

**Utah Division of Securities Commission
Meeting Minutes
May 26, 2016**

Division of Securities Staff Present

Keith Woodwell, Division Director
LeeAnn Clark, Commission Secretary
Dave Hermansen, Enforcement Director
Kenneth Barton, Compliance Director
Benjamin Johnson, Licensing & Registration Director
Chip Lyons, Securities Analyst
Andreo Micic, Securities Analyst
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
John Bickmore, Enforcement Investigator
Anna Crandall, Enforcement Investigator
Mandy Krueger, Enforcement Investigator
Jason Sterzer, Securities Examiner
Bryan Cowley, Securities Examiner
Russ Bulloch, Securities Examiner
Sally A. Stewart, Securities Receptionist

Other State of Utah Employees

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

Commissioners Present

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

Public Present

Stephen Christiansen, Stephen K. Christiansen Attorney at Law

Minutes: At 9:00 am the meeting was called to order by Commissioner **Brent Baker**. Commissioner **Gary Cornia** made the motion to approve the minutes from the March 24, 2016 Commission meeting and Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Director's Report: Director Woodwell provided the Securities Commission with an update.

1. Commissioner Russon recently retired from IMC and Cambridge and is no longer a licensee of the Division. He will be stepping down from the Commission as well. Director Woodwell indicated that the Division is trying to find another licensee to fulfill the rest of Mr. Russon's term. The Division will work with the Governor's Office to find a replacement.
2. Mr. Woodwell reported that the Division is fully staffed. Mandy Krueger was introduced as a new Enforcement Investigator. Jason Sterzer was introduced as a new Compliance Examiner. Assistant Attorney General Tom Melton introduced Wayne Jones as a new addition to the Attorney General Office.
3. Director Woodwell provided an update on two cases that were decided by the Commission and are currently on appeal. The Agency Review for the Phillips case was upheld by the Department of Commerce Executive Director. This case is now on appeal and is fully briefed. Oral arguments before the Utah Court of Appeals are scheduled for July 19, 2016. The main issue being appealed is the statute of limitations, but there are other issues related to the calculation of administrative fines. The other case that is on appeal is the Brent Allen Morgan case. The Agency Review for the Morgan case was upheld by the Department of Commerce Executive Director. The sole issue being appealed is the statute of limitations. This case is still in the briefing stage at the Utah Court of Appeals.
4. Director Woodwell updated the commission on the Administrative Expungement Petition process and the implementation of HB118 that was passed in the 2016 Legislative Session. The relevant administrative records have now been removed from the Division's Online Database. The Database now includes a caveat that states "*Pursuant to Utah Code 63G-4-106 and 107, all administrative disciplinary actions commenced over 10 years ago and certain actions over 5 years are not accessible online, but may be provided in response to a GRAMA request.*" For cases that are between 5 and 10 years old, the Respondent can petition the Division and pay a \$200 fee to have their administrative orders removed from the database. Assistant Attorney General Melton emphasized that it is important to recognize even though all requested administrative orders have been removed, all provisions of the orders must be met in order to qualify for early expungement.

Enforcement Section Report: Dave Hermansen provided the Securities Commission an update on Enforcement Section events. KristiLyn Wilkinson will be returning the middle of June. The Section currently has 22 administrative actions that are in progress. There has been a slight increase in the number of complaints received. The Section has screened six additional criminal cases with prosecutors. Mr. Hermansen provided the Commission Members an update on pending criminal cases.

Compliance Section Report: Ken Barton provided the Securities Commission an update on the Compliance Section. YTD 2016 Audit Statistics- the Compliance Section initiated 20 audits YTD. Eleven audits were for-cause audits triggered by investor complaints; nine were routine audits of both investment advisor firms and broker-dealer branch offices. The Compliance Section has nine administrative actions in progress. One action is on today's agenda for an approval of a Stipulation and Consent Orders; in six actions an Order to Show Cause or Petition to Censure and Fine has been filed with

the respondent; two administrative actions are stayed pending criminal actions. The Section has referred four cases to the Utah Attorney General's office for criminal prosecution. Mr. Barton also provided the Commission with an update on the status of some of the pending criminal cases arising from the section's audits and investigations.

