and whether there is a manager who is not the member upon which the limited
366 liability company is dependent and who cannot be replaced.
367 (ff) "State" means a state, territory, or possession of the United States, the District of
368 Columbia, and Puerto Rico.

369 (gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real
370 property by two or more persons that is:
371 (A) a tenancy in common; or
372 (B) a fee estate.
373 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.
374 (hh) "Undue influence" means that a person uses a relationship or position of authority,
375 trust, or confidence:
376 (i) that is unrelated to a relationship created:
377 (A) in the ordinary course of making investments regulated under this chapter; or
378 (B) by a licensee providing services under this chapter;
379 (ii) that results in:
380 (A) an investor perceiving the person as having heightened credibility, personal
381 trustworthiness, or dependability; or
382 (B) the person having special access to or control of an investor's financial resources,
383 information, or circumstances; and
384 (iii) to:
385 (A) exploit the trust, dependence, or fear of the investor;
386 (B) knowingly assist or cause another to exploit the trust, dependence, or fear of the
387 investor; or
388 (C) gain control deceptively over the decision making of the investor.
389 (ii) "Vulnerable adult" means an individual whose age or mental or physical
390 impairment substantially affects that individual's ability to:
391 (i) manage the individual's resources; or
392 (ii) comprehend the nature and consequences of making an investment decision.
393 (jj) "Whole long-term estate" means a person owns or persons through joint tenancy
394 own real property through a fee estate.
395 (kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of
396 legal holidays listed in Section 63G-1-301.
397 (2) A term not defined in this section shall have the meaning as established by division
398 rule. The meaning of a term neither defined in this section nor by rule of the division shall be
399 the meaning commonly accepted in the business community.

400 (3) (a) This Subsection (3) applies to the offer or sale of a real property estate
401 exempted from the definition of security under Subsection (1)(ee)(ii)(C).
402 (b) A person who, directly or indirectly receives compensation in connection with the
403 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
404 broker-dealer, investment adviser, or investment adviser representative under this chapter if
405 that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:
406 (i) a principal broker;
407 (ii) an associate broker; or
408 (iii) a sales agent.
409 Section 2. **Repealer.**
410 This bill repeals:
411 Section **61-1-14.5, Burden of proving exemption.**

Legislative Review Note
as of 12-11-14 1:28 PM

Office of Legislative Research and General Counsel

LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: P. Asplund ₵
₵ 01-12-15 3:07 PM ₵

EXPUNGEMENT OF ADMINISTRATIVE ACTION

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the treatment of agency records, including providing for the administrative expungement of agency records under certain circumstances.

Highlighted Provisions:

This bill:

- defines terms;
- provides that agency records may be classified as protected under certain circumstances;
- provides that an individual may apply for administrative expungement of records related to disciplinary action previously taken by an agency against the individual under certain circumstances, including that the individual:
  - has had no additional disciplinary action for a certain period of time; and
  - has fully complied with agency requirements regarding previous disciplinary action;
- describes the application and fee requirements for seeking the administrative expungement of agency records related to action taken by the agency;
- provides that records expunged under this legislation may still be used internally by the agency, shared with law enforcement, the courts, and as directed by court order; and
- makes technical changes.

H.B. 109

28 **Money Appropriated in this Bill:**
29 None
30 **Other Special Clauses:**
31 None
32 **Utah Code Sections Affected:**
33 AMENDS:
34 **63G-2-305**, as last amended by Laws of Utah 2014, Chapters 90 and 320
35 **63G-4-102**, as last amended by Laws of Utah 2012, Chapter 333
36 ENACTS:
37 **63G-4-701**, Utah Code Annotated 1953
38 **63G-4-702**, Utah Code Annotated 1953
39 **63G-4-703**, Utah Code Annotated 1953
40

---

41 *Be it enacted by the Legislature of the state of Utah:*
42 Section 1. Section **63G-2-305** is amended to read:
43 **63G-2-305. Protected records.**
44 The following records are protected if properly classified by a governmental entity:
45 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
46 has provided the governmental entity with the information specified in Section 63G-2-309;
47 (2) commercial information or nonindividual financial information obtained from a
48 person if:
49 (a) disclosure of the information could reasonably be expected to result in unfair
50 competitive injury to the person submitting the information or would impair the ability of the
51 governmental entity to obtain necessary information in the future;
52 (b) the person submitting the information has a greater interest in prohibiting access
53 than the public in obtaining access; and
54 (c) the person submitting the information has provided the governmental entity with
55 the information specified in Section 63G-2-309;
56 (3) commercial or financial information acquired or prepared by a governmental entity
57 to the extent that disclosure would lead to financial speculations in currencies, securities, or
58 commodities that will interfere with a planned transaction by the governmental entity or cause

59 substantial financial injury to the governmental entity or state economy;
60 (4) records, the disclosure of which could cause commercial injury to, or confer a
61 competitive advantage upon a potential or actual competitor of, a commercial project entity as
62 defined in Subsection 11-13-103(4);
63 (5) test questions and answers to be used in future license, certification, registration,
64 employment, or academic examinations;
65 (6) records, the disclosure of which would impair governmental procurement
66 proceedings or give an unfair advantage to any person proposing to enter into a contract or
67 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
68 Subsection (6) does not restrict the right of a person to have access to, after the contract or
69 grant has been awarded and signed by all parties, a bid, proposal, application, or other
70 information submitted to or by a governmental entity in response to:
71 (a) an invitation for bids;
72 (b) a request for proposals;
73 (c) a request for quotes;
74 (d) a grant; or
75 (e) other similar document;
76 (7) information submitted to or by a governmental entity in response to a request for
77 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
78 the right of a person to have access to the information, after:
79 (a) a contract directly relating to the subject of the request for information has been
80 awarded and signed by all parties; or
81 (b) (i) a final determination is made not to enter into a contract that relates to the
82 subject of the request for information; and
83 (ii) at least two years have passed after the day on which the request for information is
84 issued;
85 (8) records that would identify real property or the appraisal or estimated value of real
86 or personal property, including intellectual property, under consideration for public acquisition
87 before any rights to the property are acquired unless:
88 (a) public interest in obtaining access to the information is greater than or equal to the
89 governmental entity's need to acquire the property on the best terms possible;

90 (b) the information has already been disclosed to persons not employed by or under a
91 duty of confidentiality to the entity;
92 (c) in the case of records that would identify property, potential sellers of the described
93 property have already learned of the governmental entity's plans to acquire the property;
94 (d) in the case of records that would identify the appraisal or estimated value of
95 property, the potential sellers have already learned of the governmental entity's estimated value
96 of the property; or
97 (e) the property under consideration for public acquisition is a single family residence
98 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
99 the property as required under Section 78B-6-505;
100 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
101 compensated transaction of real or personal property including intellectual property, which, if
102 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
103 of the subject property, unless:
104 (a) the public interest in access is greater than or equal to the interests in restricting
105 access, including the governmental entity's interest in maximizing the financial benefit of the
106 transaction; or
107 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
108 the value of the subject property have already been disclosed to persons not employed by or
109 under a duty of confidentiality to the entity;
110 (10) records created or maintained for civil, criminal, or administrative enforcement
111 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
112 release of the records:
113 (a) reasonably could be expected to interfere with investigations undertaken for
114 enforcement, discipline, licensing, certification, or registration purposes;
115 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
116 proceedings;
117 (c) would create a danger of depriving a person of a right to a fair trial or impartial
118 hearing;
119 (d) reasonably could be expected to disclose the identity of a source who is not
120 generally known outside of government and, in the case of a record compiled in the course of

121 an investigation, disclose information furnished by a source not generally known outside of
122 government if disclosure would compromise the source; or
123 (e) reasonably could be expected to disclose investigative or audit techniques,
124 procedures, policies, or orders not generally known outside of government if disclosure would
125 interfere with enforcement or audit efforts;
126 (11) records the disclosure of which would jeopardize the life or safety of an
127 individual;
128 (12) records the disclosure of which would jeopardize the security of governmental
129 property, governmental programs, or governmental recordkeeping systems from damage, theft,
130 or other appropriation or use contrary to law or public policy;
131 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
132 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
133 with the control and supervision of an offender's incarceration, treatment, probation, or parole;
134 (14) records that, if disclosed, would reveal recommendations made to the Board of
135 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
136 Board of Pardons and Parole, or the Department of Human Services that are based on the
137 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
138 jurisdiction;
139 (15) records and audit workpapers that identify audit, collection, and operational
140 procedures and methods used by the State Tax Commission, if disclosure would interfere with
141 audits or collections;
142 (16) records of a governmental audit agency relating to an ongoing or planned audit
143 until the final audit is released;
144 (17) records that are subject to the attorney client privilege;
145 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
146 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
147 quasi-judicial, or administrative proceeding;
148 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
149 from a member of the Legislature; and
150 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
151 legislative action or policy may not be classified as protected under this section; and

152 (b) (i) an internal communication that is part of the deliberative process in connection
153 with the preparation of legislation between:
154 (A) members of a legislative body;
155 (B) a member of a legislative body and a member of the legislative body's staff; or
156 (C) members of a legislative body's staff; and
157 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
158 legislative action or policy may not be classified as protected under this section;
159 (20) (a) records in the custody or control of the Office of Legislative Research and
160 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
161 legislation or contemplated course of action before the legislator has elected to support the
162 legislation or course of action, or made the legislation or course of action public; and
163 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
164 Office of Legislative Research and General Counsel is a public document unless a legislator
165 asks that the records requesting the legislation be maintained as protected records until such
166 time as the legislator elects to make the legislation or course of action public;
167 (21) research requests from legislators to the Office of Legislative Research and
168 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
169 in response to these requests;
170 (22) drafts, unless otherwise classified as public;
171 (23) records concerning a governmental entity's strategy about:
172 (a) collective bargaining; or
173 (b) imminent or pending litigation;
174 (24) records of investigations of loss occurrences and analyses of loss occurrences that
175 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
176 Uninsured Employers' Fund, or similar divisions in other governmental entities;
177 (25) records, other than personnel evaluations, that contain a personal recommendation
178 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
179 personal privacy, or disclosure is not in the public interest;
180 (26) records that reveal the location of historic, prehistoric, paleontological, or
181 biological resources that if known would jeopardize the security of those resources or of
182 valuable historic, scientific, educational, or cultural information;

183 (27) records of independent state agencies if the disclosure of the records would
184 conflict with the fiduciary obligations of the agency;
185 (28) records of an institution within the state system of higher education defined in
186 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
187 retention decisions, and promotions, which could be properly discussed in a meeting closed in
188 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
189 the final decisions about tenure, appointments, retention, promotions, or those students
190 admitted, may not be classified as protected under this section;
191 (29) records of the governor's office, including budget recommendations, legislative
192 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
193 policies or contemplated courses of action before the governor has implemented or rejected
194 those policies or courses of action or made them public;
195 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
196 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
197 recommendations in these areas;
198 (31) records provided by the United States or by a government entity outside the state
199 that are given to the governmental entity with a requirement that they be managed as protected
200 records if the providing entity certifies that the record would not be subject to public disclosure
201 if retained by it;
202 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
203 except as provided in Section 52-4-206;
204 (33) records that would reveal the contents of settlement negotiations but not including
205 final settlements or empirical data to the extent that they are not otherwise exempt from
206 disclosure;
207 (34) memoranda prepared by staff and used in the decision-making process by an
208 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
209 other body charged by law with performing a quasi-judicial function;
210 (35) records that would reveal negotiations regarding assistance or incentives offered
211 by or requested from a governmental entity for the purpose of encouraging a person to expand
212 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
213 person or place the governmental entity at a competitive disadvantage, but this section may not

214 be used to restrict access to a record evidencing a final contract;
215 (36) materials to which access must be limited for purposes of securing or maintaining
216 the governmental entity's proprietary protection of intellectual property rights including patents,
217 copyrights, and trade secrets;
218 (37) the name of a donor or a prospective donor to a governmental entity, including an
219 institution within the state system of higher education defined in Section 53B-1-102, and other
220 information concerning the donation that could reasonably be expected to reveal the identity of
221 the donor, provided that:
222 (a) the donor requests anonymity in writing;
223 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
224 classified protected by the governmental entity under this Subsection (37); and
225 (c) except for an institution within the state system of higher education defined in
226 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
227 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
228 over the donor, a member of the donor's immediate family, or any entity owned or controlled
229 by the donor or the donor's immediate family;
230 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
231 73-18-13;
232 (39) a notification of workers' compensation insurance coverage described in Section
233 34A-2-205;
234 (40) (a) the following records of an institution within the state system of higher
235 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
236 or received by or on behalf of faculty, staff, employees, or students of the institution:
237 (i) unpublished lecture notes;
238 (ii) unpublished notes, data, and information:
239 (A) relating to research; and
240 (B) of:
241 (I) the institution within the state system of higher education defined in Section
242 53B-1-102; or
243 (II) a sponsor of sponsored research;
244 (iii) unpublished manuscripts;

245 (iv) creative works in process;
246 (v) scholarly correspondence; and
247 (vi) confidential information contained in research proposals;
248 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
249 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
250 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
251 (41) (a) records in the custody or control of the Office of Legislative Auditor General
252 that would reveal the name of a particular legislator who requests a legislative audit prior to the
253 date that audit is completed and made public; and
254 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
255 Office of the Legislative Auditor General is a public document unless the legislator asks that
256 the records in the custody or control of the Office of Legislative Auditor General that would
257 reveal the name of a particular legislator who requests a legislative audit be maintained as
258 protected records until the audit is completed and made public;
259 (42) records that provide detail as to the location of an explosive, including a map or
260 other document that indicates the location of:
261 (a) a production facility; or
262 (b) a magazine;
263 (43) information:
264 (a) contained in the statewide database of the Division of Aging and Adult Services
265 created by Section 62A-3-311.1; or
266 (b) received or maintained in relation to the Identity Theft Reporting Information
267 System (IRIS) established under Section 67-5-22;
268 (44) information contained in the Management Information System and Licensing
269 Information System described in Title 62A, Chapter 4a, Child and Family Services;
270 (45) information regarding National Guard operations or activities in support of the
271 National Guard's federal mission;
272 (46) records provided by any pawn or secondhand business to a law enforcement
273 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
274 Secondhand Merchandise Transaction Information Act;
275 (47) information regarding food security, risk, and vulnerability assessments performed

276 by the Department of Agriculture and Food;
277 (48) except to the extent that the record is exempt from this chapter pursuant to Section
278 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
279 prepared or maintained by the Division of Emergency Management, and the disclosure of
280 which would jeopardize:
281 (a) the safety of the general public; or
282 (b) the security of:
283 (i) governmental property;
284 (ii) governmental programs; or
285 (iii) the property of a private person who provides the Division of Emergency
286 Management information;
287 (49) records of the Department of Agriculture and Food that provides for the
288 identification, tracing, or control of livestock diseases, including any program established under
289 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control
290 of Animal Disease;
291 (50) as provided in Section 26-39-501:
292 (a) information or records held by the Department of Health related to a complaint
293 regarding a child care program or residential child care which the department is unable to
294 substantiate; and
295 (b) information or records related to a complaint received by the Department of Health
296 from an anonymous complainant regarding a child care program or residential child care;
297 (51) unless otherwise classified as public under Section 63G-2-301 and except as
298 provided under Section 41-1a-116, an individual's home address, home telephone number, or
299 personal mobile phone number, if:
300 (a) the individual is required to provide the information in order to comply with a law,
301 ordinance, rule, or order of a government entity; and
302 (b) the subject of the record has a reasonable expectation that this information will be
303 kept confidential due to:
304 (i) the nature of the law, ordinance, rule, or order; and
305 (ii) the individual complying with the law, ordinance, rule, or order;
306 (52) the name, home address, work addresses, and telephone numbers of an individual

307 that is engaged in, or that provides goods or services for, medical or scientific research that is:
308 (a) conducted within the state system of higher education, as defined in Section
309 53B-1-102; and
310 (b) conducted using animals;
311 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
312 Private Proposal Program, to the extent not made public by rules made under that chapter;
313 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
314 Evaluation Commission concerning an individual commissioner's vote on whether or not to
315 recommend that the voters retain a judge;
316 (55) information collected and a report prepared by the Judicial Performance
317 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
318 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
319 the information or report;
320 (56) records contained in the Management Information System created in Section
321 62A-4a-1003;
322 (57) records provided or received by the Public Lands Policy Coordinating Office in
323 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
324 (58) information requested by and provided to the Utah [~~State~~] 911 Committee under
325 Section 63H-7-303;
326 (59) in accordance with Section 73-10-33:
327 (a) a management plan for a water conveyance facility in the possession of the Division
328 of Water Resources or the Board of Water Resources; or
329 (b) an outline of an emergency response plan in possession of the state or a county or
330 municipality;
331 (60) the following records in the custody or control of the Office of Inspector General
332 of Medicaid Services, created in Section 63A-13-201:
333 (a) records that would disclose information relating to allegations of personal
334 misconduct, gross mismanagement, or illegal activity of a person if the information or
335 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
336 through other documents or evidence, and the records relating to the allegation are not relied
337 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation

338 report or final audit report;
339 (b) records and audit workpapers to the extent they would disclose the identity of a
340 person who, during the course of an investigation or audit, communicated the existence of any
341 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
342 regulation adopted under the laws of this state, a political subdivision of the state, or any
343 recognized entity of the United States, if the information was disclosed on the condition that
344 the identity of the person be protected;
345 (c) before the time that an investigation or audit is completed and the final
346 investigation or final audit report is released, records or drafts circulated to a person who is not
347 an employee or head of a governmental entity for the person's response or information;
348 (d) records that would disclose an outline or part of any investigation, audit survey
349 plan, or audit program; or
350 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
351 investigation or audit;
352 (61) records that reveal methods used by the Office of Inspector General of Medicaid
353 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
354 abuse;
355 (62) information provided to the Department of Health or the Division of Occupational
356 and Professional Licensing under Subsection 58-68-304(3) or (4);
357 (63) a record described in Section 63G-12-210; [~~and~~]
358 (64) captured plate data that is obtained through an automatic license plate reader
359 system used by a governmental entity as authorized in Section 41-6a-2003[~~.~~]; and
360 (65) records created or maintained for an investigation of an individual, if the records
361 were created or maintained as the result of a complaint and the governmental entity determines
362 the investigated individual has not committed a legal violation.
363 Section 2. Section **63G-4-102** is amended to read:
364 **63G-4-102. Scope and applicability of chapter.**
365 (1) Except as set forth in Subsection (2), and except as otherwise provided by a statute
366 superseding provisions of this chapter by explicit reference to this chapter, the provisions of
367 this chapter apply to every agency of the state and govern:
368 (a) state agency action that determines the legal rights, duties, privileges, immunities,

369 or other legal interests of an identifiable person, including agency action to grant, deny, revoke,
370 suspend, modify, annul, withdraw, or amend an authority, right, or license; and
371 (b) judicial review of the action.
372 (2) This chapter does not govern:
373 (a) the procedure for making agency rules, or judicial review of the procedure or rules;
374 (b) the issuance of a notice of a deficiency in the payment of a tax, the decision to
375 waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the
376 issuance of a tax assessment, except that this chapter governs an agency action commenced by
377 a taxpayer or by another person authorized by law to contest the validity or correctness of the
378 action;
379 (c) state agency action relating to extradition, to the granting of a pardon or parole, a
380 commutation or termination of a sentence, or to the rescission, termination, or revocation of
381 parole or probation, to the discipline of, resolution of a grievance of, supervision of,
382 confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah
383 State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction
384 of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or
385 judicial review of the action;
386 (d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a
387 student or teacher in a school or educational institution, or judicial review of the action;
388 (e) an application for employment and internal personnel action within an agency
389 concerning its own employees, or judicial review of the action;
390 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
391 Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that
392 this chapter governs an agency action commenced by the employer, licensee, or other person
393 authorized by law to contest the validity or correctness of the citation or assessment;
394 (g) state agency action relating to management of state funds, the management and
395 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
396 products, real property, supplies, goods, or services by or for the state, or by or for an agency of
397 the state, except as provided in those contracts, or judicial review of the action;
398 (h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of
399 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution

400 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or
401 Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or
402 judicial review of the action;
403 (i) the initial determination of a person's eligibility for unemployment benefits, the
404 initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'
405 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
406 determination of a person's unemployment tax liability;
407 (j) state agency action relating to the distribution or award of a monetary grant to or
408 between governmental units, or for research, development, or the arts, or judicial review of the
409 action;
410 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
411 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
412 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
413 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
414 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, [~~or~~] Title 19, Chapter 6, Part 7,
415 Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act,
416 except that this chapter governs an agency action commenced by a person authorized by law to
417 contest the validity or correctness of the notice or order;
418 (l) state agency action, to the extent required by federal statute or regulation, to be
419 conducted according to federal procedures;
420 (m) the initial determination of a person's eligibility for government or public
421 assistance benefits;
422 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of
423 registration;
424 (o) a license for use of state recreational facilities;
425 (p) state agency action under Title 63G, Chapter 2, Government Records Access and
426 Management Act, except as provided in [~~Section~~] Sections 63G-2-603 and 63G-4-703;
427 (q) state agency action relating to the collection of water commissioner fees and
428 delinquency penalties, or judicial review of the action;
429 (r) state agency action relating to the installation, maintenance, and repair of headgates,
430 caps, values, or other water controlling works and weirs, flumes, meters, or other water

431 measuring devices, or judicial review of the action;
432 (s) the issuance and enforcement of an initial order under Section 73-2-25;
433 (t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and
434 (ii) an action taken by the Division of Securities pursuant to a hearing conducted under
435 Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange
436 of securities described in Subsection 61-1-11.1(1); and
437 (u) state agency action relating to water well driller licenses, water well drilling
438 permits, water well driller registration, or water well drilling construction standards, or judicial
439 review of the action.
440 (3) This chapter does not affect a legal remedy otherwise available to:
441 (a) compel an agency to take action; or
442 (b) challenge an agency's rule.
443 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
444 proceeding, or the presiding officer during an adjudicative proceeding from:
445 (a) requesting or ordering a conference with parties and interested persons to:
446 (i) encourage settlement;
447 (ii) clarify the issues;
448 (iii) simplify the evidence;
449 (iv) facilitate discovery; or
450 (v) expedite the proceeding; or
451 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
452 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party,
453 except to the extent that the requirements of those rules are modified by this chapter.
454 (5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by
455 this chapter, except as explicitly provided in that section.
456 (b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is
457 governed by this chapter.
458 (6) This chapter does not preclude an agency from enacting a rule affecting or
459 governing an adjudicative proceeding or from following the rule, if the rule is enacted
460 according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking
461 Act, and if the rule conforms to the requirements of this chapter.

462 (7) (a) If the attorney general issues a written determination that a provision of this
463 chapter would result in the denial of funds or services to an agency of the state from the federal
464 government, the applicability of the provision to that agency shall be suspended to the extent
465 necessary to prevent the denial.
466 (b) The attorney general shall report the suspension to the Legislature at its next
467 session.
468 (8) Nothing in this chapter may be interpreted to provide an independent basis for
469 jurisdiction to review final agency action.
470 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
471 cause shown, from lengthening or shortening a time period prescribed in this chapter, except
472 the time period established for judicial review.
473 (10) Notwithstanding any other provision of this section, this chapter does not apply to
474 a permit review adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent
475 expressly provided in Section 19-1-301.5.
476 Section 3. Section **63G-4-701** is enacted to read:
477 **Part 7. Expungement of Administrative Disciplinary Action**
478 **63G-4-701. Title – Relationship to Utah Expungement Act.**
479 (1) This part is known as the "Expungement of Administrative Disciplinary Action."
480 (2) The provisions of this part do not affect or supercede the expungement of a record
481 under Title 77, Chapter 40, Utah Expungement Act.
482 Section 4. Section **63G-4-702** is enacted to read:
483 **63G-4-702. Definitions.**
484 As used in this part:
485 (1) "Administrative expungement" or "expunge" means to prevent public access,
486 including through a website or other electronic means, to agency records regarding the agency's
487 disciplinary action against an eligible petitioner.
488 (2) (a) "Disciplinary action" means, subject to the limitations described in Section
489 63G-4-102, state agency action against the interest of an individual that affects a legal right,
490 duty, privilege, immunity, or other legal interest of an individual, including agency action to
491 deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license.
492 (b) "Disciplinary action" does not include an investigation, detention, or conviction by

493 law enforcement or a court.
494 (3) "Eligible petitioner" means an individual who was previously the subject of
495 disciplinary action by an agency but who has:
496 (a) not been the subject of disciplinary action during the preceding three years; and
497 (b) fully complied with agency requirements regarding previous disciplinary action.
498 (4) "Qualifying record" means a record of an agency regarding disciplinary action that
499 was a final agency action at least three years before an eligible petitioner applies to the agency
500 for expungement of the record under this part.
501 Section 5. Section **63G-4-703** is enacted to read:
502 **63G-4-703. Expungement of disciplinary action.**
503 (1) Notwithstanding any conflicting provisions of Title 63G, Chapter 2, Government
504 Records Access and Management Act, and except as provided in Subsection (2), within 30
505 days after the day on which an agency receives an application for administrative expungement
506 from an eligible petitioner, the agency shall expunge the qualifying record of the eligible
507 petitioner if:
508 (a) the petitioner applies to the agency for administrative expungement in a form
509 established by agency rule in accordance with Title 63G, Chapter 3, Utah Administrative
510 Rulemaking Act; and
511 (b) the petitioner pays an application fee determined by the agency under Section
512 63J-1-504.
513 (2) Within 30 days after the day on which an agency receives an application for
514 administrative expungement, the agency head, or the agency head's designee, may deny the
515 application if:
516 (a) the petitioner filing the application is not an eligible petitioner;
517 (b) the record identified for administrative expungement is not a qualifying record;
518 (c) the petitioner provides false information on the application;
519 (d) the record for which administrative expungement is sought relates to criminal
520 conduct that resulted in a conviction that has not been expunged in accordance with Title 77,
521 Chapter 40, Utah Expungement Act; or
522 (e) the agency head, or the agency head's designee, after weighing the public's interest
523 against the petitioner's right to privacy, determines that administrative expungement would

524 unreasonably endanger the health or safety of the public.
525 (3) If the agency head or the agency head's designee denies an application for
526 administrative expungement under Subsection (2), the agency shall provide a written
527 explanation of the denial to the petitioner.
528 (4) If the agency does not provide a written explanation of a denial or otherwise
529 respond to a petitioner within 30 days after the day on which the agency receives an application
530 for administrative expungement, the agency shall expunge the qualifying record of an eligible
531 petitioner.
532 (5) An eligible petitioner whose application for administrative expungement is denied
533 as described in Subsection (2) may seek judicial review of the decision in accordance with
534 Section 63G-4-401.
535 (6) Notwithstanding the provisions of this part, a record expunged under this part may
536 be:
537 (a) used internally by the agency;
538 (b) shared by the agency with law enforcement or a court;
539 (c) shared by the agency with another agency if that agency agrees to prevent public
540 access to the record; and
541 (d) distributed by the agency as directed by court order.
542 (7) Within three years after the administrative expungement of a record under this part,
543 the agency head, or the agency head's designee, may rescind the administrative expungement of
544 an expunged record if:
545 (a) an additional and final record of disciplinary action is entered against the eligible
546 petitioner; or
547 (b) the agency determines that material information provided in the petitioner's
548 application for administrative expungement was false.

Legislative Review Note
as of 1-9-15 11:11 AM

Office of Legislative Research and General Counsel

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: **DAVID BARTHOLOMEW, CRD# 3097268,** **Respondent.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-11-0049**

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and David Bartholomew ("Bartholomew") hereby stipulate and agree as follows:

1. Bartholomew 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 June 15, 2011, the State of Utah Attorney General's Office brought charges against Bartholomew, Kenneth Eugene North ("North"), John Patrick Laing ("Laing"), Jon Rex Pugmire ("Pugmire") and James B. Mooring ("Mooring") for conduct related to

the Division's investigation.[1]

3. At that time, Bartholomew was charged with two counts of securities fraud, second degree felonies, one count of sales by an unlicensed securities agent, a third degree felony, and one count of pattern of unlawful activity, a second degree felony.[2]

4. On or about April 19, 2012, Bartholomew entered into a plea in abeyance for one count of sales by an unlicensed securities agent, a third degree felony.[3] In connection therewith, he agreed to pay $50,000 in court-ordered restitution and an additional $20,000 as complete restitution.

5. Based on the same or similar conduct, the Division initiated an administrative action against Bartholomew, North, Laing, Pugmire, and Mooring, as well as the entity Artisan

---

1 *State of Utah v. David G. Bartholomew,* Case No. 111904456, Third Judicial District Court of Utah (2011); *State of Utah v. Kenneth E. North,* Case No. 111904452, Third Judicial District Court of Utah (2011); *State of Utah v. John P. Laing,* Case No. 111904454, Third Judicial District Court of Utah (2011); *State of Utah v. John R. Pugmire,* Case No. 111904455, Third Judicial District Court of Utah (2011); *State of Utah v. James B. Mooring,* Case No. 111904457, Third Judicial District Court of Utah (2011).

2 At or about the same time, North was charged with thirteen counts of securities fraud, second degree felonies, four counts of unregistered securities agent, third degree felonies, and one count of pattern of unlawful activity. Similarly, Laing was charged with eleven counts of securities fraud, second degree felonies, one count of unregistered securities agent, a third degree felony, and one count of pattern of unlawful activity, a second degree felony. Pugmire was charged with eight counts of securities fraud, second degree felonies, one count of unregistered securities agent, a third degree felony, and one count of pattern of unlawful activity, a second degree felony. Mooring was charged with one count of securities fraud, a second degree felony, and one count of unregistered securities agent, a third degree felony.

3 On or about November 24, 2014, North pleaded guilty to one count of pattern of unlawful activity, a second degree felony. At that time, North agreed to pay complete restitution in the amount of $6,057,482 and court-ordered restitution in the amount of $556,000. His sentencing is deferred for twelve months following the entry of his plea agreement. On or about April 2, 2012, Laing pleaded guilty to three counts of securities fraud, second degree felonies. At that time, he agreed to pay $2,023,230 in restitution and $60,000 in court-ordered restitution. On or about November 26, 2012, Pugmire entered into a plea in abeyance for one count of unregistered securities agent, a third degree felony. Through that plea, he agreed to pay $50,000 in court-ordered restitution. Finally, on or about April 16, 2012, Mooring entered into a plea in abeyance for one count of unregistered securities agent, a third degree felony. In connection therewith, he agreed to pay $272,349 in restitution and $50,000 in court-ordered restitution.

Group, LLC (collectively, "Respondents"), through the issuance of an Order to Show Cause and Notice of Agency Action dated June 28, 2011 ("Order to Show Cause"). The Order to Show Cause alleged that Respondents violated § 61-1-1 (securities fraud), § 61-1-3 (unlicensed activity) and § 61-1-7 (unregistered security) of the Act, while engaged in the offer and sale of securities in or from Utah.

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

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

8. Bartholomew is represented by attorney James D. Gilson of Callister Nebeker & McCullough and is satisfied with his representation in this matter.

9. Bartholomew 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 him to enter into this Order, other than as set forth in this document.

10. Bartholomew 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.

11. Bartholomew admits the jurisdiction of the Division over him and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

12. Artisan Group, LLC registered with the Utah Division of Corporations ("Corporations") as a domestic limited liability company on or about October 11, 2007. Its status with Corporations later expired on or about February 2, 2009. While active, North served as the registered agent and manager of the entity.

13. Mooring was, at all times relevant to the matters asserted herein, a resident of Washington County, Utah. Mooring also operated a place of business in Utah County, Utah. From approximately July 27, 2001 to September 19, 2006, Mooring was licensed in Utah as a broker-dealer agent for Hornor, Townsend & Kent, Inc. ("HTK"). From approximately August 3, 2001 through September 19, 2006, Mooring was also licensed in Utah as an investment adviser representative with HTK. Mooring has not been licensed in the securities industry in any capacity since 2006.

14. Bartholomew was, at all times relevant to the matters asserted herein, a resident of Utah County, Utah. From approximately June 26, 2001 to December 6, 2006, Bartholomew was licensed in Utah as a broker-dealer agent for HTK. From approximately August 3,

2001 through December 6, 2006, Bartholomew was also licensed as an investment adviser representative of HTK. Bartholomew has not been licensed in the securities industry in any capacity since 2006.

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

16. Laing was, at all times relevant to the matters asserted herein, a resident of Salt Lake County, Utah. Laing has never been licensed in the securities industry in any capacity.

17. North was, at all times relevant to the matters asserted herein, a resident of Salt Lake County, Utah. North has never been licensed in the securities industry in any capacity. During the relevant time period, North conducted business using a variety of names, including New Century and New Century Funding, Inc. ("New Century").

GENERAL ALLEGATIONS

18. Between 2006 and 2009, while conducting business in or from Utah, various Respondents offered and sold promissory notes to at least seven investors and collected a total of approximately $3,902,353.53.[4]

19. Promissory notes are defined as securities under § 61-1-13 of the Act.

20. Respondents made material misstatements and omissions in connection with the offer and sale of securities, in violation of § 61-1-1 of the Act.

---

4 In addition to named respondents, North utilized a variety of other business names in promotional materials and on deeds of trust, including, but not limited to, the following: New Century Builders, Inc., North-Gilger Land Investments, LLC, Artisan Capital, LLC, NCB Capital, LLC, Polo Estates, The New Century Family of Companies, The New Century Group and New Century Partners.

21. Bartholomew engaged in an act, practice or course of business which operated as a fraud, in violation of § 61-1-1 of the Act, in connection with his unauthorized sales activities in the State of Utah.

22. Through the offer and sale of securities, Respondents engaged in unlicensed activity in violation of § 61-1-3 of the Act.

23. Respondents failed to register or notice file the offering, in accordance with § 61-1-7 of the Act, and failed to file any claim of exemption from registration in the State of Utah.

24. The investors lost approximately $3,484,944 of their investment funds.

INVESTOR T.B.

25. From approximately November 2006 to January 2007, T.B. met with Bartholomew on four or five different occasions in Lindon, Utah.

26. During such meetings, Bartholomew assisted T.B. with retirement planning and discussed a possible investment opportunity involving real estate.

27. He claimed that the investment would be secured by trust deeds.

28. At that time, Bartholomew also made the following representations regarding the investment:

    a. The investment involved a company named New Century;

    b. T.B. should pull equity from her home to participate in the investment;

    c. Bartholomew had personally invested in New Century and recommended the company to his other clients;

d. New Century built homes and made bridge loans;

e. New Century had building projects in Colorado, California, and Idaho; and

f. "This will put [T.B.'s] money to work for [her]."

29. Bartholomew also said that he would not charge T.B. for his services because he received a commission from the people with whom he worked.

30. T.B. later phoned her brother, Pugmire, to discuss the investment.

31. Pugmire stated that North was the principal of the company.

32. Pugmire also confirmed that New Century had building projects in Colorado, California, and Idaho.

33. Pugmire confirmed that T.B. would be able to get her money out in an emergency, and Pugmire said T.B.'s money would be used on one of New Century's building projects.

34. Based on these statements, T.B. obtained a mortgage loan from her credit union.

35. On or about January 8, 2007, T.B. wrote a check for $90,000 to New Century.

36. T.B. gave the check to Pugmire, and the check was later deposited into New Century's account at Brighton Bank.

37. Pugmire then delivered an executed promissory note signed by North and Pugmire, dated January 9, 2007, to T.B. at her home in Utah County, Utah.

38. T.B. received a $4,500 quarterly payment in March, June, September, and December 2007.

39. T.B. did not receive her March 2008 interest payment.

40. T.B.'s attorney then sent a letter to New Century requesting the missed interest payments, as well as the promised trust deed.

41. Soon after, T.B. received a copy of an unrecorded trust deed for a property located in Riverside, California, rather than the previously agreed-to property located in Kellogg, Idaho.

42. She later requested that the deed be recorded, and it was recorded on or about February 28, 2008.

43. In total, T.B. invested a total of $90,000, received a return of $16,750 in interest payments and is still owed $73,250 in principal alone.

INVESTOR S.L.

44. In 2006, S.L. was referred to New Century by a family member.

45. In or about October 2006, S.L. visited Kellogg, Idaho to learn more about investing in New Century.

46. During that trip, North talked about his development projects and told S.L. about his plans for the area and the economy.

47. In or about November 2006, S.L. and a group of investors visited Palm Springs, California, with North covering expenses.

48. Laing, Pugmire and North accompanied the group on that trip.

49. At such time, the group toured a condominium development and visited a timeshare, which North cited as examples of how he intended to structure his development.

50. During that same time period, S.L. met with Bartholomew on three separate occasions at an office located in Lindon, Utah.[5]

51. At those meetings, S.L. stated that she was a widow who wanted an investment to provide her with a monthly income, as she did not want to dip into her savings to meet her monthly expenses.

52. In response, Bartholomew provided S.L. with a New Century brochure and made the following representations regarding an investment with that company:

a. New Century was a really good deal. He had researched it personally;

b. New Century had been in business for a long time and was successful;

c. North was the principal of New Century;

d. Everyone who invested with New Century was making money;

e. He had personally invested in New Century;

f. New Century offered investors promissory notes which paid high interest rates that varied depending on the how long an investor committed funds;

g. New Century offered 25% per annum on funds invested for four years, 18% on funds invested for six months to a year, and 15% on funds invested with a monthly interest payout;

h. There were other places S.L. could put her money that he could recommend, but New Century was the best and the safest;

5 During those meetings, Bartholomew was a licensed agent and investment adviser representative of HTK.

i. There were two ways to participate: S.L. could provide a direct investment of principal, or S.L. could allow New Century to use her credit score;

j. S.L.'s investment would be tied to a specific New Century real estate development project;

k. As with any investment, there was a slight risk that S.L. would lose her money;

l. The investment would be secured by a deed to real property with a value greater than her investment;

m. The minimum investment for a two year promissory note was $500,000, but for S.L., New Century would make an exception and allow an investment of $250,000;

n. In an emergency, S.L. could get her money out or change the terms of her investment contract;

o. In order to invest, S.L. had to have a certain credit score; and

p. Bartholomew would not be making a commission on the investment from New Century, and he would not charge her for the advice he was providing.

