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 KENNETH SHAWN WHITEHEAD, RESPONDENT	**RECOMMENDED ORDER ON MOTION FOR DEFAULT** Case no. SD-16-0018

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to an April 19, 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 June 15, 2016. Respondent failed to appear.

The Presiding Officer finds that, pursuant to Utah Code § 63G-4-209(1)(b) and (c), proper factual and legal bases exist for entering a default order against Respondent.

RECOMMENDED ORDER

The Presiding Officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, and find:

1. That the investment opportunities offered and sold by Respondent(s) are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);

2. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(1), Respondent employed a device, scheme, or artifice to defraud;

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;

5. 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; and

6. That Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

The Presiding Officer further recommends that the Utah Securities Commission enter a default order against Respondent, requiring:

1. That Respondent cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;

2. That Respondent pay a fine of $1,008,750 to the Utah Division of Securities, with $201,750 of the fine due and payable in full upon receipt of the final order and the remaining $807,000 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 $1,008,750 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 July 26, 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 KENNETH SHAWN WHITEHEAD, RESPONDENT	**ORDER ON MOTION FOR DEFAULT** Case no. SD-16-0018

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

Respondent is hereby ordered to pay a fine of $1,008,750 to the Utah Division of Securities. Of this total fine, $201,750 is due and payable immediately upon receipt of this final order. The remaining $807,000 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 $1,008,750 fine becomes immediately due and payable, and subject to collection.

Respondent is hereby permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in Utah; and from being licensed in any capacity in the securities industry in Utah.

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

DATED this 4th day of August, 2016

UTAH SECURITIES COMMISSION:

Lyle White

Erik Anthony Christiansen

Brent Baker

Gary Cornia

Brent A. Cochran

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 4th day of August, 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:

Kenneth Shawn Whitehead
7857 So Goldenpointe Way
West Jordan, Utah 84088

Kenneth Shawn Whitehead
6921 So 90 E
Midvale, Utah 84047

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

LeeAnn Clark

Thomas M. Melton (4999)
Jennifer R. Korb (9147)
Assistant Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for the State of Utah
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, Utah 84114-0872
Telephone (801) 366-0310
Fax (801) 366-0315
Email: tmelton@utah.gov
jkorb@utah.gov

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

IN THE MATTER OF: **THEODORE LAMONT HANSEN (CRD#2833082),** DAVID LYLE TURNER, and **ZURICH HOLDINGS LIMITED LIABILITY COMPANY,** Respondents.	**STIPULATION AND CONSENT ORDER** **Docket No. SD-14-0052** Docket No. SD-14-0053 **Docket No. SD-14-0054**

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave R. Hermansen, and Respondents Theodore Lamont Hansen ("Hansen") and Zurich Holdings Limited Liability Company ("Zurich") (together, Hansen and Zurich are referred to herein as "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 (the

"Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.

2. On October 29, 2014, the Division initiated an administrative action against Respondents by filing an Order to Show Cause and Notice of Agency Action ("OSC").

3. Respondents hereby agree 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 Respondents pertaining to the OSC.

4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.

5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

6. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order as set forth below. 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 Order.

7. Respondents are represented by attorney Rebecca Skordas and are satisfied with the legal representation they have received.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

8. Hansen was, at all times relevant to the matters asserted herein, a resident of the state of Utah. In or about 1997, Hansen passed the Series 6 and Series 63 exams. Shortly thereafter, he became licensed as a broker-dealer agent in the state of Utah and

maintained his license until approximately 2001. Hansen has not been licensed in the securities industry in any capacity since that time.

9. Zurich is a Utah-based limited liability company that registered with the Utah Division of Corporations ("Corporations") on or about October 6, 2008. Its current status with Corporations is listed as "active." David Lyle Turner ("Turner") serves as the manager of Zurich and Becky Curtis is listed as the registered agent. Zurich has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

10. From approximately January to February 2012, Respondents offered and sold promissory notes and/or investment contracts, in or from Utah, to at least two investors and collected a total of $500,000.

11. Promissory notes and investment contracts are defined as securities in § 61-1-13 of the Act.

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

INVESTORS B.M. AND T.E.

FIRST OFFER AND SALE OF SECURITIES

13. In or about January 2012, T.E.' s friend, Eric Schriever ("Schriever"), recommended that T.E. speak with Hansen regarding a possible investment opportunity.

14. Schriever told T.E. that he had known Hansen for a long time and that the opportunities Hansen presented were legitimate.

15. He explained that he had invested funds with Hansen in the past and had been repaid in full.

16. Based on Schriever's recommendation, T.E. and his business partner, B.M., decided to meet with Hansen to discuss a possible investment.

