

Utah Division of Securities Commission

Meeting Minutes

May 28, 2015

Division of Securities Staff Present

Keith Woodwell, Division Director
LeeAnn Clark, Commission Secretary
Dave Hermansen, Enforcement Director
Kenneth Barton, Compliance Director
Benjamin Johnson, Licensing & Registration Director
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
Charles Lyons, Securities Analyst
Brooke Winters, Securities Analyst
Andreo Micic, Securities Examiner
Nathan Summers, Securities Examiner
Richard Jaramillo, Securities Examiner
Chris Hardy, Securities Investigator
Nadene Adams, Administrative Assistant

Other State of Utah Employees:

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

Commissioners Present

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

Public Present:

Josh Ostler, Counsel for Arpeggio Investments, Stanley Duane Parrish, Tyson D. Williams
Nancy Krippner, Attorney General's Office

Minutes: At 9:00 a.m. the meeting was called to order by Commissioner **Erik Christiansen**. Commissioner **Brent Baker** made the motion to approve the minutes from the March 26, 2015 Commission meeting and Commissioner **David Russon** seconded the motion. The motion was approved unanimously.

Director's Report:

Staffing: Director Woodwell reported that the Division is fully staffed and that he is very pleased with the current staffing.

Commission Nominations: Director Woodwell presented Commissioner Bangerter with a commemorative plaque and thanked him for his many years of dedicated service on the Securities Commission and the Securities Advisory Board. Director Woodwell announced that Commissioner Brent Baker's name will be sent to the Governor's Office to be re-nominated for another term and that the name of a current licensee would be submitted to the Governor's Office to replace Commissioner Tim Bangerter. Director Woodwell will keep the Commission apprised of the nominations. Commissioner Christiansen echoed Director Woodwell's sentiments in thanking Commissioner Bangerter for his service.

Legislative Update: Director Woodwell briefed the Commission on a U.S. Supreme Court case that was decided last year, *North Carolina State Board of Dental Examiners v Federal Trade Commission*. Director

Woodwell said that he wanted to make the Commission aware of how this ruling could possibly impact the Securities Commission. Director Woodwell explained that the Supreme Court analyzed two factors to determine whether or not a state board or commission was entitled to the state exemption from federal antitrust laws: (1) whether or not the licensing board or commission was controlled by active market participants; and (2) whether or not the state engaged in active supervision of the board or commission. Director Woodwell expressed confidence that the Securities Commission would pass on both factors and would qualify for the state exemption to federal antitrust laws.

Future Commission meeting dates: August 27, 2015 at 9 a.m., August 28, 2015 at 9 a.m. (hearing) September 24, 2015 at 10 a.m. and December 3, 2015 at 9 a.m.

Enforcement Section Report: Dave Hermansen reported that the incoming complaints have been slower than in previous years. The Enforcement Investigators are currently maintaining a full case load. Mr. Hermansen further stated that any new enforcement complaints that are submitted to the Division are handled quickly by the investigators. Mr. Hermansen updated the Commission on the Shane Baldwin case. The Division of Securities, along with the FBI, have been instrumental in the investigation and bringing criminal charges against Mr. Baldwin. The charges include 14 counts of securities fraud, communications fraud, and pattern of unlawful activity. Mr. Baldwin is currently in jail, being held on a \$500,000 dollar bond. Mr. Hermansen also updated the Commission on the Dee Randall case, which is scheduled for a preliminary trial at the end of June. Mr. Hermansen also gave a brief update on training opportunities for the enforcement staff.

Compliance Section Report: Ken Barton reported Audit Statistics 2015 year to date. The Compliance section has initiated a total of 32 audits. Eight audits were for-cause audits triggered by investor complaints, 17 were routine audits of both investment advisor firms and broker-dealer branch offices, and seven were special sweep audits of broker-dealer/investment adviser firms operating branch offices from within depository institutions. The Section has seven administrative actions in progress. Three actions are on today's agenda for an approval of Stipulation and Consent Orders, two actions have been filed and are currently in process, and two (Dee Randall and Dean Hamilton) administrative actions are stayed pending criminal actions. The Division issued an Order to Deny Licenses to Success Trade Securities, Inc. and Fuad Ahmed. Grounds for the denial include the Division's finding of a significant number of customer complaints and regulatory actions against the licensees, the respondents' license application was materially incomplete, and the respondents' failed to respond to numerous Division inquires for additional information. The Section has referred four cases to the Utah Attorney General's office for criminal prosecution. In Third District Court the Scott Stewart case is scheduled for trial July 28-31 with nine felony counts of securities fraud or in the alternative communications fraud. In Second District Court charges have been filed against George Marshall and Michael Aitken; felony counts include securities fraud, unlicensed agent activity, selling unregistered securities and pattern of unlawful conduct. A fourth case has been screened with the AG's office, and a criminal filing is pending.