53. Based on these representations, S.L. invested a total of $250,000 in New Century.

54. S.L. received $37,500 in returns from New Century and lost a total of $212,500 in principal alone.

BARTHOLOMEW - SELLING AWAY FROM HTK

55. From approximately June 26, 2001 to December 6, 2006, Bartholomew was employed as

an agent of HTK.

56. HTK company policy, published in "The Producer's Guide to Market Conduct," prohibits agents from "[b]ecoming involved with the sale or purchase of...promissory notes [or] personal loans as a result of any business activity..."

57. Bartholomew sold New Century promissory notes to Utah investors while he was a licensed agent of HTK.

58. Between September and November 2006, Bartholomew received at least $20,348.80 in checks from New Century designated as commissions.

59. Bartholomew did not report his securities activities with New Century as an outside business activity to his employer HTK.

60. Accordingly, HTK did not review or approve those activities, and the transactions were not recorded on the books and records of HTK.

FIRST CAUSE OF ACTION
Securities Fraud under § 61-1-1 of the Act
(Investor T.B.)

61. The Division incorporates and re-alleges paragraphs 1 through 60.

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

63. In connection with the offer or sale of a security to the investor, Bartholomew, directly or indirectly, made false statements, including, but not limited to, the following:

a. The promissory note was secured by real property located in Kellogg, Idaho,

when, in fact, the promissory note was not secured initially, and T.B. never received any interest in the Idaho property.

64. In connection with the offer and sale of a security to the investor, Bartholomew, 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. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:

i. Financial statements;

ii. Risk factors;

iii. Track record to investors;

iv. New Century and its principals' past and present legal proceedings;

v. North's business experience and operating history;

vi. Whether the investment was a registered security or exempt from registration; and

vii. Whether Bartholomew was licensed and approved to sell New Century securities.

SECOND CAUSE OF ACTION
Securities Fraud under § 61-1-1 of the Act
(Investor S.L.)

65. The Division incorporates and re-alleges paragraphs 1 through 60.

66. The investment opportunities offered and sold by Bartholomew are securities under § 61-

1-13 of the Act.

67. In connection with the offer or sale of a security to the investor, Bartholomew, directly or indirectly, made false statements, including, but not limited to, the following:

a. The promissory note was secured by real property, when in fact, the promissory note was not secured;

b. Bartholomew would not be making a commission on the investment, when in fact, Bartholomew had been receiving commissions.

68. In connection with the offer and sale of a security to the investor, Bartholomew, 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. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:

i. Financial statements;

ii. Risk factors;

iii. Track record to investors;

iv. New Century and its principals' past and present legal proceedings;

v. North's business experience and operating history;

vi. Whether the investment was a registered security or exempt from registration; and

vii. Whether Bartholomew was licensed and approved to sell New Century

securities.

THIRD CAUSE OF ACTION
Securities Fraud under § 61-1-1(3) of the Act
(Selling Away)

69. The Division incorporates and re-alleges paragraphs 1 through 60.

70. During the period Bartholomew was licensed as an agent of HTK, Bartholomew engaged in acts, practices or a course of business which operated as a fraud, including but not limited to:

    a. Selling securities away from HTK, which transactions were not reviewed or approved by his employing broker-dealer, HTK, and which were not recorded on the books and records of HTK;

    b. Accepting compensation for securities transactions from New Century, an entity not licensed as a broker-dealer and with which Bartholomew was not licensed as a securities agent;

    c. Selling a securities product to Utah investors which was prohibited by the published policy of HTK.; and

    d. Failing to report his outside business activities with New Century to HTK.

FOURTH CAUSE OF ACTION
Unlicensed Agents under § 61-1-3 of the Act
(North, Laing, Pugmire, Mooring and Bartholomew)

71. The Division incorporates and re-alleges paragraphs 1 through 60.

72. North engaged and compensated Bartholomew as an agent in the offering and/or sale of a security in Utah.

73. Bartholomew was not licensed as an agent for any of the North entities issuing securities. The only entity through which Bartholomew was licensed to sell securities was HTK.

74. Accordingly, each offer or sale of securities by Bartholomew violated Section 61-1-3(1) of the Act.

FIFTH CAUSE OF ACTION
Sale of an Unregistered Security under § 61-1-7 of the Act

75. The Division incorporates and re-alleges paragraphs 1 through 60.

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

77. The securities were offered and sold to investors in or from the State of Utah.

78. The securities offered and sold by Bartholomew were not registered or notice filed under the Act, and Bartholomew did not file any claims of exemption relating to the securities.

79. Based on the above information, Bartholomew violated § 61-1-7 of the Act.

II. THE DIVISION'S CONCLUSIONS OF LAW

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

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

    b. Bartholomew violated § 61-1-1(2) of the Act by making untrue statements of

material facts 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.

c. Bartholomew violated § 61-1-1(3) o the Act by engaging in an act, practice, or course of business which operated as a fraud or deceit upon others.

d. Bartholomew violated § 61-1-3 of the Act by acting as an agent for North's entities without being licensed as an issuer agent in the State of Utah.

e. Bartholomew violated § 61-1-7 of the Act through the sale of securities that are not registered, notice filed, or otherwise exempt from registration in the State of Utah.

III. REMEDIAL ACTIONS/SANCTIONS

81. Bartholomew neither admits nor denies the Division's findings of fact and conclusions of law but consents to the sanctions below being imposed by the Division.

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

83. Bartholomew agrees that he will be barred from (i) associating[6] 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

6"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 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.

industry in Utah.

84. 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 fine of $10,000 against Bartholomew, 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.

85. If the Division finds that Bartholomew materially violates 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, Bartholomew consents to a judgment ordering the unpaid balance of the fine immediately due and payable.

86. Bartholomew shall notify the Division of an address change within thirty days of such change.

IV. FINAL RESOLUTION

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

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

89. If Bartholomew 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, Bartholomew consents to entry of an order in which Bartholomew 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 Bartholomew 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 Bartholomew or to otherwise enforce the terms of this Order. Bartholomew 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.

90. Bartholomew 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. Bartholomew also acknowledges 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 Bartholomew 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 89 above, and may be introduced as evidence against Bartholomew in any arbitration, civil, criminal, or regulatory actions.

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

92. 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: 12-26-2014

By: _____
Dave R. Hermansen
Director of Enforcement

Respondent:

Date: 12/22/14

By: _____
David Bartholomew

Approved:

_____
Thomas M. Melton
Assistant Attorney General
D.W.

_____
James D. Gilson
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. Bartholomew cease and desist from violating the Act.
3. Bartholomew 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. 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 fine of $10,000 against Bartholomew, with $5,000 of said fine due within five days of the entry of this Order and the remainder due one year from such date.
5. If Bartholomew 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, the unpaid balance of the fine shall be imposed and become due immediately, and the Findings of Fact and Conclusions of Law set forth in this Order are deemed admitted and may be introduced as evidence against Bartholomew in any arbitration, civil, criminal, or regulatory actions.
6. Bartholomew shall notify the Division of an address change within thirty days of such change.

DATED this 22 day of January 2015.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

DATED this 22 day of January, 2015.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

Certificate of Mailing

I certify that on the 30 day of January, 2015, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

DAVID BARTHOLOMEW
c/o JAMES GILSONCALLISTER NEBEKER & MCCULLOUGH
ZIONS BANK BUILDING, STE. 900
10 EAST SOUTH TEMPLE
SALT LAKE CITY, UT 84133

Jill Ann Clark
Executive Secretary

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**
BRUCE LUCKETT DYSON; **TERRY EUGENE LEIB,** **WILLIAM OWEN MARTINEAU, and** **MARTINEAU FINANCIAL SERVICES, LLC,** **Respondents.**	Docket No. SD-14-0027 **Docket No. SD-14-0028** **Docket No. SD-14-0029** **Docket No. SD-14-0030**

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Terry Eugene Leib ("Leib"), William Owen Martineau ("Martineau") and Martineau Financial Services, LLC ("MFS") hereby stipulate and agree as follows:

1. Leib, Martineau, MFS and Bruce Luckett Dyson ("Dyson" and, collectively with Leib, Martineau and MFS, "Respondents") were the subjects of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform

Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the "Act").[1]

2. On or about July 21, 2014, the Division initiated an administrative action against Respondents, through the issuance of an Order to Show Cause and Notice of Agency Action. The Order to Show Cause alleged that Leib, Martineau and MFS violated § 61-1-1 (securities fraud); Dyson, Leib and Martineau violated § 61-1-3(1) (unlicensed agents); and MFS violated § 61-1-3(1) (unlicensed broker-dealer) and §61-1-3(2)(a) (employing unlicensed agents) of the Act, while engaging in the offer and sale of securities in or from Utah.

3. Leib, Martineau and MFS now seek to enter into this Stipulation and Consent Order ("Order") in settlement of the Division's action.

4. Leib, Martineau and MFS hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf. They 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 this Order.

5. Leib, Martineau and MFS are represented by attorney Richard Van Wagoner of Snow, Christensen & Martineau and are satisfied with his representation in this matter.

---

1 While the Division initiated an action against Respondents Dyson, Leib, Martineau and MFS as a result of the conduct referenced herein, this Stipulation and Consent Order does not involve Dyson and only serves to settle the Division's action against Leib, Martineau and MFS.

6. Leib, Martineau and MFS have read this Order, understand its contents and submit 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. Leib, Martineau and MFS 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.

8. Leib, Martineau and MFS admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

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

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

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

12. MFS is a domestic Utah limited liability company that was organized on or about

December 14, 2009.[2] Martineau currently serves as the registered agent for MFS. MFS has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

13. In or about 2011, while conducting business in or from Utah, Respondents offered and sold securities to at least one investor and collected approximately $300,000 in connection therewith.

14. Respondents are not currently, and have never been, licensed to offer and/or sell securities in Utah.

15. MFS employed or engaged Dyson, Leib, and Martineau as agents while they were unlicensed in Utah.

16. Leib, Martineau, and MFS made material misstatements and omissions in connection with the offer and/or sale of securities to the investor identified below.

17. To date, the investor has not received any return on his investment.

INVESTOR J.J.

OFFER AND SALE OF A SECURITY

18. In or about 2010, Dyson learned about an investment opportunity through his affiliation with a broker in Washington, who represented to Dyson that an investor could earn up to

2 MFS is a manager-managed, Utah limited liability company. The listed managers of MFS are the Leib Vergara Limited Partnership, of which Leib is listed as a partner, and the Oak Creek Family Limited Partnership, of which Martineau is listed as a partner.

$1 million in exchange for a $300,000 investment.[3]

19. Dyson then contacted an associate, Jamie Stevenson ("Stevenson"), who put him in touch with MFS as a potential investor in the scheme.

20. At or about the same time, Leib moved from California to Utah to accept a partnership position with MFS.[4]

21. In or about February or March 2011, Stevenson met with Leib and Martineau in Utah County, Utah, to discuss the offering.

22. About one week later, Dyson and Stevenson met with Leib and Martineau in Salt Lake County, Utah, to discuss the offering in more detail.

23. After learning about the offering from Dyson and Stevenson, Leib approached a previous neighbor, J.J., about participating in the offering.[5]

24. In or about March 2011, Leib called J.J. from Utah and made the following representations regarding the offering:

    a. Leib and Martineau had learned about the offering from Stevenson and Dyson;

---

3 The investment offering that is the subject of this Order to Show Cause was part of a larger Ponzi scheme devised and perpetrated by David Anthony Morris ("Morris"). In or about January 2012, Morris was sentenced by the U.S. District Court for the Western District of Washington to serve 40 months in prison and ordered to pay over $1.8 million in restitution for defrauding twenty-four victims between 2003 and 2011. *See* http://www.fbi.gov/seattle/press-releases/2012/pastor-sentenced-to-40-months-in-prison-for-ponzi-scheme.

4 Leib was first introduced to Martineau through Leib's brother-in-law. In 2010, Martineau was searching for development projects that needed financing, and after Leib provided Martineau the names of numerous developers that were seeking financing, Martineau offered Leib a partnership position with MFS

5 Leib and J.J. were members of the same church congregation in California. J.J. had previously expressed interest in funding an investment opportunity if Leib came across one that looked good. Leib was the only person that J.J. spoke to about the offering before he wired $300,000. J.J. did not directly communicate with Martineau or Dyson until after he had invested in the offering. Additionally, J.J. was located in California and Respondents were located in Utah during all relevant conversations about the offering. J.J. never traveled to Utah to meet with any of the Respondents to discuss the investment offering, and none of the Respondents traveled to California to discuss the offering with J.J. in-person.

b. Leib and Martineau had in-person meetings with Stevenson and Dyson in Utah to discuss the offering;

c. Dyson and his team were involved in the same trading platforms that contributed to Martineau's financial success[6];

d. The offering required an investment of $300,000 to generate a return between $15 million and $20 million in a short amount of time;

e. J.J. would receive between $10 million and $12 million in return for his $300,000 investment;

f. MFS would receive between $8 million and $10 million from J.J.'s investment;

g. There was no purpose in pursuing the offering unless J.J. could provide documentation that he had $300,000 to fund the offering;

h. All investment funds would be deposited in an escrow account and would be secure; and

i. All investment funds would be returned in or about ten days to two weeks, should something prevent the offering from generating the expected returns.

25. During that conversation, and in response to Leib's representations, J.J. stated that he was interested in funding the offering.

26. He then provided documentation via email confirming his immediate access to $300,000.

27. Additionally, J.J. asked if Leib and Martineau had researched the validity of the offering.

---

6 Leib had previously told J.J. about the specific trading platforms that contributed to Martineau's financial success.

28. In response, Leib stated that he and Martineau had received all the details, done their due diligence and asked all of the questions they had about the offering.

29. Based on these statements and representations, J.J. decided to invest $300,000 in the offering.

30. Within that same week, Leib called J.J. from Utah and provided him with instructions on wiring $300,000 to International Wealth Trust's ("IWT") Citibank account in Sherman Oaks, California.[7]

31. On or about March 25, 2011, Dyson and MFS entered into an agreement whereby Dyson would receive ten percent (10%) of gross profits derived from transactions in which Dyson advised or consulted MFS.[8]

32. On or about March 28, 2011, J.J. wired $300,000 to IWT's Citibank account.

33. In or about April 2011, J.J. asked Leib to retrieve his funds from IWT's Citibank account.

34. At that time, Leib and Martineau attempted to retrieve J.J.'s funds from IWT's Citibank account but were unsuccessful because all of J.J.'s funds had been transferred out of that account.

35. Based on a source and use analysis of the relevant bank records, J.J.'s funds were not used to purchase a bank instrument, and his funds were not held in an escrow account until they generated the expected returns. Instead, some, if not all, of J.J.'s funds were

---

7 IWT was a family trust created by Morris. IWT's Citibank account was represented to Leib and Martineau as a holding or escrow account that would be used to purchase the bank instrument.
8 The agreement makes no mention of J.J. or the source of the $300,000 investment.

used by Morris to cover his personal expenses or to pay off other investors.[9]

36. Over the next few months, Respondents made additional efforts to retrieve J.J.'s funds but were unsuccessful in collecting any of his investment.

37. In or about January 2012, Morris was convicted of wire fraud and money laundering.

38. To date, J.J. has not received any return from Leib, Martineau, or MFS on the $300,000 investment.[10]

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act

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

40. The investment opportunity offered and sold by Respondents qualifies as a security in accordance with § 61-1-13 of the Act.

41. In connection with the offer and sale of securities to investor J.J., Leib, Martineau, and MFS, directly or indirectly, made false statements, including, but not limited to, the following:

    a. Leib and Martineau, acting as agents of MFS, had done all due diligence, received all documentation and asked all their questions concerning the investment offering prior to J.J. wiring the $300,000, when, in fact, they did not do their due diligence but

---

9 The bank records indicate that between March 28, 2011 and March 30, 2011, J.J.'s $300,000 investment was transferred out of IWT's Citibank account and into three other bank accounts, all of which had connections to Morris.

10 In or about 2012, Leib received a restitution check in connection with Morris's criminal conviction for wire fraud and money laundering. Leib subsequently mailed the restitution check to J.J.; however, J.J. has been unable to cash or deposit the check because the check was not made payable to J.J. or endorsed by Leib.

merely relied on Dyson's oral promises and the limited written documentation that Dyson provided;

b. J.J.'s investment funds would be secure in an escrow account and would be returned to him in or about ten days to two weeks if the offering could not generate the expected returns, when, in fact, the funds were not secure but were used by Morris and were never returned to J.J.; and

c. J.J.'s $300,000 investment would generate a return between $15 million and $20 million, when, in fact, Leib, Martineau, and MFS had no reasonable basis for guaranteeing such a return.

42. In connection with the offer and sale of securities to investor J.J., Leib, Martineau, and MFS, 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. The details surrounding the consulting agreement entered into between Dyson and MFS, including the following:

i. MFS would be the party making the $300,000 investment, rather than J.J.; and

ii. Dyson was entitled to receive ten percent (10%) of gross profits from the offering as a consulting or commission fee.

b. The names and identity of other individuals who expected to receive commission

earnings from the offering;

c. The identity of IWT and its relationship to the Respondents;

d. Some or all of the information typically provided in an offering circular or prospectus concerning Leib, Martineau, MFS, Morris, IWT, and any other individuals and/or business entities relevant to the transaction, such as:

   i. Business and operating history;

   ii. Financial statements;

   iii. Conflicts of interests;

   iv. Risk factors;

   v. Suitability factors for the investment;

   vi. Whether Respondents were licensed to sell securities in Utah; and

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

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

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

44. Dyson, Leib, and Martineau were not licensed as broker-dealers or issuer agents at the time of their involvement in this offering.

45. Dyson, Leib, and Martineau acted as agents of a broker-dealer or issuer by effecting or attempting to effect the purchase or sale of securities in or from Utah.

46. It is unlawful for persons to transact business in this State as agents unless appropriately

licensed in accordance with the Act.

47. Accordingly, each offer and/or sale of securities by Dyson, Leib, and Martineau violated § 61-1-3(1) of the Act.

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

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

49. MFS was not licensed to act as a broker-dealer at the time of its involvement in this offering.

50. MFS acted as a broker-dealer by engaging in the business of effecting transactions in securities for the account of others in or from Utah.

51. It is unlawful for an entity to transact business in this State as a broker-dealer unless appropriately licensed in accordance with the Act.

52. Accordingly, each offer and/or sale of securities effected by MFS violated § 61-1-3(1) of the Act.

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

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

54. MFS acted as broker-dealer by engaging in the business of effecting transactions in securities for the account of others in or from Utah.

55. As a broker-dealer, it is unlawful to employ or engage an agent in this State unless the agent is appropriately licensed in accordance with the Act.

56. Dyson, Leib, and Martineau acted as unlicensed agents at the time of their involvement in

this offering.

57. Accordingly, MFS violated § 61-1-3(2) of the Act.

II. THE DIVISION'S CONCLUSIONS OF LAW

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

a. The investment opportunity offered and sold by Respondents is a security in accordance with § 61-1-13 of the Act.

b. Leib, Martineau and MFS violated § 61-1-1(2) of the Act by making untrue statements of material facts and 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.

c. Dyson, Leib, Martineau and MFS violated § 61-1-3(1) of the Act by transacting business in Utah as a broker-dealer or agent without prior licensure;

d. MFS violated § 61-1-3(2) of the Act by employing unlicensed agents.

III. REMEDIAL ACTIONS/SANCTIONS

59. Leib, Martineua and MFS neither admit nor deny the Division's findings of fact and conclusions of law but consent to the sanctions below being imposed by the Division.

60. Leib, Martineau and MFS agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.

61. Leib and Martineau agree that they will be barred from (i) associating[11] with any broker-

[11] "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

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

62. Leib, Martineau and MFS agree to cooperate with the Division in any future investigations and/or administrative proceedings relevant to the matters referenced herein.

63. 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 joint and several fine of $20,000 against Leib, Martineau and MFS. The fine amount shall be paid in accordance with the following schedule:

a. $10,000 due within thirty days from the entry of this Order; and

b. The remaining $10,000 due within two years from that date.

Failure to comply with this payment provision may result in the referral of the fine to the State Office of Debt Collection.

64. If the Division finds that Leib, Martineau or MFS 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, Leib, Martineau and MFS consent to a judgment ordering the unpaid balance of the fine immediately due and payable.

65. For the entire time the fine remains outstanding, Leib, Martineau and MFS agree to notify

---

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.

the Division of any change in mailing address, within thirty days from the date of such change.

IV. FINAL RESOLUTION

66. Leib, Martineau and MFS acknowledge that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter.

67. Leib, Martineau and MFS 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.

68. If Leib, Martineau or MFS materially violate 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, Leib, Martineau and MFS consent to the entry of an order in which they 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 Leib, Martineau or MFS 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 them or to otherwise enforce the terms of this Order. Leib, Martineau and MFS 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.

69. Leib, Martineau and MFS 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. Leib, Martineau and MFS 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 Leib, Martineau or MFS 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 68 above, and may be introduced as evidence against them in any arbitration, civil, criminal, or regulatory actions.

70. Leib, Martineau and MFS acknowledge that a willful violation of this Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.

71. 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: 1-12-2015

By: _____
Dave R. Hermansen
Director of Enforcement

Respondents:

Date: 12/20/14

By: _____
Terry Eugene Leib

Date: _____

By: _____
William Owen Martineau,
Individually and on behalf of
Martineau Financial Services,
LLC

Approved:

_____
Thomas M. Melton
Assistant Attorney General
A.S.

_____
Richard A. Van Wagoner
Snow, Christensen &
Martineau
Attorney for Leib, Martineau
and MFS

Utah Division of Securities:

Date: 1-12-2015

By: _____
Dave R. Hermansen
Director of Enforcement

Respondents:

Date: _____

By: _____
Terry Eugene Leib

Date: 12/19/2014

By: _____
William Owen Martineau,
Individually and on behalf of
Martineau Financial Services,
LLC

Approved:

_____
Thomas M. Melton
Assistant Attorney General
A.S.

_____
Richard A. Van Wagoner
Snow, Christensen &
Martineau
Attorney for Leib, Martineau
and MFS

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. Leib, Martineau and MFS cease and desist from violating the Act.

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

4. Leib, Martineau and MFS cooperate with the Division in any future investigations and/or administrative proceedings relevant to the matters referenced herein.

5. The Division impose a joint and several fine of $20,000 against Leib, Martineau and MFS. The fine amount shall be paid in accordance with the following schedule:

   a. $10,000 due within thirty days from the entry of this Order; and

   b. The remaining $10,000 due within two years from that date.

6. If Leib, Martineau or MFS materially violate any term of this Order, the unpaid balance of the fine amount shall be imposed and become due immediately.

7. For the entire time the fine remains outstanding, Leib, Martineau and MFS notify the Division of any change in mailing address, within thirty days from the date of such change.

DATED this 22 day of January 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

Certificate of Mailing

I certify that on the 30 day of January 2014, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

TERRY EUGENE LEIB
WILLIAM OWEN MARTINEAU
MARTINEAU FINANCIAL SERVICES, LLC
c/o RICHARD VAN WAGONER
SNOW, CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE, 11TH FLOOR
P.O. BOX 45000
SALT LAKE CITY, UT 84145

Executive Secretary

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: **GEOFFREY WILLIAM WATSON a.k.a. HA CORP. INTERNATIONAL LTD,** **Respondent.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-11-0042**

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Geoffrey William Watson, a.k.a. HA Corp. International Ltd., ("Watson" 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 June 9, 2011, 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.

3. On or about April 7, 2014, the presiding officer in the administrative action, acting on behalf of the Utah Securities Commission ("Commission"), signed a document entitled "Findings of Fact, Conclusions of Law, and Order" ("Commission Order") requiring Respondent to cease and desist from violating the terms of the Act, imposing a $10,000 fine, and permanently barring Respondent from the securities industry in the state of Utah.[1]

4. Given Respondent's subsequent cooperation in a separate investigation,[2] the Division now seeks to enter into this Stipulation and Consent Order ("SCO") for the purpose of waiving the fine imposed against Respondent in the Commission Order. Upon approval by the Commission, this SCO shall supersede the prior Commission Order solely as to Respondent's fine.

5. Respondent has read the Commission Order and this SCO, understands the contents of both documents and submits to this SCO voluntarily. No promises, threats or other forms of inducement have been made by the Division, nor by any representative of the Division, to encourage him to enter into this SCO, other than as set forth in this document.

6. Respondent has been advised of his right to counsel and has chosen to represent himself in this matter.

---

1 In that Commission Order, co-respondent Gregory B. Baldwin was similarly required to cease and desist from violating the Act, fined $20,000, and permanently barred from the securities industry in the state of Utah.
2 Respondent played a role in the Division's investigation involving Ingeborg Del Vechil, aka Ann Del Vechio (case number 14-0009).

AGREEMENT AND FINAL RESOLUTION

7. Upon entry of this SCO, the April 7, 2014 Commission Order shall be vacated solely as to Respondent's fine. The other findings and sanctions shall remain in full force and effect.

8. Respondent acknowledges that this SCO, upon approval by the Commission, shall be the final compromise and settlement of this matter.

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

10. Respondent acknowledges that the SCO does not affect any civil or arbitration causes of action that third parties may have against him rising in whole or in part from his actions, and that the SCO does not affect any criminal causes of action that may arise as a result of the conduct referenced herein.

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

12. The SCO 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 SCO in any way. The SCO may be docketed in a court of competent jurisdiction.

Utah Division of Securities:

Date: 12-22-2014

By: _____
Dave R. Hermansen
Director of Enforcement

Respondent:

Date: 12/19/2014

By: _____
Geoffrey W. Watson,
a.k.a. HA Corp. International LTD.

Approved: _____
Assistant Attorney General
J.N.
M.E.

ORDER

IT IS HEREBY ORDERED THAT:

The $10,000 fine imposed in the April 7, 2014 Commission Order against Respondent is waived. All other provisions of the Commission Order remain in effect.

DATED this 22 day of January 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Comia

David Russon

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

Certificate of Mailing

I certify that on the 30 day of January 2014, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Lillian Clark
Executive Secretary

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: **MICHAEL KEVIN LANDON, PROPERTY NETWORK, INC., and AMERICAN PROPERTY INVESTMENTS, LLC,** **Respondents.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-14-0036** **Docket No. SD-14-0037** **Docket No. SD-14-0038**

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Michael Kevin Landon ("Landon"), Property Network, Inc. ("Property Network") and American Property Investments, LLC ("API" and, collectively with Landon and Property Network, "Respondents") hereby stipulate and agree as follows:

1. Respondents were the subject of an investigation conducted by the Division into allegations that they 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 August 19, 2014, the Division initiated an administrative action against

Respondents, through the issuance of an Order to Show Cause and Notice of Agency Action. The Order to Show Cause alleged that Respondents violated § 61-1-1 (securities fraud) of the Act, while engaging in the offer and sale of securities in or from Utah.

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

4. 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 this Order.

5. Respondents are represented by attorney Jennifer R. Korb of Ray Quinney & Nebeker P.C. and are satisfied with her representation in this matter.

6. Respondents have read this Order, understand its contents and submit 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. 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.

8. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

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

10. Property Network is a Utah-based corporation that incorporated on or about April 7, 2006. The entity's status with the Utah Division of Corporations ("Corporations") is currently listed as active. Landon serves as president, director, and registered agent of the entity. Property Network has never been licensed in the securities industry in any capacity.

11. API is a Utah-based limited liability company that registered with Corporations on or about October 18, 2006. The entity's status with Corporations is currently listed as active. Landon serves as manager and registered agent of the entity. API has never been licensed in the securities industry in any capacity. Corporate records indicate that the entity formerly operated as American Property Investments, Inc. and is currently doing business as API Utah.

GENERAL ALLEGATIONS

12. Between March 2004 and December 2008, Respondents offered and sold investment opportunities, in or from Utah, to at least two investors and collected a total of

approximately $417,399.87.[1]

13. Respondents presented investors with multiple opportunities to participate in different real estate investments, whereby Respondents would purchase properties, renovate them, and generate profits through resale.

14. Landon represented himself to be very experienced and successful with these types of investments.

15. He explained that all investment funds would be secured by trust deeds on real property, and the properties would have enough equity to support the investments.[2]

16. Landon also represented that the investors would not be involved in the management or operation of the enterprise, as he was offering a passive-income opportunity.

17. The investment opportunities that Respondents offered and sold in or from the state of Utah qualify as investment contracts, which are defined as securities under § 61-1-13 of the Act.

18. Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investors identified below.

19. To date, investors have received a total return of $131,308.44 from Respondents and are still owed $286,091.43 in principal alone.

---

1 In total, Respondents solicited more than thirty investors and collected a total of approximately $4,208,826.79 from said investors, per a 2010 balance sheet prepared by one of Landon's business associates. However, only three of the more than thirty investors participated in the Division's investigation. The investments of J.H. and B.W., husband and wife, are described herein.

2 While Landon provided investors with trust deeds on various properties, none of said deeds had any value, as they secured positions that could not be supported by equity. All but one of the properties relevant to these transactions have been foreclosed on without providing any value to the investors.

INVESTOR J.H.

OFFER AND SALE OF SECURITIES

20. In or about 2004, J.H.'s financial advisor, Charles Blue ("Blue"), introduced J.H. to Landon.

21. Blue, who had personally invested with Landon, mentioned that Landon may have a profitable investment opportunity for J.H.

22. Landon explained to J.H. that he was involved in the real estate industry, primarily buying, managing, and selling real property for a profit.

23. He further stated that he had been in the business for many years and was very successful in his work.

24. Landon told J.H. that she could earn between 8% and 13% annually through an investment with his companies.

25. Landon also represented to J.H. that he would provide her with trust deeds on properties that would fully secure her funds.

26. As a result, her investment would be safe and secure.

27. Further, in the event anything went wrong, J.H. would own the properties.

28. Landon also emphasized the fact that J.H. would not have to manage the properties or assist in any sales efforts. She was simply an investor in Landon's businesses.

29. Landon then provided J.H. with an API brochure that further described the investment, affirming that it was a passive-income opportunity and that her funds would be 100%

safe, secure, and collateralized with real estate.

30. The investment itself was described in the brochure as a trust deed lending program, "offering long term investment benefits with short-term payout options…"

31. Based on these statements, J.H. decided to invest with Landon.

32. Specifically, J.H. invested a total of $336,899.87, paid in eight separate installments over a period of five years.[3]

33. The dates and amounts of J.H.'s investments are as follows:

DATE	AMOUNT
March 3, 2004	$95,000
March 24, 2004	$71,378
November 4, 2005	$11,000
July 17, 2007	$35,377.84
August 8, 2007	$44,544.03
March 14, 2008	$14,600
July 31, 2008	$60,000
November 19, 2008	$5,000
TOTAL	**$336,899.87**

3 Over the course of five years, J.H. invested with Landon on multiple occasions. Some of those investments occurred as a result of Landon mentioning a new project to J.H. At other times, J.H. relied upon Landon's representations regarding the success and growth of her previous investments, and provided Landon with funds, asking him to put that money toward additional projects as they became available.

34. J.H. made her payments to API. In exchange, she received a total of eleven trust deeds purporting to transfer interests in various properties, and sometimes more than one interest in the same property, from Property Network to J.H., her individual retirement account, or the entity she established for the purpose of investing.

35. With respect to the trust deeds, few directly correlated to an individual investment and none of them provided her with a position in a property that was either fully or partially supported by the existing equity.[4]

36. In addition to the trust deeds, Landon also provided J.H. with a balance sheet for Property Network, reflecting that company's financial position as of December 31, 2010, more than two years after J.H.'s final investment.

37. The balance sheet included a detailed analysis of J.H.'s investments and interests in various properties, listed by address.

38. According to that document, J.H.'s total investment with Property Network was valued at $480,843.58, reflecting both principal and interest.

39. However, J.H. has not realized that amount.

40. J.H. has requested a complete return of her investment from Landon and has received payments totaling $125,808.44.

---

4 For example, with respect to J.H.'s fourth investment, which occurred on or about July 17, 2007, she was eventually provided with a trust deed for a property located at 136 East Main Street, Grantsville, Utah. The deed was recorded on or about June 10, 2008 and signed by Landon. At that time, J.H. was unaware that the property had approximately seventeen other trust deeds previously recorded against it and a total trust deed liability of $623,280.85 plus interest. According to the Tooele County Assessor's office, the total value of the property was $287,000 in 2008. On or about July 5, 2011, the property was foreclosed on and a trustee's deed was recorded. J.H. lost her interest in the property at that time and did not recoup any money from the sale

41. She is still owed $211,091.43 in principal alone.

INVESTOR B.W.

OFFER AND SALE OF SECURITIES

42. B.W., who is married to J.H., also met Landon through his financial advisor, Blue.

43. In or about 2007, Landon represented himself to B.W. to be a very successful individual involved in real estate.

44. Specifically, he stated that he made a living through the purchase, management, and sale of real property.

45. At that time, Landon told B.W. that B.W. could make between 8% and 10% annually through an investment with Landon and his companies.

46. He further stated that B.W.'s investment would be safe because all funds would be invested in real estate and secured by trust deeds on the relevant properties.

47. If anything went wrong with the investment, B.W. would own the properties.

48. Landon also emphasized the fact that B.W. would not have to manage the properties or assist in any sales efforts. He was simply an investor in Landon's businesses.

49. Landon then provided B.W. with an API brochure that further described the investment, affirming that it was a passive-income opportunity and that his funds would be 100% safe, secure, and collateralized with real estate.

50. The investment itself was described in the brochure as a trust deed lending program, "offering long term investment benefits with short-term payout options..."

51. Based on these statements, B.W. invested a total of $80,500 in three separate payments.

52. The dates and amounts of B.W.'s investments are as follows:

DATE	AMOUNT
August 10, 2007	$45,000
March 3, 2008	$30,000
December 2, 2008	$5,500
TOTAL	**$80,500**

53. In exchange for his investment, B.W. received a total of two trust deeds purporting to transfer an interest in two separate properties from Property Network to B.W.[5]

54. These trust deeds were recorded between March and April 2008 and signed by Landon, as president of Property Network.

55. While the trust deeds appear to correlate to B.W.'s first two investments, neither of them provided him with a position in a property that was supported by the existing equity.[6]

56. Landon also provided B.W. with a balance sheet for Property Network, reflecting that company's financial position as of December 31, 2010.

57. The balance sheet included a detailed analysis of B.W.'s investments and interests in two

5 B.W. did not receive any proof of security with respect to his third investment of $5,500.

6 For example, in exchange for B.W.'s first investment, which occurred on or about August 10, 2007, he received a trust deed that was recorded on March 24, 2008. At that time, the property associated with the trust deed had approximately fourteen other trust deeds recorded against it and a total liability of $451,715 plus interest. According to the Tooele County Assessor's office, the value of the property in 2007 was $167,000. On or about July 5, 2011, the property at issue was foreclosed on and a trustee's deed was recorded. At that time, B.W. lost his interest in the property and did not recoup any money from the sale.

properties, listed by address.

58. According to that document, B.W.'s total investment with Property Network was valued at $97,092.37, reflecting both principal and interest.

59. However, B.W. has not realized that amount.

60. B.W. has requested a complete return of his investment from Landon and has received payments totaling $5,500.

61. He is still owed $75,000 in principal alone.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act (Investor J.H.)

62. The Division incorporates and re-alleges paragraphs 1 through 61.

63. The investment contracts offered and sold by Respondents are securities under § 61-1-13 of the Act.

64. In connection with the offer and sale of securities to investor J.H., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

    a. In exchange for her investment, J.H. would receive trust deeds that fully secured her funds, when, in fact, J.H. was provided with a variety of trust deeds, none of which had any value, as the underlying properties did not have enough equity to support J.H.'s interests;

    b. The investments would be 100% safe and secured by real property, when, in fact, the collateral used to secure J.H.'s investments did not have enough equity to support her

interests; and

c. In the event anything went wrong with the investment, J.H. would own the underlying properties, when, in fact, Landon knew that other investors held interests in the properties that had been previously recorded and that J.H. could lose her money.

65. In connection with the offer and sale of securities to investor J.H., Respondents, 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. Other investors in Landon's enterprises held trust deeds on the properties used to secure J.H.'s investments, and those trust deeds exceeded the value of the equity in the properties;

b. How many other investors held trust deeds in the properties supporting J.H.'s investments;

c. J.H.'s funds were being pooled with other investor funds rather than being applied directly to specific properties;

d. How Landon could guarantee a consistent annual return on the investments;

e. On or about October 17, 2001, Landon filed for Chapter 7 bankruptcy relief in the United States Bankruptcy Court for the District of Utah through the entity Private Lenders, LLC[7]; and

7 See *In re Private Lenders, LLC*, Case No. 01-35369 (Bankr. D. Utah 2001).

f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, such as:

i. Business background information;

ii. Financial statements;

iii. Risk factors;

iv. Suitability factors for the investment;

v. Conflicts of interest;

vi. Whether the investment was a registered security or exempt from registration; and

vii. Whether Landon was licensed to sell securities.

Securities Fraud under § 61-1-1 of the Act
(Investor B.W.)