17. In or about January 2012, T.E., B.M., Schriever, and Hansen met at a restaurant in American Fork, Utah.

18. During that meeting, Hansen discussed a possible investment through his company, Zurich, which purchased distressed apartment complexes primarily located in Texas and Oklahoma.

19. Shortly following that meeting, Hansen met with Schriever and B.M. at B.M.'s place of business in American Fork, Utah to discuss the investment in greater detail.

20. During that conversation, Hansen made the following representations:

    a. Hansen owned six large multi-unit apartment complexes containing hundreds of units;

    b. Hansen also owned 250 houses in Detroit, Michigan;

    c. Hansen needed investors to help him acquire more distressed apartments;

    d. Specifically, he needed $200,000 for an immediate close on some apartments located in Tulsa, Oklahoma; and

    e. Hansen also needed funds to repair and purchase his office building in Alpine, Utah.

21. He then offered to use a first position right to an oil and gas lease as collateral.

22. He also provided B.M. with a binder of information related to an apartment complex in Tulsa, Oklahoma.

23. Based on these representations, B.M. and T.E. decided to invest with Hansen through their business.

24. On or about January 24, 2012, B.M. and T.E. provided Hansen with a check in the amount of $200,000, made payable to Zurich.

25. Hansen deposited that check into the Zurich business account at Mountain America Credit Union on that same day.

26. In exchange for their investment, B.M. and T.E. received a promissory note signed by Hansen and dated January 24, 2012.

27. The note reflects a principal investment amount of $200,000, a 7.5% monthly interest rate, and a three month term, with complete repayment due on or before April 24, 2012.

SECOND OFFER AND SALE OF SECURITIES

28. A few days after the first investment, Hansen approached B.M. and T.E., requesting an additional $250,000 to close on the apartments located in Tulsa, Oklahoma.

29. B.M. and T.E. agreed to provide the additional funds and worked with an attorney to prepare a document that would fully encompass the terms of the first and second investments.

30. This document, titled "Loan Agreement," is dated February 3, 2012 and signed by Hansen and Turner on behalf of Zurich. Hansen also signed as pledgor on behalf of an entity listed as DeCarlo Apartments, LLC.

31. The agreement references the original promissory note for $200,000 and includes a second promissory note for $250,000.

32. It also sets forth the following terms and provisions:

a. Zurich is the borrower, and B.M. is the lender;

b. The combined principal investment totals $450,000;

c. As inducement for the investment, Zurich contracts to provide:

i. A second position interest in a specific property located in American Fork, Utah;

ii. An assignment of interest in a certain oil and gas lease between DeCarlo Apartments, LLC and another entity;

iii. A five percent continuing interest in that lease that will survive the termination of the Loan Agreement;

iv. A ten percent interest in Zurich's next apartment building acquisition that would similarly survive the termination of the agreement; and

v. A 50% membership interest in a limited liability company that owns a single unit residential investment property, with said interest to be granted within sixty days of the agreement.

d. The document also provides a five percent monthly interest rate for a term of five months on the $250,000 investment;

e. Additionally, it states that the funds will be used to satisfy all loan and underwriting fees, as well as title policy and recording fees, and then to cover Zurich's general business expenses, which include the acquisition and

maintenance of real estate investments; and

f. The funds will not be used to make principal or interest payments to other creditors of the borrowers or its affiliates.

33. In addition to the Loan Agreement, Hansen and Turner executed a document titled "Secured Promissory Note with Balloon Provision."

34. That document, dated February 3, 2012, is signed by Hansen and Turner, on behalf of Zurich, and includes a three percent monthly interest rate, with a term of five months.[1]

35. It also purports to convey the assignment of rents covering real property located in American Fork, Utah and the assignment of an interest in the above-mentioned oil and gas lease.

36. In connection with the execution of these agreements, B.M. and T.E. provided an additional $250,000 to Hansen between approximately January 30, 2012 and February 3, 2012 as follows:

a. $178,105.95 paid to Zurich;

b. $1,450 paid to a third party in connection with title policy and recording fees;

c. $1,800 paid to a third party in connection with legal, underwriting, and document preparation fees; and

d. $68,644.05 paid directly to Charger Title Company for the purchase of a building located in Alpine, Utah.

[1] The parties also exchanged a "Guaranty," dated February 3, 2012 and signed by Hansen and Turner, a "Pledge Agreement," dated February 3, 2012 and signed by Hansen, and a second deed of trust, dated February 2012 and signed by Hansen. These documents set forth additional details regarding B.M. and T.E.'s first two investments, totaling $450,000.

