

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
GREGORY ORVILLE HATCHER
RESPONDENT

**RECOMMENDED ORDER ON MOTION
FOR DEFAULT**

Case no. SD-16-0008

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a February 5, 2016 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 April 6, 2016. Respondent failed to appear. 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

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(3), Respondent engaged in an act, practice or course of business that operated as a fraud or deceit upon a person;
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 made false statements to investors;
4. 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
5. 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 \$273,750 to the Utah Division of Securities, with \$54,750 of the fine due and payable in full upon receipt of the Final Order and the remaining \$219,000 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 payments to investors within the 30-day period following the date of the Final Order, the full \$273,750 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 April 6, 2016.

UTAH DEPARTMENT OF COMMERCE



Greg Soderberg
Presiding Officer

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF

GREGORY ORVILLE HATCHER

RESPONDENT

ORDER ON MOTION FOR DEFAULT

Case no. SD-16-0008

BY THE UTAH SECURITIES COMMISSION:

The Presiding Officer's Recommended Order on Motion for Default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

ORDER

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

Respondent is ordered to pay a fine of \$273,750 to the Utah Division of Securities. Of this total fine, \$54,750 is due and payable immediately upon receipt of this Final Order. The remaining \$219,000 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.

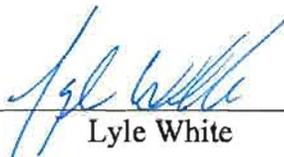
Should Respondent fail to provide proof of restitution payments to investors within the 30-day period following the date of this Order, the full \$273,750 fine becomes immediately due and payable, and subject to collection.

Respondent is 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 26th day of May, 2016

UTAH SECURITIES COMMISSION:

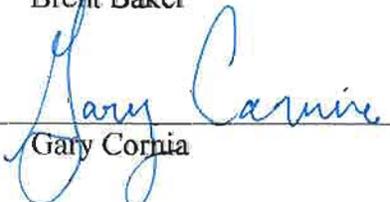


Lyle White

Erik Anthony Christiansen



Brent Baker



Gary Cornia

David Russon

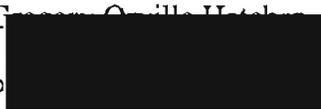
NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

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 27th day of may, 2016 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:

C
1
P



C
2
L
C
1
E



and caused a copy to be hand delivered to:

Jennifer Korb, 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
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
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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

GARY ALLEN LEWIS; and LEWIS
TRANSPORTATION GROUP, LLC

RESPONDENTS

**RECOMMENDED ORDER ON MOTION
FOR DEFAULT**

Case nos. SD-16-0005, SD-16-0006

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a February 3, 2016 Notice of Agency Action and Order to Show Cause. Respondents were 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, Respondents have not filed a response. An initial hearing was held on April 6, 2016. Respondents failed to appear. Pursuant to Utah Code § 63G-4-209(1)(b) and (c), proper factual and legal bases exist for entering a default order against Respondents.

RECOMMENDED ORDER

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 Respondents 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), Respondents 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), Respondents directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading; and
4. That Respondents' 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 Respondents, requiring:

1. That Respondents cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;
2. That Respondents pay a fine of \$792,500 to the Utah Division of Securities, with \$158,500 of the fine due and payable in full upon receipt of the Final Order and the remaining \$634,000 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 Respondents fail to provide proof of restitution payments to investors within the 30-day period following the date of the Final Order, the full \$792,500 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 April 6, 2016.

UTAH DEPARTMENT OF COMMERCE



Greg Soderberg
Presiding Officer

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

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

IN THE MATTER OF

GARY ALLEN LEWIS; and LEWIS
TRANSPORTATION GROUP, LLC

RESPONDENTS

ORDER ON MOTION FOR DEFAULT

Case nos. SD-16-0005, SD-16-0006

BY THE UTAH SECURITIES COMMISSION:

The Presiding Officer's Recommended Order on Motion for Default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

ORDER

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

Respondents are ordered to pay a fine of \$792,500 to the Utah Division of Securities. Of this total fine, \$158,500 is due and payable immediately upon receipt of this Final Order. The remaining \$634,000 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 Respondents fail to provide proof of restitution payments to investors within the 30-day period following the date of this Order, the full \$792,500 fine becomes immediately due and payable, and subject to collection.

Respondent Gary Allen Lewis is 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 Respondents from complying with the terms of the Default Order. This Order shall be effective on the signature date below.

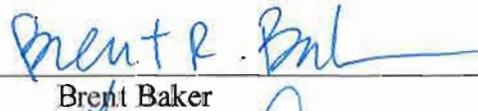
DATED this 26th day of May, 2016

UTAH SECURITIES COMMISSION:

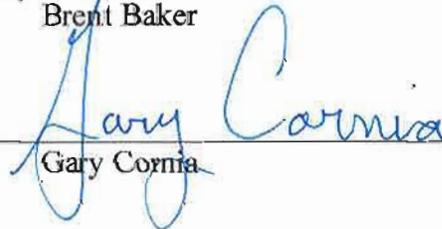


Lyle White

Erik Anthony Christiansen



Brent Baker



Gary Cormia

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 27th day of May, 2016 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:



Lewis Transportation
2400 N West Temple
Salt Lake City, Utah 84116

and caused a copy to be hand delivered to:

Jennifer Korb, 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

A handwritten signature in blue ink, appearing to read "L. Annunzio", written over a horizontal line.

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

BRET CARTWRIGHT; and EXCEPTIONAL
REALTY,

RESPONDENTS

RECOMMENDED ORDER

Case nos. SD-15-36, SD-15-37

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to an August 12, 2015 Notice of Agency Action and Order to Show Cause. The Division of Securities and Respondents settled the administrative action by entering into a Stipulation and Consent Order on January 26, 2016. On April 1, 2016, the Division sent Respondents a letter, stating that Respondents were in violation of the Stipulation and Consent Order, and allowing 30 days for Respondents to request a hearing. Respondents did not request a hearing.

The Division then filed a Motion for Entry of Order Finding That Respondents Materially Violated the Stipulation and Consent Order on May 5, 2016. The Division asks that Respondents: be found to have materially violated the Consent Order by failing to pay the agreed-upon fine; be required to pay the unpaid balance of the fine immediately; be deemed to have admitted the Division's Findings of Fact and Conclusions of Law in the Order to Show

Cause; be ordered to cease and desist from any conduct that violates the Act; and be barred from seeking licensure by the Division as a broker-dealer agent, investment adviser, investment adviser representative, or as an agent of any issuer soliciting funds in Utah without prior Division consultation. Respondents did not file a response to the Division's Motion.

Because Respondents have not responded to the Division's letter or Motion, and for good cause as shown by the evidence provided in the Division's Motion, the Presiding Officer finds that Respondents violated the Stipulation and Consent Order, and that an Order should be entered against Respondents.

RECOMMENDED ORDER

Based on the foregoing, the Presiding Officer recommends that the Utah Securities Commission find as follows:

1. That Respondents materially violated the Consent Order by failing to pay any part of the \$7,363.09 fine, as evidenced by Dave Hermansen's Affidavit, submitted as part of the Division's Motion;
2. That Respondents are deemed to have admitted the Division's Findings of Fact and Conclusions of Law, as set forth in the Stipulation and Consent Order;

The Presiding Officer further recommends that the Utah Securities Commission enter an order against Respondents, requiring:

1. That Respondents cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;
2. That Respondents may not seek licensure or apply to be licensed by the Division as a broker-dealer agent, investment advisor, or investment adviser representative, nor

licensure as an agency for any issuer soliciting funds in Utah without prior consultation with the Division.

Finally, the Presiding Officer recommends that, upon entering the order, the Utah Securities Commission dismiss any further proceedings in this case. This Recommended Order shall be effective on the signature date below.

DATED May 19, 2016.

UTAH DEPARTMENT OF COMMERCE



Greg Soderberg
Presiding Officer

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

BRET CARTWRIGHT; and EXCEPTIONAL
REALTY,

Case nos. SD-15-36, 15-37

RESPONDENTS

BY THE UTAH SECURITIES COMMISSION:

The Presiding Officer's Recommended Order in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

ORDER

Respondents are deemed to have admitted the Division's Findings of Fact and Conclusions of Law, as set forth in the Stipulation and Consent Order.

The \$7,363.09 fine is immediately due and payable.

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

Respondents may not seek licensure or apply to be licensed by the Division as a broker-dealer agent, investment advisor, or investment adviser representative, and from licensure as an agency for any issuer soliciting funds in Utah without prior consultation with the Division.

All further proceedings in this case are dismissed. This dismissal does not relieve Respondents from complying with the terms of the Order. This order shall be effective on the signature date below.