66. The Division incorporates and re-alleges paragraphs 1 through 61.

67. The investment contracts offered and sold by Respondents are securities under § 61-1-13 of the Act.

68. In connection with the offer and sale of securities to investor B.W., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

a. In exchange for his investment, B.W. would receive trust deeds that fully secured his funds, when, in fact, B.W. was provided with two trust deeds, neither of which had any value, as the underlying properties did not have enough equity to support B.W.'s interests;

b. The investments would be 100% safe and secured by real property, when, in fact, the collateral used to secure B.W.'s investments did not have enough equity to support his interests; and

c. In the event anything went wrong with the investment, B.W. would own the underlying properties, when, in fact, Landon knew that other investors held interests in the properties that had been previously recorded and that B.W. could lose his money.

69. In connection with the offer and sale of securities to investor B.W., Respondents, 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. Other investors in Landon's enterprises held trust deeds on the properties used to secure B.W.'s investments, and those trust deeds exceeded the value of the equity in the properties;

b. How many other investors held trust deeds in the properties supporting B.W.'s investments;

c. B.W.'s funds were being pooled with other investor funds rather than being applied directly to specific properties;

d. How Landon could guarantee a consistent annual return on the investments;

e. On or about October 17, 2001, Landon filed for Chapter 7 bankruptcy relief in the United States Bankruptcy Court for the District of Utah through the entity Private

Lenders, LLC[8]; and

f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, such as:

i. Business background information;

ii. Financial statements;

iii. Risk factors;

iv. Suitability factors for the investment;

v. Conflicts of interest;

vi. Whether the investment was a registered security or exempt from registration; and

vii. Whether Landon was licensed to sell securities.

II. THE DIVISION'S CONCLUSIONS OF LAW

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

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

b. Respondents violated § 61-1-1(2) of the Act by making untrue statements of material facts 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.

8 See *In re Private Lenders, LLC*, Case No. 01-35369 (Bankr. D. Utah 2001).

III. REMEDIAL ACTIONS/SANCTIONS

71. Respondents neither admit nor deny the Division's findings of fact and conclusions of law but consent to the sanctions below being imposed by the Division.

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

73. Landon agrees that he will be barred from (i) associating[9] 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.

74. 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 joint and several fine of $150,000 against Respondents, to be offset by payments of restitution to the investors. The fine amount, or restitution offsets, shall be paid in accordance with the following schedule:

    a. $5,000 due within five days of the entry of this Order;

    b. $2,500 due on or before April 27, 2015;

    c. $2,500 due on or before July 27, 2015;

    d. $500 monthly payments due between the lump-sum payments and continuing

[9] "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 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.

after such payments for a period of five years from the entry of the Order; and

e. 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.

75. Each dollar paid by Respondents to the investors as restitution shall be credited by the Division toward payment of the fine. Respondents shall send to the Division the cancelled check or confirmation of wire transfer for each payment made to the investors. Failure to comply with this provision of the Order, or the payment provisions included in paragraph 74 above, may result in the referral of the fine to the State Office of Debt Collection.

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

IV. FINAL RESOLUTION

77. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter.

78. 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.

79. If the Division finds that Respondents materially violated 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, 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) Respondents consent to a judgment ordering the unpaid balance of the fine immediately due and payable. 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.

80. 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 79 above, and may be

introduced as evidence against Respondents in any arbitration, civil, criminal, or regulatory actions.

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

82. 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: 12-22-2014

By: _____
Dave R. Hermansen
Director of Enforcement

Approved: _____
Thomas M. Melton
Assistant Attorney General
D.J.

Respondents:

Date: 12-16-14

By: _____
Michael Kevin Landon,
individually and on behalf
of all Respondents

_____
Jennifer R. Korb
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 (which Respondents neither admit nor deny) to form a basis for this settlement.

2. Respondents cease and desist from violating the Act.

3. Landon 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 impose a joint and several fine of $150,000 against Respondents, to be offset by payments of restitution to the investors. The fine amount, or restitution offsets, shall be paid in accordance with the following schedule:

    a. $5,000 due within five days of the entry of this Order;

    b. $2,500 due on or before April 27, 2015;

    c. $2,500 due on or before July 27, 2015;

    d. $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;

    e. 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.

5. If Respondents are found to have materially violated 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, Respondents notify the Division of any change in mailing address, within thirty days from the date of such change.

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

DATED this 22 day of January 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

Certificate of Mailing

I certify that on the 30 day of January 2014, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

MICHAEL KEVIN LANDON
PROPERTY NETWORK, INC.
AMERICAN PROPERTY INVESTMENTS, LLC
c/o JENNIFER KORB
RAY QUINNEY & NEBEKER
36 SOUTH STATE STREET, SUITE 1400
P.O. BOX 45385
SALT LAKE CITY, UT 84145-0385

Executive Secretary

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**
FORTIUS GROUP, LLC,	**Docket No. SD-11-0069**
FORTIUS FUND, LLC,	**Docket No. SD-11-0070**
POWDER RIDGE LAND, LLC	**Docket No. SD-11-0071**
POWDER RIDGE DEVELOPERS I, LTD.,	**Docket No. SD-11-0072**
POWDER RIDGE MANAGEMENT, INC.,	**Docket No. SD-11-0073**
CHAMONIX CAPITAL I, LLC,	**Docket No. SD-11-0074**
AMSTERDAM CAPITAL XII, LLC,	**Docket No. SD-11-0075**
DAVID RYAN BARLOW, and	**Docket No. SD-11-0076**
	Docket No. SD-13-0002
BLUE DIAMOND II, LLC,	**Docket No. SD-13-0001**
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Fortius Group, LLC ("Fortius"), Fortius Fund, LLC ("Fortius Fund"), Powder Ridge Land, LLC ("Powder Ridge Land"), Powder Ridge Developers I, Ltd. ("Powder Ridge Developers I"), Powder Ridge Management, Inc. ("Powder Ridge Management"), Chamonix Capital I, LLC ("Chamonix Capital I"), Amsterdam Capital XII, LLC

("Amsterdam Capital XII"), David Ryan Barlow ("Barlow") and Blue Diamond II, LLC ("Blue Diamond" and, collectively, "Respondents") hereby stipulate and agree as follows:

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

2. In connection therewith, the Division initiated administrative action(s) against Respondents, through the issuance of orders to show cause and notices of agency action dated September 21, 2011 and December 26, 2012. The order to show cause dated September 21, 2011 involved respondents Fortius, Fortius Fund, Powder Ridge Land, Powder Ridge Developers I, Powder Ridge Management, Chamonix Capital I, Amsterdam Capital XII, and Barlow, as well as Jared Wright ("Wright") and Colby J. Sanders ("Sanders"). That order to show cause was later amended on May 9, 2012 to dismiss Wright from the action ("Fortius Amended Order to Show Cause"). Additionally, the Division entered into a stipulation and consent order with Sanders that was approved by the Utah Securities Commission ("Commission") on or about October 29, 2012. The remaining respondents named in that action (hereinafter referred to as "Fortius Respondents") failed to participate in a properly scheduled hearing after receiving notice, and, as a result, the Commission approved an Order of Default ("Default Order") against the Fortius Respondents on or about October 29, 2012. The Default

Order imposed a $377,000 fine and a cease and desist order. Following such order, the Division issued its December 26, 2012 order to show cause involving respondents Blue Diamond and Barlow ("Blue Diamond Respondents" and the "Blue Diamond Order to Show Cause"). On March 6, 2013, that action was stayed pending the resolution of a parallel criminal proceeding against Barlow.[1] On or about May 27, 2014, Barlow entered into a plea in abeyance in the related criminal case. Barlow pleaded guilty to one count of securities fraud, a second degree felony. In connection therewith, Barlow was ordered to make complete restitution, in the amount of $243,333. In light of the criminal resolution, the stay imposed on the administrative action was lifted on or about September 23, 2014.

3. Both actions involved allegations that Respondents violated § 61-1-1(2) (securities fraud) of the Act, while engaged in the offer and sale of securities in or from Utah.

4. Respondents now seek to enter into this global Stipulation and Consent Order ("Order") in settlement of the Division's prior actions. Upon approval by the Commission, this Order shall supersede the Default Order issued October 29, 2012 against the Fortius Respondents and fully resolve the Division's actions against the Respondents.

5. 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,

[1] *State of Utah v. David Ryan Barlow*, Case No. 12140766, Fourth Judicial District of Utah (2012).

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 this Order.

6. Respondents are represented by Joseph G. Pia and Brett Johnson of Pia Anderson Dorius Reynard & Moss, LLC and are satisfied with their representation in this matter.

7. Respondents have read this Order, understand its contents and submit to this Order 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.

8. 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. The parties acknowledge that it is their understanding that the applicable statute of limitations has passed for conduct stated herein under the Act, other than the statute of limitations which is not applicable to this administrative proceeding.

9. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

IN THE FORTIUS AMENDED ORDER TO SHOW CAUSE

THE FORTIUS RESPONDENTS

10. Fortius is a Utah limited liability company that registered with Utah Division of Corporations ("Corporations") on or about September 26, 2003. Its status as a business entity is expired. Fortius has never been licensed with the Division in any capacity. Magnus Opus, Inc.[2] and Vertical Edge Capital, LLC[3] are managers of Fortius.

11. Fortius Fund is a Utah limited liability company that registered with Corporations on or about June 1, 2005. Its status as a business entity is expired. It has never been licensed with the Division in any capacity. Fortius is the manager of Fortius Fund.

12. Powder Ridge Land is a Utah limited liability company that registered with Corporations on or about September 6, 2006. Its status as a business entity is expired. It has never been licensed with the Division in any capacity. Powder Ridge Ventures, Inc.[4] is the manager of Powder Ridge Land and Barlow is the registered agent.

13. Powder Ridge Developers I is a Utah limited partnership that registered with

---

[2] Magnus Opus, Inc. is not registered as a business entity in Utah.

[3] Vertical Edge Capital, LLC is a Utah limited liability company that registered with Corporations on or about November 28, 2005. Its status as a business entity is expired. It has never been licensed by the Division in any capacity. Sanders is listed as its manager.

[4] Powder Ridge Ventures, Inc. is a Utah corporation that registered with Corporations on or about March 9, 2007. Its status as a business entity is expired. It has never been licensed by the Division in any capacity. Barlow is listed as director and president of Powder Ridge Ventures and Sanders is listed as director, secretary, and treasurer of the entity.

Corporations on December 26, 2006. Its status as a business entity is expired. It has never been licensed in the securities industry in any capacity. Powder Ridge Management is listed as manager of Powder Ridge Developers I.

14. Powder Ridge Management is a Utah corporation that registered with Corporations on or about November 13, 2006. Its status as a business entity is expired. It has never been licensed by the Division in any capacity. Brent Armstrong is the registered agent.

15. Chamonix Capital I is a Utah limited liability company that registered with Corporations on or about June 10, 2005. Its status as a business entity is expired. It has never been licensed by the Division in any capacity. Barlow is a member of Chamonix Capital I.

16. Amsterdam Capital XII is a Utah limited liability company that registered with Corporations on or about September 22, 2005. Its status as a business entity is expired. It has never been licensed by the Division in any capacity. Barlow is a member of Amsterdam Capital XII.

17. Barlow was, at all relevant times, a resident of the State of Utah. Barlow has never been licensed by the Division in any capacity.

GENERAL ALLEGATIONS AGAINST FORTIUS RESPONDENTS

18. From August 2006 to December 2007, Fortius Respondents offered and sold securities to investors, in or from Utah, and collected $1,549,457.

19. Fortius Respondents made material misstatements and omissions in connection with the

offer and sale of securities to the investors listed below.

20. The investors lost $1,510,532 in principal alone.

INVESTOR J.M.

21. In or about October 2004, J.M. first met Barlow when she and her husband, K.H., moved into a new home in Utah County, Utah. The home was located across the street from Barlow.

22. After moving in, J. M. had numerous conversations with Barlow regarding potential investment opportunities. Those conversations occurred between October 2004 and August 2006.

23. During such conversations, Barlow made the following representations:

a. He worked for Fortius, dealing with loans and investments;

b. Fortius played a role in several real estate development projects, which he described to be "solid investments";

c. Whereas stock and bonds are intangible and subject to losses, land is tangible and generally appreciates over time;

d. One of the projects that Barlow was working on for Fortius involved a real estate development near Powder Mountain Ski Resort (the "Powder Ridge Project") in Ogden Valley; and

e. Powder Ridge Development, Inc.[5], an entity that Barlow claimed to have established with his associates, was managing the Powder Ridge Project.

24. In or about the fall of 2006, J.M. visited Barlow several times in the Fortius office, located in Utah County, Utah, to discuss an investment opportunity in Fortius in greater detail.[6]

25. During her visits, Barlow showed pictures and artist renderings of the Powder Ridge Project, as well as profit projections.

26. Barlow also made the following statements about an investment in Fortius:

a. The Powder Ridge Project was "a good deal";

b. J.M. could not lose, as the investment was a "sure thing";

c. Fortius could make her a great deal of money;

d. Fortius already had forty investors;

e. The company would use investor funds to buy property ready for construction;

f. By 2010, the Powder Ridge Project could yield a return of approximately $800,000 to $1,000,000 on a minimum investment of $250,000; and

g. It was a good investment because it involved land.

27. Following those conversations, J.M told Barlow that she could not afford the minimum

[5] Powder Ridge Development, Inc. is not registered as a business entity in Utah.
[6] During this same time period, J.M. also met Wright and Sanders and spoke with them about investments.

investment of $250,000 because much of her money was in an IRA.

28. Barlow subsequently directed her to a service that would help her set up a self-directed IRA.

29. Based on Barlow's statements, J.M. ultimately invested $250,000 with Fortius.

30. On September 27, 2006, J.M. wired $63,000 from her personal bank to Chamonix Capital I. On September 28, 2006, J.M. wired $170,315 from her IRA with American Pension Services to Chamonix Capital I. On October 31, 2006, J.M. wired $16,685 from her company's account to Chamonix Capital I.

31. On or about February 13, 2007, J.M. received investor suitability questionnaires and subscription agreements from Fortius in connection with the investment.

32. According to the first subscription agreement, $229,175 of J.M.'s funds would be invested in Powder Ridge Land, in exchange for a total of 9.167 Class A non-voting member interests in the company.

33. According to the second subscription agreement, $20,825 of J.M.'s funds would be invested in Powder Ridge Developers in exchange for a total of 0.83 Class A non-voting member interests in the company.

34. On or about May 7, 2007, Wright wrote to J.M. and K.H.[7] on behalf of Powder Ridge Management. Wright told them that the management team wished to make changes to

[7] K.H. also invested with Fortius but through independent conversations and transactions. *See* ¶¶ 45-71 below.

the structure of the companies involved in the Powder Ridge Project.

35. About that same time, J.M. received a compact disc from Fortius that included two offering memoranda. One document was dated April 12, 2007 and the other May 7, 2007.[8]

36. The offering memoranda disclosed information, such as risk factors, that had not been previously disclosed at the time of the investment.

37. At or about the same time, J.M. and K.H. were asked to complete new investor suitability questionnaires and subscription agreements for their outstanding investments.

38. As requested, J.M. and K.H. completed that documentation on or about on May 16, 2007. The updated investor suitability questionnaires and subscription agreements were similar in content to the previously-completed forms but involving different companies: Powder Ridge Land I and Powder Ridge Developers I.

39. At or about the same time, J.M. and K.H. also received an operating agreement from Powder Ridge Group.

40. Although the agreement provided that J.M. and K.H. would receive distributions, they never received any distributions from any of the Fortius Respondents.

41. On or about November 20, 2009, J.M. and K.H. met with Barlow.

---

8 Up until that point, J.M. and K.H. had not previously received any offering memoranda.

42. During that meeting, Barlow made the following statements:

a. The Powder Ridge Project had suffered major setbacks;

b. All the investors' money had been lost;

c. The land for the project had been in foreclosure, so the investors had no tangible assets to show for their investment;

d. He had known these facts for many months but had not told them because they were his neighbors and he was embarrassed and still trying to find solutions; and

e. The solutions to the problems had never materialized.

43. Despite repeated requests in 2009, J.M. never received a return of her $250,000 investment from Fortius.

44. Using a source and use analysis, bank records show that the Fortius Respondents used J.M.'s $250,000 funds in the following manner:

a. $233,315 paid to The Home Abstract and Title Co.;

b. $9,781 paid to Fortius;

c. $6,281 paid to Jonathan Johnson; and

d. $623 paid to Aaron Kennington.

INVESTOR K.H.

First Investment

45. K.H. initially became interested in learning about an investment opportunity in Fortius

through J.M.

46. K.H. was impressed with the affluent lifestyles and apparent wealth of Barlow, Wright, and Sanders.

47. K.H. met with Barlow, Wright, and Sanders on multiple occasions at the Fortius office during the fall of 2006 to discuss investment opportunities with the company.

48. During those conversations, Barlow made the following statements about an investment in the Powder Ridge Project:

    a. "I invest in land, I buy land, I develop it, there is a lot money in it";

    b. "With me, your money is safe";

    c. It could not go wrong because Fortius owned the land;

    d. K.H. was Fortius' preferred type of customer, so they would take care of him;

    e. This was a no lose deal because the condos were all pre-sold;

    f. The minimum investment was $250,000; and

    g. With a $250,000 investment, the return would be $1 million to $2 million when all phases of the project sold out.

49. During those conversations, Sanders made the following statements about an investment in the Powder Ridge Project:

    a. The condos were already pre-sold;

    b. The project was "amazing";

c. Fortius had buyers "waiting in the wings";

d. K.H. could receive a return of $2 million on a $250,000 investment; and

e. The profit for investors could be $66 million, and the profit for Fortius could be $54 million.[9]

50. During those conversations, Wright made the following statements about an investment in the Powder Ridge Project:

a. Fortius was really excited to have K.H. on board with them;

b. This was a great project; and

c. It could make a lot of money for K.H.

51. Based on Barlow, Sanders and Wright's statements, K.H. invested $250,000 with Fortius.

52. On or about November 20, 2006, K.H. wired $250,000 from his personal bank account to Powder Ridge Land's account with Zion's Bank.

53. On or about February 13, 2007, K.H. received investor suitability questionnaires and subscription agreements in connection with the investment.

54. According to the first subscription agreement, $229,175 of K.H.'s funds would be invested in "Powder Ridge Land, LLC" in exchange for a total of 9.167 Class A non-voting member interests in the company.

55. According to the second subscription agreement, $20,825 of K.H.'s funds would be

[9] Barlow learned about Sanders' stated projection and told K.H. that they need to be more "conservative" and the returns would be more like $800,000 to $1 million per $250,000 investment.

invested in "Powder Ridge Developers I, Ltd."

56. Using a source and use analysis, bank records show that the Fortius Respondents used K.H.'s $250,000 in the following manner:

a. $154,850 paid to Stuart Waldrip;

b. $49,900 paid to Ridgeline Equity at Deer Crest;

c. $10,000 paid to Jonathan Johnson;

d. $8,058 paid to Wright;

e. $8,058 paid to Barlow;

f. $8,058 paid to Sanders;

g. $3,880 paid to Accrisoft Corporation;

h. $2,800 paid to Fortius;

i. $2,450 paid to Chamonix Capital I;

j. $794 paid to Delta;

k. $686 paid to Integra Telecom; and

l. $466 paid for dining, lodging, and other miscellaneous expenses.

Second Investment

57. In or about November 2007, Barlow approached K.H. about another investment in a real estate development near Powder Mountain Ski Resort called Sundown (the "Sundown Project").

58. Barlow made the following statements about an investment in the Sundown Project:

a. The Sundown Project was a condo development that was already in place;

b. It was expanding and adding new facilities;

c. It would involve a very short turn-around;

d. K.H. could receive a $1 million to $2 million return when the project was completed;

e. The project included 160 luxury condos on the mountain;

f. It was a no lose investment;

g. The project was already pre-sold;

h. Fortius had an investor group from Australia that was ready to buy in;

i. In addition to the ski resort, the project was near a golf course and an equestrian park;

j. All of the units had been pre-sold, but there was a waiting list if someone dropped out;

k. There were four phases on the project;

l. This investment would make K.H. even richer than the Powder Ridge Project;

m. It was a sure thing; and

n. Fortius had already bought the land, so the investment could not go wrong.

59. Based on Barlow's statements, K.H. invested $249,457 with Fortius.

60. On November 13, 2007, K.H. wired $249,457 from his IRA to Fortius' bank account at Zion's Bank.

61. On November 13, 2007, Barlow signed an unsecured promissory note on behalf of Fortius, through which, Fortius promised to pay a return of principal, in addition to "2.083% interest in profits in the Sundown Development."

62. Using a source and use analysis, bank records indicate that the Fortius Respondents used K.H.'s $249,457 funds in the following manner:

a. $52,620 paid to Blue Diamond;

b. $46,800 paid to Selective Funding, LLC;

c. $46,800 paid to Lending Partners;

d. $37,052 paid to K.H.;

e. $25,000 paid to Northstar Funding;

f. $16,000 paid to Secured Loan Fund II, LLC;

g. $6,000 paid to Sanders;

h. $6,000 paid to Barlow;

i. $5,000 paid to Bob Luzitano;

j. $3,363 paid to Jonathan Johnson;

k. $2,822 paid to Griffith Brothers; and

l. $2,000 paid to Boris Roberts.

Third Investment

63. In late 2007, Barlow approached K.H. about another investment with Fortius, involving a real estate development project near Pineview Reservoir in Utah called Elevation at Pineview (the "Pineview Project").

64. With respect thereto, Barlow made the following representations:

    a. The Pineview Project was intended to finance, build, and sell a development of condominium units near Pineview Reservoir;

    b. The Pineview Project carried the fastest return of all previous investments;

    c. The development the Pineview Project was already approved and zoned for condominiums;

    d. Three hundred buyers were waiting for contracts;

    e. The return on investment could be $1 million to $2 million for a $250,000 investment;

    f. K.H. could receive a 50% return within the first year;

    g. The investment involved no risk; and

    h. This project was next to a development that was already complete, and it had been successful.

65. K.H. told Barlow that he could only afford to invest $200,000.

66. In response, Barlow agreed to waive the $250,000 minimum investment and allow a

$200,000 investment, although Barlow stated that the return would be slightly less.

67. Based on Barlow's statements, K.H. invested $200,000 with Fortius.

68. On or about December 10, 2007, Amsterdam Capital XII executed an unsecured promissory note in favor of K.H.

69. Through that note, Amsterdam Capital XII promised to pay K.H. $200,000, in addition to "3.3% interest in profits in the Pineview Village Development."

70. On or about December 11, 2007, K.H. wired $200,000 from his IRA to Amsterdam Capital XII.

71. Using a source and use analysis, bank records indicate that the Fortius Respondents used K.H.'s $200,000 funds in the following manner:

    a. $61,967 paid to Selective Funding, LLC;

    b. $57,633 paid to Lending Partners;

    c. $52,620 paid to R.C. Willey Home Furnishings;

    d. $10,566 paid to Edgewood Builders;

    e. $3,750 paid to Steve G. Black, LC;

    f. $3,232 paid to Bob Luzitano;

    g. $3,000 paid to Robert Helber;

    h. $2,500 paid to Boris Roberts;

    i. $1,873 paid to K.H.;

j. $1,658 transferred to Fortius;

k. $600 paid to Revco Leasing; and

l. $601 used for miscellaneous expenses.

Investors J.Q. and L.S.

72. In or about May 2006, J.Q. approached Sanders to purchase a seven-acre piece of real estate from Fortius. The property at issue was located at the Powder Mountain Ski Resort in Weber County, Utah.

73. Within a couple of weeks of initially contacting Sanders, J.Q. and her business partner L.S. signed a purchase contract on behalf of their company and paid $70,000 in earnest money for the property, contingent upon zoning approval to build a minimum of thirty-five condominium units on the property. J.Q. and L.S. each contributed $35,000 of the $70,000 deposit.

74. The real estate purchase eventually fell through due to zoning restrictions on the land. However, J.Q. and L.S. never received a return of their earnest money.

75. In or about July 2006, Sanders informed J.Q. of a number of "upper lots" located near the original property that J.Q. and L.S. attempted to purchase.

76. Sanders stated that he intended to develop the land into two hundred and six condominiums on two parcels.

77. However, he needed to raise investor funds to purchase the lots and develop the land.

78. Sanders also stated that he was preparing to pre-sell the condominium units.

79. Sanders invited J.Q. to bring in other investors.

80. In or about July 2006, Sanders, Barlow, J.Q and L.S. attended an investment meeting at Sanders and Barlow's office located in Alpine, Utah.

81. Both Sanders and Barlow stated they had experience with hard money loans and had successfully done millions of dollars in hard money loans.

82. During this meeting, L.S. repeatedly asked Barlow and Sanders if the investment funds would go toward the purchase of the property and if the land would be subject to a loan.

83. Barlow and Sanders responded in the affirmative, stating that the investor pool of funds would be used to complete the land purchase, and the investors had nothing to worry about.

84. Additionally, the development would start as soon as the land purchase went through.

85. J.Q. offered to help with the land purchase but Sanders declined.

86. Prior to investing, Sanders, either by phone or by email, offered J.Q. and L.S. two rates of return based on whether they invested in the first phase of the development or in the entire development.

87. The cost of the property was approximately $9,000,000.

88. Prior to J.Q. and L.S. investing, Sanders and Barlow made the following statements to them:

a. Barlow and Sanders were very successful hard-money lenders;

b. They had "extensive experience in land development" including other resort developments;

c. They had over $100 million in assets;

d. They were moving investors from the hard money lending into real estate investing; and

e. Investor funds would be used to purchase real estate.

89. On or about August 7, 2006, an account in the name of Landmaster Development, LLC and L.S., wired $300,000 to Chamonix Capital I, LLC.

90. J.Q. and L.S. authorized these funds for the exclusive purpose of purchasing real estate adjacent to the Powder Mountain Ski Resort.

91. Approximately two months after investing, J.Q. received disclosure documents via email.

92. Construction on the property at issue began shortly after J.Q. and L.S. invested with Fortius; however, the company eventually lost the property.

93. At that time, Sanders told J.Q. and L.S. that he would transfer their investment to a 100-acre property that Fortius held at Eagle Mountain.

94. Sometime thereafter, Sanders told J.Q. and L.S. that Fortius never actually owned the Eagle Mountain property and offered to transfer their investment to a project located in Pineview.

95. J.Q. and L.S. asked for their money back after being offered the investment in Pineview.

96. Sanders responded that Fortius would try to find another investor to take their place in the project.

97. J.Q. and L.S. never received any of their investment back.

Investors A.B. and L.W.

98. A.B. and L.W. operate a construction company together.

99. In or about early 2006, J.Q. told A.B. about an opportunity to invest in the development of Powder Mountain condominiums

100. J.Q. briefly described the investment as one that involved land that could be purchased and developed for a good price.

101. J.Q. then referred A.B. to meet with Sanders and Barlow.

102. During the spring of 2006, A.B. attended several investment meetings that Sanders and Barlow hosted at their office located in Alpine, Utah.

103. At these meetings, Sanders and Barlow made the following representations:

a. They were investing in a piece of land and trying to raise money to buy the property with investor equity;

b. They wanted to have enough investors to buy the land free and clear;

c. They wanted to avoid doing the project with any liens against the land;

d. The development project would go through a couple of phases of building condominiums;

e. The project could yield a great return of double or triple the invested amount;

f. Sanders and Barlow had experience in development projects. Some of those projects had already been completed and others were still in progress; and

g. Barlow stated that they had enough investor capital to buy the land.

104. Based Sanders and Barlow's representations, A.B. and L.W. decided to invest with Fortius.

105. As equal partners, they invested a total of $300,000.

106. In or about September 2006, they provided the Fortius Respondents with a check made payable to Fortius Group in the amount of $80,000 and a bank wire to Fortius Group from US Bank in the amount of $220,000.

107. A.B. and L.W. received disclosure documents approximately three months after they invested, which included a private placement memorandum disclosing the risks of the investment.

108. In or about 2010, A.B. and L.W. demanded a complete return of their investment funds because the terms of their investment were not being met.

109. However, A.B. and L.W. have not received a return of their principal investment.

CAUSES OF ACTION AGAINST FORTIUS RESPONDENTS

Securities Fraud under § 61-1-1 of the Act

110. The Division incorporates and re-alleges paragraphs 1 through 109.

111. The investment opportunities offered and sold by the Fortius Respondents are securities under § 61-1-13 of the Act.

112. In connection with the offer and sale of securities to the investors, the Fortius Respondents, directly or indirectly, made false statements including, but not limited to, the following:

a. Fortius was involved in several real estate development projects which were "solid investments," when, in fact, the Fortius Respondents had no reasonable basis for making such a statement;

b. Fortius investments were a good deal, they were a sure thing, and Fortius was going to make investors a great deal of money, when, in fact, the Fortius Respondents had no reasonable basis for such statements;

c. Barlow and Sanders were successful hard-money lenders;

d. Barlow and Sanders had extensive experience in land development including other resort developments;

e. Barlow, Sanders and Fortius had over $100 million in assets; and

f. Investor funds would be used to purchase real estate.

113. In connection with the offer and sale of securities to the investors, the Fortius Respondents, 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. Information typically provided in an offering circular or prospectus regarding the Fortius Respondents, such as:

i. Financial statements, including, but not limited to, audited financial statements for Fortius and the other entities involved;

ii. Risk factors;

iii. Track record with other investors;

iv. The Fortius Respondents' business experience and operating history;

v. Whether the Fortius Respondents were licensed to sell securities;

vi. Whether the investment was a registered security or exempt from registration;

vii. What percentage of ownership Barlow and Sanders would retain in the development project;

viii. How many investors were involved and how much money had been raised;

ix. Whether Barlow and Sanders would be paid a commission from investor funds and the amount of that commission; and

x. What would happen if the Fortius Respondents were unsuccessful in raising all of the funds necessary for the project(s).

II. THE DIVISION'S FINDINGS OF FACT IN THE BLUE DIAMOND ORDER TO SHOW CAUSE

THE BLUE DIAMOND RESPONDENTS

114. Blue Diamond is a Utah limited liability company that registered with Corporations on or about October 24, 2007. Blue Diamond's current status is expired. Barlow is the registered agent. Magnus Opus, Ted Mellon (Mellon), and Martinez Design Associates are members of Blue Diamond. Blue Diamond has never been licensed with the Division in any capacity.

115. Barlow was, at all relevant times, a resident of the State of Utah. Barlow has never been licensed with the Division in any capacity.

GENERAL ALLEGATIONS AGAINST BLUE DIAMOND RESPONDENTS

116. Between September 2007 and October 2007, the Blue Diamond Respondents offered and sold promissory notes to investors, in or from Utah, and collected a total of $333,333.

117. Promissory notes are securities under the Act.

118. The Blue Diamond Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investors identified below.

Investors K.H. and J.M.

119. In or about September 2007, K.H. and J.M. were neighbors to Barlow.

120. They had also invested in Barlow's land-based investment opportunity involving Fortius.[10]

121. At that time, Barlow told K.H. and J.M. that he had another investment opportunity for them.

122. Barlow said that he wanted to keep the investment opportunity separate from Fortius, so he asked K.H. and J.M. to meet with him in his home to discuss it.

123. From approximately September to October 2007, K.H. and J.M. met with Barlow in his home in Alpine, Utah on at least three separate occasions.[11]

124. During the first, Barlow made the following representations:

a. Gil Martinez ("Martinez") was a real estate planner located in California. He had a good reputation in the business and was involved in multiple development projects around the world;

b. Barlow would be partnering with Martinez and Martinez' partner, Mellon, on various investment projects;

c. For one project in particular, Barlow and Mellon would be starting a new real estate development business called Blue Diamond;

d. Mellon would be involved in the business aspect of Blue Diamond, while Barlow would deal with marketing and finding potential properties to develop;

e. Blue Diamond was looking for short-term real estate investments;

---

[10] See ¶¶21-71 above.

[11] Barlow also invited his attorney, Steve Black, to attend the first meeting.

f. Blue Diamond needed $333,333 in start-up capital until long-term capital could be obtained;

g. The funds were needed for business expenses, including start-up fees and travel;

h. Blue Diamond would need the funds for about six months;

i. Blue Diamond would close a project soon and once that happened, Blue Diamond would repay K.H. and J.M.'s principal;

j. Blue Diamond would pay 18% per annum, or $5,000 per month, on the principal;

k. In addition to the $5,000 per month return, Blue Diamond would also pay K.H. and J.M. $1 million when the first project closed, or three years, whichever occurred first; and

l. In exchange for the funds, Blue Diamond would provide the investors with a promissory note.

125. K.H. and J.M. told Barlow that they did not have the minimum required funds to invest.

126. Barlow, K.H. and J.M. then discussed the possibility of K.H. and J.M. leveraging their home equity to invest.

127. K.H. and J .M. said they could only leverage their home equity if they would have the funds returned soon.

128. In response to K.H. and J.M.' s concerns, Barlow made the following statements:

a. The funds would be repaid;

b. Barlow would personally guarantee the funds;

c. The investment was "very safe";

d. The investment funds would be held in a Wells Fargo Bank account;

e. There was a good chance the funds would not be used; and

f. Barlow would control all of the money.

129. During the second meeting with Barlow, J.M. and Barlow's attorney, Steve Black ("Black"), discussed the promissory note and addressed specific revisions that J.M. and K.H. had requested.

130. On or about October 25, 2007, K.H., J.M., Barlow, and Black met for the third time.

131. During that meeting, Barlow gave K.H. and J.M. a signed copy of the revised promissory note.

132. According to the note, Barlow signed as president of Magnus Opus Corp (a member-manager of Blue Diamond) and as a personal guarantor.

133. The promissory note also included the following terms:

a. Blue Diamond would pay K.H. and J.M. interest at a rate of 18% per annum;

b. Blue Diamond would pay K.H. and J.M. an additional $1 million; and

c. The initial term was sixty days, but the term could be extended for two additional sixty-day periods, as long as Blue Diamond was current on payments.

134. Based on Barlow's statements and the representations in the promissory note, K.H. and J.M. decided to invest $333,333 with Barlow.

135. On or about October 26,2007, K.H. and J.M gave Barlow a cashier's check for $333,333 while at K.H. and J.M.'s home in Alpine, Utah.

136. After the investment, Barlow extended the term of the note by sixty days on two occasions and paid K.H. and J.M. $10,000 each time he did so.

137. On or about December 4, 2009, J.M. sent a letter to Barlow, Martinez, and Mellon requesting a return of her funds.

138. Bank records show that on October 26, 2007, Barlow deposited $333,333 into Blue Diamond's Wells Fargo Bank account, which opened the account balance. Barlow was the only authorized signatory on the account.

139. Based on a first in, first out analysis, bank records indicate that the Blue Diamond Respondents used K.H. and J.M.'s funds in the following manner:

a. $192,000 transferred to the Fortius Respondents;

b. $1,250 paid to Black; and

c. Various other expenses, including interest payments to K.H. and J .M.

140. K.H. and J.M. have been re-paid $92,000 of their investment and are still owed $241,333 in principal alone.

CAUSES OF ACTION AGAINST BLUE DIAMOND RESPONDENTS

Securities Fraud under § 61-1-1(2) of the Act

141. The Division incorporates and re-alleges paragraphs 114 through 140.

142. The investment opportunities offered and sold by the Blue Diamond Respondents are securities under § 61-1-13 of the Act.

143. In connection with the sale of securities to investors K.H. and J .M., the Blue Diamond Respondents, directly or indirectly, made false statements including, but not limited to, the following:

a. K.H. and J .M.' s investment funds would be used for investment projects separate from Fortius, when in fact, $192,000 of their investment funds went to the Fortius Respondents;

b. Barlow would personally guarantee the investment, when in fact, Barlow had no reasonable basis for making such a statement; and

c. The investment was safe and carried no risk, when, in fact, the Blue Diamond Respondents had no reasonable basis for making such a statement.

144. In connection with the sale of securities to investors K.H. and J .M., the Blue Diamond Respondents, directly or indirectly, failed to disclose material information including, but not limited to, the following, which was necessary in order to make statements made in the investment contracts not misleading:

a. The Blue Diamond Respondents would use the majority of K.H. and J.M.'s funds for purposes other than those specified;

b. Some or all of the information typically provided in an offering circular or prospectus regarding the Blue Diamond Respondents, such as:

i. Financial statements;

ii. Risk factors;

iii. Total number of investors;

iv. Suitability factors for the investment;

v. Whether the promissory notes were registered; and

vi. Whether Barlow was licensed to sell securities.

II. THE DIVISION'S CONCLUSIONS OF LAW

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

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

b. Respondents violated § 61-1-1(2) of the Act by making untrue statements of material facts and 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

146. Respondents admit the Division's findings of fact and conclusions of law and consent to the sanctions below being imposed by the Division.

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

148. Barlow agrees that he will be barred from (i) associating[12] 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.

149. Barlow agrees 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).

150. 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 fine of $35,000 upon Respondents, with $15,000 of the fine due at such time as Barlow completes restitution payments in the related criminal case (case no. 121401766), and the remaining $20,000 due one year from that date.

151. If the Division finds that Respondents materially violate 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, Respondents consent to a judgment ordering the entire fine immediately due and payable.

IV. FINAL RESOLUTION

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

[12] "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 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.

supersede the Default Order issued October 29, 2012 against the Fortius Respondents and fully resolve the Division's actions against the Respondents.

153. 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.

154. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third parties may have against them rising 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. The parties acknowledge that it is their understanding that the applicable statute of limitations has passed for conduct alleged herein under the Act, other than the statute of limitations which is not applicable to this administrative proceeding.

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

156. 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 hearings are canceled.

Utah Division of Securities:

Date: Jan. 9, 2015

By: _____
Dave R. Hermansen
Director of Enforcement

Approved: _____
Thomas M. Melton
Assistant Attorney General
J.S. and J.N.