THIRD OFFER AND SALE OF SECURITIES

37. On or about February 22, 2012, Hansen approached B.M. with an additional investment opportunity.

38. Hansen claimed to need funding to pay for the closing costs associated with the purchase of a 128-unit apartment complex known as the Landings.

39. In exchange for the investment, Hansen agreed to return B.M.'s principal by March 3, 2012.

40. Additionally, B.M. would receive a fifty percent ownership interest in the project, be named as a sales manager, and become a member of a new limited liability company that Hansen would create specifically for that project.

41. In connection with the pitch, Hansen prepared a hand-written document, titled "Agreement," to outline the terms of the investment.

42. The Agreement is dated February 22, 2012, signed by Hansen, on behalf of Zurich, and B.M., as an investor.

43. The terms of the Agreement are as follows:

a. B.M. agrees to provide $100,000 on or before February 22, 2012;

b. An additional $200,000 shall be provided, if needed, for closing costs associated with the Landings project located in Tulsa, Oklahoma;

c. B.M. will receive a 50% ownership interest in the project;

d. B.M. will become the sole manager and member of the new limited liability company established for purposes of this project;

e. Zurich will make its first payment on this open line of credit on or about March 2,

2012 in the amount of $50,000; and

f. Hansen personally guarantees the investment.

44. Beneath the signature lines on the Agreement, Hansen includes a note reflecting that the parties agreed to an initial investment of $50,000 and that Hansen would pay an additional $50,000 as compensation for a prior note.

45. Such amount shall be paid on March 3, 2012.

46. Based on these representations, B.M. invested $50,000 with Zurich by providing a check for that amount on or about February 22, 2012.

47. Hansen deposited that check in Zurich's bank account at Mountain America Credit Union on or about the same day.

48. Following that transaction, Hansen failed to close on the Landings complex and never created the limited liability company referenced in the Agreement.

49. Further, a source and use analysis of the relevant bank records reflects that Respondents failed to use investor funds in any of the three investments as represented in the pitch. Instead, Respondents used some, if not all, of the investment funds for the following types of expenses: payments to other investors, personal expenses, utilities, and transfers to Hansen's other businesses.

50. Additionally, at the time of the filing of the OSC, the investors had only received a return of $300,000 of their total investment and were still owed $200,000 in principal alone.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act Investors B.M. and T.E. (First Offer and Sale of Securities)

51. The Division incorporates and re-alleges paragraphs 1 through 50.

52. The promissory note offered and sold by Hansen is a security under § 61-1-13 of the Act.

53. In connection with the offer and sale of a security to investors B.M. and T.E., Hansen, directly or indirectly, made false statements, including, but not limited to, the following:

a. Hansen owned six large multi-unit apartment complexes containing hundreds of units, when, in fact, he only owned portions of two apartment complexes;

b. Hansen owned 250 houses in Detroit, Michigan, when, in fact, Hansen did not own any houses in Detroit. Instead, he had been employed to perform maintenance work on twenty-five houses in that area and was attempting to use his connection with those houses as collateral for the loan;

c. Hansen would use some of B.M. and T.E.'s investment to close on some apartments, when, in fact, he did not use any of the funds for this stated purpose and never closed on that complex;

d. Hansen would use some of the investment funds to purchase and repair his office building, when, in fact, a source and use analysis of the bank records indicates that the funds tied to the first investment were used for the following types of expenses: payments to other investors, personal expenses, utilities, and transfers to Hansen's other businesses; and

e. Hansen offered first position rights to an oil and gas lease as collateral for the loan, when, in fact, he did not have any ownership interest in said lease and could not legally transfer that interest to the investors.

54. In connection with the offer and sale of a security to investors B.M. and T.E., Hansen,

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. Hansen had an $810,002.67 default judgment entered against him in 2005 for breaching the terms of a promissory note;

b. On or about September 26, 2011, Hansen had a breach of contract suit filed against him in Nevada;

c. At the time of solicitation and investment, Hansen had the following outstanding civil judgments issued against him:

   i. Contract judgments totaling approximately $33,445,371.47;

   ii. Debt collection judgments totaling approximately $2,566,149.29;

   iii. Tax lien judgments totaling approximately $1,171,200.49;

   iv. Foreign judgments totaling approximately $6,295,803.52;

   v. Lien and/or mortgage foreclosure judgments totaling approximately $908,984.48; and

   vi. Miscellaneous judgments totaling approximately $1,858,476.07;

d. Hansen had eviction judgments granted against him in 2004 and 2005; and

e. Some or all of the information typically provided in an offering circular or prospectus regarding Hansen, Zurich, and any other individuals associated therewith, such as:

   i. Business background information;

   ii. Financial statements;

   iii. Risk factors;

   iv. Conflicts of interest;

v. Suitability factors for the investment;

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

vii. Whether Hansen was licensed to sell securities.