DATED this 26th day of may, 2016

UTAH SECURITIES COMMISSION:



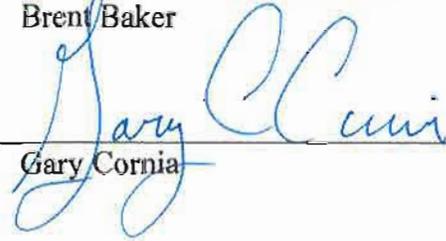
Lyle White



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

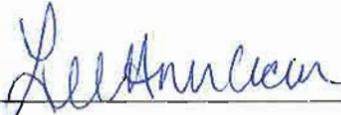
I hereby certify that on the 27th day of May, 2016 the undersigned served a true and correct copy of the foregoing ORDER by mailing a copy through first-class mail, postage prepaid, to:

Bret Cartwright
Exceptional Realty
13618 S. Vestry Road
Draper, Utah 84020
~~_____~~

and caused a copy to be hand delivered to:

Jennifer Korb, 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, 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: JASON DWAYNE WATSON, and InREFCo, LLC, Respondents. | STIPULATION AND CONSENT ORDER Docket No. SD-15-0051 Docket No. SD-15-0052 |
|--|---|

The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave R. Hermansen, and Jason Dwayne Watson and InREFCo, LLC (together, the “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 November 4th, 2015, the Division initiated an administrative action against Respondents, through the issuance of an Order to Show Cause and Notice of Agency Action.
3. The Order to Show Cause alleged that Respondents violated § 61-1-1(2) (Securities Fraud) of the Act while engaged in the offer of a security in or from Utah.
4. Respondents now seek to enter into this Stipulation and Consent Order (“Order”) in

settlement of the Division's action.

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, 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 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. Watson was, at all times relevant to the matters asserted herein, a resident of the state of Utah. Watson has never been licensed in the securities industry.
10. InREFCo was, at all times relevant to the matters asserted herein, a Wyoming Limited

Liability Company registered on November 14, 2012. Watson is listed as the Registered Agent and sole member of InREFCo in Utah. InREFCo's status is expired as of February 25, 2014. InREFCo has never been licensed in the securities industry.

GENERAL ALLEGATIONS

11. In or around December 2012, while conducting business in or from Utah, Respondents offered an investment opportunity to the Absentee Shawnee Tribe ("the Tribe"), headquartered in Shawnee, Oklahoma.
12. The Tribe was offered an opportunity to invest in renewable and sustainable energy in Shenzhen Energy Funding Program ("Shenzhen") through InREFCo.
13. In exchange for a \$450,000 investment, the Tribe was promised a 200% return on its investment.
14. The investment opportunity offered by Respondents to the Tribe, for approximately \$450,000, is an investment contract.
15. Investment contracts are defined as securities under § 61-1-13 of the Act.
16. Respondents made material misstatements and omissions in connection with the offer of a security to the investor identified below.

INVESTOR ABSENTEE SHAWNEE TRIBE

17. The Tribe is headquartered in Shawnee, Oklahoma and is governed by a five-member Executive Committee.
18. During the time period set forth herein, the Executive Committee was comprised of Governor G.B., Treasurer K.D., a Lieutenant Governor, a Secretary and a Representative.
19. In or about December 2012, tribal member Patrick Watson ("Patrick") went to the Tribe

- Treasurer's office in Shawnee, Oklahoma and told K.D. he knew an "investor," Watson, who had an investment opportunity for the Tribe which would earn money in 30 days.
20. Patrick told K.D. that the Tribe's money would be invested with the renewable energy company, Shenzhen, through Watson's company, InREFCo.
 21. Patrick discussed the opportunity with K.D. and made the following representations:
 - a. Patrick said the investment opportunity was in renewable and sustainable energy with Shenzhen;
 - b. Patrick was bringing the opportunity to the Executive Committee as a tribal member;
 - c. Patrick was there to introduce the Tribe to Watson;
 - d. Patrick explained that Watson and InREFCo were the finders who connected investors with Shenzhen, and if the Tribe decided to invest, the investment money would go through InREFCo;
 - e. Watson was giving the Tribe the first opportunity to invest;
 - f. Patrick said that in exchange for \$450,000, the Tribe would earn 200% in 30 days for a total return of \$900,000;
 - g. It was a good opportunity for the Tribe to make good money in a short amount of time; and
 - h. Patrick needed to know if the Tribe was going to invest by the end of the week.
 22. K.D. told Patrick that one week was not enough time for the Executive Committee to meet and consider the investment opportunity.
 23. Patrick informed Watson that the Executive Committee needed additional time and Watson approved a one week extension.

24. Approximately one week after Patrick presented the investment opportunity to K.D., members of the Executive Committee participated in a conference call with Watson.
25. Present during the conference call were, K.D., Tribe Controller B.C., Governor G.B., a Tribe Representative, Patrick and Watson, who indicated he was calling from his home in Utah.
26. During the conference call, Watson made the following representations about the investment opportunity:
 - a. Watson confirmed the investment required a minimum of \$450,000 and in exchange the Tribe would receive a \$900,000 return in 30 days plus the return of their investment principal for a total return of \$1,350,000;
 - b. Watson guaranteed the investment with collateral that was backed with gold;
 - c. The collateral was a \$100,000,000 bank note with a 7.5% coupon paid annually by the bank if InREFCo did not return the Tribe's investment money within 30 days; and
 - d. The investment money would be used for an energy business venture.
27. Following the conference call, the Executive Committee decided to have their attorney, Kirk Cullimore, Jr. ("Cullimore"), perform due diligence on the investment opportunity
28. Between January 8, 2013 and January 16, 2013, several e-mails were exchanged between Cullimore, the Tribe and Watson regarding the investment opportunity.
29. Included in an e-mail sent by Watson, were two documents titled "INREFCo with Private Equity Investor Letter of Agreement to Fund Funding Contract" and "RE: Private Offer - Investment in Shenzhen Energy Funding Program".

30. The Private Equity Investor Letter of Agreement was dated December 26, 2012, signed by Watson and contained the following information:
- a. \$450,000 would be loaned to InREFCo for the InREFCo Project Funding/Shenzhen Energy Funding Program;
 - b. The investment funds would be refunded if the project did not occur within 30 days;
 - c. The collateral for the investment was a \$100,000,000 bank note with 7.5% coupon paid annually by the bank;
 - d. InREFCo would be using the funds from the Tribe for project funding at InREFCo's sole discretion;
 - e. In exchange for \$450,000, there would be a 200% return on the investment; and
 - f. The document included wiring instructions for funds to be sent to Bank of the West in Layton, Utah.
31. The document titled RE: Private Offer - Investment in Shenzhen Energy Funding included a letter from Watson dated January 6, 2012 [sic], and contained the following information:
- a. The investment was in a renewable energy project funding program to develop “waste to energy” projects globally in partnership with Shenzhen Energy, the fourth largest energy company in the world;
 - b. The \$450,000 investment would be used to pay a required bank fee for the funding program;
 - c. The rate of return was 200% interest (\$900,000) plus a return of the \$450,000 investment principal within 30 days for a total return of \$1,350,000;

- d. The collateral for the investment was a \$100,000,000 bank note with a 7.5% coupon paid annually by the bank;
 - e. The coupon payment would be assigned to guarantee repayment of the investment; and
 - f. There was “absolutely no risk” and “this is a private, guaranteed return opportunity and is available immediately.”
32. In performing due diligence for the Tribe, Cullimore could not verify any of the collateral InREFCo offered as security nor could he make contact with the bank or gather other information to verify InREFCo's need for the investment funds to pay bank fees for the funding program.
33. In or around mid-January 2013, B.C., the Tribe Controller, e-mailed Watson that the Tribe was not interested in the investment opportunity.