Respondents:

Date: 1/8/15

By: _____
David R. Barlow,
Individually and on behalf of
all Respondents

_____
Joseph G. Pia
Attorney for Respondents

_____
Brett Johnson
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. Barlow 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. Barlow pay restitution, as ordered in the criminal case *State of Utah v. David Ryan Barlow*, Case No. 121401766, Fourth Judicial District of Utah (2012).
5. The Division impose a fine of $35,000 against Respondents, with $15,000 of the fine due at such time as Barlow completes restitution payments in the related criminal case (case no. 121401766), and the remaining $20,000 due one year from that date.
6. The Division's prior Default Order, dated October 29, 2012, is hereby vacated, and this Order shall stand as the final resolution between the parties.

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

Certificate of Mailing

I certify that on the 30 day of January 2014, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

JOSEPH G. PIA
BRETT JOHNSON
PIA ANDERSON DORIUS REYNARD & MOSS, LLC
222 SOUTH MAIN STREET, SUITE 1830
SALT LAKE CITY, UT 84101

Lillian Clair
Executive Secretary

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: **RATIONAL CAPITAL MANAGEMENT, LLC, ALAN HERBERT OVIATT,** **Respondents.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-11-0057** **Docket No. SD-11-0058**

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Rational Capital Management, LLC ("RCM") and Alan Herbert Oviatt ("Oviatt" and, collectively with RCM, "Respondents") hereby stipulate and agree as follows:

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

2. In relation thereto, the Washington County Attorney's Office brought a second degree

theft charge against Oviatt on or about March 16, 2010.[1]

3. On or about August 21, 2013, Oviatt was found guilty of theft in the second degree and sentenced to 120 days in jail, serving on weekends and holidays, and ordered to pay restitution in the amount of $123,000, in monthly payments of $1,000.

4. Based on the same or similar conduct, the Division initiated an administrative action against Respondents, through the issuance of an Order to Show Cause and Notice of Agency Action dated July 26, 2011. The Order to Show Cause alleged that Respondents violated § 61-1-1 (securities fraud) and § 61-1-3 (unlicensed activity) of the Act, while engaged in the offer and sale of securities in or from Utah.

5. Respondents now seek to enter into this Stipulation and Consent Order ("Order") in settlement of the Division's action.

6. 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 this Order.

7. Respondents are represented by attorney Darwin Overson and are satisfied with his representation in this matter.

---

1 *State of Utah v. Alan Herbert Oviatt*, Case No. 101500457, Fifth Judicial District Court of Utah (2010).

8. Respondents have read this Order, understand its contents and submit 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.

9. 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.

10. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

11. RCM is a Delaware limited liability company that registered with the Delaware Division of Corporations on or about April 9, 2007. RCM has never been licensed in the securities industry in any capacity.

12. Oviatt was, at all relevant times, a resident of Utah. Oviatt has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

13. From approximately May to July 2008, Respondents offered and sold securities to an investor, in or from Utah, and collected a total of $701,396.

14. Respondents made material misstatements and omissions in connection with the offer and

sale of securities to the investor identified below.

15. The investor lost approximately $624,329 in principal alone.

INVESTOR S.H.

16. S.H. and Oviatt initially met in or about 2007 when they became neighbors and attended the same church.

17. In or about March 2008, Oviatt began discussing possible investment opportunities with S.H. while the two attended church.

18. In or about May of that same year, Oviatt went to S.H.'s home in Washington County, Utah to discuss an investment in RCM.

19. During that meeting, Oviatt made the following representations:

    a. Oviatt had been trading stock options for about eighteen years and had been very successful;

    b. He received annual returns ranging from 50% to 400% through his stock option trades;

    c. He was the owner of a company called RCM that was based in Delaware;

    d. He used RCM to attract investors to stock option trading;

    e. He was going to start a hedge fund;

    f. The hedge fund would be an RCM fund;

    g. Approximately 99% of the account's funds would be S.H.'s money, but as more investors invested in the fund, S.H.'s percentage of the fund would be diluted;

h. The trading strategy would be the same for all clients;

i. The minimum investment amount was $250,000;

j. He would never put more than 50% of the funds in the account at risk;

k. He would never buy more options than he could cover with half of the available funds;

l. The three stocks that Oviatt followed were: Chicago Mercantile Exchange (CME), First Solar, and Apple;

m. These stocks were very cyclical, and he had traded them long enough to know the patterns and how to make money on them;

n. He would receive an annual fee or commission for managing the account but only after a 20% increase in the net asset value of the fund;

o. He was talking to other potential investors about investing in the hedge fund;

p. He passed a test for a "finance series license" and was in the process of getting additional licenses to operate the hedge fund;

q. He tripled his sister's $50,000 investment by trading Apple Computer options;

r. The market did not have to do well for options to do well; and

s. The beauty of trading options is "you make money in up and down markets."

20. Oviatt gave S.H. an operating agreement describing the investment. In section 3.1 of the agreement, it stated that Oviatt would be the "Initial Manager." In section 4.3 it further stated that the manager would be paid a "Management Fee… of (i) 2% multiplied by (ii)

the Net Asset Value of such Capital Account, calculated as of the anniversary date of each calendar year."

21. Based on Oviatt's statements, S.H. invested $701,396 in RCM. S.H. invested in the following manner:

    a. On or about May 26, 2008, S.H. rolled $100,000 from his IRA account to RCM's account at OptionsXpress;

    b. On or about May 26, 2008, S.H. rolled $101,396 from another IRA account to RCM's account at OptionsXpress;

    c. On or about May 27, 2008, S.H. gave Oviatt a cashier's check for $300,000 made payable to OptionsXpress; and

    d. On or about July 30, 2008, S.H. gave Oviatt a cashier's check for $200,000 made payable to RCM.

22. An analysis of the relevant bank accounts, performed by a CPA and forensic accountant with the firm Hafen, Buckner, Everett & Graff, PC, shows that Oviatt used S.H.'s investment funds in the following manner:

    a. Oviatt used an initial $201,396 for trading purposes. From that amount, Oviatt lost $124,312 in trades and returned the remaining balance of $77,067 to S.H.;

    b. Oviatt used an additional $500,000 for trading purposes. From that amount, he lost $376,756 in trades and withdrew an unauthorized amount of $120,147 from the account.

23. That same report found that Oviatt paid himself a total of $123,250 from S.H.'s funds, despite only being owed $3,103 in management fees under the operating agreement, based on a net asset value of $155,134 at the end of the 2009 calendar year.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act

24. The Division incorporates and re-alleges paragraphs 1 through 23.

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

26. In connection with the offer and sale of securities to the investor, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

    a. S.H.'s investment funds would only be used for options trading, when, in fact, Oviatt withdrew an unauthorized amount of $120,147 from the trading account;

    b. Oviatt would never put more than 50% of the funds in the account at risk, when, in fact, he lost over 50% of S.H.'s investment funds;

    c. Oviatt passed a test for a "finance series license" and was in the process of getting additional licenses to operate a hedge fund, when, in fact, the Central Registration Depository operated by the Financial Industry Regulatory Authority, Inc. has no record of Oviatt ever passing a securities exam; and

    d. Oviatt would receive a 2% management fee of the net asset value calculated at the end of the calendar year, when, in fact, Oviatt paid himself a management fee of

77%.

27. In connection with the offer and sale of securities to the investor, Respondents, 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. In 1989 and 2002, Oviatt filed for bankruptcy;

b. From 1987 to 2003, Oviatt had seven civil judgments entered against him, totaling approximately $28,149; and

c. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, such as:

i. Financial statements;

ii. Risk factors;

iii. Track record with prior investors;

iv. Respondents' business experience and operating history; and

v. Whether the investment was a registered security or exempt from registration.

Unlicensed Activity under § 61-1-3 of the Act

28. The Division incorporates and re-alleges paragraphs 1 through 23.

29. RCM and Oviatt engaged in the business of advising another as to the value of securities or the advisability of investing in securities;

30. RCM and Oviatt received $213,250 in fees for such services;

31. RCM and Oviatt are not licensed as investment advisers or investment adviser representatives in the State of Utah and are not exempt from such licensure.

32. As a result, RCM and Oviatt acted as an unlicensed investment adviser and investment adviser representative, respectively, and thereby violated Section 61-1-3(3) of the Act.

II. THE DIVISION'S CONCLUSIONS OF LAW

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

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

b. Respondents violated § 61-1-1(2) of the Act by making untrue statements of material facts 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.

c. Respondents violated § 61-1-3(3) of the Act by transacting business in the state of Utah as an investment adviser and investment adviser representative without the appropriate license or exemption from licensure.

III. REMEDIAL ACTIONS/SANCTIONS

34. Respondents admit the Division's findings of fact and conclusions of law and consent to the sanctions below being imposed by the Division.

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

36. Oviatt agrees that he will be barred from (i) associating[2] 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.

37. Oviatt agrees to pay $123,000 in restitution, as ordered in the related criminal action, *State of Utah v. Alan Herbert Oviatt,* Case No. 101500457, Fifth Judicial District of Utah (2010).

38. 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 fine of $30,000 against Respondents. The fine shall be paid in accordance with the following schedule:

    a. $10,000 due on or before Oviatt completes restitution payments in the related criminal action, *State of Utah v. Alan Herbert Oviatt,* Case No. 101500457, Fifth Judicial District of Utah (2010); and

    b. $20,000 due within two years from the date of the initial payment.

39. At such time as the final payment is due, and subject to the condition that Respondents not be found in violation of any term of this Order, as described in further detail below, the Division shall waive $5,000 of the total fine, reducing the final payment from $20,000 to $15,000.

---

[2] "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 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.

40. If the Division finds that Respondents materially violate 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, Respondents consent to a judgment ordering the entire $30,000 fine immediately due.

IV. FINAL RESOLUTION

41. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter.

42. Respondents 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.

43. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third parties may have against them rising 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.

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

45. The Order constitutes the entire agreement between theparties 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: Jan 21, 2015

By: _____
Dave R. Hermansen
Director of Enforcement

Approved:

_____
Thomas M. Melton
Assistant Attorney General
A.S.

Respondents:

Date: 1-6-15

By: _____
Alan Herbert Oviatt,
individually and on behalf of
Rational Capital Management,
LLC

_____
Darwin Overson
Attorney for Respondents

RECEIVED

JAN 16 2015

Utah Department of Commerce
Division of Securities

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. Oviatt 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. Oviatt 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).

5. The Division impose a fine of $30,000 against Respondents. Such fine shall be paid in accordance with the following schedule:

    a. $10,000 due on or before Oviatt completes restitution payments in the related criminal action, *State of Utah v. Alan Herbert Oviatt,* Case No. 101500457, Fifth Judicial District of Utah (2010); and

    b. $20,000 due within two years from the date of the initial payment.

6. At such time as the final payment is due, and subject to the condition that Respondents not be found in violation of any term of this Order, the Division shall waive $5,000 of the total fine, reducing the final payment from $20,000 to $15,000.

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

Certificate of Mailing

I certify that on the 30 day of January 2014, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

GEMENT, LLC

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 FOR DEFAULT**
JASON LEE BORUP,	**CASE NO.** SD- SD-14-0055
RESPONDENT	

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's January 13, 2015 recommended order on motion for 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 $712,500 to the Utah Division of Securities. Of this total fine, $142,500 is due and payable immediately upon receipt of this final order. 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 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 $712,500 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 30th date following the signature date below, except that:

1. If the parties file a fully-executed settlement agreement with the presiding officer during this 30-day period, those circumstances shall stay the effective date pending the Commission's review of, and decision regarding, the settlement; and
2. If the Commission approves the settlement agreement and enters the associated order, those circumstances shall serve to vacate this default order without further proceeding.

DATED this 22 day of January, 2015

UTAH SECURITIES COMMISSION:

Tim Bangerter

Erik Anthony Christiansen

Brent Baker

Gary Cornia

David Russon

Brent Baker

Gary Correia

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 30 day of January, 2015 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

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

Lillian 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	**RECOMMENDED ORDER ON MOTION FOR DEFAULT**
JASON LEE BORUP,	**CASE NO.** SD-14-0055
RESPONDENT	

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a December 2, 2014 notice of agency action and order to show cause. 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 January 7, 2015. Respondent failed to appear. As of the date of this order, Respondent has made no effort to participate in these proceedings.

Given the foregoing, the presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(b) and (c), proper factual and legal bases exist for entering a default order against Respondent.

RECOMMENDED ORDER

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, and find:

1. That the investment opportunities offered and sold by Respondent are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);
2. That 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 investors;
3. That 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. That Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

The presiding officer further 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 $712,500 to the Utah Division of Securities, with $142,500 of the fine due and payable in full upon receipt of the final order and the remaining $570,000 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 $712,500 fine become 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.

This recommended order shall be effective on the signature date below.

DATED this 13th day of January, 2015.

UTAH DEPARTMENT OF COMMERCE

Jennie T. Jonsson
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 13th day of Jan., 2015, the undersigned hand delivered a true and correct copy of the foregoing RECOMMENDED ORDER ON MOTION FOR DEFAULT to the following:

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	**RECOMMENDED ORDER ON MOTION FOR DEFAULT**
JOHN PATRICK LAING,	**CASE NO.** SD-11-0051
RESPONDENT	

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a June 29, 2011 notice of agency action and order to show cause. Thereafter, the proceedings were stayed for a time. The stay was lifted on October 23, 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 December 3, 2014. Respondent failed to appear. As of the date of this order, Respondent has made no effort to participate in these proceedings since the stay was lifted.

Given the foregoing, the presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(b) and (c), proper factual and legal bases exist for entering a default order against Respondent.

RECOMMENDED ORDER

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, and find:

1. That the investment opportunities offered and sold by Respondent are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);
2. That 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 investors;
3. That 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;
4. That, in violation of Utah Code Ann. § 61-1-3(1), Respondent was not properly licensed to deal in securities at any relevant time;
5. That, in violation of Utah Code Ann.§ 61-1-7, the securities sold by Respondent were not registered or exempt from registration; and
6. That Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

The presiding officer further recommends that the Utah Securities Commission enter a default order against Respondent, requiring:

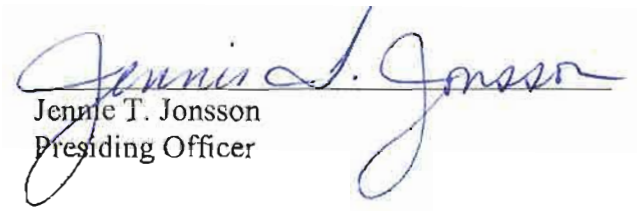
1. That Respondent cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;
2. That Respondent pay a fine of $60,000 to the Utah Division of Securities, due and payable in full upon receipt of the final order; and
3. That Respondent be permanently barred from 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.

This recommended order shall be effective on the signature date below.

DATED this 4th day of December, 2014.

UTAH DEPARTMENT OF COMMERCE



Jennie T. Jonsson
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 4th day of Dec., 2014, the undersigned hand delivered a true and correct copy of the foregoing RECOMMENDED ORDER ON MOTION FOR DEFAULT to the following:

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 MOTION FOR DEFAULT**
JOHN PATRICK LAING,	**CASE NO.** SD-11-0051
RESPONDENT	

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's December 4, 2014 recommended order on motion for 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 $60,000 to the Utah Division of Securities, due and payable immediately upon receipt of this final order.

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 22 day of January, 2014

UTAH SECURITIES COMMISSION:

Tim Bangerter

Erik Anthony Christiansen

Brent Baker

Gary Cornia

David Russon

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 22 day of January, 2014

UTAH SECURITIES COMMISSION:

Tim Bangerter

Erik Anthony Christiansen

Brent Baker

Gary Comia

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 30 day of January 2014 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

a

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

Lillian Cearn

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	**RECOMMENDED ORDER ON MOTION FOR DEFAULT**
DEAN LOREN CASUTT,	**CASE NO.** SD-14-0050
RESPONDENT	

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to an October 20, 2014 notice of agency action and order to show cause. 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 December 3, 2014. Respondent failed to appear. As of the date of this order, Respondent has made no effort to participate in these proceedings.

Given the foregoing, the presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(b) and (c), proper factual and legal bases exist for entering a default order against Respondent.

RECOMMENDED ORDER

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, and find:

1. That the investment opportunities offered and sold by Respondent(s) are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);
2. That 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 investors;
3. That 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. That Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

The presiding officer further 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 $153,625 to the Utah Division of Securities, with $30,725 of the fine due and payable in full upon receipt of the final order and the remaining $122,900 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 $153,625 fine become 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.

This recommended order shall be effective on the signature date below.

DATED this 4th day of December, 2014.

UTAH DEPARTMENT OF COMMERCE

Jennie T. Jonsson
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 4th day of Dec., 2014, the undersigned hand delivered a true and correct copy of the foregoing RECOMMENDED ORDER ON MOTION FOR DEFAULT to the following:

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 MOTION FOR DEFAULT**
DEAN LOREN CASUTT,	**CASE NO.** SD-14-0050
RESPONDENT	

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's December 4, 2014 recommended order on motion for 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 $153,625 to the Utah Division of Securities. Of this total fine, $30,725 is due and payable immediately upon receipt of this final order. 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 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 $153,625 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 22 day of January, 2014

UTAH SECURITIES COMMISSION:

Tim Bangerter

Erik Anthony Christiansen

Brent Baker

Gary Cornia

David Russon

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 $153,625 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 22 day of January, 2014

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 30 day of January, 2014 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

eral
h

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

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
BRUCE LUCKETT DYSON,	**RECOMMENDED ORDER ON DEFAULT**
RESPONDENT	**CASE NO.** SD-14-0027

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a July 22, 2014 notice of agency action and order to show cause. On September 3, 2014, the presiding officer issued a scheduling order requiring Respondent to file initial disclosures by October 1, 2014 and final Disclosures by December 5, 2014. Thereafter, the final disclosure deadline was extended to December 15, 2014.

On January 9, 2014, the Division, having complied with all required disclosure deadlines, 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 hereby 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 $375,000 to the Utah Division of Securities, with $75,000 of the fine due and payable in full upon receipt of the final order and the remaining $300,000 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 $375,000 fine become 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 16th day of January, 2015.

UTAH DEPARTMENT OF COMMERCE

Jennie T. Jonsson
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 16th day of Jan., 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:

by

ey General
ıtor

vision of Securities

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**
BRUCE LUCKETT DYSON,	**CASE NO.** SD-14-0027
RESPONDENT	

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's January 16, 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 $375,000 to the Utah Division of Securities. Of this total fine, $75,000 is due and payable immediately upon receipt of this final order. 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 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 $375,000 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 22 day of January, 2015

UTAH SECURITIES COMMISSION:

Tim Bangerter

Erik Anthony Christiansen

Brent Baker

Gary Cornia

David Russon

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 $375,000 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 20 day of January, 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 30 day of January 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:

eral
h

ng

LillAnn Ciarn

OSC

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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: **MERLIN VICTOR FISH,** **AQUAPOWER, LC,** **Respondents.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-14-0021 **Docket No.** SD-14-0022

It appears to the Director ("Director") of the Utah Division of Securities ("Division") that Merlin Victor Fish ("Fish") and AquaPower, LC ("AquaPower" and, collectively with Fish, "Respondents") have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.* (the "Act"). Those acts and practices are more fully described herein. Based upon information discovered in the course of the Division's investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over Respondents and the subject matter is appropriate because the Division alleges that Respondents violated § 61-1-1 (securities fraud) of the Act while engaged in

OSC

the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

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

3. AquaPower is a Utah-based limited liability company that registered with the Utah Division of Corporations ("Corporations") on or about June 25, 2007. The entity's current status with Corporations is active.[1] Fish serves as registered agent and manager of the entity. AquaPower has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

4. From approximately November 2008 to March 2012, while conducting business in or from Utah, Respondents offered and sold membership interests in AquaPower, a limited liability company,[2] to at least three investors and collected a total of $110,000 in cash and $15,000 in rent credits.

5. Interests in a limited liability company are defined as securities under § 61-1-13 of the Act.

6. Respondents made material misstatements and omissions in connection with the offer and

1 Former business names include: NPWR, LC, NanoNutrients, L.C., NanoNutrients, LLC, and N|PWR, LC.
2 The company is engaged in licensing a nanonutrient-enriched water product developed by an individual named Dr. James Kaiser. The product is not patented, and, according to Dr. Kaiser, no published studies exist with respect to its effects. However, through the offer and sale of membership units in the company, Fish represented that the product was going to change the world, as it has applications in nearly every facet of life. Specifically, the product could be used to enhance nutritional supplements, extract precious minerals from ore, and increase hydrogen production through the improved electrolysis of water.

sale of securities to the investors identified below.

7. To date, investors have not received any return on their investments.

INVESTOR C.M.

OFFER AND SALE OF SECURITIES

8. C.M., a Utah resident, initially met Fish and his associate, Max Campbell ("Campbell"), through an acquaintance, Marilynn Phips ("Phips").

9. In or about 2008, Phips learned that C.M. had inherited some money.

10. Phips later conveyed this information to Fish and Campbell, who were looking for investors in Fish's company, AquaPower.[3]

11. Shortly thereafter, Fish and Campbell began frequenting C.M.'s place of business.

12. In or about September 2008, Campbell mentioned an investment in Fish's company during one of his visits with C.M.

13. At that time, C.M. informed Campbell that he only had $10,000 available to invest.

14. Campbell represented that Fish would not take less than $50,000, thereby ending their discussion regarding AquaPower.

15. However, in or about November 2008, Fish went to C.M.'s place of business and stated that he would be willing to accept a $10,000 investment, even though he never accepted anything less than $50,000.

16. As justification for this departure from the minimum investment amount, Fish stated that a current membership unit holder was interested in selling his units.

3 AquaPower was doing business as NanoNutrients, L.C. at the time of the offer and sale to C.M. However, for purposes of this Order to Show Cause, the entity will be referred to as AquaPower.

OSC

17. At that time, Fish made the following representations regarding an investment in AquaPower:

    a. The company had developed a free-energy device that was going to provide free energy to the world;

    b. The product could be used in a variety of ways;

    c. To that end, the company had developed a hydrogen generator, roughly the size of a regular electrical box, that could be installed in homes;

    d. One gallon of AquaPower's nanonutrient water could power the generator, providing electricity to a home, for approximately one month;

    e. Additionally, the water was being used in a feeding formula for chickens; and

    f. The company was dominating the chicken industry in North and South America, and it was working on getting the formula incorporated into the chicken industry in France and the United Kingdom.

18. Fish also represented that C.M. would make money on the membership units that he purchased.

19. Based on Fish's statements, C.M. invested $10,000 in AquaPower.

20. On or about November 17, 2008, C.M. provided Fish with a $10,000 check made payable to Caravel Strategies.[4]

21. In exchange for the investment, C.M. received a membership unit certificate dated

---

4 Caravel Strategies, LC was a limited liability company that registered with Corporations on or about February 28, 2007. Its status with Corporations expired on or about May 28, 2013. During its existence, Kevin and Patricia Fish served as managers of the entity. Fish specifically requested that C.M. make his check payable to this entity, and, shortly after receiving C.M.'s payment, Fish wired $10,000 to the prior unit holder as compensation for his units.

OSC

November 21, 2008.

22. The certificate provided proof of C.M.'s ownership of 100 class A voting units in AquaPower, operating as NanoNutrients LC.[5]

23. Fish signed and dated the certificate as manager of the entity.

24. To date, C.M. has not received a return on his investment.

INVESTOR J.D.

OFFER AND SALE OF SECURITIES

25. J.D., an Idaho resident, initially met Fish through his business partner, Rich Richardson ("Richardson").

26. In or about the fall of 2011, Richardson and J.D., who were working together on various business ventures, met with Fish to learn more about AquaPower.

27. At that time, Fish represented that AquaPower's nanonutrient technology was being used to enhance nutritional supplements, strengthen fertilizers, extract precious minerals from ore, and improve the electrolysis of water.[6]

28. Fish also told J.D. that the company had a design for a hydrogen fuel assist device that would fit on diesel trucks.

29. He represented that J.D., who owned a trucking company at the time, would own the entire trucking industry if he used the technology.

30. Additionally, Fish showed J.D. a PowerPoint presentation that purported to include

---

5 C.M. paid approximately $10 per unit for his equity stake in the company.

6 As proof of the product's strength, Fish provided J.D. with a demonstration, whereby he ignited hydrogen mixed with regular water, producing a small flash. Fish then ignited hydrogen mixed with the supposed nanonutrient water, producing a much larger explosion.

OSC

results of studies on the technology and its impact on the hog and chicken industries.

31. Based on this information, J.D. decided to purchase several licenses from AquaPower, through which he could market and sell products utilizing the nanonutrient technology in the health supplement, agricultural, mining, and diesel industries.[7]

32. Given J.D.'s familiarity with the company, Fish later contacted J.D. to discuss a potential investment opportunity in the company itself.

33. Specifically, in or about November 2011, Fish reached out to J.D. via telephone.

34. During the call, Fish told J.D. that one of AquaPower's membership unit holders was in desperate need of money to save his business.

35. As a result, he was liquidating his units and needed to complete the transaction as soon as possible.

36. With respect to the investment, Fish stated that a $50,000 investment in membership units would result in a return of $750,000 as soon as AquaPower sold to an investment group out of Hong Kong that had expressed interest in buying the company.

37. Fish also represented that the group was close to closing the deal.

38. J.D. stated that he would only purchase the units if Fish could assure him that the sale would go through.

39. Fish responded that the deal was rock solid and that he was certain it would occur.

40. Based on these representations, J.D. invested $50,000 in AquaPower.

---

7 J.D. paid $1 million for the four licenses. He also spent another $100,000 for the option to purchase ten additional licenses at $250,000 each over the next two years.

41. On or about November 15, 2011, J.D. wired $50,000 to the company's bank account.[8]

42. In exchange for the investment, J.D. received a membership unit certificate, in the name of his joint venture with Richardson, dated November 19, 2011 and signed by Fish.

43. The certificate conveyed ownership of 7,693 class A voting units.[9]

44. The group from Hong Kong never completed the purchase of AquaPower.

45. J.D. never received a return on his investment.

INVESTOR D.R.

OFFER AND SALE OF SECURITIES

46. In or about December 2011, Fish and several business associates, including Bert Wonnacott ("Wonnacott"), Mae Jang ("Jang"), Michael Hansen ("Hansen"), and Bob Norton, traveled to a commercial office building in Pleasant Grove, Utah, where they met D.R., the owner of the building.

47. After some discussion regarding the availability of office space in the building, Fish asked D.R. if he would be willing to sell the entire structure.

48. Fish explained that his company, AquaPower, was being acquired, and the new owners wanted a professional office building to house their administrative headquarters.

49. Fish also represented that the pending acquisition of his company would be one of the largest financial transactions to occur in Utah.

50. Fish then said that they would lease space from D.R. until the deal went through.

---

8 On or about November 16, 2011, Fish transferred $50,000 to the bank account of the prior membership unit holder who sold his shares to J.D.

9 J.D. paid approximately $6.50 per unit for his equity stake in the company.

OSC

51. D.R. agreed to the lease, and AquaPower moved into the building in or about January 2012.

52. Between January and March 2012, D.R., Fish and Wonnacott had lunch on several occasions in Utah County, Utah.

53. During those lunches, Fish and Wonnacott told D.R. about AquaPower and its nanonutrient technology.

54. Fish also presented D.R. with the opportunity to purchase membership units in AquaPower. With respect thereto, Fish made the following representations:

    a. Hansen had an offer on the table to acquire AquaPower within one month;

    b. Upon acquisition, membership units in the company would be valued at $100 each;

    c. D.R. could purchase units for $6.50 each;

    d. After the acquisition was finalized, he could sell those units at a price of $100 each;

    e. D.R. would have to act quickly and purchase units before the deal went through;

    f. Fish also encouraged D.R. to buy units for the company's potential, rather than the anticipated profit associated with the acquisition; and

    g. The nanonutrient technology was "priceless in the human stewardship that it represented."

55. Fish explained to D.R. that he had turned down other lucrative offers to sell his company based on his sense that those buyers would exploit or bury the nanonutrient technology.

56. Fish reinforced the idea that stewardship was more important than financial gain.

57. Based on these representations, D.R. decided to purchase 10,000 membership units at a

OSC

price of $6.50 per unit.

58. On or about March 12, 2013, D.R. signed a subscription agreement[10] and provided Jang with a $50,000 cashier's check made payable to AquaPower.[11]

59. The remaining $15,000 investment was credited to D.R. in exchange for rent payments.

60. As proof of his investment, D.R. received two membership unit certificates, dated March 15, 2012 and signed by Fish, reflecting ownership of a combined total of 10,000 class A voting units.[12]

61. D.R. continues to hold those units in AquaPower; however, the acquisition never went through, and, as a result, no market for the securities ever materialized.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act
Investor C.M.
(Offer and Sale of Securities)

62. The Division incorporates and re-alleges paragraphs 1 through 61.

63. The interests in a limited liability company offered and sold by Respondents are securities under § 61-1-13 of the Act.

64. In connection with the offer and sale of securities to investor C.M., Respondents, 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:

---

10 The subscription agreement attempted to disclose some of the risks of the investment, including the fact that AquaPower was a startup company with no revenue and limited operating history, the company was selling restricted securities subject to limitations on resale, no market existed for the securities, and any projections provided to investors were estimates, which could later prove to be incorrect.

11 The check was deposited into the company's bank account at Wells Fargo and subsequently transferred into other business accounts.

12 D.R. invested through a family trust. The certificates list the trust as owner of the units.

OSC

a. Documentation and research showing how the nanonutrient product powered a hydrogen generator;

b. Documentation and research showing how the nanonutrient product impacted animals in North and South America;

c. Proof of the feeding formula's dominance in the chicken industry in North and South America;

d. Proof of Respondents' efforts to get the feeding formula incorporated into the chicken industry in France and the United Kingdom;

e. How C.M. would make money on the membership units that he purchased;

f. How Respondents arrived at a valuation of $10,000 for C.M.'s units;

g. Details regarding the market for the units and any restrictions on resale;

h. The fact that the Utah Division of Consumer Protection had filed an action against Fish in Utah's Fourth District Court in or about 2007, as a result of his alleged violations of the Credit Service Organization Act and the Consumer Sales Practices Act[13]; and

i. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, such as:

   i. Business and operating history;

   ii. Financial statements;

   iii. Risk factors;

13 *Financially Fit Inc. v. Utah Dept. of Commerce,* Case No. 070908732, Fourth Judicial District Court of Utah (2007).

OSC

iv. Suitability factors for the investment;

v. Whether the investment was a registered security or exempt from registration; and

vi. Whether Respondents were licensed to sell securities.

Securities Fraud under § 61-1-1 of the Act
Investor J.D.
(Offer and Sale of Securities)

65. The Division incorporates and re-alleges paragraphs 1 through 61.

66. The interests in a limited liability company offered and sold by Respondents are securities under § 61-1-13 of the Act.

67. In connection with the offer and sale of securities to investor J.D., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

a. J.D. could sell his membership units for $750,000 as soon as the sale to the Hong Kong investment group went through, when, in fact, Respondents had no reasonable basis for this statement.

68. In connection with the offer and sale of securities to investor J.D., Respondents, 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. How Respondents arrived at a valuation of $750,000 for the projected sale of J.D.'s units;

b. Details regarding the market for the units and any restrictions on resale;

c. How Respondents arrived at a price of roughly $6.50 per unit for J.D.'s equity

OSC

stake in AquaPower;

d. Details surrounding the Hong Kong investment group and the terms of its pending acquisition;

e. How Respondents could be certain that the acquisition would go through;

f. Proof that AquaPower's nanonutrient technology was being used to enhance nutritional supplements, strengthen fertilizers, extract precious minerals from ore, and improve the electrolysis of water;

g. Documentation and research showing how the hydrogen fuel assist device worked on diesel trucks and how it would impact the trucking industry;

h. Documentation and research supporting the study results summarized in Respondents' PowerPoint presentation;

i. The fact that the Utah Division of Consumer Protection had filed an action against Fish in Utah's Fourth District Court in or about 2007, as a result of his alleged violations of the Credit Service Organization Act and the Consumer Sales Practices Act[14]; and

j. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, such as:

   i. Business and operating history;

   ii. Financial statements;

   iii. Risk factors;

---

14 *Financially Fit Inc. v. Utah Dept. of Commerce,* Case No. 070908732, Fourth Judicial District Court of Utah (2007).

iv. Suitability factors for the investment;

v. Whether the investment was a registered security or exempt from registration; and

vi. Whether Respondents were licensed to sell securities.

Securities Fraud under § 61-1-1 of the Act
Investor D.R.
(Offer and Sale of Securities)

69. The Division incorporates and re-alleges paragraphs 1 through 61.

70. The interests in a limited liability company offered and sold by Respondents are securities under § 61-1-13 of the Act.

71. In connection with the offer and sale of securities to investor D.R., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

a. D.R. could sell his units for $100 each within one month, when, in fact, Respondents had no reasonable basis for such statement.

72. In connection with the offer and sale of securities to investor D.R., Respondents, 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. Details surrounding the terms of Hansen's pending acquisition;

b. How Respondents arrived at a valuation of $100 per unit post acquisition;

c. How Respondents arrived at a price of roughly $6.50 per unit for D.R.'s equity stake in AquaPower;

d. Details and terms of the prior offers to buy the company that Respondents claim

OSC

to have rejected;

e. The fact that the Utah Division of Consumer Protection had filed an action against Fish in Utah's Fourth District Court in or about 2007, as a result of his alleged violations of the Credit Service Organization Act and the Consumer Sales Practices Act, and Fish settled with that division in or about December 2011, for a total fine of $10,000[15]; and

f. Whether Respondents were licensed to sell securities.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on **Wednesday, September 3, 2014** at **9:00 a.m.**, at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;

15 *Financially Fit Inc. v. Utah Dept. of Commerce,* Case No. 070908732, Fourth Judicial District Court of Utah (2007).

OSC

b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1 and 61-1-7, or any other section of the Act;

c. Why Respondents should not be 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; and

d. Why Respondents should not be ordered to pay to the Division a fine, in an amount to be determined by the Utah Securities Commission after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1. Such fine may include the Division's costs incurred in investigating and prosecuting the action. Additionally, it may be reduced by restitution paid to the investors.

DATED this 7th day of July, 2014.

KEITH WOODWELL
Director, Utah Division of Securities

Approved:

PAUL G. AMANN
Assistant Attorney General
K.W.

D.H.

DOUGLAS E. GRIFFITH (4042)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, UT 84101
Telephone: (801) 532-8000
dgriffith@keslerrust.com
Attorneys for Respondents

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

IN THE MATTER OF: **MERLIN VICTOR FISH, AQUAPOWER, LC,** Respondents.	**RESPONSE TO ORDER TO SHOW CAUSE** Docket No. SD-14-0021 Docket No. SD-14-0022

Respondents Merlin Victor Fish ("Fish") and AquaPower, LC ("AquaPower") (hereinafter collectively "Respondents"), by and through their counsel of record, hereby respond the Division of Securities' Order to Show Cause as follows:

1. Respondents admit the allegations contained in ¶¶ 1-5 of the Order to Show Cause.

2. Respondents deny the allegations contained in ¶¶ 6-7 of the Order to Show Cause.

3. Respondents are without knowledge or information sufficient to form a belief as to the allegations contained in ¶¶ 8 and 9 of the Order to Show Cause, and therefore can neither admit nor deny the same.

4. Respondents deny the allegations contained in ¶¶ 10 and 11 of the Order to Show Cause.

5. Respondents are without knowledge or information sufficient to form a belief as to the allegations contained in ¶¶ 12-14 of the Order to Show Cause, and therefore can neither admit nor deny the same.

6. Respondents deny the allegations contained in ¶¶ 15-18 of the Order to Show Cause.

7. Respondents are without knowledge or information sufficient to form a belief as to the allegations contained in ¶ 19 of the Order to Show Cause, and therefore can neither admit nor deny the same.

8. Respondents admit the allegations contained in ¶¶ 20-23 of the Order to Show Cause.

9. Respondents deny the allegations contained in ¶ 24 of the Order to Show Cause.

10. Respondents admit the allegations contained in ¶ 25 of the Order to Show Cause.

11. Respondents deny the allegations contained in ¶¶ 26-29 of the Order to Show Cause.

12. Respondents admit the allegations contained in ¶ 30 of the Order to Show Cause.

13. Respondents deny the allegations contained in ¶¶ 31-33 of the Order to Show Cause.

14. Respondents admit the allegations contained in ¶¶ 34 and 35 of the Order to Show Cause.

15. Respondents deny the allegations contained in ¶¶ 36-40 of the Order to Show Cause.

16. Respondents admit the allegations contained in ¶¶ 41-44 of the Order to Show Cause.

17. Respondents deny the allegations contained in ¶¶ 45-50 of the Order to Show Cause.

18. Respondents admit the allegations contained in ¶ 51 of the Order to Show Cause.

19. Respondents deny the allegations contained in ¶¶ 52-57 of the Order to Show Cause.

20. Respondents admit the allegations contained in ¶¶ 58-60 of the Order to Show Cause.

21. Respondents are without knowledge or information sufficient to form a belief as to ¶ 61 of the Order to Show Cause, and therefore can neither admit nor deny the same.

22. Respondents respond to ¶ 62 to the same extent it has answered ¶¶ 1-61 herein.

23. Respondents admit the allegations contained in ¶ 63 of the Order to Show Cause.

24. Respondents deny the allegations contained in ¶ 64 of the Order to Show Cause.

25. Respondents respond to ¶ 65 to the same extent it has answered ¶¶ 1-64 herein.

26. Respondents admit the allegations contained in ¶ 66 of the Order to Show Cause.

27. Respondents deny the allegations contained in ¶¶ 67 and 68 of the Order to Show Cause.

28. Respondents respond to ¶ 69 to the same extent it has answered ¶¶ 1-68 herein.

29. Respondents admit the allegations contained in ¶ 70 of the Order to Show Cause.

30. Respondents deny the allegations contained in ¶¶ 71 and 72 of the Order to Show Cause.

31. Respondents deny the allegations contained in the prayer for relief of the Order to Show Cause.

AFFIRMATIVE DEFENSES

Respondents assert the following affirmative defenses to the Division's Order to Show Cause and reserve the right to amend their affirmative defenses as further information becomes available.