Registration and Licensing: Benjamin Johnson provided the Securities Commission an update on the Registration and Licensing Section. The date for implementation of the Division's new administrative rule connected to Regulation A - Tier 2 is the end of June. The section is preparing a courtesy notification to inform filers of the new Regulation A - Tier 2 requirements. The notification will be sent the middle of June.

Investor Education: Karen McMullin provided the Securities Commission an update on Investor Education events.

Event Update- since the March Commission Meeting, the Division has participated in 12 events with an estimated audience of around 2,000 people.

- Elder Financial Exploitation - During two recent AARP "Real Possibilities" events, Keith was the keynote speaker. Over 500 seniors were in attendance and heard the Division's new presentation titled "Smarter Now...Than Ever Before". This presentation focuses on educating the audience to become "Smarter than your neighbor, co-worker, and the scam artists". The fraud awareness and investor protection message has not changed but the presentation suggests a change in thought processes by consumers and points out sales techniques commonly used on seniors.
- URS - The "Smarter Now" presentation is also being used at the 2016 URS seminars, teaching public employees about the tools to empower them to make informed decisions as they approach retirement. In the first four URS seminars, approximately 480 public employees heard this presentation and they each received the Division folder full of Investor Education material. The "Smarter Now" presentation also encourages action by using FINRA's BrokerCheck, CFTC's SmartCheck and offers additional reasons to call the Division to check on an individual or an offering. The Division has experienced phone calls from the public the morning following events and individuals have made appointments requesting additional help.
- Stock Market Game - The ten-week Spring Semester of the Stock Market Game ended with a total of 1,033 teams participating via registration by 72 teachers. The highlight for this semester was, out of 550 teams in the High School Division, watching the first place team win with an ending cash balance of \$157,448.06, an impressive 57.45% return in ten weeks. In the past, other teams have experienced similar success, but this team consisted of seven students who are currently wards of the state at Slate Canyon Youth Center in Provo. Their teacher described the team's success by overcoming obstacles way beyond the norm. With very limited access to computers and challenges which only those who work closely with the students understand, these young men accomplished something to be remembered

for a long time. The Division cooperated with several different agencies to provide a separate awards ceremony at the Slate Canyon facility to recognize the win. The Provo Daily Herald, Provo City School District and the Deseret News all covered the story.

- 2016-17 SMG School Year - The Stock Market Game schedule for the 2016-17 school years has been set and it includes three workshops for teachers at the Utah State Office of Education Business and Marketing Conference, one full day teacher training to be held at the Heber Wells building, two three-week Teacher Promo Stock Market Game sessions, and two ten-week semesters in the fall and spring of the school year.

Education and Training Fund Report:

Following the presentation of the Education and Training fund report by Benjamin Johnson, Commissioner **Gary Cornia** made the motion to approve the funding request, in the amount of \$37,792.20. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Consideration and Approval of Proposed Orders

Gregory Orville Hatcher, SD-16-0008: Recommended Order on Motion for Default and Order on Motion for Default

Jennifer Korb reported that on February 5, 2016 an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondent was ordered to file a response to the order within a 30-day period. Respondent failed to respond. An initial hearing was held on April 6, 2016; Respondent failed to appear. Because Respondent failed to file a Response it is recommended that a default judgement against the Respondent be entered. In the recommended default order, Respondent is ordered to pay a fine of \$273,750 to the Division, with \$54,750 of the fine due and payable in full upon receipt of the Final Order. The remaining \$219,000 is subject to offset for a period of 30 days from the Final Order, on a dollar-for-dollar basis for any restitution paid to investors. If Respondent fails to provide proof of restitution payments within the 30-day period; the full \$273,750 fine becomes due immediately and subject to collection. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondent.