FIRST CAUSE OF ACTION
Securities Fraud under § 61-1-1(2) of the Act

34. The Division incorporates and re-alleges paragraphs 1 through 33.
35. The investment contract offered by Respondents is a security under § 61-1-13 of the Act.
36. In connection with the offer of a security to the Tribe, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
- a. The \$450,000 investment was needed to cover the cost of a required bank fee related to the funding program; when in fact, there was no reasonable basis for making that statement and there was no evidence of the claimed bank fees;
 - b. The rate of return on the investment was 200%; when in fact, Respondents had no reasonable basis to make that statement;

- c. The collateral on the investment was a \$100,000,000 bank note with a 7.5% coupon paid annually by the bank; when in fact, there was no reasonable basis to make that statement and no evidence that the purported bank note was genuine; and
 - d. The investment was risk free; when in fact, all investments carry some risk.
37. In connection with the offer of a security to the Tribe, 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. On August 19, 1997, Watson and his wife filed for Chapter 7 Bankruptcy in U.S. District Court for the Western District of Washington and the case was discharged on December 16, 1997; case no. 3:97-bk-36649-PBS;
 - b. On October 1, 2009, Watson and his wife filed for Chapter 7 Bankruptcy in U.S. District Court for the Eastern District of California and the case was discharged on January 25, 2010; case no. 2:09-bk-41372; and
 - c. With respect to the investment, some or all of the information typically provided in an offering circular or prospectus, such as:
 - i. Business and operating history
 - ii. Financial statements;
 - iii. Information regarding principals involved in the company;
 - iv. Risk factors;
 - v. Conflicts of interest;
 - vi. Suitability factors for the investment;
 - vii. Whether Respondents were licensed to sell securities in the state of Utah; and

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

II. THE DIVISION'S CONCLUSIONS OF LAW

38. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunity offered by Respondents is a security under § 61-1-13 of the Act.
 - b. Respondents violated § 61-1-1 of the Act by making untrue statements of material facts and/or omitting to state material facts in connection with the offer of a security, disclosure of which were necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

39. Respondents neither admit nor deny the Division's findings of fact and conclusions of law.
40. Respondents agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.
41. Respondents agree that they will be 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 this state, and from being licensed in any capacity in the securities industry in this state.
42. 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 \$10,000.00 against Respondents, jointly and severally. Respondents shall pay the fine

pursuant to the following schedule:

- a. \$3,000.00 due within 15 days of the entry of this Order; and
 - b. \$1,000.00 due the first day of the following quarter, and then \$1,000.00 is due the first day of the next six consecutive quarters thereafter (i.e., if the first payment of \$3,000.00 is due in June 2016, then the next payment of \$1,000.00 would be due July 1, 2016, and the second payment of \$1,000.00 would be due on October 1, 2016, and so on).
43. 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.
44. Failure to comply with the payment provisions in the Order included in paragraph 42 above may result in the referral of the fine to the State Office of Debt Collection.
45. For the entire time the fine 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

46. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter.
47. 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

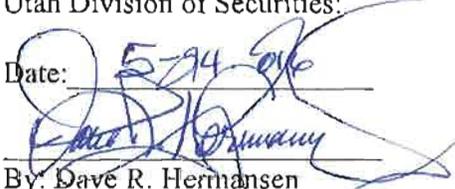
whatsoever.

48. 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.
49. 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. Respondents acknowledge that a willful violation of this Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
50. 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.

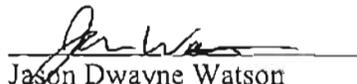
Utah Division of Securities:

Date: 5-24-2016

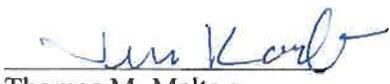

By: Dave R. Hennansen
Director of Enforcement

Respondent Jason Dwayne Watson:

Date: 04-13-2016


Jason Dwayne Watson

Approved:


Thomas M. Melton
Jennifer Korb
Assistant Attorney General

Respondent InREFCo, LLC

Date: 04-13-2016

By: 
Jason Dwayne Watson

Its: Sole Member

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. Respondents are barred from (i) associating with any broker-dealer or investment adviser licensed in Utah, (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.
4. The Division imposes a total fine of \$10,000.00 against Respondents, jointly and severally. Respondents shall pay the fine pursuant to the following schedule:
 - a. \$3,000.00 due within 15 days of the entry of this Order; and
 - b. \$1,000.00 due the first day of the following quarter, and then \$1,000.00 is due the first day of the next six consecutive quarters thereafter (i.e., if the first payment of \$3,000.00 is due in June 2016, then the next payment of \$1,000.00 would be due July 1, 2016, and the second payment of \$1,000.00 would be due on October 1, 2016, and so on).
5. If any Respondent materially violates any term of this Order, the unpaid balance of the fine amount shall be imposed and become due immediately.

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

DATED this 26th day of May, 2016.

BY THE UTAH SECURITIES COMMISSION:



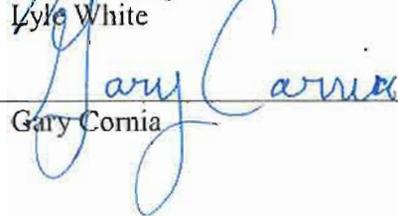
Brent Baker

Erik Christiansen

David Russon



Lyle White



Gary Cornia

Certificate of Mailing

I certify that on the 27th day of May, 2016, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Jason Dwayne Watson, individually and as the registered agent for InREFCo LLC
1293 Burke Lane
Farmington, UT 84025

J [REDACTED]

And hand-delivered via drop box to:

Gregory Soderberg, Administrative Law Judge
Department of Commerce

Dave Hermansen
Director of Enforcement
Utah Division of Securities


Executive Secretary

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

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

IN THE MATTER OF:

**LEGEND SECURITIES, INC.,
CRD#44952**

Respondent.

STIPULATION AND CONSENT ORDER

Docket No. SD-16-0010

The Utah Division of Securities (“Division”), by and through its Director of Compliance, Kenneth O. Barton, and the Respondent, Legend Securities, Inc. (“Legend” or “Respondent”) hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that it violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. §61-1-1, *et seq.*
2. On or about February 18, 2016, the Division initiated an administrative action against Respondent by filing a Petition to Censure Licensee and Impose a Fine.
3. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the Order to Show Cause.
4. Respondent admits that the Division has jurisdiction over it and the subject matter of this

action.

5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on its behalf.
6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.
7. Respondent is represented by attorney David W. Brown and is satisfied with the legal representation it has received.

I. FINDINGS OF FACT

The Parties

8. Legend is a New York corporation that has been licensed as a broker-dealer in Utah since 2006. Legend does not maintain an office in Utah.
9. Joseph L. Jacoby ("Jacoby"), CRD#2619787, is an individual who resided in Las Vegas, Nevada, during the period relevant to this action. From January 2002 until his resignation in May 2011 Jacoby was an agent of Legend. Prior to associating with Legend, Jacoby was an agent of ten different broker-dealer firms between 1995 and 2001.
10. Jacoby has taken and passed the FINRA Series 7, General Securities Representative Examination, and Series 63, Uniform Securities Agent State Law Examination.
11. Jacoby conducted his securities business from a Las Vegas, Nevada branch office of Legend where he was the sole agent. Jacoby was licensed in Utah from August 2007 until he terminated his Utah license in November 2010.

12. Jacoby is not currently licensed in the securities industry in any capacity. Records contained in the Central Registration Depository¹ (“CRD”) indicate that his securities license was revoked by the State of Nevada in December 2011, following the suspension of his securities license by FINRA for exercising discretion in the account of a Utah client, K.P., without prior written authorization by the customer or Legend.
13. Jacoby is named as a respondent in an Order to Show Cause filed by the Division contemporaneously with this action.
14. Salvatore C. Caruso (“Caruso”), CRD#2363696, is a New York resident. Caruso is Legend’s President and Chief Financial Officer, and an owner and securities principal of Legend. During the period relevant to this action, Caruso was Legend’s Chief Compliance Officer and direct supervisor of Jacoby. Caruso was licensed in Utah from May 2006 until June 2011, when he terminated his Utah license.
15. CRD records indicate that in May 2011, Caruso was sanctioned by the United States Securities & Exchange Commission (“SEC”) after instructing a Legend agent to back-date books and records requested by the SEC that had not been completed or maintained as required. Caruso was fined \$25,000 and Legend was fined \$50,000.²

¹CRD is a computerized database maintained by the Financial Industry Regulatory Authority (“FINRA”). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

²For more information, see:
<http://www.sec.gov/litigation/admin/2011/34-64502.pdf>

Division Investigation

Investor K.P.

16. On August 4, 2010, Utah resident K.P. filed a written complaint with the Division, alleging Jacoby mismanaged his securities account, causing significant losses. K.P. alleged Jacoby made unsuitable investments, conducted unauthorized transactions and excessively traded the account to generate commissions. The Division's investigation into the complaint revealed the following:
17. Jacoby began calling K.P. by telephone sometime in 2006 to solicit K.P. to invest money with Jacoby and Legend. Jacoby represented himself as a very successful broker who could make substantial profits for K.P.
18. In August 2007, K.P. agreed to open an account. At Jacoby's direction, K.P. fully liquidated two rollover IRA annuities, paying surrender fees to do so. K.P. transferred a total of \$550,970.90 to Legend. Immediately prior to the transfer, the monies were invested in less-aggressive annuity products at Great American Life Insurance Company (\$387,689.32) and Sun Life Financial (\$163,281.58).
19. Jacoby aggressively traded K.P.'s Legend account for approximately 26 months, making a total of 233 purchases and sales from August 2007 through October 2009. During that period of time, the account sustained grievous losses, falling from its initial value of \$550,970 to \$147,430 as of October 31, 2009.³
20. Commissions and fees paid to Jacoby/Legend through markups and markdowns during

³K.P. took distributions totaling approximately \$54,000 during this period. Considering distributions, the account value as of October 31, 2009 would be \$201,430 – a loss in account value of \$349,540 or 63%.

that period, however, totaled at least \$180,288.⁴ After complaints by K.P. to Legend, another Legend agent was assigned to the account, which was eventually closed by K.P. and transferred elsewhere.