FIRST AFFIRMATIVE DEFENSE

Respondents allege that Division has failed to state a claim or cause of action upon which relief may be granted as against Respondents.

SECOND AFFIRMATIVE DEFENSE

Respondents allege that Division's claims are barred by reason of the Division's failure to plead fraud with particularity as to Respondents.

THIRD AFFIRMATIVE DEFENSE

Respondents allege that Division's claims are barred by release and waiver.

FOURTH AFFIRMATIVE DEFENSE

Respondents allege that Division's claims are barred by equitable estoppel and promissory estoppel.

FIFTH AFFIRMATIVE DEFENSE

Respondents allege that Division's claims are barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

Respondents allege that Division's claims are barred by any other matter constituting an avoidance or affirmative defense.

STATEMENT OF ADDITIONAL MATERIAL FACTS

1. C.M. was a trained Cranial Sacrial Therapist. Fish and Max Campbell ("Campbell") were both patients of C.M. during the relevant time period herein.

2. Fish was not present during C.M.'s treatment of Campbell. Fish has no knowledge of what Campbell may have told C.M. concerning AquaPower or its operations.

3. C.M. asked Fish for an opportunity to acquire an interest in AquaPower without any representation or solicitation from Fish regarding AquaPower.

4. Knowing of an existing member who desired to liquidate his interest in AquaPower, Fish arranged for C.M. to acquire an ownership interest in AquaPower by purchasing units from an existing member. Neither Fish nor AquaPower benefited from C.M.'s purchase of AquaPower units.

5. Since becoming a member and unit holder of AquaPower, C.M. received a dividend of 1,000 Class B units of AquaPower.

6. J.D. has fully and completely resolved, released, and satisfied any and all claims against AquaPower, Fish and others by accepting an interest in three licenses from AquaPower. As partial consideration for such interest in the licenses, J.D. transferred to AquaPower all units he acquired in AquaPower from an existing member of AquaPower for his investment of $50,000.00. A copy of the settlement agreement among AquaPower, J.D., and others is attached hereto as Exhibit "A".

7. At all times relevant herein or prior to the relevant facts herein, D.R. was an accountant and registered securities advisor.

8. For a period of time and prior to or during the time of his investment in AquaPower, D.R. was an in-house accountant for AquaPower.

9. In the course of fulfilling his duties as an accountant and insider, D.R. had full access to the books and records of AquaPower, including company financial records. D.R. also participated in management meetings for AquaPower and was fully aware of AquaPower's customers, licenses, research projects, test results and financial conditions.

10. D.R. wanted AquaPower to expand its operations and products into the pig and agricultural industries. When told that AquaPower did not have the financial resources to fund such an expansion, D.R. insisted on investing $50,000 into AquaPower, provided AquaPower would use such monies to expand the water products produced by AquaPower into the pig and agricultural industries.

11. AquaPower agreed and sold D.R. units valued at $6.50 per unit in exchange for D.R.'s $50,000 investment. Such proceeds were then used to develop and prepare products for testing in the pig industry and the alfalfa industry as requested and directed by D.R.

PRAYER

WHEREFORE, Respondents request that this Court dismiss the claims and causes of action filed by Division against Respondents and deny the relief requested by the Division.

DATED this 5th day of August, 2014.

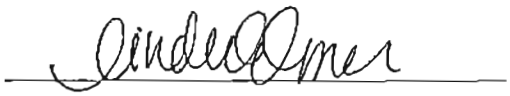
KESLER & RUST

Douglas E. Griffith

Douglas E. Griffith
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that I caused to be delivered by U.S. Mail a true and correct copy of **RESPONSE TO ORDER TO SHOW CAUSE** this 5th day of August, 2014.



Administrative Court Clerk
c/o Maria Lohse
Utah Division of Securities
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Utah Division of Securities
Utah Department of Commerce
Attn: Keith Woodwell
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Utah Attorney General's Office
Commercial Enforcement Division
Attn: Paul G. Amann
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, UT 84114-0872

EXHIBIT “A”

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into this 28th day of May, 2014 by and among ARKTOS, LLC ("ARKTOS"), Jason Duncan ("Duncan") and Richard Richardson ("Richardson") and AquaPower, LLC ("AquaPower"), Merlin Fish ("Fish") and Bert Wonnacott ("Wonnacott" aka "Wannacott" in pleadings) (collectively "the Parties").

WHEREAS, Duncan and Richardson are or have in the past been owners, agents and representatives of ARKTOS; and Fish and Wonnacott are owners, agents and representatives of AquaPower;

WHEREAS, ARKTOS entered into various contracts with AquaPower, including but not limited to four separate licensing agreements, an option agreement to acquire additional licensing agreements, and a product preferred purchasing agreement for a total purchase price of $1,100,000;

WHEREAS, ARKTOS also acquired 7,693 Class A units of AquaPower, LC, certificate no. A-1105 for a purchase price of $50,000;

WHEREAS, ARKTOS filed a civil action against AquaPower, Fish, Wonnacott and related AquaPower entities known as *ARKTOS, LLC v. AquaPower, et al.*, Civil No. 120100502, Fourth District Court, Utah County, American Fork Department, State of Utah ("the Action");

WHEREAS, ARKTOS alleged in the action that the named defendants engaged in securities fraud, common law fraud, selling unregistered securities, along with additional claims, all of which claims and causes of action AquaPower, Fish, Wonnacott and the other defendants denied; and

WHEREAS, the Parties have determined that it is in their best interest to resolve these disputes.

NOW THEREFORE, the Parties enter into the following agreement:

1. The Parties hereto acknowledge and accept the recitals set forth above as true and accurate.

2. Upon execution of this Agreement and in consideration for the obligations and agreements provided by ARKTOS, Duncan and Richardson as set forth herein, AquaPower hereby agrees to grant and issue to Star Valley Research LLC three non-exclusive licenses for the rights to acquire AquaPower products for use and distribution to specified geographical areas and for a specified field or use, as described and designated in each license. Copies of the three licenses are attached hereto as Exhibits A, B and C.

3. Upon execution of this Agreement and in consideration for the obligations and agreements provided by AquaPower, Fish and Wonnacott as set forth herein,

ARKTOS hereby agrees to transfer to AquaPower its 7,693 Class A units of AquaPower, LC, certificate no. A-1105.

4. With the exception of the obligations contained in this Agreement and upon receipt of the licenses described above, ARKTOS, Duncan and Richardson, together with all of their owners, officers, representatives, affiliates, attorneys, investors and all other parties associated with them hereby fully release and waives any and all claims, demands, causes of action and damages which they may have against AquaPower, Fish, Wonnacott, and the other defendants listed in the action, together with their owners, officers, representatives, affiliates, attorneys, investors and all other parties associated with them related to or arising out of the Action, the four licensing agreements, the option agreement, the preferred purchasing agreement, the Class A units, any and all securities, and all other claims, whether known or unknown, claimed or unclaimed.

5. With the exception of the obligations contained in this Agreement and upon receipt of the units described above, AquaPower, Fish, Wonnacott, and the other defendants listed in the action, together with their owners, officers, representatives, affiliates, attorneys, investors and all other parties associated with them hereby fully release and waive any and all claims, demands, causes of action and damages which they may have against ARKTOS, Duncan and Richardson, together with all of their owners, officers, representatives, affiliates, attorneys, investors and all other parties associated with them, related to or arising out of the Action, the four licensing agreements, the option agreement, the preferred purchasing agreement, any and all securities, and all other claims, whether known or unknown, claim or unclaimed.

6. Upon execution of this Agreement and issuance of the three licenses and delivery of the Class A Units referenced above, the Parties hereto authorize their respective attorneys to submit the required legal documents to the court to dismiss the Action with prejudice. Copies of the stipulation and order of dismissal are attached hereto as Exhibit "D".

7. This Agreement has been entered into in the State of Utah and shall be governed by Utah law. In any action to interpret or enforce the terms of this Agreement, whether in law or equity, the prevailing party shall be entitled to collect its attorneys fees and all other costs and expenses of the litigation.

8. This Agreement shall be binding on, and shall inure to the benefit of, the Parties to this Agreement and their respective successors and assigns.

9. This Agreement, together with all documents referenced herein, constitutes the entire agreement of the Parties relating to its subject matter and is meant to integrate any previous agreement, oral or written. No modification or amendment of this Agreement shall be of any force or effect unless in writing and executed by the Party or Parties against whom enforcement is sought.

10. Each party hereto acknowledges that they are executing this Agreement with all such authority as may be required by their respective corporation or legal entity, that they have had the opportunity to have such Agreement reviewed by their own attorneys, and that they enter such Agreement without undue duress or influence, or in reliance upon any promises or representations other than those set forth within this Agreement.

11. This Agreement may be signed in one or more counterparts or telefax copy, each of which will be valid and effective as though all the signatures appeared on the same page.

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed as of the date first above written.

ARKTOS, LLC

By Jason H. Duncan — 5/28/14
Its Managing Partner — Date

JASON DUNCAN — 5/28/14
Date

RICHARD RICHARDSON — 5/28/14
Date

AQUAPOWER, LC

By — 5/29/14
Its CEO — Date

MERLIN FISH — 5/29/14
Date

BERT WOODNACOTT — 5/30/14
Date

Approved as to form:

Ronald S. George
Attorneys for ARKTOS, Duncan

KESLER & RUST, P.C.

Douglas E. Griffith
Attorneys for AquaPower, Fish and Wormacott

PAUL G. AMANN (6465)
Assistant Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for the State of Utah
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, Utah 84114-0872
Telephone (801) 366-0196
Facsimile: (801) 366-0315
Email: pamann@utah.gov

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

IN THE MATTER OF, **MERLIN VICTOR FISH** **AQUAPOWER, L.C.,** RESPONDENTS.	INITIAL DISCLOSURES CASE NO. SD-14-0021 CASE NO. SD-14-0022

The undersigned Assistant Attorney General, Paul G. Amann, on behalf of the State of Utah, Department of Commerce, Securities Division (Division), hereby submits the following initial disclosures as required by Utah Administrative Code R151-4-503, and the scheduling order issued in this case.

WITNESSES (with discoverable information):

1. Respondent, Merlin Victor Fish;
2. Kristilyn Wilkinson, Securities Division Investigator;
3. Investors C.M., J.D. and D.R.;
4. Any witnesses listed by Respondent.

The Division reserves the right to amend its disclosures with the names of other witnesses as may become known through its investigation, discovery or other avenues.

EVIDENCE: With the exclusion of non-discoverable material (*e.g.*, material that is attorney work-product, attorney-client privileged, confidential) the Division hereby gives notice

that it will provide reasonable access to its files as mandated by Rule 151-4-503(1)(b)(ii)(B) of the Utah Rules of Administrative Procedure.

The Division reserves the right to amend its disclosures with other evidence as may become known through its investigation, discovery or other avenues.

Respectfully submitted this 17th day of September, 2014.

PAUL G. AMANN
Assistant Attorney General
Counsel for the Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2014, I emailed and mailed a true and correct copy of the foregoing to counsel for Respondent at their last known address of record as follows:

Douglas E. Griffith, Esq.
Kesler|Rust
68 South Main, 200
Salt Lake City, Utah 84101
dgriffith@keslerrust.com

and provided a copy via drop-box to:

Jennie Jonsson, Administrative Law Judge
Utah Department of Commerce

Ann Skaggs, Analyst
Utah Division of Securities

R

RECEIVED

SEP 18 2014

Utah Department of Commerce
Division of Securities

DOUGLAS E. GRIFFITH (4042)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, UT 84101
Telephone: (801) 532-8000
dgriffith@keslerrust.com
Attorneys for Respondents

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

IN THE MATTER OF: **MERLIN VICTOR FISH,** **AQUAPOWER, LC,** Respondents.	**RESPONDENTS' INITIAL DISCLOSURES** Docket No. SD-14-0021 Docket No. SD-14-0022

Pursuant to Utah Administrative Code § R151-4-503, respondents Merlin Victor Fish ("Fish") and AquaPower, LC ("AquaPower") (hereinafter collectively "Respondents"), by and through their counsel of record, hereby submit the following initial disclosures:

a. **The name and, if known, the address and telephone number of each individual likely to have discoverable information supporting the party's claims or defenses; and identification of the topic(s) addressed in the information maintained by each individual.**

Merlin Fish
Topics: Sale of Securities to Dayne Raff, Craig Malecker, and Jason Duncan
c/o counsel

Mae Jang
Topics: Sale of Securities to Dayne Raff
c/o counsel

Bert Wormacott
Topics: Sale of Securities to Dayne Raff
c/o counsel

Larry Lawrence
Topics: Sale of Securities to Dayne Raff
c/o counsel

Ryan Fish
Topics: Sale of Securities to Dayne Raff
c/o counsel

Valmir Dutra
Topics: Sale of Securities to Dayne Raff
c/o counsel

Richard Richardson
Topics: Sale of Securities to Jason Duncan
c/o counsel

Craig Malecker
Topics: Sale of Securities to Craig Malecker
c/o Division

Jason Duncan
Topics: Sale of Securities to Jason Duncan
c/o Division

Dayne Raff
Topics: Sale of Securities to Dayne Raff
c/o Division

b. A description, by category and location, of all discoverable documents, data compilations, and tangible things that are in the party's possession, custody, or control; and support the party's claims or defenses.

Those documents include:

1. Emails Involving Dayne Raff and Merlin Fish;

2. Emails Involving Merlin Fish and Mae Jang;

3. Other Emails Involving Dayne Raff and Third-persons;

4. Meeting Minutes;

5. Google Maps;

6. Raff Resume;

7. Articles regarding anno-products;

8. AquaPower Business Plan;

9. Contract forms;

10. Other Documents related to Dayne Raff;

11. Bank documents related to the transfer of funds paid by subject investors to existing unit-holders;

12. Settlement Agreement among AquaPower and Jason Duncan and others;

13. Documents related to the sale of securities to the subject investors; and

14. Documents related to AquaPower products.

All documents are available upon request to counsel.

DATED this 17TH day of September, 2014.

KESLER & RUST

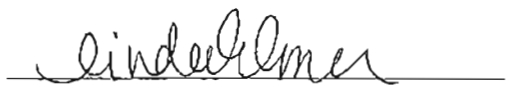
Douglas E. Griffith
Attorneys for Respondents

DOUGLAS E. GRIFFITH (4042)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, UT 84101
Telephone: (801) 532-8000
dgriffith@keslerrust.com
Attorneys for Respondents

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

IN THE MATTER OF: **MERLIN VICTOR FISH,** **AQUAPOWER, LC,** Respondents.	**CERTIFICATE OF SERVICE** Docket No. SD-14-0021 Docket No. SD-14-0022

I hereby certify that I caused to be delivered by U.S. Mail a true and correct copy of **RESPONDENTS' INITIAL DISCLOSURES** this 17th day of September, 2014.



Administrative Court Clerk
c/o Maria Lohse
Utah Division of Securities
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Utah Attorney General's Office
Commercial Enforcement Division
Attn: Paul G. Amann
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, UT 84114-0872

Utah Division of Securities
Utah Department of Commerce
Attn: Keith Woodwell
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

RECEIVED

NOV 1 8 2014

Utah Department of Commerce
Division of Securities

DOUGLAS E. GRIFFITH (4042)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, UT 84101
Telephone: (801) 532-8000
dgriffith@keslerrust.com
Attorneys for Respondents

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

IN THE MATTER OF: **MERLIN VICTOR FISH,** **AQUAPOWER, LC,** Respondents.	**RESPONDENTS' SUPPLEMENTAL DISCLOSURES** Docket No. SD-14-0021 Docket No. SD-14-0022

Respondents Merlin Victor Fish ("Fish") and AquaPower, LC ("AquaPower") (hereinafter collectively "Respondents"), by and through their counsel of record, hereby submits following supplemental disclosures:

Documents

- Test Results
- Poultry Studies
- Emails Regarding Poultry Studies

All such documents are attached hereto labeled as AQ000525 – AQ000560

DATED this 17th day of November, 2014.

KESLER & RUST

DOUGLAS E. GRIFFITH
Attorneys for Respondents

DOUGLAS E. GRIFFITH (4042)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, UT 84101
Telephone: (801) 532-8000
dgriffith@keslerrust.com
Attorneys for Respondents

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

IN THE MATTER OF: **MERLIN VICTOR FISH,** **AQUAPOWER, LC,** Respondents.	**CERTIFICATE OF SERVICE** Docket No. SD-14-0021 Docket No. SD-14-0022

I hereby certify that I caused to be delivered by U.S. Mail a true and correct copy of **RESPONDENTS' SUPPLEMENTAL DISCLOSURES** this 17th day of November, 2014.

Administrative Court Clerk
c/o Maria Lohse
Utah Division of Securities
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Utah Division of Securities
Attn: Ann Skaggs
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Utah Division of Securities
Utah Department of Commerce
Attn: Keith Woodwell
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Adam Knorr

RECEIVED

NOV 18 2014

Utah Department of Commerce
Division of Securities

From: Jim Kaiser <jpk@digis.net>
Sent: Monday, November 17, 2014 1:18 PM
To: Merlin Fish
Subject: FW: Today's test (9/16)

-----Original Message-----
From: Ardor [mailto:asno234@mcleodusa.net]
Sent: Tuesday, September 16, 2008 5:47 PM
To: Jim Kaiser
Subject: Today's test (9/16)

Test #: 18
Date: ..... 9/16/2008 #of cells:
..... 5x6
Water#: 110
Start time: 2:40pm
End time: 3:35pm
Time run: 55min
Start temp: 68
End temp: 88
Temp change: ..... +20
Volts: 14.5
Amps: 10.3
Watts: 149
Liters/min: 0.663
Ml/Min/Watt: 4.43

ml/min when the unit was cold = 0.810
Expected the ml/min to go up when the temp increased.
????

Ashby

Adam Knorr

From: Jim Kaiser <jpk@digis.net>
Sent: Monday, November 17, 2014 1:18 PM
To: Merlin Fish
Subject: FW: Today's test (9/17)

-----Original Message-----
From: Ardor [mailto:asno234@mcleodusa.net]
Sent: Wednesday, September 17, 2008 5:22 PM
To: Jim Kaiser
Subject: Today's test (9/17)

Test #: 20
Date: ..... 9/17/2008 #of cells:
..... 5x6
Water#: 111
Start time: 4:15pm
End time: 4:45pm
Time run: 30min
Start temp: 69
End temp: 79
Temp change: ..... +10
Volts: 15.3
Amps: 10.3
Watts: 157.6
Liters/min: 0.665
Ml/Min/Watt: 4.22

ml/min when the unit was warmed up to 86 (1 hour elapsed time) =
0.724@144 watts

Ashby

Adam Knorr

From: Jim Kaiser <jpk@digis.net>
Sent: Monday, November 17, 2014 1:18 PM
To: Merlin Fish
Subject: FW: Today's tests (10/10)

-----Original Message-----
From: Ardor [mailto:mail@ArdorMfg.com]
Sent: Friday, October 10, 2008 4:25 PM
To: Jim Kaiser
Subject: Today's tests (10/10)

Test #: 21
Date: ..... 10/10/2008 #of cells:
..... 5cx6
Water#: 200
Start time: ..... NA
End time: ..... NA
Time run: 0min
Start temp: ..... NA
End temp: ..... NA
Temp change: ..... NA
Volts: 15.3
Amps: 10.3
Watts: 157.6
Liters/min: 0.665
Ml/Min/Watt: 4.22

Test #: 22
Date: ..... 10/10/2008 #of cells:
..... 5cx6
Water#: 200
Start time: 3:20pm
End time: 4:20pm
Time run: 60min
Start temp: 82
End temp: 93
Temp change: ..... +11
Volts: 13.3
Amps: 10.3
Watts: 137
Liters/min: 694
Ml/Min/Watt: 5.07

Ashby

Adam Knorr

From: Jim Kaiser <jpk@digis.net>
Sent: Monday, November 17, 2014 1:19 PM
To: Merlin Fish
Subject: FW: Today's tests (10/17)

-----Original Message-----
From: Ardor [mailto:mail@ArdorMfg.com]
Sent: Friday, October 17, 2008 3:17 AM
To: Jim Kaiser
Subject: Today's tests (10/17)

Test #: 23
Date: ..... 10/17/2008 #of cells:
..... 5cx6
Water#: 201
Start time: 11:05
End time: 12:05
Time run: ..... 60 min
Start temp: 59
End temp: 60
Temp change: ..... +1
Volts: 14.3
Amps: ..... 1.06 /3.0
Watts: ..... ?
Liters/min: ..... ?
Ml/Min/Watt: ..... ?

At 14.3 volts the amps started @ 3.0, no HHO out. Instead pressure built in the electrolyser & pushed fluid out the bottom port back into the tank. The amps slowly went down to 1.06. Then HHO production started & the amps went up quickly, pushing fluid out of the tank back into the electrolyser. When the amps hit 3.0 production of HHO stopped, amps started down & fluid pushed back into the tank. Watched this repeat over and over for the entire 60 min.

==========

Next two tests are at the minimum current that produced consistent HHO output.

Test #: 24
Date: ..... 10/17/2008 #of cells:
..... 5cx6
Water#: 201
Start time: 1:50

End time: 1:55
Time run: ..... 5 min
Start temp: 57
End temp: 60
Temp change: ..... +3
Volts: 16.5
Amps: 7.38
Watts: 121.8
Liters/min: 0.4804
Ml/Min/Watt: 3.94

Test #: 25
Date: ..... 10/17/2008 #of cells:
..... 5cx6
Water#: 2001
Start time: 1:55
End time: 2:40
Time run: ..... 45 min
Start temp: 60
End temp: 73
Temp change: ..... +13
Volts: 15.9
Amps: 7.38
Watts: 117.3
Liters/min: 0.4811
Ml/Min/Watt: 4.10

Ashby

Adam Knorr

From: Jim Kaiser <jpk@digis.net>
Sent: Monday, November 17, 2014 1:20 PM
To: Merlin Fish
Subject: FW: Today's tests (10/28)

-----Original Message-----
From: Ardor [mailto:mail@ArdorMfg.com]
Sent: Wednesday, October 29, 2008 3:20 AM
To: Jim Kaiser
Subject: Today's tests (10/28)

These tests were run with a 3,200 watt power supply. (20-30 amps, 160 volts) Target was watts. 200, 300, 400

Test #: 27
Date: ..... 10/28/2008 #of cells:
..... 5cx6
Water#: ..... 201/200 50% each Start time:
.....
End time: .....
Time run: .....
Start temp: .....
End temp: .....
Temp change: .....
Volts: 17.1
Amps: 11.5
Watts: 196
Liters/min: 0.790
Ml/Min/Watt: 4.03

Test #: 28
Date: ..... 10/28/2008 #of cells:
..... 5cx6
Water#: 201/200
Start time: .....
End time: .....
Time run: .....
Start temp: .....
End temp: .....
Temp change: .....
Volts: 18.0
Amps: 16.6
Watts: 299
Liters/min: 1.048
Ml/Min/Watt: 3.50

Test #: 29

Date: ..... 10/28/2008 #of cells:
..... 5cx6
Water#: 201/200
Start time: .....
End time: .....
Time run: .....
Start temp: .....
End temp: .....
Temp change: .....
Volts: 19.0
Amps: 22.7
Watts: 431.0
Liters/min: 1.433
Ml/Min/Watt: 3.32

Ashby

Report on Commercial Performance of Broiler Chickens on Avian Immune 3000

February 25, 2008

COMMERCIAL PERFORMANCE OF BROILER CHICKENS FED AVIAN IMMUNE 3000

Stage Two House of Raeford/ Columbia Division Trials
September/ November 2007

Nanotechnology is the understanding and control of matter at dimensions of roughly 1 to 100 nanometers, where unique phenomena enable novel applications (National Nanotechnology Initiative, 2006). An avenue for application of this emerging and revolutionary technology of the 21st century is in animal nutrition to cost effectively enhance health and performance and reduce the adverse environmental impact of animal production. NanoNutrients LC (Draper, Utah) and NanoNutrients Research and Development of SC have used this transforming technology to develop a cocktail of nano-sized nutrients and compounds for chickens. The test product Avian Immune 3000 was field tested by House of Raeford/ Columbia Division, Leesburg, South Carolina, in 2007.

Source of Data

This report is based on commercial broiler chicken performance data collected by House of Raeford/ Columbia Division and provided to Clemson University by NanoNutrients Research and Development of SC, LC. The data set included information on performance of broiler chickens from selected flocks prior to use of the test products and from selected flocks during Stage Two Trial. Clemson University served as an unbiased third party in order to analyze the data independently of either Columbia Farms or NanoNutrients. Drs. Thomas Scott and Denzil Maurice, of Clemson University's Department of Animal & Veterinary Sciences, analyzed, summarized and provided interpretation of the data and laboratory specimens for Dr. James Kaiser and Mr. Mike Cary of NanoNutrients Research and Development of SC, LC.

Methodology

NanoNutrients Research and Development of SC, in collaboration with House of Raeford/ Columbia Division, conducted Stage One Trial with a limited number of broiler growers during the early part of 2007. The observations of broiler performance from that trial were encouraging and indicated that the Avian Immune 3000 product was beneficial for the production traits monitored at load-out for processing. Based upon those observations, Stage Two Trial was implemented.

For Stage Two Trial, thirty-three (33) broiler growers were selected by House of Raeford/ Columbia Division to be compared at processing load-out. Sixteen units were treated with the Avian Immune 3000 A for the first five days after placement in the broiler houses and then were provided Avian Immune 3000 B from Day 6 through the end of grow-out. Seventeen broiler growers were selected as non-treated controls. The Stage Two Trial was from September to November 2007.

Breeder flocks that produced hatching eggs for commercial chicks used in the Stage Two Trial were given Avian Immune 3000 A for five days followed by Avian Immune 3000 B daily starting in July 2007. All Columbia breeders/pullets have been maintained on continuous use of

Avian Immune 3000 B to date. Selected growers were provided the Avian Immune 3000 products in order to treat broilers in an identical fashion as breeders; i.e., 3000 A for first five days followed by 3000 B daily until load-out for processing.

Results

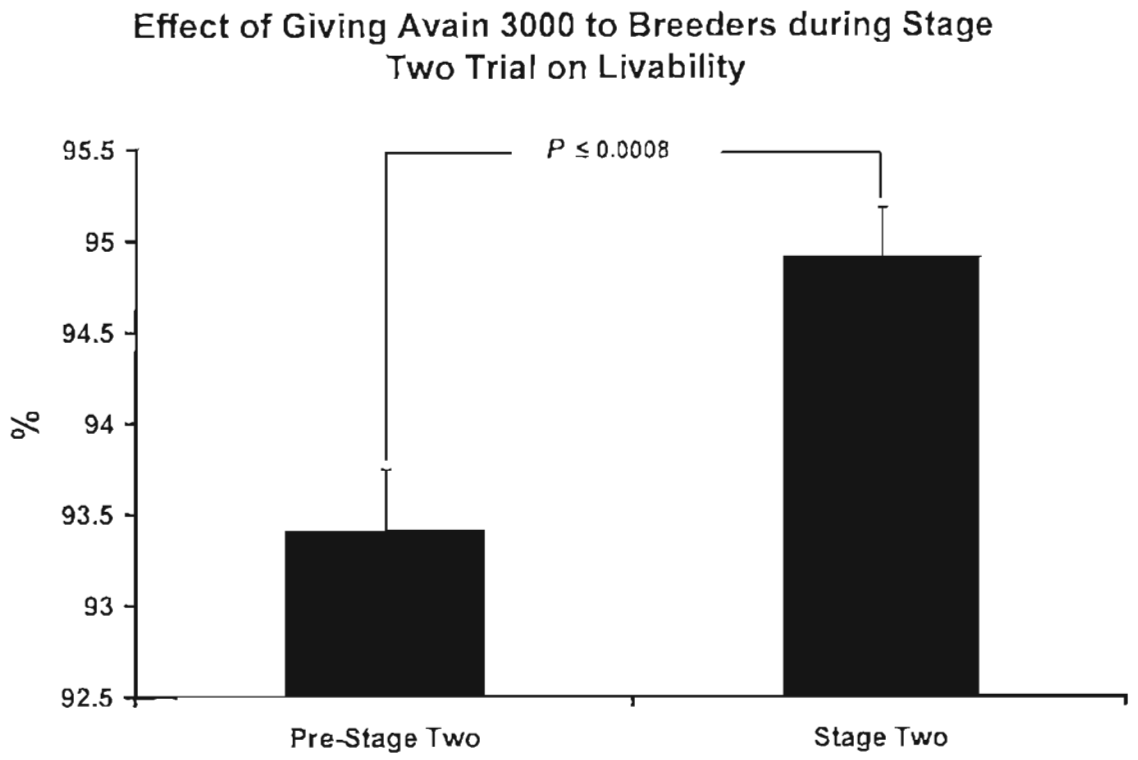
The performance indicators analyzed for Stage Two Trial were percent livability, percent condemnation, feed conversion ratio and live weight at load-out. The factors known to have affected performance during Stage Two Trial were Avian Immune 3000 treatment of broilers and breeders as well as prior performance of broilers raised by the selected grower units used for grow-out during Stage Two Trial.

It was very apparent that broilers performed better during Stage Two Trial, and when compared back to the average performance of grower units during the previous year there were pronounced improvements in performance. This is apparent in Figures 1-4 that follow on pages 4 - 7. In all cases of performance traits analyzed, a significant improvement in livability, condemnation rate, feed conversion ratio and live weight was found during Stage Two Trial. The broiler chicks hatched from treated-breeders' hatching eggs benefited from Avian Immune 3000. Livability improved 1.5% ($P < 0.0008$), condemnations were down 0.0754% ($P < 0.0041$), feed conversion was 0.041 points better ($P < 0.0001$), and live weight increased 0.31 pounds ($P < 0.0001$). On a million-bird basis there were 310,000 more pounds of live weight loaded, 41,000 pounds less feed consumed, 15,000 more birds processed, and 754 less birds condemned.

When the data found in Figures 1-4 were broken down into treatment effects attributed to Avian Immune 3000 during Stage Two Trial, it was further determined how well grower units performed compared to the prior year's averaged data (see pages 8 - 11). Comparisons were done within treated and untreated grower units as a way of determining the degree of improvement based upon prior performance ability for the identified grower farms. In doing so, the field data could be examined on a comparative basis to see how much better broiler performance was during Stage Two Trial relative to the same grower's farm performance previously. Both treated and untreated grower units exhibited significant improvements in livability (Figure 5) with 1.7% ($P < 0.0153$) and 1.5% ($P < 0.0464$) increases, respectively, for untreated and treated broilers in Stage Two Trial. With regard to condemnation rate, the treated Stage Two Trial broilers had significant improvement ($P < 0.0238$, Figure 6) by 0.0865%, while the condemnation change in untreated broilers was not significant ($P < 0.0754$). Figure 7 shows the improvement in feed conversion for Stage Two Trial with both treated and untreated broilers being much better and significantly improved ($P < 0.0130$ and 0.0001, respectively). Although both treated and untreated broilers in Stage Two Trial had greater live weights than before, one can see from the degree of significance for each of the pair-wise comparisons in Figure 8 that broilers had greater live weight when treated with Avian Immune 3000. The improvement for treated broilers is 0.398 pounds ($P < 0.0001$) while for untreated broilers the improvement from the pervious year average is 0.222 pounds ($P < 0.0110$). It appears that Avian Immune 3000 is beneficial for production especially in cases where certain growers may experience management challenges during broiler grow-out.

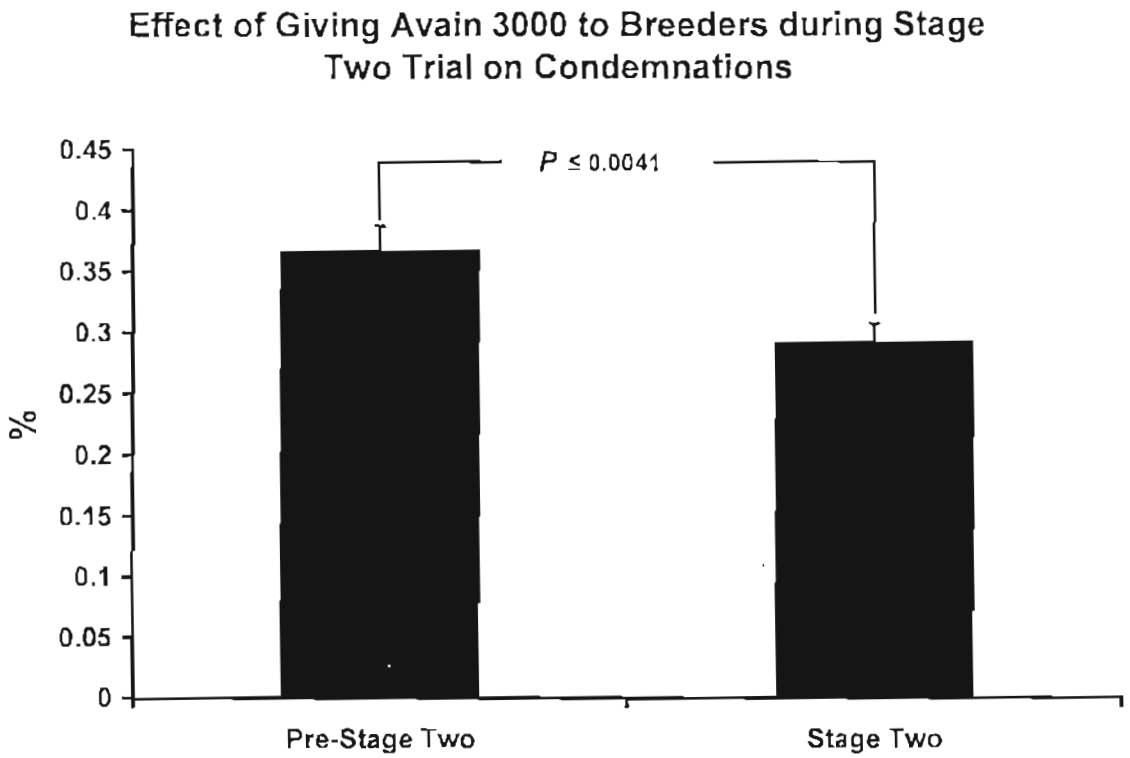
A small pilot study with sub-samples of broilers from grower units used in Stage Two Trial was conducted by Clemson University in late November – early December, 2007. A set of treated and untreated broilers (24 per group, equal numbers of males and females) were processed at Clemson University's Meats Lab for collection of body parameter data, organ weights and blood. Preliminary results of this study are provided in the Summary and Comments section of this report (Page 12). There were positive indicators of broiler health for Avian Immune 3000 treated broilers in that small study.

Figure 1



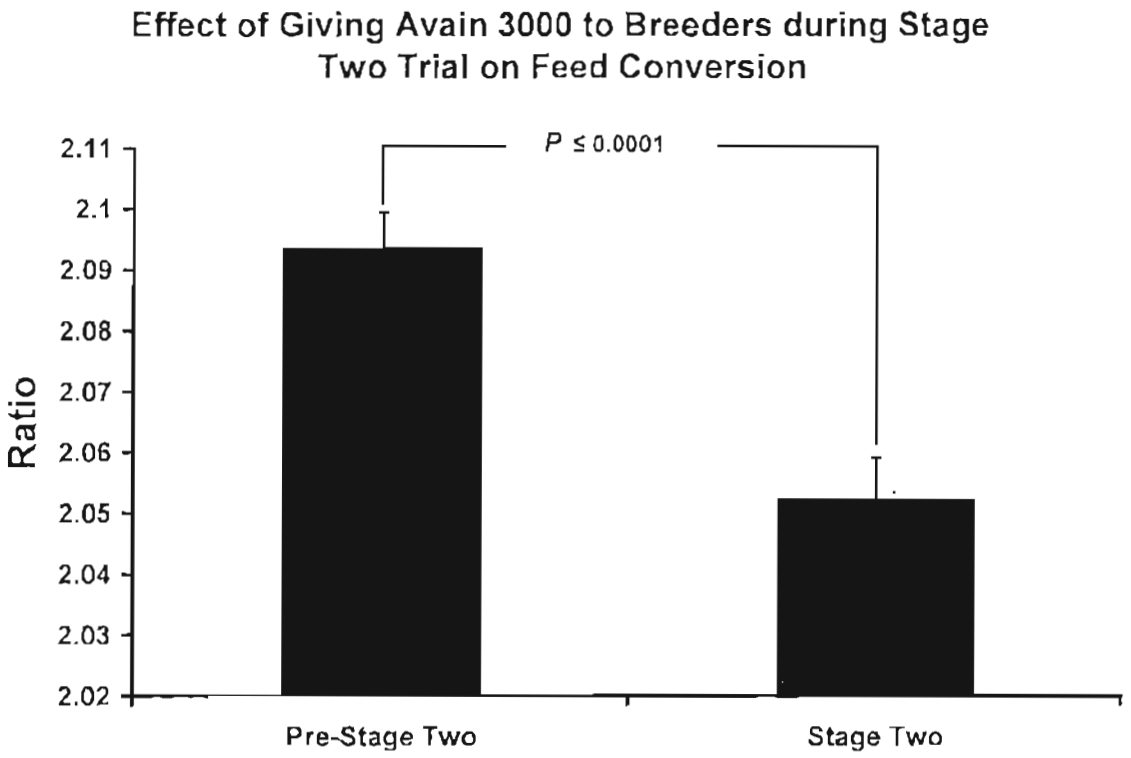
Average percent livability of broiler chickens from selected grower farms during the prior twelve months (Pre-Stage Two) compared to the average for the same grower farms during Avian Immune 3000 treatment (Stage Two Trial). Breeder flocks had been provided Avian Immune 3000 during the production of hatching eggs for the Stage Two Trial. Averages for both treated and untreated grower farms during Stage Two Trial are combined for the comparison.