Registration and Licensing Section Report: Benjamin Johnson reported that the number of registration and exemption filings received by the Division has increased 23% in FY2015 as compared to FY2014. The increase has largely been in Rule 506(b) exemption filings. The Division has yet to see a substantial number of Rule 506(c) exemption filings (new category authorized by the JOBS Act that allows for general solicitation). State-level registration and exemption filings are down 5% from FY2014 levels. Mr. Johnson also reported that 25% of the Rule 506 filings during the current calendar year have been filed using the new electronic filing system. Mr. Johnson noted that the SEC has recently approved a new rule for Regulation A offerings and provided a brief summary of the rule. Mr. Johnson stated that the "Tier One" offerings under Regulation A would be handled through the NASAA coordinated state review process.

Investor Education Report: Karen McMullin provided the Commission an update on Investor Education events. Since the last Commission Meeting scheduled in March, the Division has participated in 15 events with over 1,300 people attending those events. The audience in those events included educators, public employees, seniors, and new residents to Utah. Ms. McMullin that the Division continues to distribute free IE materials from partner agencies and supplements those materials with Division-created materials for the issues that are specific to the prominent problems that we encounter with Utah investors. Ms. McMullin highlighted a

new publication from the Dallas Federal Reserve Bank, "Building Wealth." *Building Wealth* is a personal finance education resource that presents an overview of wealth-building strategies for consumers, community leaders, teachers and students. It contains options for an online, printed or tablet guide and also a mobile app. Hard copies are provided to the Division free of charge. Similar material is received in large quantities from the Federal Trade Commission, Department of Labor and FINRA.

Ms. McMullin provided the following update on the Division's 2015 Investor Education Goals.

The 2015 goals include outreach to:

- 1) URS members
 - a. After attending the first URS Pre-Retirement Seminar in 2015, a state employee contacted us with questions regarding her retirement accounts she had through previous employment. Seeming very desperate for help, she said, "It has proven impossible to actually speak to an advisor which is one of the big motivations for me to get out of there". She came into our office, met with Heidie and myself for more education and left with ideas and information to help her with her future financial decisions. Another similar appointment occurred last week with a highly educated State Employee making critical decisions on behalf of she and her husband. She sent an email that said: "THANK YOU!!!! THANK YOU!!! This was one of the best educational experiences that I have had and I have had many."
- 2) The victims or caregivers of those exposed to Elder Financial Exploitation
 - a. While presenting at the large 5 county Seniors Conference in Cedar City about Elder Financial Exploitation, an AARP volunteer came up to me after the seminar. She had contacts in St. George who want to organize seminars and wondered if they could contact me about scheduling them. She also requested 100 EFE brochures which she was going to distribute at events in St. George, Panguitch and Kanab.
- 3) The Stock Market Game participants
 - a. Successfully going over 1000 teams, a goal of the SMG in Utah for several years. But the success story came from an email sent from a teacher who had been involved with the SMG for years.
- 4) Educators
 - a. Six (6) events with educators in May and June. After speaking at a Jr. High in Davis County last week, two district employees have contacted us providing information about their "investment guy" and for an appointment to receive more education.
- 5) Outreach through our new online tool called "Retirement Toolbox".
 - a. Number of "hits" since April 9th: 368.

Commissioner Christiansen commended Ms. McMullin for her efforts.

Review of New Administrative Rule to Codify Securities Commission Precedent:

Jennie Jonsson, Department of Commerce Administrative Law Judge, addressed the Commission regarding this issue. This rule responds to the Utah Administrative Rulemaking Act requirement that agencies codify their decisions that have precedential value. ALJ Jonsson reviewed the proposed rule with the Commission and described the Commission Orders that have been codified in the proposed rule. The rule is designed to provide notice to securities attorneys and respondents of the previous legal determinations that have been made by the Commission. ALJ Jonsson explained that this could be a very fluid rule that will be amended over time as Division Orders are appealed and new Orders are issued. The proposed rule is still in the public comment period and those comments will be reviewed before it can become effective.