21. In 2010, K.P. filed a FINRA arbitration action, alleging claims against Jacoby, Legend, Caruso, and Legend principal Anthony Fusco, arising from the losses in his account. K.P., who was represented by experienced Utah counsel, later settled that action with the respondents' payment to K.P. of \$117,000.
22. K.P. suffered from numerous health problems and passed away in 2012.

Unsuitable Investments and Trading

23. Jacoby's securities recommendations and his trading activities in K.P.'s account were unsuitable for K.P.
24. According to trade tickets provided by Legend,⁵ 69% of the transactions in K.P.'s account were marked as solicited, or recommended, by Jacoby.
25. At the time K.P. opened the account with Jacoby he was 55 years old. He had retired early due to disability caused by numerous health problems and was receiving early social security benefits due to the disability. K.P. had suffered a stroke at age 48 and never fully recovered. He had ongoing heart and kidney problems requiring periodic hospital care and had also suffered a heart attack. Jacoby and Legend knew K.P.'s health history, disabled status and ongoing medical problems.

⁴This figure is based upon K.P.'s trade confirmations. Legend commission reports, however, indicate Jacoby earned \$179,982.

⁵As discussed in greater detail below, Legend failed to produce trade tickets for nearly half of the 233 transactions in K.P.'s account.

26. Among other things, K.P.'s Legend new account application clearly indicated his age and retired status, that he was divorced, that the account was a retirement account to be funded with IRA monies, and that he had been introduced to Jacoby/Legend by telephone call.
27. In addition, the new account application had boxes checked for two investment objectives: "Long term growth with safety (long term capital appreciation with relative safety of principal)" and "Long term growth with greater risk - Aggressive Growth (trade volatile securities that have wide changes in price)."⁶
28. The new account application reported K.P.'s income as \$25,000-39,999, net and liquid net worth as \$500,000-999,999 and tax bracket as 28%. His investment experience was reported as 20 years trading options and stocks, with average options trades in the amount of \$5,000 with an average of 10 trades per year, and average stock trade amounts as \$20,000 with an average of 50 trades per year. One question, "Is this a Discretionary account?" was left unanswered.
29. Jacoby communicated with K.P. exclusively by telephone. The two never met in person.
30. Soon after the account was opened, it was apparent that K.P.'s stated investment objectives of long-term growth – with either safety or greater risk – were ignored by Jacoby. Many of the securities in K.P.'s account were purchased, sold, and in some

⁶Where there is more than one investment objective, the new account instructions request a ranking from 1 to 8 among eight included objectives. Although no ranking was completed on K.P.'s new account application, two objectives which more closely fit Jacoby's trading activity in K.P.'s account, "Short term growth with high risk (Appreciation with acceptance of high risk)" and "Speculative (want increase in value of investments - High Risk)" were not checked or ranked.

cases, repurchased again within a matter of days or weeks.

31. Jacoby and Legend knew that K.P. needed access to the monies in the account for one-time purchases and to supplement his limited monthly income. Soon after establishing his account at Legend, in October 2007 K.P. took a \$7,000 distribution from the account. Subsequently, he took additional single withdrawals in December 2007 (\$3,000), March 2008 (\$20,000 to purchase a vehicle), and July 2008 (\$1,500). In August 2008, K.P. scheduled monthly withdrawals in the amount of \$1,500.
32. In a handwritten May 1, 2008 broker note, Jacoby acknowledged the prior withdrawals from the account and recorded K.P.'s need for future withdrawals in the near future. The notes state K.P. told Jacoby he was planning on using "the majority" of monies from the account to purchase a home "in about a year".⁷ Despite knowing K.P.'s need for safety of principal and liquidity to buy a home, Jacoby continued to take short-term and risky positions in the account.
33. Most of the trades in K.P.'s accounts were in equity securities and non-traditional exchange traded funds ("ETFs"). There was no diversification among asset classes and no positions were taken for preservation of capital. No mutual funds were purchased, and there were minimal cash or money market positions maintained for liquidity purposes to facilitate K.P.'s withdrawals.⁸

⁷When Jacoby began soliciting K.P. in 2006, K.P. was living with his son in Las Vegas, Nevada. K.P. later moved to Utah, where he rented an apartment during the period relevant to this action.

⁸According to other entries in Jacoby's broker notes, he and Caruso allegedly recommended K.P. purchase a new variable annuity prior to the first stock transaction taking place in August 2007. If true, the recommendations to liquidate two annuities for which K.P. paid surrender fees in order to simply purchase a new variable annuity from Jacoby/Legend

Leveraged, Inverse ETF Trades

34. K.P. had no knowledge of leveraged, inverse ETFs, commonly referred to as non-traditional ETFs, prior to opening his Legend account.
35. Non-traditional ETFs are highly complex products which have risk factors that differ from traditional ETFs and may include leveraging, daily reset, and time decay, all of which effect investment return. Investors holding non-traditional ETFs for more than one trading session can expect their performance to greatly differ from the underlying index or benchmark, particularly in volatile market conditions.
36. The investments recommended by Jacoby included inverse ETFs, which utilize derivatives for the purpose of profiting from the decline in the value of a benchmark, as well as double and triple-leveraged ETFs, meaning that a 1% move in the underlying index or benchmark would produce a 2% or 3% rise (or fall if inverse) of the investment's value. Some of the ETFs Jacoby purchased were both inverse and leveraged.⁹
37. Non-traditional ETFs are designed to be used by sophisticated investors and held in an account for a single trading day, given their volatility and significant risks. They are completely unsuitable for non-speculative investors with long-term investment objectives.
38. Jacoby placed 62 transactions in leveraged and inverse ETFs, which were particularly ill-

would have been dubious. The notes further state Jacoby recommended the annuity to K.P. on three other occasions, all of which were after Jacoby knew K.P. needed current income and that his investment horizon was one year in order to purchase a home with monies from the account.

⁹Trading symbols for the ETFs purchased in K.P.'s account included DIG, DUG, DXD, EEV, FXP, QID, SKF, SRS, and UYG.

suitable to K.P.'s needs, as, among other things, K.P. was not seeking market speculation or implementing a sophisticated daily trading strategy.

39. Jacoby's broker notes made no reference to discussing with K.P. the risks and costs of investing in leveraged and inverse ETFs, why they would be suitable for K.P., or of mailing any information about them to K.P. prior to investing. In an interview with the Division, K.P. indicated he received no such disclosures.
40. The average holding period for the ETF investments was over 13.7 days, with the longest holding period being 63 days. Net losses in K.P.'s account from ETF transactions were approximately \$146,823.

Churning/Excessive Trading

41. The 233 trades placed by Jacoby in K.P.'s account benefitted Jacoby and Legend to the significant financial detriment of K.P.
42. Jacoby had *de facto* control of K.P.'s account. Of the trade tickets provided by Legend, 69% of the transactions in the account were marked as solicited, or recommended, by Jacoby.
43. Commissions paid to Jacoby from K.P.'s account alone comprised 41% of Jacoby's total compensation from Legend during the time he traded the account.
44. During the 12-month period from September 2007 to August 2008, K.P.'s portfolio was turned over an average of 6.68 times monthly. From September 2008 to August 2009, K.P.'s portfolio was turned over an average of 7.40 times monthly.
45. In the aggregate, for the 26 months Jacoby managed K.P.'s account, Jacoby turned over the account approximately 14.93 times.
46. Based on records provided by Legend, K.P. paid approximately \$104,372 in commissions

from August 2007 through August 2008, which was 26.65% of the average monthly account value. From September 2008 to August 2009, K.P. paid approximately \$69,481 in commissions, which was 31.74% of the average monthly account value.

47. The portfolio turnover and amount of commissions paid far exceed acceptable industry standards.
48. The trades recommended and placed by Jacoby were unsuitable and excessive in size and frequency in view of the financial resources and character of K.P.'s account.

Unauthorized Exercise of Discretion

49. While Legend permitted discretionary trading accounts, K.P.'s account was never established as a discretionary account.
50. Jacoby often called K.P. with a trade recommendation, which was then consented to by K.P. However, Jacoby would then place additional trades in the account that were not discussed or authorized, and would call K.P. to report the trades after the fact.

51. Pursuant to a FINRA investigation of Jacoby, Jacoby provided a written narrative, dated April 14, 2010, of his activities in K.P.'s account, which included the following:

Sometime during the first quarter of 2009, [K.P.] informed me that he would be going through medical procedures that required him to be in and out of the hospital and doctors offices for approximately 2 months. He gave me instructions to sell any stock in his account if it was going down substantially and I was unable to reach him prior to the sale. I agreed to accommodate him in order to protect his account and quite frankly, I was afraid to not follow his instructions. Once [K.P.] finished his procedures I only conducted buys and sells after I first spoke to him on the phone.