Securities Fraud under§ 61-1-1 of the Act Investors B.M. and T.E. (Second Offer and Sale of Securities)

55. The Division incorporates and re-alleges paragraphs 1 through 50.

56. The promissory note or investment contract offered and sold by Respondents is a security under § 61-1-13 of the Act.

57. In connection with the offer and sale of a security to investors B.M. and T.E., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

a. Respondents would use the loan funds to cover loan and underwriting fees, title policy and recording fees, and Zurich's general business activities, which included the acquisition and maintenance of real estate investments, when, in fact, a source and use analysis of the bank records shows that at least some of the funds were used for the following types of expenses: payments to other investors, personal expenses, utilities, and transfers to Hansen's other businesses;

b. Loan funds would not be used to make principal or interest payments to other creditors of Zurich or its affiliates, when, in fact, a source and use analysis of the

relevant bank records indicates that some of the investors' funds were used to repay other investors; and

c. Respondents offered rights to an oil and gas lease as collateral for the loan, when, in fact, they did not have an ownership interest in said lease and could not legally transfer that interest to the investors.

58. In connection with the offer and sale of a security to investors B.M. and T.E., 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. Respondents used the investors' initial investment for purposes outside the scope of their original agreement;

b. Hansen had an $810,002.67 default judgment entered against him in 2005 for breaching the terms of a promissory note;

c. On or about September 26, 2011, Hansen had a breach of contract suit filed against him in Nevada;

d. At the time of solicitation and investment, Hansen had the following outstanding civil judgments issued against him:

i. Contract judgments totaling approximately $33,445,371.47;

ii. Debt collection judgments totaling approximately $2,566,149 .29;

iii. Tax lien judgments totaling approximately $1,171,200.49;

iv. Foreign judgments totaling approximately $6,295,803.52;

v. Lien and/or mortgage foreclosure judgments totaling approximately $908,984.48; and

vi. Miscellaneous judgments totaling approximately $1,858,476.07;

e. Hansen had eviction judgments granted against him in 2004 and 2005; and

f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, and any other individuals or entities associated therewith, such as:

i. Business background information;

ii. Financial statements;

iii. Risk factors;

iv. Conflicts of interest;

v. Suitability factors for the investment;

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

vii. Whether Respondents were licensed to sell securities.

Securities Fraud under§ 61-1-1 of the Act Investor B.M.
(Third Offer and Sale of Securities)

59. The Division incorporates and re-alleges paragraphs 1 through 50.

60. The investment contract offered and sold by Hansen and Zurich is a security under§ 61-

1-13 of the Act.

61. In connection with the offer and sale of a security to investor B.M., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:

a. The funds would be used to cover closing costs on the 128-unit apartment complex located in Tulsa, Oklahoma, when, in fact, a source and use analysis of the relevant bank records indicates that Hansen used the funds for the following types of expenses: payments to other investors, personal expenses, and transfers to Hansen's other businesses; and

b. Hansen personally guaranteed the investment, when, in fact, Hansen had no reasonable basis for this guarantee.

62. In connection with the offer and sale of a security to investor B.M., Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:

a. Hansen had misused the funds from B.M. 's prior two investments;

b. Hansen had an $810,002.67 default judgment entered against him in 2005 for breaching the terms of a promissory note;

c. On or about September 26, 2011, Hansen had a breach of contract suit filed against him in Nevada;

d. At the time of solicitation and investment, Hansen had the following outstanding civil judgments issued against him:

i. Contract judgments totaling approximately $33,445,371.47;

ii. Debt collection judgments totaling approximately $2,566,149.29;

iii. Tax lien judgments totaling approximately $1,171,200.49;

iv. Foreign judgments totaling approximately $6,295,803.52;

v. Lien and/or mortgage foreclosure judgments totaling approximately $908,984.48; and

vi. Miscellaneous judgments totaling approximately $1,858,476.07;

e. Hansen had eviction judgments granted against him in 2004 and 2005; and

f. Some or all of the information typically provided in an offering circular or prospectus regarding Hansen, Zurich, and any other individuals associated therewith, such as:

i. Business background information;

ii. Financial statements;

iii. Risk factors;

iv. Conflicts of interest;

v. Suitability factors for the investment;

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

vii. Whether Hansen was licensed to sell securities.