Commissioner **Gary Cornia** made the motion to approve the proposed rule; Commissioner **Tim Bangerter** seconded the motion and the motion was approved unanimously.

Education and Training Fund Report: Benjamin Johnson reported that spending has been fairly light since the last meeting. There are no pending grant requests for Commission approval. Division spending for the period has been within approved parameters. Actual expenses from the Fund were \$43,600, and the Division

is requesting additional authorizations for \$41,800. Director Woodwell stated that there are a handful of NASAA multi-state settlements that are being finalized and will add to the Fund balance.

Commissioner **David Russon** made the motion to approve the requested Division Budget of \$41,800 (Investigation/Litigation Section). Commissioner **Brent Baker** seconded the motion and the motion was approved unanimously.

Consideration and Approval of Proposed Orders:

Arpeggio Investments, LLC; Stanley Duane Parrish, Tyson D. Williams, SD-10-0065, SD-10-0067, SD-10-0069: Order on Motion to Exclude Evidence and Other Relief, Recommended Order on Default and Order on Default

Dave Hermansen reported that on September 30, 2010 a Notice of Agency Action and Order to Show Cause was filed. Thereafter proceedings were stayed for a time pending a criminal referral. On February 13, 2013 the stay was lifted, and on March 13, 2015 the parties were ordered to file initial disclosures by April 1, 2013. On April 11, 2013 the Division served its initial disclosures to Respondents' counsel. The proceedings were stayed for a second time. The stay was lifted on October 8, 2014, and Respondents' were order to file initial disclosures by November 15, 2014. Respondents did not meet the deadline. The Respondents also failed to meet the final disclosure deadline of April 21, 2015. On May 11, 2015 the ALJ issued a recommended order on default. The proposed Default Order includes a cease and desist order and permanent securities bar against Respondents and a fine of \$29,687. Of the total fine, \$5,937 is due and payable immediately upon receipt of the final order. The remaining \$23,750 is subject to offset during the 30-day period following the date of the order on a dollar-for-dollar basis for any restitution paid to the investors.

Josh Ostler, Counsel for the Respondents, addressed the Commission. Mr. Ostler explained that the Respondents are also involved in a lawsuit with the SEC. Mr. Ostler requested that the Commission stay any further action and allow the Respondents to address the issues in writing before any default order is considered. Commissioner Christiansen asked Mr. Ostler why Respondents did not respond to the October 8, 2014 order. Mr. Ostler explained that Counsel for Respondents had been busy with a lengthy federal trial unrelated to this case. Commissioner Christiansen stated that the Respondents' actions are considered as dilatory neglect and are inexcusable. Administrative Law Judge Jennie Jonsson noted for the record that she would like to make the Commission aware of the Administrative Rules which require that the administrative enforcement action come to a final resolution within 6-8 months. She indicated that an additional continuance at this point would violate the rule. Attorney Tom Melton also addressed the Commission regarding the proposed default order. Mr. Melton stated that he made several attempts to resolve the issues, to no avail. He argued that Respondents' failure to meet the deadlines in the case was inexcusable and that default was appropriate.

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

Adam Leffler: SD-14-0051: Stipulation and Consent Order

Dave Hermensen explained the facts of the case and reported that the administrative case against Mr. Leffler was originally filed on October 23, 2014. The Division and Mr. Leffler have reached agreement on a stipulation and consent order. The proposed order imposes a cease and desist order and permanent securities bar against Respondent as well as a fine of \$78,678.74, to be offset by restitution payments to the investor in the amount of \$62,975.74.

Commissioner **David Russon** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Tim Bangerter** seconded the motion and the motion was approved unanimously.

Jorgen Marc Bailey: SD-14-0049: Order on Motion to Exclude Evidence and Recommended Order on Default, Order on Default

Dave Hermansen explained the facts and background of the case. On October 20, 2014, a notice of agency action and order to show cause was filed. On December 14, 2014, the presiding officer issued a scheduling order requiring Respondent to file initial disclosures by December 17, 2014, and final disclosures by April 14, 2014. Respondent has not filed a response. On May 26, 2015 the ALJ issued a recommended order on default. The proposed order seeks a cease and desist order and permanent securities bar against Respondent and a fine of \$194,750. Of the total fine, \$155,800 is due and payable immediately upon receipt of the final order. The remaining \$23,750 is subject to offset during the 30-day period following the date of the order on a dollar-for-dollar basis for any restitution paid to the investors.