52. On April 15, 2011, FINRA took regulatory action against Jacoby for the unauthorized exercise of discretion in K.P.'s account from approximately January through March 2009. FINRA found that Jacoby effected at least six (6) transactions during that period "without obtaining prior written authorization from the customer to exercise such

discretion or prior written acceptance of the discretionary account by [Legend].”¹⁰

53. Nowhere in Jacoby’s broker notes, for the period of January 1, 2009 to March 12, 2009, where the notes abruptly end, is there any mention of placing trades without K.P.’s approval. In fact, on at least 11 occasions the notes purportedly document speaking to K.P. during that time. The entries are inconsistent with Jacoby’s written representations to FINRA as described above.
54. Moreover, despite written representations to FINRA that K.P. was “self-directing” his account, to the contrary, Jacoby’s broker notes indicate that Jacoby, and not K.P., was directing the trading in the account. With few exceptions, the broker note language states Jacoby recommended particular transactions, and K.P. “agreed” to them.

Trade Ticket Irregularities

55. Notwithstanding Jacoby’s notes, Jacoby marked approximately 31% of the trade tickets for K.P.’s account as “unsolicited”, suggesting that K.P. brought such trades to Jacoby. The accuracy of those tickets, however, is questionable, and appears to be intended to overstate K.P.’s involvement in trading the account.
56. For example, Jacoby’s trading logs show that he placed “unsolicited” trades in the exact same stock or ETF in K.P.’s account as well as in other Jacoby-managed investor accounts on the same trading day. Of ten such instances, seven of the trades were also marked “unsolicited” in the other investor account. For that to happen, absent the trade

¹⁰As a disciplinary sanction, FINRA suspended Jacoby’s securities license for five business days and fined him \$2,500. See April 15, 2010 FINRA Letter of Acceptance, Waiver and Consent, Case No. 2010021688401: <http://disciplinaryactions.finra.org/Search/ViewDocument/14956>

tickets being incorrectly marked, completely unrelated investors would need to have had the exact same trading idea as K.P. on the exact same day with Jacoby purchasing shares in the securities just minutes from each other.

57. In addition, although Legend had a form entitled “Acknowledgment of Non-Solicitation” designed to document that particular transactions were not solicited by a Legend agent, no such forms were ever provided to or executed by K.P. with respect to the trades marked “unsolicited” in his account.

“Happiness” Statements

58. Despite disastrous results in K.P.’s account, Jacoby’s broker notes continually included self-serving “happiness statements” – statements often used to “confirm” knowledge and approval of questionable trading patterns in an account which may not mirror the account’s investment objectives. For example:
- a. March 23, 2008: “He was very thankful for all my help and isn’t worried about recent market pull backs”

(As of March 30, 2008, year-to-date losses were approximately \$86,000);
 - b. June 24, 2008: “[K.P.] told me I was doing a good job and thanked me for calling”

(As of June 30, 2008, year-to-date losses were approximately \$150,000, or 30%);
 - c. October 30, 2008: “he was happy and thanked me.”

(As of October 31, 2008, year-to-date losses were approximately \$249,000 or 50%)
59. K.P. told the Division that those representations were fabricated and that his reaction to

the mounting losses in the account was great dissatisfaction and concern.

60. The accuracy of the entries is further questionable because even though Jacoby continued to communicate with K.P. and to trade the account through October 2009, there is not a single note entered after March 12, 2009 despite Jacoby placing more than 50 trades in that period.¹¹

Legend Books and Records Violations

61. By letter to Caruso dated August 19, 2010, the Division requested information concerning Jacoby's activities in K.P.'s account, including "all trade tickets for transactions in [K.P.'s account] since account establishment" in August 2007.¹²
62. Caruso's response dated September 10, 2010 represented that "[a]ll trade tickets" were contained in a CD-ROM enclosed with the letter. However, the CD only included 91 trade tickets out of 233 trades.
63. By letter dated February 17, 2011, the Division again requested all trade tickets, noting it was the second request for information that should already be in K.P.'s account file.
64. Caruso's response dated March 2, 2011 indicated he had sent on an enclosed CD "all available trade tickets that I was able to locate in my office" and stated while there may be duplicates of the tickets initially sent, there would be "many additional tickets."

Caruso stated that Legend moved into new office space in May 2010 and "stored many of

¹¹According to Legend's Written Supervisory Policies and Procedures, agents are required to maintain "logbooks" which are to be reviewed for accuracy on a monthly basis by supervisors.

¹²SEC Rule 17a-3 of the 1934 Securities Exchange Act, incorporated by reference to the Act through Utah Admin. Code Rule R164-5-1(C)(1), requires a broker-dealer to maintain records commonly referred to as trade tickets that detail certain information about each order for the purchase or sale of securities. Failure to do so is a violation of Section 61-1-5(1) of the Act.

- the files that were older than 2 years. I need to go through those files.”
65. While the CD included additional trade tickets, approximately 129 trade tickets were still missing.
 66. By email dated May 18, 2011, the Division requested that Caruso provide an update on the status of “retrieving the trade/order tickets not provided to the Division” previously.
 67. In a May 31, 2011 response, Caruso provided by e-mail a zip file of additional trade tickets. Those tickets included trades for another customer, duplicate trades to those previously provided, and 15 additional trade tickets for K.P.’s account. Trade tickets for approximately 114 transactions were still missing.
 68. The Division made several additional requests for other documents, and advised Legend that the failure to produce the requested documents could be a violation of record keeping requirements of the Act.
 69. After a total of three written requests and two e-mail requests over a period of ten months, Legend failed to provide trade tickets for approximately 114 transactions – nearly half of the trades– in K.P.’s account. Approximately 50 of the missing tickets pertained to transactions that took place fewer than two years¹³ before the Division’s initial August 2010 request.
 70. Legend’s Written Supervisory Policies and Procedures (“WSPs”) in effect at the time¹⁴ required that Legend keep copies of trade tickets for a period of six years:

¹³SEC Rule 17a-4 of the 1934 Securities Exchange Act requires that a broker-dealer record keep trade tickets for at least three years, with the first two years in an easily accessible place.

¹⁴References are to Legend’s WSPs dated January 30, 2007.

“All books, records and accounts concerning all securities transactions undertaken by this firm must be maintained in clear, full detail, and must accurately reflect all transactions”, which agents are required to maintain all records for a period of six years. Those records include trade tickets, correspondence, research files, account forms, and “any other material that may be required to justify or clarify actions taken on behalf of a client.”

71. Trade tickets are required to disclose the terms and conditions of the order or instructions, any modifications, time of entry, price at which executed, whether solicited or discretionary, and must be reviewed by a principal of the firm.

72. It also is the responsibility of supervisors to see that the proper records are being kept:
Our designated supervising principals are responsible for ensuring that the individuals under their direct supervision are aware of what books and records they must maintain and for sufficiently monitoring and reviewing to ascertain whether they are being adequately maintained.

73. The WSPs state that supervisory reviews and procedures for proper books and records maintenance require that:

no material paper document, regardless of how seemingly insignificant, is to be discarded; all notes, correspondence, etc. is to be filed in client file.

All registered representatives will have their logbooks reviewed on a monthly basis for accuracy and legibility. This review will include sampling of three (3) entries from the journals, verifying them by file contents and randomly sampling three (3) investments from three (3) separate files and verifying their entry into the log journals.

Any discrepancies found during such reviews will be written up and disciplinary action as found appropriate will be implemented.

Any reviews undertaken in this area will be documented in writing and maintained in the Compliance Department's files.

74. The WSPs further state it is Caruso's responsibility to ensure that all required books and

records are maintained in an appropriate manner, for the appropriate length of time, and that they are adequately safeguarded.

Legend Failed to Reasonably Supervise Jacoby

75. Although Legend's WSPs set forth requirements to ensure compliance with securities laws and regulations, Legend failed to implement, follow, or enforce those procedures with a view to preventing securities violations by Jacoby.
76. When Legend hired Jacoby, he had worked for ten previous firms in a six-year period. He had three customer complaints that resulted in lawsuits, involving allegations including deceptive trade practices, unauthorized trading and unsuitable investments. Two of the cases settled with payments to claimants, and the third resulted in an arbitration award against Jacoby.¹⁵
77. Jacoby conducted business from a remote office located in Las Vegas, Nevada, but was supervised by Caruso from New York. Jacoby was the sole agent in the Las Vegas branch office.
78. Based on his employment and complaint history and geographic distance from Caruso alone, Jacoby should have been subject to heightened supervision, or at a minimum, heightened scrutiny of his business.

Supervisory Review Requirements

79. With regard to the opening of new accounts, Legend's WSPs state:

Legend Securities, Inc. has the responsibility to use due diligence and learn as many essential facts as possible concerning our customers. We must obtain minimal

¹⁵In addition, a current FINRA arbitration proceeding, FINRA Case No. 11-03076, is pending against Jacoby for conduct arising after K.P.'s matter was settled, alleging unauthorized and aggressive trading that resulted in significant customer losses.

information about a customer's financial situation and investment objectives, prior to or promptly after, completion of an initial transaction.