Figure 2



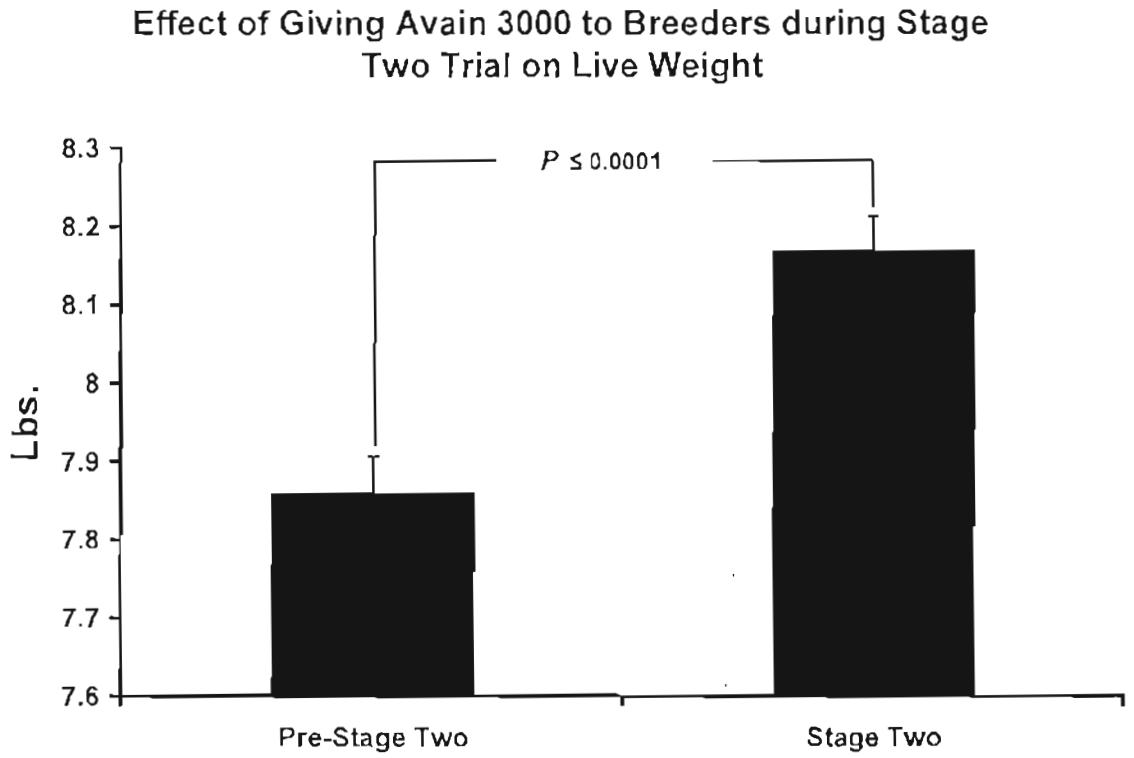
Average percent condemnation of broiler chickens from selected grower farms during the prior twelve months (Pre-Stage Two) compared to the average for the same grower farms during Avian Immune 3000 treatment (Stage Two Trial). Breeder flocks had been provided Avian Immune 3000 during the production of hatching eggs for the Stage Two Trial. Averages for both treated and untreated grower farms during Stage Two Trial are combined for the comparison.

Figure 3



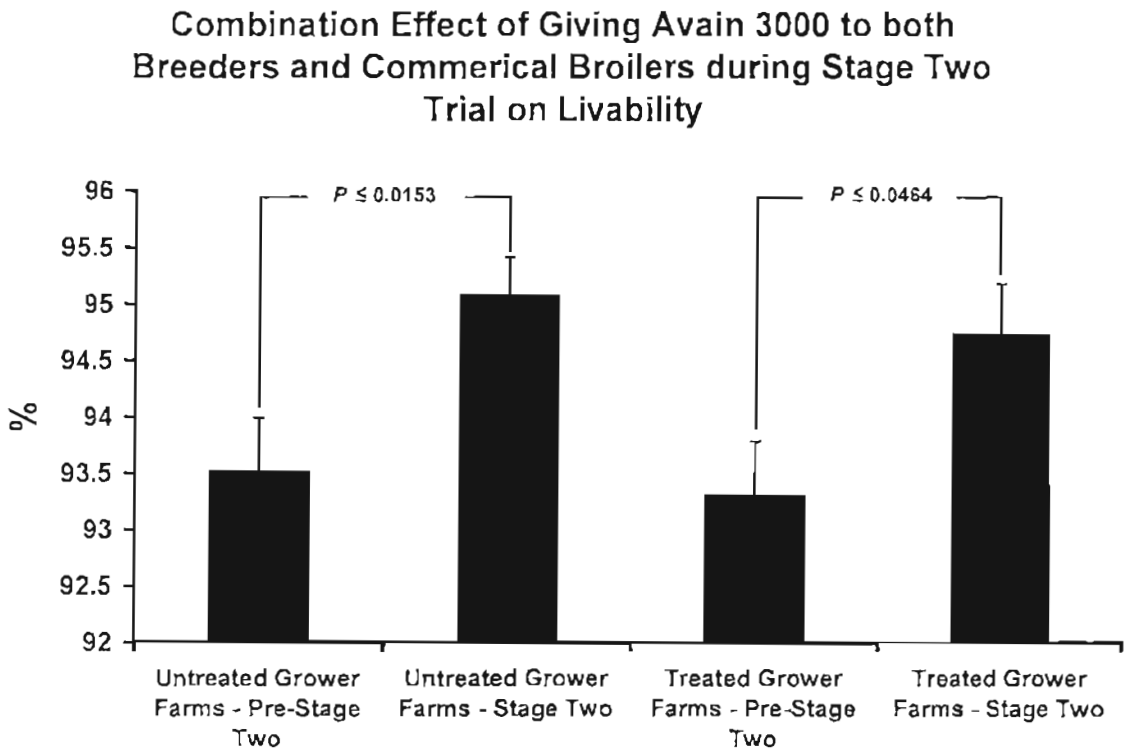
Average feed conversion ratio of broiler chickens from selected grower farms during the prior twelve months (Pre-Stage Two) compared to the average for the same grower farms during Avian Immune 3000 treatment (Stage Two Trial). Breeder flocks had been provided Avian Immune 3000 during the production of hatching eggs for the Stage Two Trial. Averages for both treated and untreated grower farms during Stage Two Trial are combined for the comparison.

Figure 4



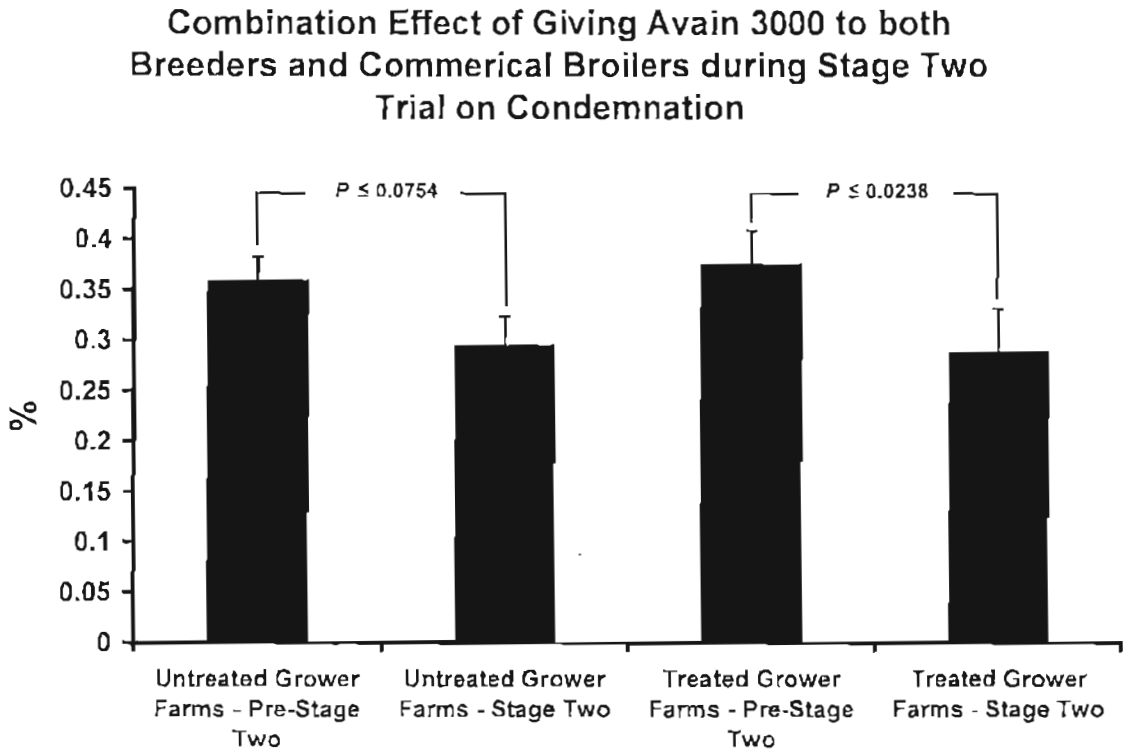
Average live weight of broiler chickens from selected grower farms during the prior twelve months (Pre-Stage Two) compared to the average for the same grower farms during Avian Immune 3000 treatment (Stage Two Trial). Breeder flocks had been provided Avian Immune 3000 during the production of hatching eggs for the Stage Two Trial. Averages for both treated and untreated grower farms during Stage Two Trial are combined for the comparison.

Figure 5



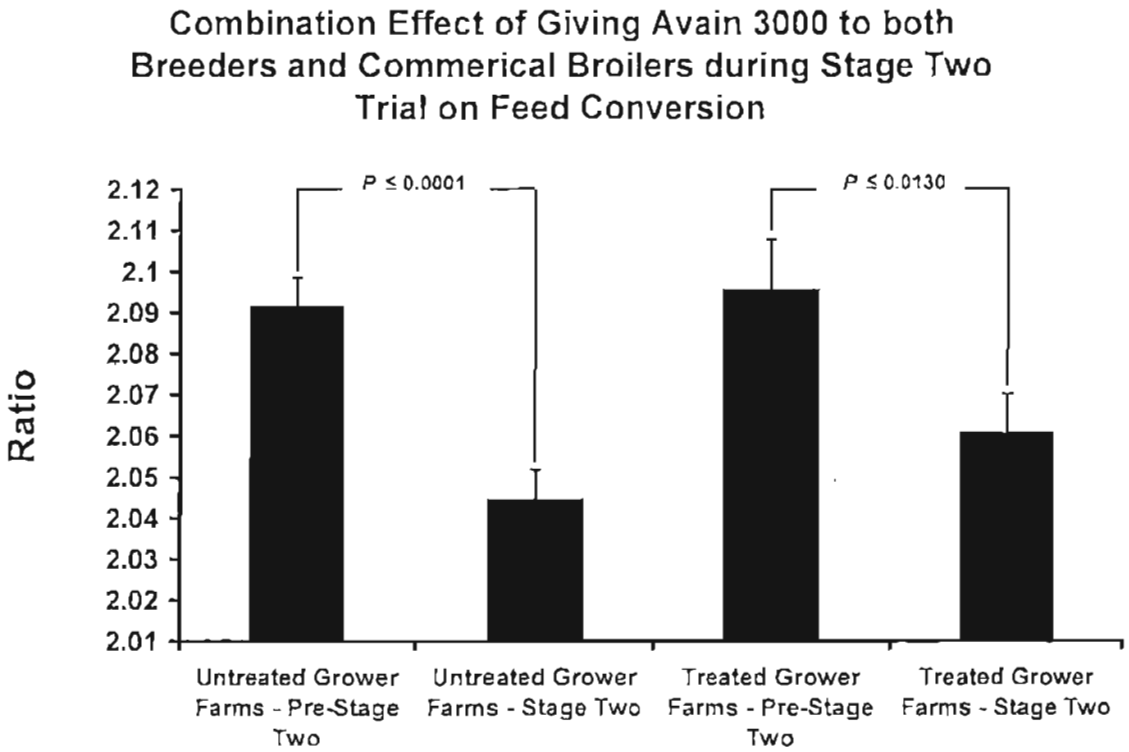
Average percent livability of broiler chickens from selected grower farms during the prior twelve months (Pre-Stage Two) compared to the average for the same grower farms during Avian Immune 3000 treatment (Stage Two Trial). Breeder flocks had been provided Avian Immune 3000 during the production of hatching eggs for the Stage Two Trial. Averages for treated and untreated grower farms during Stage Two Trial were compared.

Figure 6



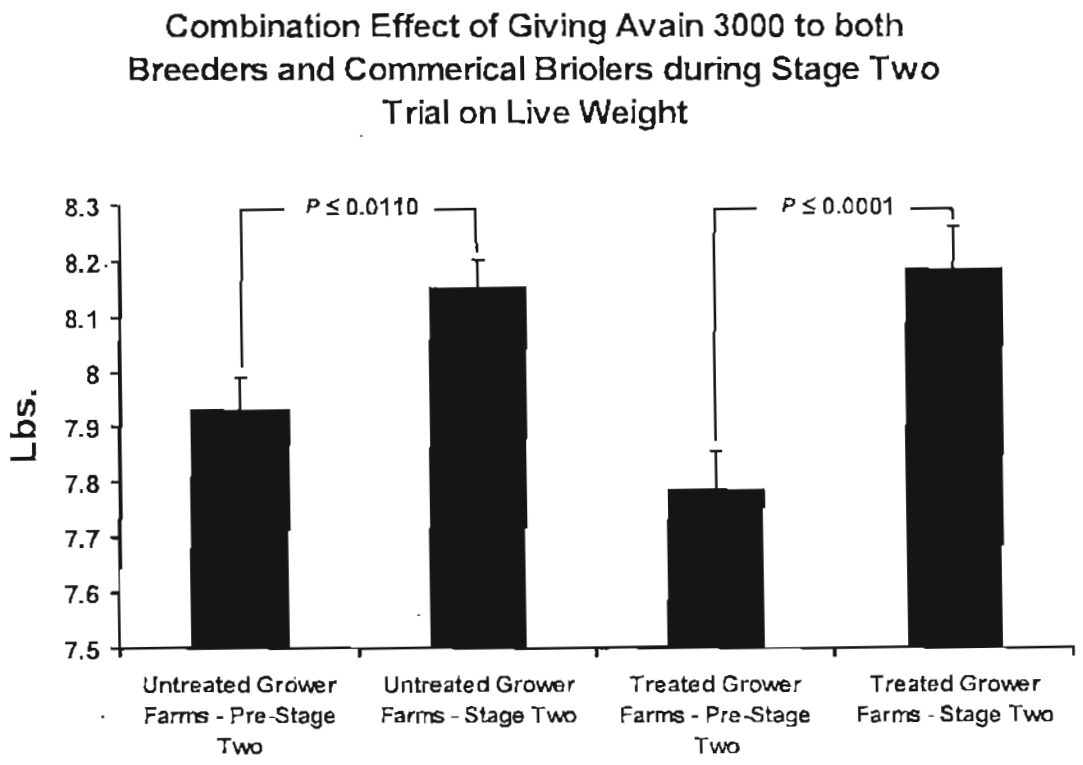
Average percent condemnation of broiler chickens from selected grower farms during the prior twelve months (Pre-Stage Two) compared to the average for the same grower farms during Avian Immune 3000 treatment (Stage Two Trial). Breeder flocks had been provided Avian Immune 3000 during the production of hatching eggs for the Stage Two Trial. Averages for treated and untreated grower farms during Stage Two Trial were compared.

Figure 7



Average feed conversion ratio of broiler chickens from selected grower farms during the prior twelve months (Pre-Stage Two) compared to the average for the same grower farms during Avian Immune 3000 treatment (Stage Two Trial). Breeder flocks had been provided Avian Immune 3000 during the production of hatching eggs for the Stage Two Trial. Averages for treated and untreated grower farms during Stage Two Trial were compared.

Figure 8



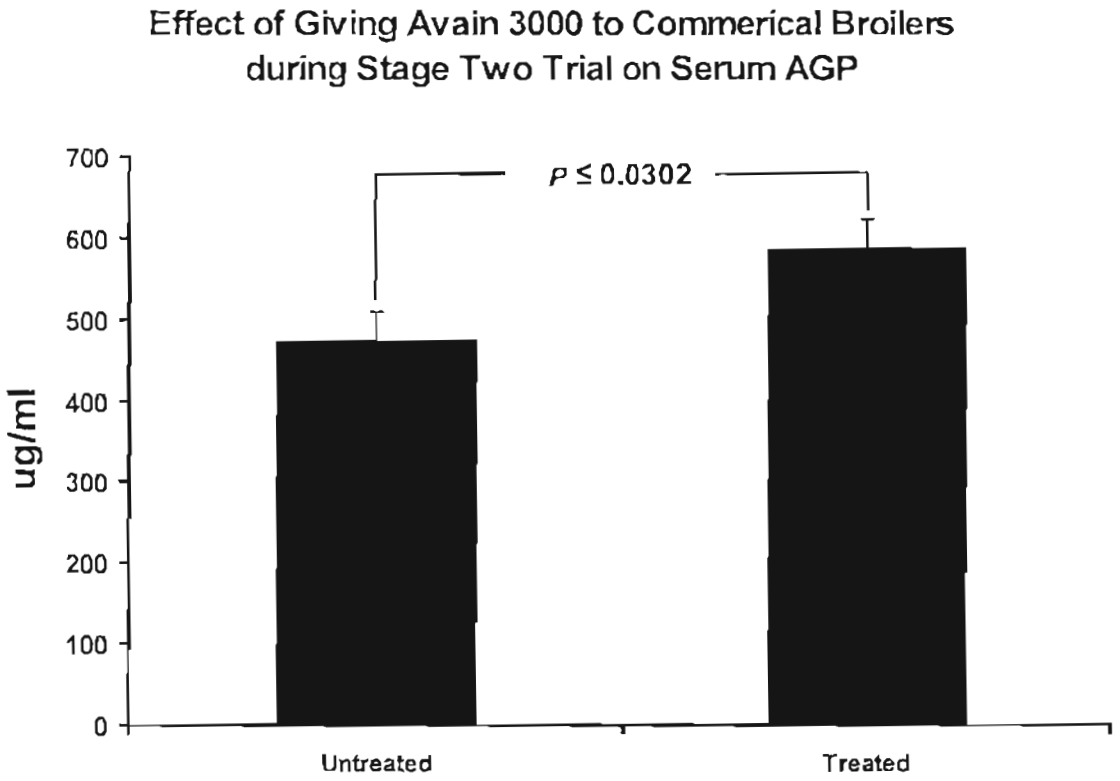
Average live weight of broiler chickens from selected grower farms during the prior twelve months (Pre-Stage Two) compared to the average for the same grower farms during Avian Immune 3000 treatment (Stage Two Trial). Breeder flocks had been provided Avian Immune 3000 during the production of hatching eggs for the Stage Two Trial. Averages for treated and untreated grower farms during Stage Two Trial were compared.

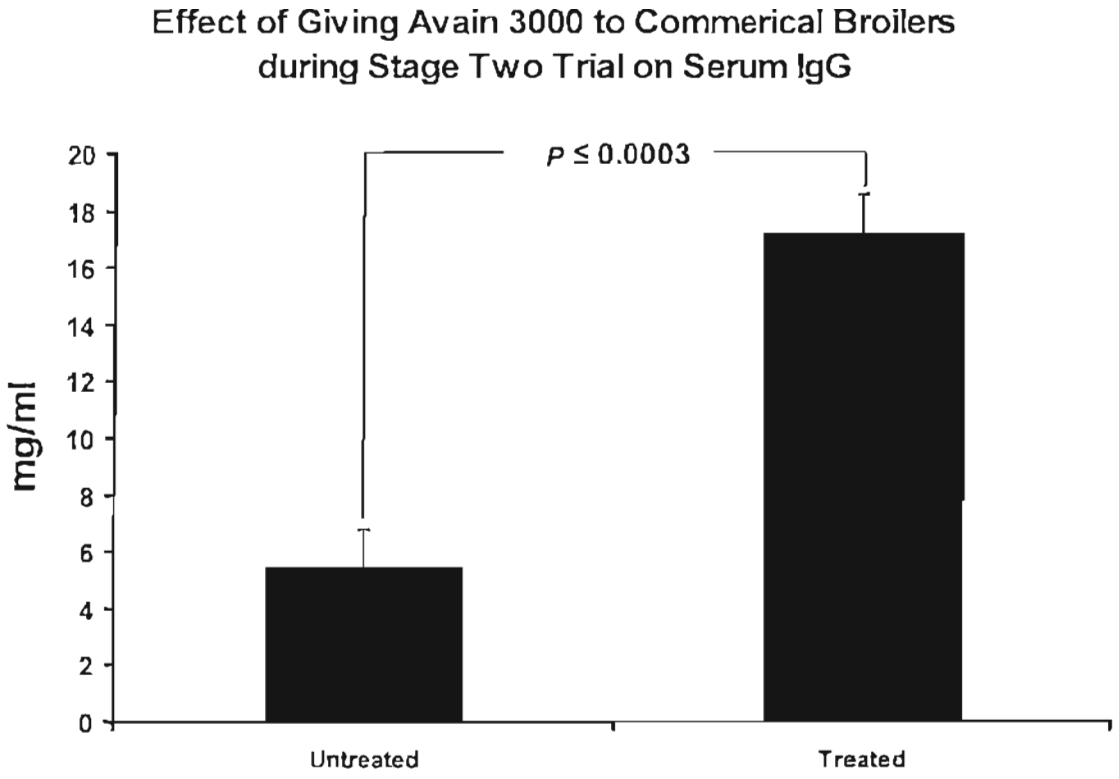
Summary and Comments

The pilot study was done at Clemson University by Drs. Scott and Maurice to provide them an opportunity to examine some indicators of broiler performance not normally determined at the commercial processing plant. The preliminary results did not reveal differences in body parameters, feathering scores nor leg scores, and among the organs weighed only spleen weights were different between the two groups of broilers. Females appeared to respond to the Avian Immune 3000 treatment with body weights and breast weights approaching those of males, and untreated broilers had larger relative spleen weights ($P < 0.060$). The latter could be an indicator of health status once future experiments determine the basis for the organ weight differences. The relative heart weights were not different, but the appearance and texture of the heart muscles were different in treated broilers. Again, a future assessment of change in heart muscle composition is warranted by this observation. Although not a selected organ to weigh, testes in males appeared quite large for broilers of this age. Determinations of testosterone (and estrogen) concentrations in serum samples are to be carried out at the Clemson University Endocrinology Lab.

With regard to serum evaluations, total protein, alpha-1-acid glycoprotein (AGP, acute phase protein) and IgG concentrations have been determined for treated and untreated broilers. There was greater total protein in serum from untreated broilers, but there was not a statistical difference ($P < 0.1161$). AGP concentrations were greater for treated than untreated broilers ($P < 0.0302$). Typically, dramatic increases or spikes in AGP would be indicative of stress; however, elevated AGP concentrations have been reported in the scientific literature as positively correlated with immune responsiveness of mononuclear cells (i.e., monocytes, B cells, T cells). The latter speaks to the beneficial effect of producing elevated levels of AGP as a component of immune responsiveness. Furthermore, actions of AGP are as a natural anti-inflammatory and an antiviral for binding and inactivation of viruses in the body. In the Clemson study, it has also been found that serum IgG concentrations are significantly greater in treated than untreated broilers ($P < 0.0003$). Average reported serum concentration for chicken IgG is ~6 mg/ml. The untreated broilers had concentrations near this value while the Avian Immune 3000 treated broilers had IgG concentrations three-fold greater. Apparently, Avian 3000 Immune treatment led to more production of specific antibodies of the IgG class. Additional measures of immunity are to be determined in pilot study serum samples, which will provide a more comprehensive picture of Avian Immune 3000 effects on general immune status.

To reiterate, Avian Immune 3000 is a two part product, with Avian Immune 3000 A and Avian Immune 3000 B. Avian Immune 3000 A is intended to be delivered to the flock during the first 5 days after hatching, and the Avian Immune 3000 B is intended to be delivered for the duration of the grow-out.


Effect of Giving Avain 3000 to Commerical Broilers
during Stage Two Trial on Serum AGP
P ≤ 0.0302
ug/ml
700
600
500
400
300
200
100
0
Untreated
Treated


Effect of Giving Avain 3000 to Commerical Broilers
during Stage Two Trial on Serum IgG
P ≤ 0.0003
mg/ml
20
18
16
14
12
10
8
6
4
2
0
Untreated
Treated

Avian Immune 3000 A has the following ingredients in a proprietary blend:

Zinc Chloride	Aids in carbohydrate digestion, aids in phosphorus metabolism, aids in the absorption of vitamin A, allows acuity of taste and smell, assists in the normal absorption and action of vitamins, especially the (B complex), constituent of at least 25 enzymes involved in digestion and metabolism, essential for general growth, helps to fight and prevent the formation of free radicals, important in healing wounds and burns, may also be required in the synthesis of DNA, needed for proper maintenance of vitamin E levels in the blood, promotes a healthy immune system, promotion of glandular and reproductive health, protects the liver from chemical damage, required for collagen formation, required for protein synthesis, vital for bone formation.
MSM	A natural source of sulfur, may help with joint function and as an anti-inflammatory.
Co-Q 10	Co-enzyme Q10, in each cell, converts food energy into energy in the mitochondria.

Avian Immune 3000 B has the following ingredients in a proprietary blend:

MSM	A natural source of sulfur, may help with joint function and as an anti-inflammatory.
Arabinogalactan	A long chain polysaccharide which contributes to gut health.
Omega-3	Contributes to heart and circulation health, among other benefits,
Silver	A mineral that displays antibiotic and anti-viral properties.
Hyaluronic Acid	Non-sulfated glycosaminoglycan which demonstrates benefit to connective tissue and heart valves.
Magnesium	Essential to all cells of all known living organisms, as a part of the basic nucleic acid chemistry of life.
Co-Q 10	Co-enzyme Q10, in each cell, converts food energy into energy in the mitochondria.
Amylase	Glycoside hydrolase enzymes that break down starch into maltose molecules.
Catalase	An enzyme whose functions include catalyzing the decomposition of hydrogen peroxide to water and oxygen.
Lipase	A water-soluble enzyme that catalyzes the hydrolysis of ester bonds in water–insoluble, lipid substrates.
Protease	Any enzyme that conducts proteolysis, that is, begins protein catabolism by hydrolysis of the peptide bonds that link amino acids together in the polypeptide chain.
Superoxide Dismutase	It is an important antioxidant defense in nearly all cells exposed to oxygen.

Vitamin D	A nanosized vitamin D to provide an active vitamin D for improved calcium utilization.

Please note that all of the ingredients in the formulation are nano-sized, meaning that the average particle size is under 100 nm. The concentration of this final formulation is 214 micrograms per ounce, and is administered at a rate of one ounce per gallon of water for the oral consumption in each house, up to 256 ounces of formulation per day.

nano nutrients avian

How does a live production manager feel about the affect of the Avian Immune 3000 on:

- bird health
- Impact on LT infections
- bird immunity
- making more money
- working with NanoNutrients Avian

Columbia Farms Live Production Manager asserts, "...most definitely, we would do it again. *And* we are doing it again!", when it comes to better yields and bottom line using the Avian Immune 3000 B+.

Get the info straight from a grower that has realized the income from Avian Immune 3000!

Welcome! We at NanoNutrients Avian are pleased to present the comments of Allan Fallaw, Live Production Manager, at Columbia Farms in S.C. His comments were given during a live webinar on September 25, 2008. They were not scripted or prompted. Columbia Farms has been the primary trial location for the NanoNutrients Avian products for the past 18 months. His comments are provided with his permission.

First Comment

Allan: I don't know if I need to wait until I am asked questions or if I can just jump in here...

Merlin: You can jump in anytime

Allan: Just to follow up on some of the things Tom was saying about the IgG levels. That was one of the things that peaked our interest here, at the very beginning of our work with the immune products was the increase in IgG levels in the blood serum. That was when Mike Cary and I immediately started putting this product on our pullets and breeders, and beginning a test there.

There are two things that stand out, from a field person standpoint, when you are looking at the immune system in the bird, and quite simply how the bird is performing. And then when you post birds and you are looking at the bursa size and the health of the bursa inside the bird. This operation here in Leesville, SC has a history of small bursas, very high bursa problems, gumboro problems in this area. When we went on this product in the breeders and the pullets some things started happening around here. We saw Dr. Hector Cervantes saw this, from the University of Georgia, does posting sessions for us on a routine basis. We saw the bursa sizing, and as I said the bursa size are grating, as most

vets sometimes do, from like a 1 to 8 or 9 type scale, with 1 being the smallest and 7 or 8 being the largest.

We were probably before this trial running about a 2 to 2,3, something in there, and then when we did this posting session on the birds that had been on the product, our bursa size had reached a point where they were in the 6,7...5,6 to 7 range. It was unlike anything we had seen in this operation before, and Dr. Cervantes, I hate to speak for him, but he was quite impressed with what he was seeing in the posting session.

And then the other thing, that stands out with us here, is the last two years we have had LT, infections to LT, Laringotracheitis, in this area. The first year that we had the vaccinations for LT we experienced, and as many poultry people know, vaccinations can sometimes be, it's not as harsh, but it's pretty stressful on the birds. The first year that we vaccinated with the LT vaccine, we probably lost 4-5 points in feed conversion, and probably a day and a half, or a couple two days worth of growth rate. The next year, this past year, while we were on the Avian Immune product, in the breeders and the pullets, which meant all the broilers in the field basically were chicks from these breeders and pullets. We went through that year, our performance was as good as it had ever been, not on LT vaccine, I mean even through those winter months when we were vaccinating, our performance was unaffected by the vaccinations. We were in the 4 – 5, in the 4 operations at House of Raeford, our performance was right up there among the top of all four operations of which two of them were not vaccinating for LT, and we were pretty strong as far as industry standards so...

My belief is that the immunity levels in those chicks aided greatly in our performance during that period of time."

Merlin: "Thank you Allan. We are going to come back to you because I would like to ask you some more questions."

Second Comment

Merlin: Allan, can I come back to you just for a minute?

Allan: Yes, sir

Merlin: Allan is the manager of live operations for Columbia Farms. Allan does about 850,000 chickens a week. So he has a fairly sizable operation. And he has worked with us now, what for nearly, two years, haven't you Allan?

Allan: That's correct

Merlin: And with all of our testing and trials, we've done pullets and breeder stock, and broiler grow outs. Would you do it again, Allan?

Allan: Most definitely, Merlin, I would. As I said, the things that jump out at me as a live production manager are, we're looking for the better health of the chicken. That's....I mean that is key to us being successful. We have many disease challenges, and many things that can affect our bottom line. And as I said when we first.....first reached that point in that trial when Tom had given us the numbers on the IgG

levels, and we saw that, and we know how that affects the immunity of the bird, and we started giving it to the breeders and the pullets and we started seeing some better performance from the..., coming from the progeny of those birds. Yea, most definitely, we would do it again. And we are doing it again.

Merlin: Yea, I know you are doing it. And you are a buyer of our product now, I need to say that, but have you made money on this, Allan?

Allan: Yes..... I am not going to tell you how much, but we've made money.

Merlin: No, I wouldn't ask you how much.

Allan: Yes we have.

Merlin: If I knew how much you made I'd probably raise the price.

Allan: You know, as everybody in the chicken industry knows, everything is kind of tight right now, and I wouldn't feel comfortable using something that I didn't think was helping our performance, and I really believe based on the first round of trials that we had and the things we are doing now, I think the outlook is good based on what we are seeing.

The things, again, that just stand out in my mind are those two years that we had the...., were vaccinating for LT, the performance that we had the first year when we were not on the product and the performance we had last year, this past year when all the birds we were processing were on the product, and the ease that which we went through that, those winter months when we were vaccinating for LT was just, you know, what that meant to me was a large sum of money to this operation.

Merlin: Thank you. Would you mind making a comment? You can be...feel free here to say what you want to say, Allan. How has it been working with NanoNutrients?

Allan: How has it uhm...?

Merlin: Has it been a decent experience?

Mike Cary: He means working with me Allan.

Allan: Yea, I guess you mean working with Mike Cary. The other day, Mike came into my office, and I had a new shirt on, and his first comment, "So, you have a new shirt on." And I said, "Mike, when you come here enough and you know when I buy a new shirt," I said, "you have been by here quite a few times haven't you?" And so, anyways, Mike has been great to work with. He's the....the....the growers have befriended Mike. Mike's....We couldn't ask for any better service from Mike. I don't see how he does all he does. But I have been very pleased with Mike's service and been very pleased with the contact that we've had with you Merlin, and Dr. Kaiser, on following up on the trials that we have been doing at Clemson, and Dr. Scott and Dr. Maurice, and, you know, it has been a good experience. I don't have any complaints there at all.

Merlin: Thank you. Thank you.

To find out more about how your growers can benefit like Allan – remove disease threat and add more live weight – contact us at 801-208-8900!

mike cary
Doux Farms Tour
November 6, 2008 at 4:07 PM
Jim Kaiser

6 November 2008

Subject Doux Group Veterinarians

Jose Luis Kieling Franco
Medico Veterinario- CRMV/RS 2912
Gestao da Qualidade
jose.franco@doux.com.br
cell 55 51 9678 1556

Fernando Farias da Costa
Medico Veterinario- CRMV/RS 9617
fernando.costa@doux.com.br
cell. 55 51 9678.1733

Valmir Dutra and myself met Seniors Franco and Costa at Doux Frangosul SA Agroavicola Industrial headquarters at Montenegro, Brazil, at 8am and

began
tour, in Doux company auto, of Doux Broiler Farms. These farms are raising small birds of Cobb genetics. Birds are raised for 30 days to 2 and 1/2 pound for
Arab contracts. 40% of all broiler birds are raised for these contracts. That's approximately 1,200 farms

Each farm is owned by Contract Farmer and run by single families. Farm houses are owned by Contract Farmers financed by Doux. Doux supplies all

chickens,
feed and medicals. Farms are managed by Doux Technicians. Each Technician has 60 farms under his/her management and visits 5 to 6 farms

each day

Farms range from older to newer, but even the old farms are being updated to one standard. Houses are 400 ft by 50 ft and are "lighted" (not darkened)
and cooled by fans, misi systems and curtains. Some of the older housed

are hand carted feed to bell feeder, but most are feed by screw lines from outside feed silos. Watering is done through nibble feeders from stand alone 20,000 liter plastic tanks on concrete slabs set higher than

houses for gravity feed. Pressures vary
from 8 to 15 pounds at head. Water from the single 20k tanks are fed to 1000 liter tanks with lockable tops that can be used for adding medications or additives.
The 1000k tanks are measured each day and refilled manually with manual valves. Then each 1000k tank feeds one house by single line to the middle of each
house on the inside wall (wall facing the direction of the water source

and always restricted with no road approach) The water line comes up in the inside of
house to a raised U shape with approximately 2 feet of elevated run, on which is a on/off hand valve, ,then a simple water meter, then to another on/off valve,, then
back down to floor and splits the watering run to the watering nipple line going both ways to each end of the house for full house coverage.Lines are raised
as chickens grow in size.A chlorine dispenser is feeding into the small tanks on a 24/7 schedule at a 3 to 5 ppm basis (that's 1 milligram per liter).

Feed diets are in four cycles. Start up 1 to 7 days, Mid diet 8 to 18, Next diet 18-24 days and Finishing diet 19-30 days. In the final week any medications being
delivered are ceased

All chicks are vaccinated day 1 then 14th day for the Newcastle virus for that equipment

Compost sheds are used for composting dead chickens as Brazilian Agriculture Rules don't allow for burning or scattered burying of
caucus'

The average size of small bird houses are 28,500 per house that's approximately 16 birds per sq meter

Pictures are attached and one subject farm is showing 20 day chickens and note the feathers are just coming in and that represents a problem for bruised and
damaged birds at processing

More information to follow, but we have the undivided attention of the Doux management and the most in cooperation

Farms are very clean and orderly with bath and shower facilities and ready rooms with minute to minute notes and calculations and approximates for the operator to
follow

The bio hazzard requirments allow for only approved visitors with company guides in full boots , trousers , blouses, and hair nets Feet baths are located at entrance
to each house

Messrs Franco and Costa are at the top of the Veterinarian management for the Doux Group and are extremely excited about the new science of NanoTechnology.
and look forward to learning everything possible about Nano Science and where it can be utilized and integrated into poultry management

From: Steve Dayhuff
Subject: RE: Doux Production in Brasil
Date: December 3, 2008 at 10:33 PM
To:
Cc:

I am working on all of these numbers and will have the data back to you tonight. I am validating the data

Thanks, Marcl

Steve Dayhuff
COO
nano
NanoNutrients LC
12159 So. Business Park Drive
Suite 120
Draper, Utah 84020
O. 801.208.8900
C. 801.201.7695
steve.dayhuff@nano-nutrients.net

From: PASSPORTFINANCE@aol.com [mailto:PASSPORTFINANCE@aol.com]
Sent: Wednesday, December 03, 2008 7:59 PM
To: steve.dayhuff@nano-nutrients.net
Cc: merlin.fish@nano-nutrients.net
Subject: Re: Doux Production in Brasil

This fantastic news, Steve last week I sent the following to Merlin, could you address these issues and get back to me as soon as possible.

For our commercialization plan and the negotiations of future contracts, we must prepare and understand the following parameters, I need you guys to really think the following through and let me know the answers as soon as possible and if our assumptions are correct

1. Do we know the total production for the country of Brazil for Chickens? I have a figure of 9 billion kilos?, is this correct?.