Commissioner **David Russon** made the motion to approve the proposed Order on Default. Commissioner **Tim Bangerter** seconded the motion and the motion was approved unanimously.

Aclai Asset Management, LLC; Justin Warren Luetzgerodt: SD-15-0007, SD-15-0008, Stipulation and Consent Order

Securities Examiner Richard Jaramillo reported on the facts and background of the case. On February 20, 2015, the Division initiated an administrative action against the Respondents by filing a Petition to Censure Licensees and Impose a Fine. The Division and Respondent subsequently reached agreement on a Stipulation and Consent Order. The proposed stipulation imposes a cease and desist order on Respondents and a permanent securities bar. As of the date of the Order, the Respondents have disgorged to investors \$287,007 of the performance-based fees that were wrongfully collected. The proposed order requires that within 30 days of the Order, Respondents shall disgorge to investors an additional \$80,373 for a total of \$367,380. The proposed order includes a joint and several fine of \$30,000.00. The fine shall be reduced on a dollar-for-dollar basis, up to \$25,000.00, for disgorgement payments made within 30 days following entry of the Order. The remaining \$5,000.00 shall be paid to the Division within 45 days following the entry of this Order.

Commissioner **Tim Bangerter** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Michael Edward Logan: SD-15-0006: Stipulation and Consent Order

Securities Examiner Andreo Micic reported on the facts and background of the case. On February 19, 2015, the Division initiated an administrative action against Respondent. The Division and Respondent subsequently reached agreement on a Stipulation and Consent Order. The proposed order imposes a cease and desist order and permanent securities bar against Respondent Logan as well as a fine of \$12,500.00. The fine shall be reduced on a dollar-for-dollar basis, up to \$10,000.00 for restitution paid to the investor. In consideration of the Respondent's financial situation, restitution payments shall be due 36 months following the date of this Order. If at that time Respondent has paid at least \$10,000.00 to the victim, the Division may, in its own discretion, reduce the remaining fine from \$2,500.00 to \$1,250.00.

Commissioner **Tim Bangerter** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Dave Russon** seconded the motion and the motion was approved unanimously.

Kelly T. Scott, SD-07-0031, SD-07-0034: Addendum to Consent Order

Securities Analyst Chip Lyons reported on the facts and background of the case. Following negotiations with the Respondent, the Division is recommending an Addendum to the October 16, 2007 Stipulation and Consent Order that was previously entered against the Respondent. Mr. Lyons noted that the Respondent has met the requirements of the prior order. Through the Addendum, the Division seeks to modify the limitations that were previously placed on Respondent in the 2007 Order as follows: a) All limitations on securities-related seminars as set forth in paragraph 34(b) of the 2007 Order are lifted; and b) All limitations of the sale or promotion of variable annuities as set forth in paragraph 34(c) of the 2007 Order are lifted.

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

Richard Monroy, Mark L. Rabin, Millennium Exploration Company, LLC: SD-14-0046, SD-14-0047, SD14-0048: Notice of Time and Place of Hearing and Stipulation and Consent Order

For the record, A Notice of Time and Place of Hearing was issued on May 26, 2015 by ALJ Jonsson. Asst. Attorney General Tom Melton notified the Commission that the Division and the Respondents had been negotiating a Stipulation and Consent Order right up to the day before the scheduled hearing. After a brief recess, Mr. Melton confirmed that he had received a signed Stipulation and Consent Order from Respondents. The proposed Stipulation and Consent Order was presented to the Commission for review and approval. The proposed order imposes a cease and desist order and a joint and several fine of \$10,000 against Respondents. The fine shall be paid in full within 15 days from the entry of the Order.

Commissioner **Dave Russon** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Brent Baker** seconded the motion and the motion was approved unanimously.

Commissioner **Tim Bangerter** made the motion to adjourn the meeting. Commissioner **Dave Russon** seconded the motion and the meeting was adjourned at 11:05am.

Approved: _____



Erik Christiansen, Chairman

Date: _____

8/27/15