All New Accounts must be signed by the customer, the registered representative and a principal of the firm. SALVATORE C. CARUSO will review new accounts on an on-going basis to determine that all suitability requirements are being met. Information must be obtained and maintained with the New Account forms concerning any special circumstances appropriate to any unusual transactions.

80. Legend's WSPs delegated many supervisory responsibilities to then-Chief Compliance Officer Caruso, including the monitoring and review of "all daily securities activities and related records" such as new account forms, trade tickets, adherence to specific compliance policies and procedures, the solicitation of orders, and exception reports. Further, "[a]ll accounts will be reviewed, on an on-going periodic basis. On a monthly basis, all accounts with activity during the particular month will be reviewed." In addition, random accounts will be selected and reviewed, with a more in-depth review of those accounts with increased activity or heavy concentration.
81. Daily reviews include an evaluation of transactions conducted the previous day and "the nature of the trades. The investments will be looked at with regard to its suitability for the particular investor, the trade will be evaluated with regard to excessive concentration of net worth in one particular investment (taking into account past investment activities and previous investment experience)."
82. Weekly reviews include comparing a printout of each week's logged transactions with submitted transactions cover sheets as well as a run of exception reports, with review of "all items appearing on such reports... to determine if any further action or more in-depth reviews are warranted in any instance."
83. Monthly reviews consist of sample client monitoring calls being made, review of all

customer account statements, preparation and review of a monthly summary of client transactions and review of all accounts with high activity levels.

84. Quarterly and annual compliance reviews are also required. For annual reviews, a “complete log of all securities transactions in each client’s account will be printed. Random files will be pulled and the contents of the file will be compared to the transactions journal, looking for any discrepancies.”

85. Legend’s WSPs further provide that:

Written documentation of all reviews undertaken will be maintained, indicating:

- a) the scope of the review undertaken
- b) the individual(s) undertaking the review
- c) any pertinent findings during the review
- d) any remedial actions taken, if necessary
- e) other relevant information relating to the specific review

These reviews will be maintained by the Compliance Department.

86. Legend’s WSPs also provide that Caruso is responsible for ensuring that Legend receives from its clearing firm “all available assistance in monitoring its activities and ensuring compliance” and, in that regard:

NASD Rule #3020 requires us to receive from our clearing firm a list of all exception reports which it issues, or which it is able to issue.

SALVATORE C. CARUSO will maintain copies of all requests made by us (to the clearing firm) indicating our desire for certain reports, and must ensure that these reports are being received on a regular basis, and being utilized as compliance tools...

All correspondence between the clearing firm and [Legend] relating to exception reports and both firms’ responsibilities under NASD Rule #3020 are maintained by SALVATORE C. CARUSO.

87. Despite the numerous questionable activities in K.P.’s account, Legend produced no exception or other surveillance reports generated at any time pertaining to Jacoby or his activities in K.P.’s account, and no documentation showing that the other required

supervisory reviews described above took place.

Non-Conventional Investments and New Products

88. As alternative investments to conventional equity and fixed income investments, the ETFs purchased and sold in K.P.'s account meet the definition of what Legend's WSPs refer to as "non-conventional investments" or "NCIs".

89. Under the heading "Recommending NCIs" Legend's WSPs state:

Our Chief Compliance Officer and all supervising principals are responsible for ensuring that appropriate care is taken to be certain that all registered persons understand the features of any product we are offering so as to be in a position to perform the required suitability analysis before executing a transaction. In addition, our Chief Compliance Officer is responsible for seeing that we meet the obligation that all marketing materials provide an accurate and balanced description of the risks and rewards of any NCIs being offered.

Given the complex nature of NCIs and the potential for customer harm of [sic] confusion, our Chief Compliance Officer is responsible for reviewing all NCI transactions to ensure that the following:

Appropriate due diligence with respect to the product has been undertaken

A reasonable-basis suitability analysis has been performed

Customer-specific suitability analysis for recommended transactions has been undertaken

All promotional material being utilized are fair, accurate and balanced

Appropriate internal controls have been implemented

Adequate training has been given to all registered personnel engaged in the sale of these products

90. The Legend WSPs emphasize due diligence efforts required to be undertaken by Legend agents regarding NCIs and that:

Our Chief Compliance Officer is responsible for ensuring that all individuals responsible for undertaking these due diligence efforts have received appropriate training and have the skill necessary to evaluate the terms of the investment as well as the potential risks

and benefits. Our Chief Compliance Officer will maintain a list of individuals so trained, as well as all training materials utilized.¹⁶

91. Specific customer suitability analysis is required:

We cannot rely too heavily on a customer's financial status as the basis for recommending NCIs, as net worth alone is not necessarily determinative of whether a particular product is suitable for a particular investor. NASD Notice to Member 03-71 states, *'given the unique nature of NCIs, these products may present challenges when it comes to a member's duty to dispense its suitability obligation; however, the difficulty in meeting such challenges cannot be considered as a mitigating factor in determining whether members have met their suitability obligations. NCIs with particular risks may be suitable for recommendation to only a very narrow band of investors capable of evaluating and being financially able to bear those risks'*

92. In addition, "[a]ll recommended NCI transactions must be pre-approved by the rep's supervising principal, and all such transactions will be reviewed by Compliance or Operations. Such review will consist of ensuring that appropriate due diligence and suitability measures were taken. The reviews will be documented by initialing transaction documents and by indicating any follow-up measures which were taken."

93. Finally, the ETFs purchased in K.P.'s account were also subject to comprehensive firm review as "new products" that Caruso was responsible to analyze, applying a number of factors described in the WSPs, prior to offering such products to clients.

94. Significantly, in February 2010, "due to the inherent risks and nature of leveraged" ETFs, Legend restricted their sale to retail customers, and imposed an advance-review and approval process for any customer seeking to purchase such products, even on an unsolicited basis.

¹⁶Legend produced no information as to what, if any, training Jacoby received on the leveraged and inverse ETT's sold to K.P.

Questionable Activities

95. Under the heading “Questionable Activities” Legend’s WSPs indicate that “[a]ll account/securities activity reviews (which will be documented and maintained) will specifically be looking for evidence of improper or fraudulent trading practices, including but not limited to...
- a. Evidence of Excessive Trading Activity: “The monthly print out of all trading activities for each registered representative will be reviewed for excessive concentration of trading activities for any given client. Should any account appear to show a high concentration of any security, the account will be pulled and thoroughly reviewed. If documentation is not found in the client files justifying such trading activity, the representative will be called upon to give an explanation and, if necessary, the client will be contacted.”
 - b. “In and Out” Trading Patterns: “It is the philosophy of Legend Securities, Inc. that the client is best served through a long-term investment perspective. Therefore, rapid in-and-out trading is highly disregarded and any such trading pattern will be looked upon with extreme skepticism. On a monthly basis, all transactions, by registered representative and by client, will be reviewed, looking specifically for such trading patterns. Should any patterns appear to exist, the registered representative involved will be called upon to explain exactly why each transaction was made, along with disclosing all written materials concerning such transactions in his/her file.”
 - c. Heavy Concentrations/Unusually Large Orders: transactions of more than \$100,000 are subject to heightened review and scrutiny. “Furthermore, the client will be personally contacted by one of the principals of this firm to verify that the transaction is indeed, an appropriate investment.”¹⁷
 - d. Unsuitable Recommendations: “In addition to the financial suitability issue, there must also be an effort to determine whether or not the recommendation is appropriate to the previous investment experience, risk tolerance, and lifestyle of the client. If there are any suspicions or doubts concerning a transaction, a supervising principal will contact the client directly by phone for a discussion to aid the principal in determining whether or not the transaction was indeed an appropriate recommendation.”

¹⁷Jacoby placed eight trades in amounts greater than \$100,000. Legend provided no evidence to show any heightened supervisory review or scrutiny or contact with K.P. to verify that such transactions were appropriate.

- e. Churning: “Churning a client’s account (executing transactions solely for the purpose of generating commissions) is STRICTLY PROHIBITED. Uncovered churning activities will result in, minimally, suspension of trading activities for a specified period of time, and in severe or repeat instances, termination.

Registered representatives are required to bring to the attention of their Supervising Principal any account that initiates its own trades on an extremely active basis or any account that dramatically changes its trading techniques.

Monthly active account reports will be reviewed by a Supervising Principal to identify potential churning situations. Any situations identified as possibly involving churning will be looked into in detail.

REVIEW FOR CHURNING WILL CONSIST OF: Reports will be generated on a weekly, monthly, quarterly and annual basis, by client, showing all transactions in that client’s accounts for the time frame reported. These transactions will include all buys and sells. If it is determined in any of these reports that there seems to be an excessive amount of client activity (an indication of possible churning), all the client’s accounts will be reviewed with careful scrutiny. Any accounts seeming to generate a disproportionately high amount of commissions relative to the size of the investment will be singled out for review.