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

Gary Allen Lewis and Lewis Transportation Group, LLC, SD-16-0005, SD-16-0006: Recommended Order on Motion for Default and Order on Motion for Default

Jennifer Korb reported that on February 3, 2016, an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondents were ordered to file a response to the order within a 30-day period. Respondents failed to respond. An initial hearing was held on April 6, 2016; Respondents failed to appear. Because Respondents failed to file a Response it is

recommended that a default judgement against the Respondents be entered. In the recommended default order, Respondents are ordered to pay a fine of \$792,500 to the Division, with \$158,000 of the fine due and payable in full upon receipt of the Final Order. The remaining \$634,000 is subject to offset for a period of 30 days from the Final Order, on a dollar-for-dollar basis for any restitution paid to investors. If Respondents fail to provide proof of restitution payments within the 30-day period; the full \$792,500 fine becomes due immediately and subject to collection. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondents.

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

Bret Cartwright and Exceptional Realty, SD-15-0036, SD-15-0037: Recommended Order and Order.

Jennifer Korb reported that an adjudicative proceeding was initiated pursuant to an April 12, 2015 Notice of Agency Action and Order to Show Cause. The Division and Respondents settled the administrative action by entering into a Stipulation and Consent 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 respond. The Division 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 the Respondents be found to have materially violated the Consent Order by failing to pay the agreed-upon fine of \$7,363.09. Under the terms of the proposed order, Respondents are required to pay the unpaid balance of the fine immediately. Respondents would be deemed to have admitted to the Division's Findings of Facts and Conclusions of the Law. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondents.

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

Jason Dwayne Watson and InREFCo, LLC, SD-15-0051, SD-15-0052: Stipulation and Consent Order.

Dave Hermansen reported that on or about the November 4, 2015 the Division initiated an administrative action against Respondents, through the issuance of a Notice of Agency Action and Order to Show Cause. Respondents now seek to enter in a Stipulation and Consent Order in settlement of Division's action. As part of the proposed Stipulation and Consent Order, the Division imposes a total fine of \$10,000 against Respondents, jointly and severally. Respondents shall pay the fine pursuant to the following schedule: \$3,000 due within 15 days of the entry of this order and \$1,000 due the first day of each quarter and then \$1,000 is due the first day of the of the next six consecutive quarters. If the Respondents martially violate any terms of this Order,

the unpaid balance of the fine amount shall be imposed and become due immediately. The Stipulation and Consent Order also includes a cease and desist order and a permanent securities bar against the Respondents.

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

Legend Securities, Inc., SD-16-0010: Stipulation and Consent Order.

Ken Barton reported that on or about the November 4, 2015 the Division initiated an administrative action against Respondent, through the issuance of a Petition to Censure Licensee and Impose a Fine. Respondent and the Division have agreed to the terms of a Stipulation and Consent Order, which imposes a total fine of \$50,000 against Respondent. An initial payment of \$25,000 is due within 90 days following the entry of the Order and the remaining fine shall be paid within 12 months following the entry of the Order. If the Respondents partially violate any terms of the Order, the unpaid balance of the fine amount shall be imposed and become due immediately. The Stipulation and Consent Order also includes a cease and desist order and Respondent agrees to withdraw its license in Utah no later than the next business day following entry of the Order.

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

Kelly Thomas Scott and Retirement Advisors: SD-07-0031, SD-07-0034: Stipulation to Vacate Addendum to Consent Order.

Keith Woodwell reported that the Division and the Respondents entered into a Stipulation and Consent Order on October 16, 2007. The parties entered into an Addendum to the Stipulation and Consent Order on May 28, 2015. Respondents are petitioning for removal of their administrative records from public access by the Division, which requires that at least five years have passed since the final order in the administrative action was issued. To assure compliance with the five year requirement and to avoid confusion, the parties stipulate that the 2015 Addendum may be vacated and that the 2007 Stipulation and Consent Order should be considered the final order.

Commissioner **Erik Christiansen** made the motion to approve the proposed Stipulation to Vacate Addendum to Consent Order. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Future Meeting Schedule:

August 4, 2016, room 403, starting at 9am
September 22, 2016, room 403, starting at 9am
December 1, 2016, room 403, starting at 9am

Commissioner **Brent Baker** called for a motion to adjourn the Securities Commission Meeting. Commissioner **Erik Christiansen** made a motion adjourn and Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously. Meeting adjourned at 11:10 am.

Approved: _____
Erik Christiansen, Chairman

Date: _____