2. From this 9 billion tons, It appears that 7 billion is industrialized production the rest is divided among a bunch of smaller farms, whom at first hand is not of interest for us.

3. Is it fair to estimate that this production represents approx $7 billions in sales considering $1 per kilo price point or does it reflect a higher price point?.

4. If we consider this sales volume, we can estimate that the feed cost is probably 60-70% of the sale price so at 70% we have a feed cost of roughly $5 billion dollars?. Is this figure correct as to the percentage of feed cost compared to sale price?.

5 If our proposal is correct with Nano Nutrients and that we have a reduction of 20-25% of the feed costs which relates to an avg of 23% we could have a potential savings of $1 15 billions in savings for the industry in Brazil (0.23 x $5B =$1.15B.)

6. Taking our production potential of 7 billion kilos at an avg of 1 8kg each would provide us a production close to 3.888 billion chickens per year. By averaging 270 production days, we have a daily production of

roughly 14 million chicken's per day.

7. If we are considering 5500 gallons per million chickens, then our market cap for Brazil would be roughly 5500 x 14MM x 365 days = 28 million gallons per year. (I am assuming that the chickens will be fed daily).

8. If the above figures are correct, it appears that we can offer an economic advantage for the country of Brazil of roughly $760 million dollars or roughly 10% of their annual dollar volume of production.
($14 per gallon cost of product x 28 million gallons =$392 million. $1.15 billion savings in feed cost - $392 Millions in product cost gives us $760 million in annual savings.)

By breaking down the local industry in this manner, we will be in a better position to negotiate our terms and conditions with Doux or Dr Veira. Please get back to me as soon as possible so that we can prepare our next commercialization stage

On steps to follow at this point:

1. Finish import documentation's, focus on tariffs where we can qualify for reduced entry tariffs such as Phosphate in liquid form?, or vitamin water?, or purified water?, establish timeline and if he needs help with government. (Valmere)

2. Establish protocol for test, determining product selection, quantity, control elements, time, type of chicken etc... (Mike, Jim).

3. Establishing firm time line and reservation of University site for completion of tests. (Mike, Valmere).

4. Getting costs estimates for tests, and generic discussion with Veira as to whom should pay for these?. (Valmere).

5. Meeting with Doux Chairman and finalizing procedures for implementation of tests, payments and contract negotiations. (Marc).

.

Thanks

Marc Didier
Passport Financial LLC
14701 Nestled Cove
Draper, Utah 84020
801 949-7124

In a message dated 12/3/2008 3:17:44 P.M. Mountain Standard Time, steve.dayhuff@nano-nutrients.net writes:

> Hello, Team!
>
> Valmir was able to get some critical data from Doux today. Besides responses directly from Aristedes, the stats person also provided some detail. This is crucial information to understand what they are doing. I believe that we have now figured out the puzzle as to why our numbers were not lining up.
>
> First of all, we needed to know at what age the birds were harvested and the weights that they averaged. Please see below:

Days	Weight/lbs.	% Business
34	3.2	64.6%
36	3.7	14.2%
44	5.7	17.2%
47	6.4	1.0%
49	6.6	1.7%
52	7.7	1.3%
		100.0%

It has become clear that they are primarily focused on the 34 day bird. While we were talking a 2.5 lb bird with Doux in France, I believe that is because Doux Sr. was taking the view of the weight of the bird *post processing*. This makes sense, now, because he measures his business in how much he makes selling the birds by weight to the public market. A 3.2 lb average weight *pre-processing* bird would come in close to 2.5 lbs after being processed. Suddenly the stories all line up!

The 34 and 36 day birds are 100% exported. The other birds (44, 47, 49, 52 days) are produced 18% for domestic and 82% for export.

A number of questions were put to Mr. Aristedes by Valmir. I will encapsulate the responses:

His two primary targets are weight gain and feed conversion

ALL of his production is focused on weight.

He prefers weight gain over early harvest

Feed formulas will be made available (security of the formulas was promised)

His biggest problem was the first week of life of the chick. Rapid weight gain in that week was the issue.

He will be ready to buy immediately after proof from the study.

Thanks, Valmir, for getting these clarifications and the packet preparation. We should now be able to finish the protocols.
Thanks to Jim Jr. for the updated labels.
Thanks to Merlin for finding that notary.
Thanks to Jim for getting the asay's cranked out.

The registration packets will be finished today and sent
Protocols for the trial will be sent out to Mike tomorrow for Clemson review before being sent to Sergio.
Mike, Valmir has more detailed info for you and will communicate directly.

Abraços pra todos a voces!

Steve Dayhuff
COO
nano
NanoNutrients LC
12159 So. Business Park Drive
Suite 120
Draper, Utah 84026
O: 801 208 8900
C: 801.201.7695
steve.dayhuff@nano-nutrients.net

Jean-Charles Doux
RE: Greetings from Jim kaiser at Nano-Nutrients
October 28, 2008 at 1:34 AM
Jim Kaiser
Merlin Fish, mike cary

Helio Jim

It was a real pleasure to have this meeting during SIAL

I will plan my trip to Brazil probably today and I expect to be there during November. I am just waiting another confirmation of trip to middle-east

Anyway I know my colleague in Brazil are already aware about you (I saw the mails) and my recommendation if I cannot join you for this meeting, is you schedule your trip directly with our team over there and I will be keeping in touch.anyway.

Talk to you soon Jim

My best regards

Jean-Charles DOUX

De : Jim Kaiser (mailto:jim.kaiser@nano-nutrients.net)
Envoyé : lundi 27 octobre 2008 21:24
À : Jean-Charles Doux
Cc : Merlin Fish; mike cary
Objet : Greetings from Jim kaiser at Nano-Nutrients

Dear Jean-Charles,

I would like to express my sincere appreciation for the time that you spent with Merlin and me during your busy tradeshow. As you will recall, we discussed the potential to have a webinar to introduce our material to your leaders in Brazil and to determine the details for our trial. I look forward to meeting your Brazilian staff and would like also to introduce our field expert – Mike Cary – who will be traveling to Brazil to work with your staff during the trial

I realize that we left the exact schedule open as we both concluded our travel. We can make any day this week work. I further realize that you must coordinate your schedule with that of your Brazilian operation and to that end, will make any time of day available and at your disposal.

I look forward to hearing from you.

My most sincere regards,

Jim kaiser

nano-nutrients

James Kaiser, Ph.D.
NanoNutrients, LC
12159 So. Business Park Drive, Suite 120
Draper, Utah 84020
Office 801-208-8900
Cell 801-361-1431
jim.kaiser@nano-nutrients.net

nano+nutrients

From: Jean-Charles Doux
Subject: Re: Thank you
Date: October 28, 2008 at 1:45 PM
To: [illegible]

I appreciate your effort as well Merlin

My best regards

Jean-Charles DOUX

Envoyé par mon terminal mobile BlackBerry

----Original Message----
From: Merlin Fish <merlin.fish@nano-nutrients.net>
To: Jean-Charles Doux
Sent: Tue Oct 28 20:28:51 2008
Subject: Thank you

Dear Jean-Charles,

May I express my appreciation for the time you and your father were able to devote to the members of our NanoNutrients team. You were very kind to give us so much time. We have every confidence in a long lasting relationship. Our goal is to save your company millions and millions of Euros.

You can expect prompt attention from our field experts with your Brazilian counterparts

Warmest personal regards,

Merlin Fish

President

NanoNutrients, LC

12159 So. Business Park Drive, Suite 120

Draper, Utah 84020

Office 801-208-8900

Cell 801-362-0746

<mailto:carrington.johnson@nano-nutrients.net>
merlin.fish@nano-nutrients.net

R

RECEIVED

NOV 18 2014

Utah Department of Commerce
Division of Securities

DOUGLAS E. GRIFFITH (4042)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, UT 84101
Telephone: (801) 532-8000
dgriffith@keslerrust.com
Attorneys for Respondents

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

IN THE MATTER OF: **MERLIN VICTOR FISH,** **AQUAPOWER, LC,** Respondents.	**CERTIFICATE OF SERVICE** Docket No. SD-14-0021 Docket No. SD-14-0022

I hereby certify that I caused to be delivered by U.S. Mail a true and correct copy of **RESPONDENTS' SUPPLEMENTAL DISCLOSURES** this 17th day of November, 2014.

Administrative Court Clerk
c/o Maria Lohse
Utah Division of Securities
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Utah Division of Securities
Attn: Ann Skaggs
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Utah Division of Securities
Utah Department of Commerce
Attn: Keith Woodwell
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Thomas M. Melton (4999)
Assistant Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for the State of Utah
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, Utah 84114-0872
Telephone (801) 281-1221
Fax (801) 291-1224
Email: tmelton@utah.gov

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE

IN THE MATTER OF: **Respondents.**	**DIVISION OF SECURITIES' PRETRIAL DISCLOSURES** **Docket No. SD-14-0021** **Docket No. SD-14-0022**

The Division of Securities ("Division"), by and through its counsel of record, hereby submits the following Pretrial Disclosures as required by Utah Administrative Code Rule 151-4-504(2).

WITNESSES THE DIVISION WILL CALL:

1. Respondent Merlin Fish
2. Investor Craig Malecker
3. Investor Dayne Raff

4. Investigator KristiLyn Wilkinson

WITNESSES THE DIVISION MAY CALL

1. Investor Jason Duncan

EVIDENCE:

1. Check from Craig Malecker to Caravel Strategies dated November 17, 2008;
2. Certificate of Membership Units for NanoNutrients, LC for Craig Malecker, dated November 21, 2008;
3. Bank Statement of Dayne and Sally Raff
4. AquaPower, LC Membership Unit Subscription Agreement, dated March 12, 2008;
5. Certificates of Membership Units, AquaPower, LC for Raff Family Holdings, dated March 15, 2012;
6. Check to Dayne Raff from NanoNutrients Manufacturing, LLC dated January 21, 2012;
7. Emails from Jim Kaiser to Merlin Fish dated November 17, 2014;
8. Report on Commercial Performance of Broiler Chickens on Avian Immune 3000, dated February 25, 2008;
9. Email dated November 8, from Mike Cary to Jim Kaiser;
10. Emails dated December 3, 2008 from Steve Day Huff to Merlin Fish;
11. Transcript of Interview of Merlin Fish, conducted by Division of Securities, September 19, 2013;

12. Email from Mae Jang to Merlin Fish, dated February 15, 2013;

13. Letter from Douglas Griffith to AquaPower, LC, dated February 15, 2013;

14. Affidavit of Craig Malecker in Support of Petitioner's Motion for Summary Judgment dated November 20, 2014;

15. Utah Company Profile for Caravel Strategies, LC;

16. Business Account Application with Wells Fargo for Caravel Strategies, LC

17. Bank Records and account statements from Wells Fargo, for Caravel Strategies, LC;

18. NanoNutrients Schedule of Members and Classes of Units, effective date May 1, 2009;

19. Affidavit of Dayne Raff in Support of Petitioner's Motion for Summary Judgment dated November 20, 2014;

20. NanoNutrients, LC Operating Agreement (2009);

21. Administrative Citation, In the Matter of Merlin V. Fish and Financially Fit, Inc., UDCP Case No. 55171;

22. Order of Adjudication, In the Matter of Merlin V. Fish and Financially Fit, Inc., UDCP Case No. 55171;

23. Order of Adjudication on Remand, In the Matter of Merlin V. Fish and Financially Fit, Inc., UDCP Case No. 55171;

24. Findings of Facts, Conclusions of Law and Order on Review, In the Matter of Merlin V. Fish and Financially Fit, Inc., UDCP Case No. 55171;

25. Order of Adjudication, In re Financially Fit, Inc., DCP Case No. 555503;

26. Findings of Fact, Conclusions of Law and Recommended Order, In re Financially Fit, Inc., DCP Case No. 555503;

27. Findings of Fact, Conclusions of Law and Order on Review, In re Financially Fit, Inc., DCP Case No. 555503;

28. Description of Financially Fit, Inc. and Sales Script, December 2004;

29. Petition for Judicial Review, Financially Fit, Inc., v. Utah Department of Commerce, Utah Division of Consumer Protection, Case No. 070908732 (filed June 14, 2007);

30. Affidavit of Merlin Victor Fish in Support of Respondents' Memorandum in Opposition to Motion for Summary Judgment, dated December 28, 2014;

31. Affidavit of Bert Wonnacott in Support of Respondents' Memorandum in Opposition to Motion for Summary Judgment, dated December 29, 2014;

32. Affidavit of Mae Jang in Support of Respondents' Memorandum in Opposition to Motion for Summary Judgment, dated December 26, 2014.

33. AquaPower Power Point Presentation;

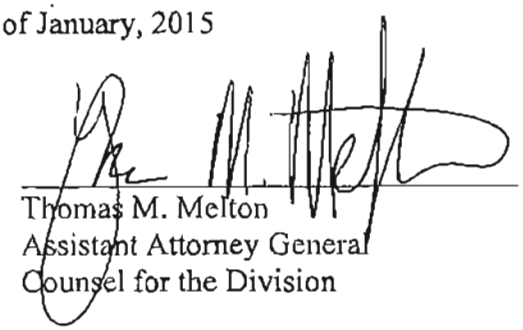
34. Any and all documents produced by Respondents;

35. Any and all recorded statements by Respondents or other witnesses not previously identified;

36. The Division reserves the right to amend this list as evidence is discovered, suggested by

other evidence tendered through these proceedings or adduced at trial or in rebuttal.

Respectfully submitted this 8th day of January, 2015



Thomas M. Melton
Assistant Attorney General
Counsel for the Division

Certificate of Hand Delivery

I certify that on the 8th day of January, 2015, I hand delivered a true and correct copy of the foregoing Pretrial Disclosures to Respondents and/or Respondents' counsel at their last known address of record as follows:

Douglas Griffith

Kesler & Rust

68 South Main Street, Suite 200

Salt Lake City, UT 84101

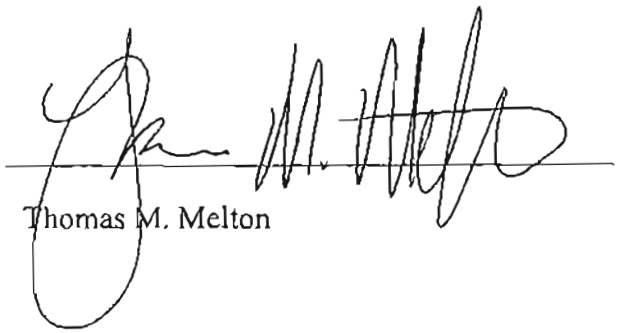
Jennie Jonsson, Administrative Law Judge

Utah Department of Commerce

KristiLyn Wilkinson

Investigator

Division of Securities



Thomas M. Melton

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 DIVISION'S MOTION FOR SUMMARY JUDGMENT**
MERLIN VICTOR FISH; **AQUAPOWER, LC,**	**CASE NO.** SD-14-0021 **CASE NO.** SD-14-0022
RESPONDENTS	

BY THE PRESIDING OFFICER:

The notice of agency action and order to show cause in this matter were sent by the Utah Division of Securities (Division) to Merlin Victor Fish and Aquapower, LC (Respondents) on July 8, 2014. On November 24, 2014, the Division filed a motion for summary judgment. On December 29, 2014, Respondents filed a memorandum opposing the motion for summary judgment and raising certain affirmative defenses. On January 6, 2014, the Division filed a final reply. The parties did not request oral argument.

ANALYSIS

Under Rule 56(c) of the Utah Rules of Civil Procedure (URCP 56(c)), summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In applying this standard for summary judgment, a tribunal must view the material facts to which there is no genuine issue "in the light most favorable to the nonmoving party." *Hillcrest Inv. Co. v. Utah Dep't of Transp.*, 287 P.3d 427. Pursuant to Utah Administrative Code § R151-4-106 and Utah Code Ann. § 63G-4-102(4)(b), URCP 56(c) and the controlling case law interpreting it are controlling authority in this administrative matter. In this tribunal, controlling case law regarding the standards for summary judgment includes orders issued by the Utah Court of Appeals, the Utah Supreme Court, the United States 10th Circuit Court, and the United States Supreme Court.

In this case, the questions presented are (1) whether the investments offered and sold by Respondents satisfy the definition of a "security"; and (2) if Respondents offered or sold a security, whether they made false statements or material omissions in connection with the offer or sale of the security. In addition to disputing these questions, Respondents have raised three general affirmative defenses. First, they argue that this action is time-barred under a statute of limitations. Second, they argue that the Division is required to demonstrate that the alleged victims reasonably relied on Respondents' alleged misrepresentations and/or material omissions, but that the Division has failed to carry this burden. Third, they argue that they had no intent to offer or sell a security.

The presiding officer will address and rule on each question individually.

I. Statute of limitations.

Utah Code Ann. § 61-1-21.1(1) states: "[n]o indictment or information may be returned or civil complaint filed under this chapter more than five years after the alleged violation." The violations that are alleged by the Division occurred in 2008. Therefore, Respondents argue that this action, which was filed in 2014, is time-barred.

This argument has previously been reviewed and ruled on by the Utah Securities Commission (Commission). On March 27, 2014, the Commission issued an order denying a respondent's motion for summary judgment, holding that "the statute of limitations specified in Section 61-1-21.1 is inapplicable" to an administrative disciplinary hearing.[1] Similarly on November 20, 2014, the Commission denied a respondent's motion to dismiss, holding that "there is no statute of limitations applicable to administrative actions filed by the Division of Securities under the Uniform Securities Act where no civil complaint is filed."[2]

The Division's action is not time-barred. Respondent's assertions and arguments to the contrary are dismissed.

II. Reasonable reliance.

Respondents argue that the Division cannot maintain this action without demonstrating that investors reasonably relied on untrue statements or materially misleading representations made by Respondents. Respondents have cited no legal authority to support this position, which has previously been considered and ruled on by the Commission.

The Commission's order *In the Matter of Gregory B. Baldwin and Geoffrey William Watson* (Division of Securities cases SD-11-0041 and SD-11-0042), issued April 7, 2014 states:

---

[1] *In the Matter of Jack Phillips* (Utah Division of Securities case SD-12-0001), issued March 27, 2014.

[2] *In the Matter of Brent Allen Morgan and Summit Development & Lending Group, Inc.* (Utah Division of Securities cases SD-14-0039 and SD-14-0040), issued January 6, 2015.

"Utah Code § 61-1-1(2) contemplates a violation at the time a security is offered. The statute does not require that money change hands or that an investor suffer a financial loss before an administrative action may be taken. [Arguments] to the contrary are without merit."

Given the foregoing, Respondents' arguments that the Division must prove reasonable reliance are dismissed.

III. Sale of securities.

The investments at issue in this case are membership interests in a limited liability company. Respondents do not deny that they sold such memberships.

Utah Code Ann. § 61-1-13(ee)(i)(Q) defines the term "security" to include "interest in a limited liability company." Respondents do not deny that the interests sold to two of their investors constitute securities under this definition. However, Respondents argue that the interests sold to another investor, D.R., fall under an exemption to the statute.

Utah Code Ann. § 61-1-13(ee)(ii)(B) provides that the term "security" does not include "an interest in a limited liability company in which … all of the members are actively engaged in the management of the limited liability company." Respondents argue that investor D.R. was actively engaged in the management of Aquapower when he purchased his membership interests.

Even if Respondent's arguments regarding D.R.'s role in the company are true, those circumstances fail to satisfy the exemption language of Section 61-1-13(ee)(ii)(B), which requires a demonstration that *all members* are actively engaged in company management. The statutory exemption does not apply to separate members, analyzed individually. In order to claim the exemption, Respondents must provide an exhaustive list of all persons who have owned membership interests in the company, and then demonstrate that each person was at all relevant

times actively engagement in company management. Respondent's argument and analysis fail to meet these requirements.

Given the foregoing, summary judgment is granted on the question of whether Respondents sold securities. The limited liability company membership interests offered and sold by Respondents to investors C.M., J.D., and D.R. constitute securities. Respondents are liable for any untrue statements or material omissions they made in connection with the offer and sale of these membership interests.

IV. Intent.

Respondents argue that they never intended to sell a security. However, they do not contend that they never intended to sell membership units in Aquapower. The two issues are separate and distinct. As the Division has demonstrated in its filings, there is no intent or willfulness standard applicable to the sale of a security. Where Respondents did offer and sell securities, they are accountable for any untrue statements and material omissions they made in connection with their offers and sales. Any arguments to the contrary are dismissed.

V. False statements/material omissions in connection with the offer and sale of securities.

1. False statements.

The Division alleges that, in selling interests in Aquapower, Respondents made at least two false statements. Each is discussed individually.

A. **Alleged false statement:** Investor J.D. could resell his membership units for $750,000 following sale of the company to a Hong Kong investment group.

Respondents' position: Respondents deny the allegation.

Discussion

This allegation was raised in the Division's order to show cause (¶ 36) and denied by Respondents in their response (¶ 15). The parties have not discussed it in their memoranda on the motion for summary judgment. Therefore, the presiding officer has no basis from which to adjudicate this alleged false statement. It must be presented to the Commission.

B. **Alleged false statement:** Investor D.R. could resell his membership units for $100 each within one month of purchase, due to a pending offer from a foreign consortium.

Respondent's position: Respondent did not make this statement. He told D.R. that the company might sell if a named, prospective buyer—but not a foreign consortium—could get financing, and that the company's first offer in such circumstances would be $100 per unit.

Discussion

On this point, D.R. claims Respondent Fish made specific statements, which Respondent Fish denies making. Therefore, there is a genuine factual dispute as to whether the statements were made and, if so, who made them and whether they were false.

Given the foregoing, summary judgment on this point is denied.

The presiding officer realizes that Respondents have established the dispute on this point through conclusory statements set forth in Respondent Fish's affidavit, which was prepared solely for the purpose of opposing summary judgment. The Division is correct in its argument that controlling authority regarding the standards for summary judgment require more in the way of admissible evidence in order to find that a genuine issue of fact exists.[3] However, where a

[3] *See Hall v. Bellmon*, 935 F.2d 1106, 1111 (10th Cir. 1992), holding that, in order to create a factual dispute precluding summary judgment, "the nonmovant's affidavits must be based upon personal knowledge *and set forth*

respondent denies ever making an alleged verbal statement or representation, is not reasonable to require an articulation of facts to support the respondent's claim of a non-occurrence. Where statements and representations are actionable in and of themselves, and where there is a he-said-she-said situation, the Commission must be called on to determine which party is telling the truth. That determination cannot be made on summary judgment.

As explained hereafter, where Respondents have raised an affirmative defense to the effect that they did provide appropriate disclosures and sufficient disclaimers to their investors, they must articulate specific facts in order to establish their position.

2. **Material omissions.**

The Division alleges that, in selling interests in Aquapower, Respondents omitted to disclose numerous pieces of material information. Each is discussed individually.

A. **Alleged omission:** Documentation and research showing how the nanonutrient product powered a hydrogen generator.

Respondent's position: Respondent Fish never represented that he had a nanonutrient product that would power a hydrogen generator.

Discussion

On this point, investor C.M. claims that specific representations were made by Respondent Fish and on behalf of Respondent Aquapower regarding the capabilities of Respondents' nanonutrient product to power a hydrogen generator. Respondent Fish denies personally making these representations. Therefore, there is a geniune factual dispute as to whether the representations were made and, if so, by whom.

---

facts that would be admissible in evidence; conclusory and self-serving affidavits are not sufficient" (emphasis added)

Given the foregoing, summary judgment is denied. However, the presiding officer notes that the Division is not necessarily required to prove that Respondent Fish personally made materially misleading representations to investors. If the Commission finds credible Respondent Fish's assertions, it may still entertain the question of whether Respondent Fish took a role in making misleading statements or generating misleading information—perhaps through the creation of written materials, websites, or powerpoint presentations—that was passed on to investors through others. *See* Utah Code Ann. § 61-1-1, which provides that both direct and indirect misrepresentations are unlawful.

In addition to denying that Respondent Fish personally made certain representations regarding the capabilities of a nanonutrient product, Respondents make several other arguments. A brief discussion of these arguments will assist in clarifying and narrowing the issues for hearing.[4]

First, Respondents argue that documentation never existed to support a claim that a nanonutrient product could power a hydrogen generator; therefore, such documentation could not be disclosed. This argument is not a defense to the allegation. Where C.M. has made a sworn affidavit stating that representations regarding the nanonutrient product's capabilities were important to his decision to invest, any omission that rendered that representation misleading—including a failure to disclose that the representation was objectively insupportable—constitutes a material omission.[5] If the Commission finds that the representation was made and that

---

[4] Respondents did not articulate these arguments as affirmative defenses in their response to the order to show cause. Nor have they filed a motion to dismiss or a motion for summary judgment in order to effect an adjudication of these arguments prior to hearing. Nevertheless, the presiding officer does not consider it necessary to take them to hearing and, therefore, addresses them on her own initiative, pursuant to Utah Code Ann. § 63G-4-206(1)(b) and 208(4).

[5] Under the Commission's precedent, a presumption of materiality is created by an investor's sworn statement that, had a certain piece of information been provided, it would have caused him to question or disbelieve representations made in connection with the transaction. *See* the Commission's order *In the Matter of Red Desert Development Corp., Red Desert Underground, LLC, and Ronald H. Baird* (Utah Division of Security cases SD-13-0018, SD-13-

Respondent Fish is either directly or indirectly responsible for its making, Respondents' admission that there was no documentation to support it constitutes proof of a material omission.

Respondents also argue that Utah law (*State v. Johnson*, 2009 UT App 382, ¶ 41; 224 P.3d 720) does not clearly require any type of affirmative disclosure in a securities transaction. Respondents are incorrect. In fact, as Respondents acknowledge, *State v. Johnson* does not reach the issue and, therefore, is not instructive. However, the Commission's precedent establishes that a person who offers a security is required to disclose all material information.[6] If a misleading representation was made, the Commission may sanction anyone whom the Commission considers responsible for failing to affirmatively disclose material information. Respondents' arguments to the contrary are dismissed.[7]

Finally, Respondents argue that C.M purchased a security from a prior investor, not from Respondent Fish, and that Respondent Fish therefore had no duty to disclose anything to C.M. However, Respondents admit that Respondent Fish was the point of contact for C.M. and that he arranged the sale. There is no evidence that C.M. ever spoke to or met with the prior investor. More importantly, there is no legal authority to support Respondents' position. Section 61-1-1(2) provides: "It is unlawful for *any person*, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact…" (emphasis added). The parties do not dispute that Respondent Fish took a role

---

0019, and SD-13-0020), issued November 8, 2013 and concluding: "[The investor] testified that she would not have entrusted her money to Respondent Baird if she had been aware that he was in financial straits and in imminent danger of business failure. … Therefore, the Commission concludes that Respondent Baird's concealing from Ms. Chambers the truth of his financial circumstances constitutes a failure to disclose material information that was necessary to render his representations regarding the security of her money not misleading[.]"

[6] Id.

[7] In their memorandum, Respondents incorporate their *State v. Johnson* argument in responding to other alleged material omissions. All such arguments are dismissed.

in C.M.'s purchase of interests in Aquapower. If Respondent Fish made or is otherwise responsible for a false statement or a material omission in connection with that sale, the Commission may sanction Respondent Fish. Respondents' arguments to the contrary are dismissed.[8]

B. **Alleged omission:** Documentation and research showing how the nanonutrient product impacted animals in North and South America, including proof of the feeding formula's dominance in the chicken industry and proof of Respondents' efforts to get the feeding formula incorporated into the chicken industry in France and the United Kingdom.

   Respondent's position: Respondent Fish never represented having a nanonutrient product that was being used with animals.

Discussion

On this point, investor C.M. claims that specific representations were made by Respondent Fish and on behalf of Respondent Aquapower regarding use of the nanonutrient product in the animal industry. As with the prior point, Respondent Fish denies personally making these representations. Therefore, under the same analysis articulated above, summary judgment is denied, but the Division is not required to prove at hearing that Respondent Fish personally made the representations directly to investors. If the Commission considers that Respondents indirectly caused the representations to be made, it may hold Respondents responsible for them.

[8] In their memorandum, Respondents incorporate their argument regarding the seller being the only party responsible for making disclosures in responding to other alleged material omissions. All such arguments are dismissed.

A brief discussion of Respondents' additional arguments on this point will assist in clarifying and narrowing the issues for hearing.[9]

Respondents argue that "there was no documentation or research showing how the nanonutrient product impacted animals," and that, therefore, no documentation or research could have been provided. This argument is not a defense to the allegation. Where investor C.M. has made a sworn affidavit stating that representations regarding the nanonutrient product's capabilities were important to his decision to invest, the same analysis articulated above as to materiality applies. If the Commission finds that the representation was made and that Respondent Fish is either directly or indirectly responsible for its making, Respondents' admission that there was no documentation to support it constitutes proof of a material omission.

The presiding officer notes that Respondents' contention regarding the nonexistence of documentation or research regarding the animal industry is contradicted within their memorandum, which also states that: "there had been research done on the effects of the product to six million chickens in the U.S." In addition, Respondents state in their memorandum that chicken industry-related research within the U.S. was available to investors on request, as were e-mails through which Respondent Fish was making efforts to incorporate the product into the broader market. Respondents' position is neither clear, nor clearly credible.

However, the important point is that Respondents admit (a) that they did not disclose to investors the non-existence of research or documentation to support a claim that Aquapower had a lucrative market in the chicken industry; or, alternatively, (b) that they did not disclose to investors the available research and documentation through which investors could have evaluated a claim that Aquapower had a lucrative market in the chicken industry. If the representation was made, either circumstance constitutes a material omission.

---

[9] *See* footnote 4, *supra*.

Respondents' apparent argument that they fulfilled any applicable duty of disclosure by being willing to respond to investor requests is insupportable. Respondents have articulated no legal authority to demonstrate that their duty to disclose material information is triggered only by an investor request. In fact, Section 61-1-1(2) establishes an affirmative duty to disclose all material facts "in connection with the offer, sale, or purchase of any security." The trigger for disclosure is the offer of a security, not an investor request or inquiry. Respondent's arguments to the contrary are dismissed.

C. **Alleged omission:** Proof that the nanonutrient technology was being used to enhance nutritional supplements, strengthen fertilizers, extract precious minerals from ore, and improve the electyrolysis of water.

   Respondent's position: Respondents deny the allegation.

Discussion

This allegation was raised in the Division's order to show cause (¶ 27) and denied by Respondents in their response (¶ 11). The parties have not discussed it in their memoranda on the motion for summary judgment. Therefore, the presiding officer has no basis from which to adjudicate this alleged material omission. It must be presented to the Commission.

D. **Alleged omission:** Documentation and research showing how the hydrogen fuel assist device worked on diesel trucks and how it would impact the trucking industry.

   Respondent's position: Respondents deny the allegation.

Discussion

This allegation was raised in the Division's order to show cause (¶¶ 28-29) and denied by Respondents in their response (¶ 11). The parties have not discussed it in their memoranda on the motion for summary judgment. Therefore, the presiding officer has no basis from which to adjudicate this alleged material omission. It must be presented to the Commission.

E. **Alleged omission:** Some or all of the information typically provided in an offering circular or prospectus (business and operating history; financial statements; risk factors; suitability factors for the investment; investment registration status; and Respondents' licensure status), as well as the methodology by which investors' units were valued. **Respondents' position:** As to C.M.'s purchase, Respondents did not value or sell the units. The prior investor who offered the units set the price and was responsible for making all required disclosures. As to D.R.'s purchase, the sale price was determined from the most recent sales, and the resale price was based on the current valuation of the technology. This data, as well as all other information typically disclosed to prospective investors, was available to D.R. by virtue of his serving as Aquapower's bookkeeper, accountant, and project manager.

Discussion

Respondents admit that they brokered the sale of shares to C.M. without providing any of the disclosures typically provided in a securities transaction and without explaining to him how the prior investor valued and priced the securities. Therefore, there is no factual dispute on these points. Nor do Respondents dispute C.M.'s sworn statement that information regarding the

valuation method and other typical disclosures would have influenced his decision to invest. Therefore, there is no argument as to whether the omission is material.

The Commission has previously established that failure to provide a prospectus or similar disclosures in connection with the offer of a security constitutes a material omission.[10] Where Respondents connected themselves with the offer of a security to C.M., their failure to provide a prospectus or similar disclosures addressing, at a minimum, the risk factors associated with the investment constitutes a material omission under this precedent. Summary judgment is granted to the Division on this issue.

The question of whether Respondents are also responsible for disclosures regarding the methodology through which the units were priced is a closer call. It appears from C.M.'s affidavit that he believed Respondents priced the units. However, C.M. does not articulate how or why he formed this belief. Respondents assert, essentially, that C.M.'s belief was both incorrect and without reasonable basis. However, they provide no evidence to support their argument.[11] In the absence of such evidence, the factual dispute derives from (a) what might well have been an assumption on the part of C.M.; and (b) a conclusory statement made by Respondent Fish in an affidavit prepared solely to defeat summary judgment. In these circumstances, neither party's argument is strong enough to form a basis for summary judgment.

Given the foregoing, summary judgment is denied on the issue of whether Respondents' failure to provide C.M. with the methodology by which C.M.'s shares were valued constitutes a

---

[10] See the Commission's *Baldwin* order: "In connection with the offer of [a security], Respondents omitted to disclose specific information about the investment itself, including the identity of the person to whom funds would be entrusted, the track record of the investment to date, *and the risk factors*. ... Such information is likely to affect a reasonable person's decision regarding whether to invest. Therefore, the information is material, and [the] failure to provide it constitutes additional violations of Section 61-1-1(2)" (emphasis added).

[11] Respondents might have provided an affidavit from the seller.

material omission. However, if the Commission finds that Respondents priced the units, their failure to disclosure methodology to support the pricing constitutes a material omission.

D.R. states in his affidavit that Respondent Fish offered him the investment, quoting a per-share sales price of $6.50 and representing a $100-per-share potential resale price, without providing a prospectus or equivalent disclosures. Respondents do not dispute that they represented the two numbers. They do not dispute that the data to support them constitutes material information. Nor do they contend that they provided D.R. with a prospectus or similar dedicated document containing the disclosures that are required in conjunction with the offer of a security. Rather, they claim that D.R. had access to all of the pertinent information.

Respondents' argument has some support in the record. Although D.R. states in his affidavit that Respondent Fish did not disclose how he arrived at the sales price and anticipated resale value, the notes from D.R.'s interview with the Division investigator indicate that D.R. knew the $6.50 acquisition price was derived from recent sales of shares and that the $100 resale price was based on valuation of the technology. Therefore, the essential question is whether Respondents provided the sales and valuation data, as well as other applicable disclosures, to D.R. They claim that they did, by virtue of giving D.R. access to their company books. D.R. contends, essentially, that his involvement with the company books was too brief and too tangential to be meaningful.[12]

Given the foregoing, there is a genuine dispute as to whether Respondents fulfilled their duty to provide typical disclosures to D.R., including information sufficient to support and justify

[12] Additionally, from the transcript of D.R.'s interview with the Division investigator, it appears that D.R. is prepared to testify that the books themselves were incomprehensible.

both D.R.'s purchase price and his anticipated profits. Summary judgment on this issue is denied.[13]

F. **Alleged omission:** Mechanism by which investors would make money on the membership units purchased, including details regarding the market for investors' units and any restrictions on resale.

Respondent's position: Respondent Fish never promised his investors that they would make money on their membership units. As to C.M.'s purchase, Respondents disclosed that the market for Aquapower units was limited and that there were resale restrictions. As to D.R.'s purchase, Respondents did not represent a prospective sale of the company; they told D.R. that he needed to invest as if the company would never be sold; and they told D.R. that his shares were worthless at the time of purchase.

Discussion

From their affidavits, it is abundantly clear that both C.M. and D.R. believed that their shares had value and would generate meaningful profits, through resale or otherwise. As with prior points, Respondent Fish denies personally making any such representations. Respondents' denial of having made an actionable representation regarding anticipated or expected profits is sufficient to create a genuine issue of fact as to whether they did. Therefore, summary judgment is denied on the question of whether Respondents represented to investors, either directly or indirectly, that they would make money on their shares.

[13] On this issue, Respondents could and should have entered into evidence the books to which they assert D.R. had access. Their failure to do so opens the question of whether Respondent Fish's conclusory statements are sufficient to create a genuine issue of fact. However, had Respondents provided the books, certain questions would likely still remain for the Commission. Specifically, the Commission would be required to rule on whether the books actually contained the sales and valuation data and, if so, whether putting such data in a place where an investor might find and recognize it satisfies the affirmative duty to disclose it. Respondents are placed on notice that, at hearing, they must prove their affirmative defense through a preponderance of evidence, not merely through claims of compliance.

Respondents' argument that they never assured D.R. of an imminent sale is difficult to accept, given that they admit representing both an anticipated selling price and naming a prospective purchaser. It is also difficult to understand why Respondents would provide D.R. with details about a possible sale while also advising him to invest as if the company would never be sold. At a minimum, Respondents appear to admit that they gave D.R. mixed messages. The question before the Commission might well be as to whether Respondents' disclaimers are sufficient to negate their representations. The fundamental question, however, is what exactly Respondents represented to D.R. regarding an anticipated sale of the company. The record is unclear and inherently contradictory; therefore, the question must go to hearing.

As to materiality, C.M. states in his affidavit that information regarding how he would make money on his membership units would have affected his decision to invest. Respondents have not rebutted this statement. Therefore, if the Commission considers that Respondents represented to C.M. an ability to make money on his membership units, whether through resale or otherwise, Respondents' failure to disclose information regarding how profits would be generated constitutes a material omission.