Turnover is a mathematical ratio which measures how frequently a customer’s funds are reinvested from one security to another. There is no pre-determined turnover ratio that identifies churning because customer investment objectives and investment history must be considered on a case-by-case basis. Churning is generally characterized by short-term holding periods and high turnover ratios.

Churning generally occurs when a representative has direct or indirect control over a customer’s account. Direct control exists in discretionary accounts. Indirect control exists in situations where customers have a high degree of reliance on a representative, generally allowing the representative to transact whatever business s/he feels most appropriate. Such customers are generally unsophisticated and, not understanding the securities market in any depth, rely heavily on their representative’s expertise.

If it is suspected or believed that churning is occurring, the account executive will be called in for a face-to-face meeting and given a chance to explain the particular activity in question. If the activity cannot be justified, the client will be contacted and the account executive severely reprimanded, ranging from temporary suspension of conduct any securities activities to termination.

Suitability of Investment Recommendations

96. Legend's WSPs require that all recommendations to a client are suitable, based on information disclosed upon opening of the account, and new account forms are to be reviewed for completeness and updated as required. In addition, the WSPs acknowledge:

Rule 405 of the New York Stock Exchange is known as the "Know Your Customer" or "Due Diligence" Rule. Even non-Exchange member broker/dealers must observe the spirit of Rule 405. To "know your customer" firms and their representatives must learn all essential facts relative to every order, every customer and every account opened or serviced.

The client's investment objectives, risk tolerance, financial resources and level of sophistication and knowledge about financial matters and securities markets must be clearly understood by the registered representative servicing the account. Income, age, employment status, occupation and dependents should all be considered and discussed with the client when determining investment objectives.

If at any time a customer wishes to undertake a transaction that a registered representative feels to be unsuitable, the representative should discuss the trade with his/her Supervising Principal PRIOR TO EXECUTING THE TRADE.

Seemingly unsuitable trades will be questioned and the representative will be called in to discuss the trade and defend why it seemed appropriate and/or suitable. If the individual is unable to show why the trade was suitable, disciplinary action will be warranted.

We have a strong fiduciary responsibility to learn the essential facts concerning every customer, every transaction and every account. In other words, we must "KNOW OUR CUSTOMERS." Information must be available before a determination can be made as to the suitability of a specific transaction. Our policy on approval of new accounts is that they are to be approved by an appropriate principal prior to completion of initial transaction.

Routine reviews will determine if information maintained in client files has been made current as necessary. Any special circumstances must be noted concerning suitability determinations on any unusual transactions.

(emphasis added).

97. According to an attestation provided by Caruso to FINRA pertaining to monitoring and supervision, which was also provided to the Division during its investigation, compliance

reviews at Legend involve trade blotter review for accuracy, commissions, markup/markdowns, suitability based on the customer's stated objectives and other information from the new account form, and frequency of trades. In emphasizing the importance of daily reviews, Caruso further stated:

It is my opinion that a week or longer to conduct a compliance review is too long of a time period. If a problem exists, I want to find it and rectify it immediately before it can potentially escalate. Our WSP's will be completely updated within the next 2 to 3 months so that they reflect our current business procedures and activities.

If any exception of any kind or suspicious activity is observed, it will be investigated to determine if the exception or suspicious activity warrants action. In addition, the report viewed will be printed and notes will be made on the report if an exception does exist. The reviews are conducted by 2, sometime 3 individuals every day.

Another factor taken into consideration before determining whether or not a customer's activity is deemed suspicious is that I make it a point to KNOW MY CUSTOMER. I review the new account application, discuss the type of activities the customer may conduct, such as, is it a day trading customer?, what types of securities does he/she transact?, how long have you known the customer? Etc... I then monitor the activity in the account to get a good understanding of the type of business the customer conducts. This allows me to identify any deviations that may occur in the future.

There have not been any notable exceptions or suspicious activity during the review period.

98. Despite Caruso's attestation, the myriad requirements of Legend's WSPs, and Jacoby's activities that should have triggered supervisory reviews on numerous grounds, information produced to the Division provides no indication or documentation of any review of Jacoby's activities, the activities in K.P.'s account, or any indication that the policies and procedures described above were implemented or otherwise followed.¹⁸ By

¹⁸Based upon information provided by Legend, the only documentation of compliance with supervisory duties set forth in the WSPs consists of 1) trade tickets for just over half of the

letter to the Division dated March 2, 2011, Caruso represented that “[t]here is no other material information. All information has been supplied.”

99. Had Caruso or other Legend principals undertaken supervisory reviews as required by the WSPs, Jacoby’s numerous violations would have been easily discovered. As described above, the WSPs required frequent supervisory review of accounts, particularly those with high trading activity and the use of NCIs and “new product” investments of questionable suitability for a retired, disabled investor.
100. Legend and Caruso knew K.P. had retired early due to health disabilities and that he had ongoing health problems; that he had limited income; that the source of monies in his account were rollover IRA retirement funds; that K.P. had most recently been invested in less-aggressive annuity products with fixed returns; that he was relying on Jacoby’s recommendations; that he needed liquidity for the monies in the Legend account; and that his time frame for needing the monies in the account was short.
101. Moreover, Caruso purportedly knew enough about K.P. that at the time the account was established, Caruso recommended the purchase of an annuity as a suitable investment.
102. Legend failed to reasonably supervise its agents Jacoby and Caruso, by, among other things:
 - a. failing to adopt, implement and follow adequate supervisory and compliance procedures when presented with indications that Jacoby was engaging in highly questionable activities in K.P.’s account,
 - b. failing to maintain books and records required by industry rules and its WSPs;

transactions in K.P.’s account and 2) two check lists relating to inspections of Jacoby’s branch office, neither of which identified any compliance issues based on K.P.’s account or otherwise.

- c. failing to maintain books and records sufficient to demonstrate that adequate efforts were made to supervise Jacoby;
 - d. failing to ensure that supervisory persons such as chief compliance officer Caruso reasonably and diligently exercised their supervisory and compliance responsibilities; and
 - e. failing to follow its own WSPs and document the analysis, review, and any follow-up actions taken pertaining to Jacoby's activities and the activities in K.P.'s account.
103. The activity in K.P.'s account raised numerous red flags for Jacoby's violative conduct, including but not limited to the following:
- a. aggressive trading activity in volatile securities in the account of a retired, disabled investor;
 - b. the account was funded with retirement monies from conservative positions in annuities but then entirely traded in equities and non-traditional inverse and leveraged ETFs;
 - c. investor need for liquidity based on income needs;
 - d. Jacoby's remote office location;
 - e. Jacoby operating a one-person branch;
 - f. trading activities were inconsistent with stated investment objectives of long-term growth;
 - g. that the investment objectives were never changed or updated to be short-term or speculative;

- h. high commissions and lack of any discount for unsolicited trades;
 - i. significant losses in the account;
 - j. use of high-risk, speculative, inverse and leveraged ETF investments during periods of extreme market volatility;
 - k. Jacoby's broker notes abruptly ending in March 2009 but Jacoby continuing to trade the account for six more months, after which more than 50 trades took place;
 - l. 41% of Jacoby's compensation came from a single client account; and
 - m. activities in the account were wholly contrary to initial recommendations that an annuity would be suitable for K.P.
104. Legend was unable to produce trade tickets which were required to be maintained during the relevant period, in violation of securities industry regulations, the Act, and Legend's own policies and procedures, which required that such records be kept for six years.
105. The above findings evidence that Legend and its principals failed to reasonably supervise Legend agents, and as a result Jacoby was able to engage in fraudulent acts in excessively trading and making unsuitable recommendations in K.P.'s account, enriching himself and Legend to the detriment of the client, to whom, by the terms of Legend's own WSP, it owed a fiduciary duty.¹⁹

II. CONCLUSIONS OF LAW

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G) (Churning/Excessive Trading

106. Legend, through its agent Jacoby, induced trading in K.P.'s account which was excessive

¹⁹See para. 96, *supra*.

in size and frequency in view of the financial resources and character of the account, to generate commissions for Legend and Jacoby, which conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(C)(2), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

107. Legend and Jacoby's conduct also violates FINRA Rules 2010, 2310/2111, made applicable to broker-dealers through R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G) (Unsuitable Investments)

108. The recommendations and trading activity in K.P.'s account by Legend, through its agent Jacoby, were unsuitable given K.P.'s disabled and retired status, objectives, financial situation, and needs, which conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(C)(3), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

109. Legend and Jacoby's conduct also violates FINRA Rules 2010, 2090, 2310/2111, made applicable to broker-dealers through R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G) (Unauthorized Use of Discretion)

110. Legend, through its agent Jacoby, exercised unauthorized discretion in K.P.'s account without first obtaining written discretionary authority from K.P., which conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(C)(5), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

111. Legend and Jacoby's conduct also violates FINRA Rule 2510, made applicable to broker-

dealers through R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Securities Fraud Under § 61-1-1(3) of the Act

112. Legend, in connection with the offer, sale, or purchase of securities, through its agent Jacoby, engaged in acts, practices, and a course of business which operated as a fraud or deceit on K.P. in order to generate significant commissions for Legend and Jacoby. The violative conduct includes but is not limited to churning or excessively trading K.P.'s account, making unsuitable investments, exercising unauthorized discretion in K.P.'s account, and violating industry rules and standards, as well as Legend's policies and procedures.

Failure to Reasonably Supervise Under § 61-1-6(2)(a)(ii)(J)

113. Jacoby engaged in numerous violations of the Act as set forth above. Jacoby was subject to the supervision of Caruso, specifically, and Legend.

114. Although as described above, Legend's WSPs set forth requirements to ensure compliance with securities laws and regulations, Legend failed to implement, follow, or enforce those procedures with a view to preventing numerous securities violations by Jacoby.

115. Legend failed to reasonably supervise Jacoby and Caruso, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.

116. Legend's failure to supervise further violates FINRA Rule 3010, made applicable to broker-dealers under Utah Admin. Code Rule R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Failure to Maintain Books and Records Under § 61-1-5 of the Act

117. SEC Rules 17a-3 and 17a-4 set forth the requirements for broker-dealers to maintain trade records, as well as the period of time such records must be maintained. Section 61-1-5 of the Act requires that a broker-dealer maintain books and records “as the division by rule prescribes...” Rule R164-5-1(C)(1) of the Utah Administrative Code in turn requires that a broker-dealer shall make, maintain, and preserve books and records in compliance with SEC rules 17a-3 and 17a-4.
118. Legend failed to produce trade tickets for nearly half of the trades that took place in K.P.’s account, during a period in which such records were required to be made, maintained and preserved. Legend failed to maintain those books and records as set forth herein, as is required under Section 61-1-5(1) of the Act, and failed to respond to a reasonable request from the Division for those records under Section 61-1-5(5), warranting sanctions under Section 61-1-6(2)(a)(ii)(B) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

119. Respondent admits it failed to maintain books and records as described herein. Respondent neither admits nor denies the Division’s other Findings and Conclusions, but consents to the sanctions below being imposed by the Division.
120. Respondent represents that the information it has provided to the Division as part of the Division’s investigation is accurate.
121. Respondent agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.
122. Respondent agrees to withdraw its license in Utah no later than the next business day

following entry of this Order.

123. Pursuant to Utah Code Ann. Section 61-1-6, in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1 the Division imposes a fine of \$50,000.00. An initial payment of \$25,000 is due to the Division within ^{Ninety}~~thirty~~ (90) days following entry of this Order, and the remaining fine shall be paid within twelve (12) months following entry of this Order. APB

IV. FINAL RESOLUTION

124. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudice of the Commission, and such waiver shall survive any nullification.
125. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondent consents to entry of an order in which:
- a. Respondent admits the Division's Findings of Fact and Conclusions of Law as set forth in this Order; and
 - b. Respondent's fine shall increase to \$100,000.00 and become immediately due and payable.

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

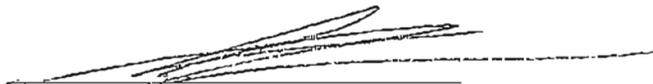
verifying the violation. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this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

126. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against it 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 his conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against it have no effect on, and do not bar, this administrative action by the Division against it. If Respondent materially violates this Order, however, the Findings of Fact and Conclusions of Law set forth in this Order are deemed admitted as described in paragraph 125 above, and may be introduced as evidence against Respondent in any arbitration, civil, criminal, or regulatory actions.
127. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this ____ day of _____, 2016

Dated this ^{7th} 20 day of MAY, 2016

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

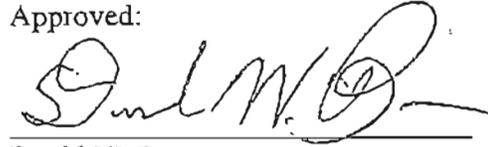


Salvatore C. Caruso
President
Legend Securities, Inc.

Approved:

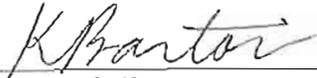
Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division



David W. Brown
Counsel for Respondent

Dated this 20 day of May, 2016



Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:



Jennifer Korb
Assistant Attorney General
Counsel for Division

Dated this 20th day of MAY, 2016



Salvatore C. Caruso
President
Legend Securities, Inc.

Approved:

David W. Brown
Counsel for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted in part as set forth in paragraph 119 but which are otherwise neither admitted nor denied by the Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondent agrees to withdraw its license in Utah no later than the next business day following entry of this Order.
4. Pursuant to Utah Code Ann. Section 61-1-6, in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of \$50,000.00, which shall be paid as set forth in paragraph 123 above.

BY THE UTAH SECURITIES COMMISSION:

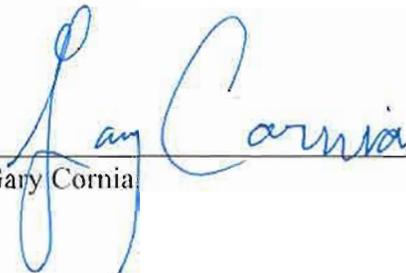
DATED this 26th day of May, 2016



Brent Baker



Erik Christiansen



Gary Cornia

David A. Russon



Lyle White

Certificate of Mailing

I certify that on the 27th day of May, 2016, I mailed, by certified mail, a true and correct copy of the fully executed Stipulation and Consent Order to:

David W. Brown
Blake Professional Plaza
2880 West 4700 South, Suite F
Salt Lake City, UT 84129

Certified Mail # 7015 0640 00065947 1629

A handwritten signature in blue ink that reads "AllAnn Cream". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Secretary

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

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

IN THE MATTER OF:

**KELLY T. SCOTT, CRD #2199834; and
RETIREMENT ADVISORS**

Respondents.

**STIPULATION TO VACATE
ADDENDUM TO CONSENT ORDER**

Docket No. SD-07-0031

Docket No. SD-07-0034

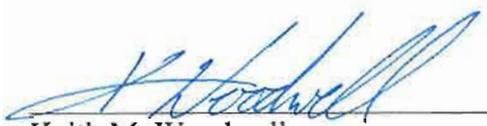
The Utah Division of Securities and the Respondents herein, Kelly T. Scott and Retirement Advisors, hereby stipulate to vacate the Addendum to Consent Order entered on these dockets on May 28, 2015. In furtherance hereof, these parties jointly agree:

1. The parties entered into a Stipulation and Consent Order ("Order") in this matter on October 16, 2007.
2. The parties entered into an Addendum to the Order ("Addendum") on May 28, 2015.
3. The Addendum acknowledged Respondents' compliance with the Order and modified the limitations of the Order as set forth therein.
4. Respondents are requesting removal of administrative records from public access by the Utah Division of Securities under Utah Code § 63G-4-107, the relevant provisions of which require that at least five years have passed since the date the final order in an administrative action was issued.

5. To assure compliance with the governing statutory provision, and to avoid any confusion about the date of the final order in the administrative actions captioned herein, the parties stipulate that the Addendum may be vacated and that the Consent Order is the final order in these actions for purposes of Utah Code § 63G-4-107.

6. The Division of Securities stipulates and agrees that its acknowledgment in the Addendum of Respondents' compliance with the obligations in the Order remains true notwithstanding the vacating of the Addendum.

Dated this 19th day of May, 2016.



Keith M. Woodwell
Director, Division of Securities

Dated this _____ day of May, 2016.

Stephen K. Christiansen
Counsel for Respondents

5. To assure compliance with the governing statutory provision, and to avoid any confusion about the date of the final order in the administrative actions captioned herein, the parties stipulate that the Addendum may be vacated and that the Consent Order is the final order in these actions for purposes of Utah Code § 63G-4-107.

6. The Division of Securities stipulates and agrees that its acknowledgment in the Addendum of Respondents' compliance with the obligations in the Order remains true notwithstanding the vacating of the Addendum.

Dated this 19th day of May, 2016.



Keith M. Woodwell
Director, Division of Securities

Dated this 20th day of May, 2016.



Stephen K. Christiansen
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED:

1. The Addendum to Consent Order dated May 28, 2015, is hereby vacated on the terms, for the reasons, and with the conditions set forth in the stipulation between the parties hereto.

BY THE UTAH SECURITIES COMMISSION:

DATED this 20th day of May, 2016.



Brent Baker



Tim Bangertor



Erik Christiansen



Gary Cornia

David A. Russon

Certificate of Mailing

I certify that on the 27th day of May 2016, I mailed a true and correct copy of the Stipulation to Vacate Addendum to Consent Order to:

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



Executive Secretary