In the case of D.R., the question of materiality is more convoluted. Respondents appear to argue that, if any representation of certain or reasonably expectable profits was made, it was not material to D.R.'s decision to invest and, therefore, any omissions regarding the representation could not have been material either. In support of this argument, Respondents point to the transcript of D.R.'s interview with the Division investigator. In his interview, D.R. explained that he was excited by the nanonutrient technology and by the potential he saw for its use in the pig industry. D.R. also explained that, having been released from a position as lay clergy in his

church, he wanted to be part of something larger than himself, where he could exercise stewardship in caring for the earth and for his family.

In emphasizing these sections of the transcript, Respondents ignore the remainder of the interview, much of which deals with D.R.'s financial straits and his need to generate income. At most, Respondents have demonstrated that D.R. had multiple reasons for investing. Respondent's arguments to the effect that D.R. would have invested even without any prospect of profits are unsupported by the record and, therefore, are dismissed. If the Commission considers that Respondents directly or indirectly represented to D.R. that he would make money on his membership units, whether through resale or otherwise, any omission that rendered the representation misleading is material.

G. **Alleged omission:** Details surrounding a Hong Kong investment group and the terms of its intended acquisition of the company, including the basis for Respondents' certainty that the acquisition would go through.

   Respondent's position: Respondents never represented that Aquapower was being acquired by a Hong Kong investment group.

Discussion

This allegation was raised in the Division's order to show cause (¶ 36) and denied by Respondents in their response (¶ 15). The parties have not discussed it in their memoranda on the motion for summary judgment. Therefore, the presiding officer has no basis from which to adjudicate this alleged material omission. It must be presented to the Commission.

H. **Alleged omission:** The fact that the Utah Division of Consumer Protection (DCP) had filed an action against Respondent Fish in Utah's Fourth District Court in or about 2007, as a result of his alleged violations of the Credit Service Organization Act and the Consumer Sales Practices Act.

Respondent's position: The DCP action had no relevance or materiality to investors' purchase of Aquapower units. Respondent Fish was not fined in the DCP action.

Discussion

Respondents do not deny that Respondent Fish was the subject of a regulatory action prior to offering Aquapower membership units for sale. Their argument is that the action was irrelevant and immaterial to the offer. It is not necessary to address relevance. If the information was material to a representation made by Respondents in connection with their offer of a security, it is also relevant.

There is Commission precedent establishing prior regulatory and criminal actions as being material to representations regarding both the safety and suitability of an investment and the overall decision of whether to invest.[14] Such history must be disclosed when a security is offered. Respondents' failure to make the disclosure constitutes a material omission. Summary judgment is granted to the Division on this issue.

Respondents have raised the question of whether the civil penalty associated with the action constituted a fine. Respondents also appear to indicate that, due to the nature of the action, it should not have affected an investor's decision. Neither argument is persuasive. Respondents

---

[14] *See* the Commission's analysis the *Phillips* order: "[Phillips] failed to disclose his criminal history and the risks, nature, and suitability of the offering when he assured the [investors] that their money would be safe. Had the [investors] known Respondent to be a convicted gambler, had they understood the true nature of the investment and the risks involved ... they would have had reason to doubt [Phillips's] assurances." *See also* the Commission's analysis in the *Baldwin* order: "[Baldwin and Watson] also omitted to disclose to potential investors their criminal history, civil judgments, bankruptcies, *and regulatory history*. Such information is likely to affect a reasonable person's decision regarding whether to invest. Therefore, the information is material, and [the] failure to provide it constitutes additional violations of Section 61-1-1(2)" (emphasis added).

have cited no legal authority to demonstrate that prior regulatory actions are material only if they include a fine. More importantly, the Commission has previously established that regulatory history must be disclosed. Where the regulatory action occurred, its disclosure was mandatory.

ORDER

Based on the foregoing analysis, summary judgment is granted to the Division as follows.

1. Respondents made a material omission when they connected themselves with the offer of a security to C.M. without providing him with a prospectus or similar disclosures to address, at a minimum, the risk factors associated with the investment.
2. Respondents made a material omission when they failed to disclose Respondent Fish's regulatory history at the time they offered securities to C.M. and D.R.

Otherwise, summary judgment is denied. If the Commission considers that Respondents' material omissions as herein found constitute a sufficient basis for entering a sanction, it may order the sanction without conducting an evidentiary hearing on the remaining issues analyzed in this order. If the Commission determines to conduct an evidentiary hearing to adjudicate one or more of the remaining issues, the hearing shall be limited, as follows:

1. Did Respondents state, either directly or indirectly, to investor J.D. that a $50,000 investment in membership units would result in a return of $750,000 as soon as the company sold to an investment group out of Hong Kong that had expressed interest in buying the company? If so, was this statement untrue?

2. Did Respondents state, either directly or indirectly, to investor D.R. that he could resell his membership units for $100 each within one month of purchase? If so, was this statement untrue?

3. Did Respondents represent, either directly or indirectly, to investor C.M. that they had a nanonutrient product capable of powering a hydrogen generator? If so, Respondents' failure to disclose that no documentation or research existed to support the claim constitutes a material omission.

4. Did Respondents represent, either directly or indirectly, to investor C.M. that they had a nanonutrient product in use within the U.S. chicken industry and that they were prepared to expand its use into the chicken industry in France and the United Kingdom? If so, Respondents' failure to disclose the supporting research—or alternatively, their failure to disclose the nonexistence of supporting research—constitutes a material omission.

5. Did Respondents represent, either directly or indirectly, to investor J.D. that they had nanonutrient technology that was being used to enhance nutritional supplements, strengthen fertilizers, extract precious minerals from ore, and improve the electyrolysis of water? If so, was the representation misleading by virtue of material omission?

6. Did Respondents represent, either directly or indirectly, to investor J.D. that they had a hydrogen fuel assist device for use with diesel trucks that would allow J.D. to "own the entire trucking industry"? If so, was the representation misleading by virtue of material omission?

7. Did Respondents take a role in valuing and pricing the membership shares C.M. purchased?
    a. If so, Respondents' failure to disclose to C.M. data to support the valuation and price constitutes a material omission.
    b. If not, did Respondents nevertheless have a duty to provide to C.M. data to support the valuation and price? If so, their failure to do so constitutes a material omission.

8. Did D.R.'s role in the company allow him access to information, including sales and valuation data, that is typically provided in a prospectus, such that Respondents were not required to provide any further disclosures? If not, Respondents' failure to disclose the data constitutes a material omission.

9. Did Respondents represent, either directly or indirectly, to investors that they would be able to make money on their membership units? If so, Respondents' failure to disclose how profits would be generated constitutes a material omission.

This order is entered on an interlocutory basis and is not subject to agency or judicial review until such time as a final order is entered in this matter. Utah Administrative Code § R151-4-901(1); Utah Code § 63G-4-401(1).

This order shall be effective on the signature date below.

DATED this 9th day of January, 2015.

UTAH DEPARTMENT OF COMMERCE

Jennie T. Jonsson, Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2015, the undersigned served a true and correct copy of the foregoing document by electronic mail and by first class mail, postage prepaid, to:

MERLIN VICTOR FISH
AQUAPOWER LC
C/O DOUGLAS E GRIFFITH
68 S MAIN ST, 2ND FLOOR
SALT LAKE CITY UT 84101
dgriffith@keslerrust.com

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: **MERLIN VICTOR FISH,** **AQUAPOWER, LC,** Respondents.	**STIPULATION AND CONSENT ORDER** Docket No. SD-14-0021 Docket No. SD-14-0022

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Merlin Victor Fish ("Fish") and AquaPower, LC ("AquaPower" and, collectively with Fish, "Respondents") hereby stipulate and agree as follows:

1. Respondents were the subject of an investigation conducted by the Division into allegations that they 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 July 7, 2014, the Division initiated an administrative action against Respondents, through the issuance of an Order to Show Cause and Notice of Agency Action. The Order to Show Cause alleged that Respondents violated § 61-1-1 (securities

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

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

4. 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 this Order.

5. Respondents are represented by attorney Douglas Griffith of Kesler & Rust and are satisfied with his representation in this matter.

6. Respondents have read this Order, understand its contents and submit 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. 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.

8. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

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

10. AquaPower is a Utah-based limited liability company that registered with the Utah Division of Corporations ("Corporations") on or about June 25, 2007. Its status with Corporations expired as of September 25, 2014 for failure to file for renewal.[1] Fish is listed as the registered agent and manager of the entity. AquaPower has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

11. From approximately November 2008 to March 2012, while conducting business in or from Utah, Respondents offered and sold membership interests in AquaPower, a limited liability company,[2] to at least two investors and collected a total of $60,000 in cash and $15,000 in rent credits.

12. Interests in a limited liability company are defined as securities under § 61-1-13 of the Act.

13. Respondents made material misstatements and omissions in connection with the offer and

---

1 Former business names include: NPWR, LC, NanoNutrients, L.C., NanoNutrients, LLC, and N|PWR, LC.

2 The company is engaged in licensing a nanonutrient-enriched water product developed by an individual named Dr. James Kaiser. The product is not patented, and, according to Dr. Kaiser, no published studies exist with respect to its effects. However, through the offer and sale of membership units in the company, Fish represented that the product was going to change the world, as it has applications in nearly every facet of life. Specifically, the product could be used to enhance nutritional supplements, and increase hydrogen production through the improved electrolysis of water.

sale of securities to the investors identified below.

14. To date, two of the investors have not received any return on their investments and are still owed $75,000.

INVESTOR C.M.

OFFER AND SALE OF SECURITIES

15. C.M., a Utah resident, initially met Fish and his associate, Max Campbell ("Campbell"), through an acquaintance, Marilynn Phipps ("Phipps").

16. In or about 2008, Phipps learned that C.M. had inherited some money.

17. Phipps later conveyed this information to Fish and Campbell, who were looking for investors in Fish's company, AquaPower.[3]

18. Shortly thereafter, Fish and Campbell began frequenting C.M.'s place of business.

19. In or about September 2008, Campbell mentioned an investment in Fish's company during one of his visits with C.M.

20. At that time, C.M. informed Campbell that he only had $10,000 available to invest.

21. Campbell represented that Fish would not take less than $50,000, thereby ending their discussion regarding AquaPower.

22. However, in or about November 2008, Fish went to C.M.'s place of business and stated he would be willing to accept a $10,000 investment, even though he never accepted anything less than $50,000.

23. As justification for this departure from the minimum investment amount, Fish stated that a current membership unit holder was interested in selling his units.

3 AquaPower was doing business as NanoNutrients, L.C. at the time of the offer and sale to C.M. However, for purposes of this Order to Show Cause, the entity will be referred to as AquaPower.

24. At that time, Fish made the following representations regarding an investment in AquaPower:

a. The company had developed a free-energy device that was going to provide free energy to the world;

b. The product could be used in a variety of ways;

c. To that end, the company had developed a hydrogen generator, roughly the size of a regular electrical box, that could be installed in homes;

d. One gallon of AquaPower's nanonutrient water could power the generator, providing electricity to a home, for approximately one month;

e. Additionally, the water was being used in a feeding formula for chickens; and

f. The company was dominating the chicken industry in North and South America, and it was working on getting the formula incorporated into the chicken industry in France and the United Kingdom.

25. Fish also represented that C.M. would make money on the membership units that he purchased.

26. Based on Fish's statements, C.M. invested $10,000 in AquaPower.

27. On or about November 17, 2008, C.M. provided Fish with a $10,000 check made payable to Caravel Strategies.[4]

28. In exchange for the investment, C.M. received a membership unit certificate dated November 21, 2008.

29. The certificate provided proof of C.M.'s ownership of 100 class A voting units in

[4]Caravel Strategies was a limited liability company that registered with Corporations on or about February 28, 2007. Its' status with Corporations expired on or about May 28, 2013. During its existence, Kevin and Patricia Fish served as managers of the entity. Fish specifically requested that C.M. make his check payable to this entity, and, shortly after receiving C.M.'s payment, Fish wired $10,000 to the prior unit holder as compensation for his units.

AquaPower, operating as NanoNutrients LC.[5]

30. Fish signed and dated the certificate as manager of the entity.

31. To date, C.M. has not received a return on his investment.

INVESTOR D.R.

OFFER AND SALE OF SECURITIES

32. In or about December 2011, Fish and several business associates, including Bert Wonnacott ("Wonnacott"), and Mae Jang ("Jang"), traveled to a commercial office building in Pleasant Grove, Utah, where they met D.R., the owner of the building.

33. Fish then said that they would lease space from D.R. until the deal went through.

34. D.R. agreed to the lease, and AquaPower moved into the building in or about January 2012.

35. After some discussion regarding the availability of office space in the building, Fish asked D.R. if he would be willing to sell the entire structure.

36. Fish explained that his company, AquaPower, was being acquired, and the new owners wanted a professional office building to house their administrative headquarters.

37. Fish also represented that the pending acquisition of his company would be one of the largest financial transactions to occur in Utah.

38. Between January and March 2012, D.R., Fish and Wonnacott had lunch on several occasions in Utah County, Utah.

39. During those lunches, Fish and Wonnacott told D.R. about AquaPower and its nanonutrient technology.

40. Fish also presented D.R. with the opportunity to purchase membership units in AquaPower. With respect thereto, Fish made the following representations:

[5] C.M. paid approximately $10 per unit for his equity stake in the company.

a. Michael Hansen had an offer on the table to acquire AquaPower within one month;

b. Upon acquisition, membership units in the company would be valued at $100 each;

c. D.R. could purchase units for $6.50 each;

d. After the acquisition was finalized, he could sell those units at a price of $100 each;

e. D.R. would have to act quickly and purchase units before the deal went through;

f. Fish also encouraged D.R. to buy units for the company's potential, rather than the anticipated profit associated with the acquisition; and

g. The nanonutrient technology was "priceless in the human stewardship that it represented."

41. Fish explained to D.R. that he had turned down other lucrative offers to sell his company based on his sense that those buyers would exploit or bury the nanonutrient technology.

42. Fish reinforced the idea that stewardship was more important than financial gain.

43. Based on these representations, D.R. decided to purchase 10,000 membership units at a price of $6.50 per unit.

44. On or about March 12, 2013, D.R. signed a subscription agreement[6] and provided Jang with a $50,000 cashier's check made payable to AquaPower.[7]

45. The remaining $15,000 investment was credited to D.R. in exchange for rent payments.

46. As proof of his investment, D.R. received two membership unit certificates, dated March 15, 2012 and signed by Fish, reflecting ownership of a combined total of 10,000 class A

[6] The subscription agreement attempted to disclose some of the risks of the investment, including the fact that AquaPower was a startup company with no revenue and limited operating history, the company was selling restricted securities subject to limitations on resale, no market existed for the securities, and any projections provided to investors were estimates, which could later prove to be incorrect.

[7] The check was deposited into the company's bank account at Wells Fargo and subsequently transferred into other business accounts.

voting units.[8]

47. D.R. continues to hold those units in AquaPower; however, the acquisition never went through, and, as a result, no market for the securities ever materialized.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act Investor C.M. (Offer and Sale of Securities)

48. The Division incorporates and re-alleges paragraphs 1 through 47.

49. The interests in a limited liability company offered and sold by Respondents are securities under § 61-1-13 of the Act.

50. In connection with the offer and sale of securities to investor C.M., Respondents, 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. Documentation and research showing how the nanonutrient product impacted animals in North and South America;

    b. Proof of the feeding formula's dominance in the chicken industry in North and South America;

    c. Proof of Respondents' efforts to get the feeding formula incorporated into the chicken industry in France and the United Kingdom;

    d. How C.M. would make money on the membership units that he purchased;

    e. How Respondents arrived at a valuation of $10,000 for C.M.'s units;

    f. Details regarding the market for the units and any restrictions on resale;

    g. The fact that the Utah Division of Consumer Protection had filed an action against Fish in Utah's Fourth District Court in or about 2007, as a result of his alleged violations of the Credit Service Organization Act and the Consumer Sales Practices

[8] D.R. invested through a family trust. The certificates list the trust as owner of the units.

Act[9]; and

h. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, such as:

i. Business and operating history;

ii. Financial statements;

iii. Risk factors;

iv. Suitability factors for the investment;

i. Whether the investment was a registered security or exempt from registration' and

j. Whether Respondents were licensed to sell securities.

Securities Fraud under § 61-1-1 of the Act Investor D.R. (Offer and Sale of Securities)

51. The Division incorporates and re-alleges paragraphs 1 through 47.

52. The interests in a limited liability company offered and sold by Respondents are securities under § 61-1-13 of the Act.

53. In connection with the offer and sale of securities to investor D.R., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

a. D.R. could sell his units for $100 each within one month, when, in fact, Respondents had no reasonable basis for such statement.

54. In connection with the offer and sale of securities to investor D.R., Respondents, 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:

[9] *Financially Fit Inc. v. Utah Dept. of Commerce,* Case No. 070908732, Fourth Judicial District Court of Utah (2007).

a. Details surrounding the terms of Hansen's pending acquisition;

b. How Respondents arrived at a valuation of $100 per unit post acquisition;

c. How Respondents arrived at a price of roughly $6.50 per unit for D.R.'s equity stake in AquaPower;

d. Details and terms of the prior offers to buy the company that Respondents claim to have rejected;

e. Whether Respondents were licensed to sell securities.

II. THE DIVISION'S CONCLUSIONS OF LAW

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

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

b. Respondents violated § 61-1-1(2) of the Act by making untrue statements of material facts 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

56. Respondents neither admit nor deny the Division's findings of fact and conclusions of law but consent to the sanctions below being imposed by the Division.

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

58. Fish agrees that he will be barred from (i) associating[10] with any broker-dealer or

[10] "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 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.

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.

59. 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 joint and several fine of $70,000 against Respondents, to be offset by payments of restitution to investors C.M. and D.R., up to $60,000. The fine amount, and/or restitution offsets, shall be paid within fifteen (15) days of the entry of the Order by the Commission.

60. If the Division finds that Respondents 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, Respondents consent to a judgment ordering the unpaid balance of the fine immediately due and payable.

61. Each dollar paid by Respondents to investors C.M. and D.R. as restitution shall be credited by the Division toward payment of the fine. Respondents shall send to the Division the cancelled check or confirmation of wire transfer for each payment made to the investors. Failure to comply with this provision of the Order, or the payment provisions included in paragraph 59 above, may result in the referral of the fine to the State Office of Debt Collection. Respondents shall send to the Division the cancelled check or confirmation of wire transfer for each payment made to the investors. Failure to comply with this provision of the Order, or the payment provisions included in paragraph 59 above, may result in the referral of the fine to the State Office of Debt Collection. If Respondents fully pay the restitution to investors C.M. and D.R., investors C.M. and D. R. will return the certificates of units for those units for which restitution was made to

AquaPower's counsel Douglas E. Griffith of Kesler & Rust. If C.M. and/or D.R. fail to return said certificates of units, AquaPower is entitled to cancel such certificates of units, and return said units to the AquaPower's authorized but unissued units.

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

IV. FINAL RESOLUTION

63. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter.

64. 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.

65. If Respondents materially violate 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, 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.

66. 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 90 above, and may be introduced as evidence against Respondents in any arbitration, civil, criminal, or regulatory actions.

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

68. 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: Jan 21, 2015

By: _____
Dave R. Hermansen

Director of Enforcement

Respondents:

Date: 1/16/15

By: _____
Merlin V. Fish
Individually and on behalf of all respondents

Approved:

By: _____
Thomas M. Melton
Assistant Attorney General
D.J.

Approved:

By: _____
Douglas E. Griffith
Kesler & Rust
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. Fish 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 impose a joint and several fine of $70,000 against Respondents, to be offset by payments of restitution to investors C.M. and D.R., up to $60,000. The fine amount, and/or restitution offsets, shall be paid within fifteen (15) days of the date of this Order.
5. If Respondents materially violate 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, Respondents notify the Division of any change in mailing address, within thirty days from the date of such change.

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

DATED this 22 day of January, 2014.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David Russon

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: **R. AUSTIN CHRISTENSEN, CRD#4238271** **Respondent.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-14-0023

It appears to the Director ("Director") of the Utah Division of Securities ("Division") that Respondent R. Austin Christensen ("Christensen"), CRD#4238271, has engaged in acts and practices that violate the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.* Those acts and practices are more fully described herein. Based upon the Division's investigation into this matter, the Director issues this Order to Show Cause in accordance with the provisions of Section 61-1-20(1) of the Act.

STATEMENT OF FACTS

1. Christensen is a Utah resident and is licensed in Utah as an insurance agent.

2. Between January 2001 and November 2005, Christensen was licensed in Utah as a broker-dealer agent with several different broker-dealer firms. Christensen has previously taken and passed the FINRA Series 6 and 63 examinations. He is not currently licensed in the securities industry in any capacity.

3. During the period relevant to this action, Christensen was not licensed to offer or sell any securities products or effect or attempt to effect securities transactions.

Dee Randall and the Horizon Companies

4. During the period relevant to this action, Christensen was affiliated as an insurance agent with Horizon Financial and Insurance Group, Inc.[1] ("insurance agency"), a general insurance agent for Union Central Life Insurance Company. The insurance agency was owned and controlled by Dee Allen Randall ("Randall").

5. Christensen and others offered and sold private placement securities investments in "Horizon Notes" which as used herein collectively refers to promissory notes issued by various companies owned and controlled by Randall. Those companies include, but are not limited to, Horizon Auto Funding, LLC; Independent Commercial Lending, LLC; Horizon Financial Center I, LLC; and Horizon Mortgage and Investment, Inc. dba Independent Financial & Investment (collectively referred to at times as "the Horizon entities").

6. In addition to selling insurance, Randall, through the Horizon entities and Horizon Notes, purported to offer private placement securities investments[2] in commercial and residential property development and rentals, as well as an automobile loan business for individuals with poor credit.

---

[1]This entity was also known as or affiliated with other entities controlled by Randall, Horizon Financial & Insurance Agency, LLC, and Utah Horizon Financial & Insurance Agency, LLC.

[2]The Horizon Notes were purportedly sold in reliance on Rule 506 of Regulation D of the 1933 Securities Act.

7. The Horizon entities operated as a Ponzi scheme run by Randall[3] in which investor monies were routinely and freely commingled and transferred among the various Horizon entities. New investor monies were used to pay interest to prior investors or for personal use.

8. Interest payments due to investors under the Horizon Notes began to arrive late in 2009 or 2010, but payments to most investors ceased entirely in 2010.

9. Randall declared a personal Chapter 11 bankruptcy on December 20, 2010.[4] However, he continued to raise capital for the Horizon entities after that date and failed to disclose the bankruptcy to existing or potential investors.

Solicitations and Sales by Christensen

10. Between 2010 and 2011, Christensen solicited at least four of his insurance clients to purchase Horizon Notes.

11. Like many Horizon agents, Christensen sold clients life insurance with high premiums, telling them the premiums would be funded by the Horizon Note interest.

12. The Horizon Notes offered and sold by Christensen are securities under the Act.

13. Christensen sold Horizon Notes to four investors, raising at least $443,596, including one

---

[3]On December 18, 2012, the Division filed an Order to Show Cause against Randall and the Horizon entities. On June 18, 2014, Randall was criminally charged in the Third District Court, Salt Lake County, with twenty-three felony counts, Case No. 141906717. Those actions are currently pending.

[4]Following a September 2011 hearing in which Randall admitted commingling monies among the Horizon entities, a Trustee (the "Trustee") was appointed. The Trustee subsequently filed a Chapter 11 bankruptcy for each of the Horizon entities, all of which were consolidated with the Randall bankruptcy proceeding to be administered by the Trustee as a single bankruptcy estate.

investor whose monies were invested in February 2011 and April 2011 – months after Randall's bankruptcy.

14. None of the notes were sold through a licensed broker-dealer. Rather, Christensen met with investors to offer and sell the Horizon Notes and thereafter assisted with the paper work required to transfer their monies from existing accounts into the Horizon investments. A majority of the monies raised by Christensen came from retirement accounts.

15. Prior to investing, Christensen's investors did not receive audited company financial statements or a Private Placement Memorandum ("PPM") describing the details of the investment.

16. Christensen's investors never met with Randall prior to investing.

Misrepresentations of Material Facts

17. In connection with the offer and sale of Horizon Notes, Christensen misrepresented or omitted material facts to investors, including but not limited to:

    a. an investment in Horizon Auto Funding, LLC would be used to make car loans, would be "safer than a bank," there was "no risk," would be "guaranteed" to return 6%, would make a greater return for IRA monies then-held in a Merrill Lynch account, and the investment would cost Christensen his license and livelihood if it wasn't safe.

    b. an investment in Horizon Auto would provide a "good return" for an early retiree, and the Horizon Auto loan business was structured to be the same as Larry H. Miller's auto loan business and would be equally as successful.

c. an investment in Horizon Auto would be pooled with other investor monies to make auto loans, would pay 14% annual interest if at least $100,000 was invested, would be secured by car titles, and that the investor would receive monthly interest payments that could be used to pay the premiums on a life insurance policy sold by Christensen, with enough left over to pay for living expenses.

These representations were false and/or omitted to disclose material facts necessary in order to make the statements made, under the circumstances in which they were made, not misleading.

Omissions of Material Facts

18. In connection with the offer and sale of Horizon Notes, Christensen failed to disclose material facts to investors, including but not limited to:

a. that he was not licensed to offer or sell securities such as the Horizon Notes;

b. that he was not licensed or qualified to give investment advice;

c. that he had completed no due diligence and had no reasonable basis for making the representations set forth in paragraph 17;

d. relevant disclosures about the Horizon entity issuing the notes, including its financial condition and liabilities;

e. that Randall's entities had a history of missing or late interest payments;

f. that as nonaccredited investors, they were entitled to review audited financial statements for the company prior to investing;

g. that investors' money would be moved into Randall's other companies, used to pay other investors' interest, or for other personal use; and

h. that, as to one investor, R.F., Randall had filed personal bankruptcy several

months before R.F. made his investment.

FIRST CAUSE OF ACTION
Misrepresentations and Omissions of Material Facts under § 61-1-1(2) of the Act

19. Christensen violated Section 61-1-1(2) of the Act by misrepresenting and omitting material facts as described herein in connection with the offer and sale of the Horizon Notes.

SECOND CAUSE OF ACTION
Unlicensed Agent under § 61-1-3 of the Act

20. Christensen violated Section 61-1-3(1) of the Act because he was not licensed to offer or sell securities such as the Horizon Notes.

THIRD CAUSE OF ACTION
Sale of Unregistered Securities under § 61-1-7 of the Act

21. Christensen sold unregistered securities to investors in violation of Section 61-1-7 of the Act.

REQUEST FOR RELIEF

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202 and 63G-4-204 through -209, and held before the Division. As set forth in the Notice of Agency Action accompanying this Order, Respondent is required to file a written response with the Division, and an initial hearing on this matter has been scheduled for September 4th, 2014 at 9:30 a.m. The initial hearing will take place at the Division of Securities, 2nd floor, 160 East 300 South, Salt Lake City, Utah. The purpose of the initial hearing is to establish a scheduling order and address any preliminary matters. If Respondent fails to file a written response or appear at the initial hearing, findings may be entered, a permanent Order to Cease and Desist may be

issued, and a fine may be imposed against Respondent, as provided by Utah Code Ann. §§ 63G-4-206 or -209. At the Order to Show Cause hearing, Respondent may show cause, if any he has:

1. Why Respondent should not be found to have engaged in the violations of the Act as alleged by the Division in this Order to Show Cause;

2. Why Respondent should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, -3, -7 or any other section of the Act;

3. Why Respondent should not be barred from associating with a broker-dealer or investment adviser licensed in Utah or acting as an agent for any issuer soliciting investor funds in Utah; and

4. Why Respondent should not be ordered to pay a fine to the Division in the amount of $25,000.00.

Dated this 8th day of July, 2014.

Keith M. Woodwell
Director, Utah Division of Securities

Approved:

Paul G. Amann
Assistant Attorney General

R

RECEIVED

SEP 22 2014

Utah Department of Commerce
Division of Securities

Bryan R. Farris (Bar No. 8979)
275 West 200 North, Suite 350
Lindon, Utah 84042
Phone: (801) 377-0135
Fax: (801) 377-0134
bfarris@ridgelandoperating.com

Attorney for the Respondent
R. Austin Christensen

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

IN THE MATTER OF: R. AUSTIN CHRISTENSEN CRD #4238271 Respondent.	**ANSWER TO ORDER TO SHOW CAUSE** Docket No. SD-14-0023

Respondent R. Austin Christensen ("Respondent") for his Answer to the Order to Show Cause, responds as follows:

1. Respondent admits the allegations contained in Paragraph 1.

2. Respondent admits the allegations contained in Paragraph 2.

3. Respondent admits the allegations contained in Paragraph 3.

4. Respondent admits the allegations contained in Paragraph 4.

5. Respondent denies the allegations contained in Paragraph 5. Respondent neither offered, nor sold "private placement securities investments".

6. Respondent lacks knowledge or information sufficient to admit the allegations in paragraph 6, and therefore denies such.

7. Respondent denies the allegations contained in Paragraph 7.

8. Respondent lacks knowledge or information sufficient to admit the allegations in paragraph 8, and therefore denies such.

9. Respondent lacks knowledge or information sufficient to admit the allegations in paragraph 9, and therefore denies such.

10. Respondent denies the allegations contained in Paragraph 10. Respondent never solicited anyone to purchase Horizon Notes. Respondent referred 3 clients to Mr. Randall but was neither compensated by Randall nor presented the opportunities to such clients.

11. Respondent denies the allegations contained in Paragraph 11. None of those referred to Mr. Randall purchased insurance from Respondent.

12. Respondent denies the allegations contained in Paragraph 12. Respondent neither offered, nor sold "Horizon Notes".

13. Respondent denies the allegations contained in Paragraph 13. Respondent neither offered, nor sold "Horizon Notes".

14. Respondent denies the allegations contained in Paragraph 14. Respondent neither offered, nor sold "Horizon Notes".

15. Respondent denies the allegations contained in Paragraph 15. Respondent neither offered, nor sold "Horizon Notes". As far as Respondent is aware, anyone that invested into Horizon Notes was provided a "Private Placement Memorandum (PPM) describing the details of the investment." However, those documents were provided by Mr. Randall and not by Respondent.

16. Respondent denies the allegations contained in Paragraph 16. Mr. Randall did all of the presenting of the opportunity, with or without the presence of Respondent.

17. Respondent denies all of the allegations contained in Paragraph 17, including all its subparagraphs. Respondent neither offered, nor sold "Horizon Notes". Respondent never made any representations in regards to the opportunity.

18. Respondent denies all of the allegations contained in Paragraph 18, including all its subparagraphs. Respondent neither offered, nor sold "Horizon Notes". Respondent never made any representations in regards to the opportunity.

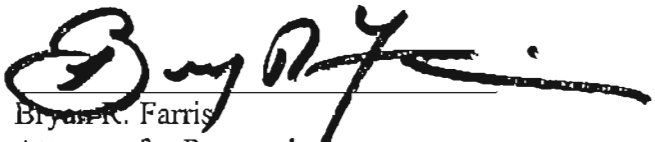
19. Respondent denies the allegations contained in Paragraph 19. Respondent neither offered, nor sold "Horizon Notes". Respondent never made any representations in regards to the opportunity.

20. Respondent denies the allegations contained in Paragraph 20. Respondent neither offered, nor sold "Horizon Notes".

21. Respondent denies the allegations contained in Paragraph 21. Respondent neither offered, nor sold "Horizon Notes".

WHEREFORE, Respondent respectfully requests the Order to Show Cause be dismissed in its entirety and Respondent be awarded such other and further relief as the Court deems just and proper.

DATED this 17th day of September 2014.



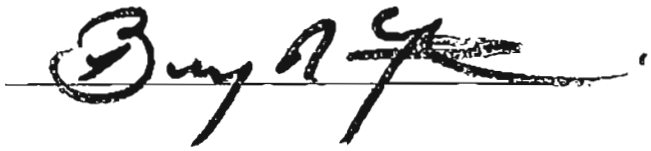
Bryan R. Farris
Attorney for Respondent

Mailing Certificate

I hereby certify that on 17th day of September 2014, I caused a copy of the foregoing ANSWER TO ORDER TO SHOW CAUSE to be sent, to the following:

Paul G. Amman
Assistant Attorney General
PER VIA E-MAIL: pamann@utah.gov

Paul G. Amann
Assistant Attorney General
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114-0872



PAUL G. AMANN (6465)
Assistant Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for the State of Utah
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, Utah 84114-0872
Telephone (801) 366-0196
Facsimile: (801) 366-0315
Email: pamann@utah.gov

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

IN THE MATTER OF, **R. AUSTIN CHRISTENSEN** **CRD #4238271** RESPONDENT.	INITIAL DISCLOSURES CASE NO. SD-14-0023

The undersigned Assistant Attorney General, Paul G. Amann, on behalf of the State of Utah, Department of Commerce, Securities Division (Division), hereby submits the following initial disclosures as required by Utah Administrative Code R151-4-503, and the scheduling order issued in this case.

WITNESSES (with discoverable information):

1. Respondent;
2. Kenneth Barton, Utah Securities Division;
3. Investors R.C. and C.C..;
4. Any witnesses listed by Respondent.

The Division reserves the right to amend its disclosures with the names of other witnesses as may become known through its investigation, discovery or other avenues.

EVIDENCE: With the exclusion of non-discoverable material (*e.g.*, material that is attorney work-product, attorney-client privileged, confidential) the Division hereby gives notice

that it will provide reasonable access to its files as mandated by Rule 151-4-503(1)(b)(ii)(B) of the Utah Rules of Administrative Procedure.

The Division reserves the right to amend its disclosures with other evidence as may become known through its investigation, discovery or other avenues.

Respectfully submitted this 2ND day of October, 2014.

PAUL G. AMANN
Assistant Attorney General
Counsel for the Division

CERTIFICATE OF SERVICE

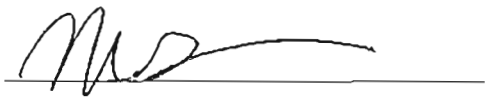
I HEREBY CERTIFY that on this 2nd day of October, 2014, I emailed a true and correct copy of the foregoing to counsel for Respondent at their last known address of record as follows:

Bryan R. Farris, Esq.
Counsel for Respondent
Email: bfarris@ridgelandoperating.com

and provided a copy via drop-box to:

Jennie Jonsson, Administrative Law Judge
Utah Department of Commerce

Ann Skaggs, Analyst
Utah Division of Securities



Bryan R. Farris (Bar No. 8979)
275 West 200 North, Suite 350
Lindon, Utah 84042
Phone: (801) 377-0135
Fax: (801) 377-0134
bfarris@ridgelandoperating.com

Attorney for the Respondent
R. Austin Christensen

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

IN THE MATTER OF: R. AUSTIN CHRISTENSEN CRD #4238271 Respondent.	**INITIAL DISCLOSURES** Docket No. SD-14-0023

The Undersigned, Bryan R. Farris, on behalf of Respondent R. Austin Christensen ("Respondent"), hereby submits the following initial disclosures as required by Utah Administrative Code R151-4-503, and the Scheduling Order issued in this case, and states as follows:

WITNESSES (with Discoverable Information):

1. Respondent.

2. Kenneth Barton, Utah Securities Division;

3. Dee Allen Randall;

4. Investors Wade Lemon and Katherine Laws.

Respondent reserves the right to amend its disclosures with the names of other witnesses as may become known through its investigation, discovery or other avenues.

EVIDENCE:

With the exclusion of non-discoverable material (ie. Material that is attorney work-product, attorney-client privileged, confidential, etc.) Respondent hereby gives notice that it will provide reasonable access to its files as mandated by Utah Rules of Administrative Procedure.

Respondent reserves the right to amend its disclosures with the names of other witnesses as may become known through its investigation, discovery or other avenues.

DATED this 6th day of October 2014.

Bryan R. Farris
Attorney for Respondent

Mailing Certificate

I hereby certify that on 6th day of October 2014, I caused a copy of the foregoing INITIAL DISCLOSURES to be sent, to the following:

Paul G. Amman
Assistant Attorney General
PER VIA E-MAIL: pamann@utah.gov

Paul G. Amann
Assistant Attorney General
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114-0872

PAUL G. AMANN (6465)
Assistant Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for the State of Utah
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, Utah 84114-0872
Telephone (801) 366-0196
Facsimile: (801) 366-0315
Email: pamann@utah.gov

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

IN THE MATTER OF, **R. AUSTIN CHRISTENSEN** **CRD #4238271** RESPONDENT.	AMENDED INITIAL DISCLOSURES CASE NO. SD-14-0023

The undersigned Assistant Attorney General, Paul G. Amann, on behalf of the State of Utah, Department of Commerce, Securities Division (Division), hereby submits the following amended initial disclosures as required by Utah Administrative Code R151-4-503, and the scheduling order issued in this case.

WITNESSES (with discoverable information):

1. Respondent;
2. Kenneth Barton, Utah Securities Division;
3. Investors W.L., M.L., K.L. and R.F.;
4. Any witnesses listed by Respondent.

The Division reserves the right to amend its disclosures with the names of other witnesses as may become known through its investigation, discovery or other avenues.

EVIDENCE: With the exclusion of non-discoverable material (*e.g.*, material that is attorney work-product, attorney-client privileged, confidential) the Division hereby gives notice

that it will provide reasonable access to its files as mandated by Rule 151-4-503(1)(b)(ii)(B) of the Utah Rules of Administrative Procedure.

The Division reserves the right to amend its disclosures with other evidence as may become known through its investigation, discovery or other avenues.

Respectfully submitted this 27th day of October, 2014.

PAUL G. AMANN
Assistant Attorney General
Counsel for the Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October, 2014, I emailed a true and correct copy of the foregoing to counsel for Respondent at their last known address of record as follows:

Bryan R. Farris, Esq.
Counsel for Respondent
Email: bfarris@ridgelandoperating.com

and arranged for copy to be provided via drop-box to:

Jennie Jonsson, Administrative Law Judge
Utah Department of Commerce

Chip Lyons, Analyst
Utah Division of Securities