CRIMINAL CHARGES AGAINST RESPONDENT HANSEN

63. On August 6, 2014, Hansen was charged criminally in Utah's Fourth District Court (*State of Utah vs. Theodore L Hansen,* Case No. 141402284) in connection with the conduct described in this Order.

64. On January 11, 2016, as part of a plea agreement, Hansen entered a guilty plea to two

counts of Attempted Sale of Unregistered Securities (Class A Misdemeanors).

65. On February 22, 2016, Hansen was sentenced to 365 days in jail for each count (which was suspended) and was placed on probation for 36 months.

66. Hansen paid full restitution to the victims in the criminal matter (which was approximately $500,000), and therefore no restitution was imposed.

II. THE DIVISION'S CONCLUSIONS OF LAW

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

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

b. Respondents violated § 61-1-1(2) of the Act by making untrue statements of material facts and/or omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

68. Respondents neither admit nor deny the Division's Findings of Fact and Conclusions but consent to the sanctions below being imposed by the Division.

69. Respondents represent that any information they provided to the Division as part of its investigation is accurate and complete.

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

71. Respondents agree to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor

funds in this state.

72. 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 total fine of $20,000.00 against Respondents, jointly and severally. The fine shall be paid as follows: (a) $10,000 paid within thirty (30) days following entry of this Order, and (b) $10,000 paid within sixty (60) days following entry of this Order.

IV. FINAL RESOLUTION

73. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter. Respondents acknowledge 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, Respondents expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

74. If either 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, Respondents consent to entry of an order in which:

a. Respondents admit the Division's Findings of Fact and Conclusions of Law as set forth in this Order; and

b. any payments owed by Respondents pursuant to this Order 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 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 the 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.

75. 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.

76. 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 the 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.

77. 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.

Utah Division of Securities:

Date: 07-12-2016

By: Dave R. Hermansen
Director of Enforcement

Respondent Hansen:

Date: 7/7/16

[redacted]
Theodore Lamont Hansen

Approved:

Jennifer Korb
Assistant Attorney General

Respondent Zurich Holdings LLC

Date: 7/7/16

By: [redacted]

Its: MANAGER

Approved:

Rebecca H. Skordas
Attorney for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondents neither admit nor deny, are hereby entered.

2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.

3. Respondents are barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in this state.

4. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines contained in Utah Admin. Code Rule R164-31-1, the Division imposes a total fine in the amount of $20,000.00, to be paid as set forth in paragraph 72 above.

BY THE UTAH SECURITIES COMMISSION:

DATED this 4th day of August, 2016.

Brent R. Baker

Brent Baker

Lyle White

Lyle White

Erik Christiansen

Erik Christiansen

Gary Cornia

Gary Cornia

Brent A. Cochran

CERTIFICATE OF MAILING

I certify that on the 4th day of August, 2016, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Rebecca Skordas Skordas
Caston & Hyde
560 South 300 East Suite 225 Salt
Lake City, Utah 84111
Counsel for Respondents Theodore Hansen and Zurich Holdings LLC

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

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

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
LAURENCE DEWEY BLACK, CRD#1370336;	**Docket No. SD-16-0011**
LARRY BLACK WEALTH MANAGEMENT fka BECKSTEAD, BLACK & ASSOCIATES, INC., CRD#116271	**Docket No. SD-16-0012**
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondents Laurence D. Black ("Black") and Larry Black Wealth Management ("LBWM") (collectively referred to at times as "Respondents") hereby stipulate and agree as follows:

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

2. On or about March 22, 2016, the Division initiated an administrative action against Respondents by filing a Petition to Censure and Impose a Fine.

3. Respondents hereby agree 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 Respondents pertaining to the Petition.

4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.

5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

6. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.

7. Respondents are represented by attorney Mark Pugsley and are satisfied with the legal representation they have received.

I. FINDINGS OF FACT

8. LBWM is a Utah corporation that is licensed with the Division as an investment adviser firm with its primary place of business in Park City, Utah. LBWM has been licensed in Utah since 1992 and was formerly known as Beckstead, Black & Associates, Inc. until August 2011 when it changed its primary business name to Larry Black Wealth Management.

9. Black is the president, owner and designated official of LBWM. He has taken and passed the FINRA Series 6, 7, 22, 63 and 65 examinations. Black has been licensed in Utah as an investment adviser representative of LBWM since 1993. He was also previously

licensed as a broker-dealer agent of several broker-dealer firms, but has not been licensed in that capacity since 1997. At present, Black is the sole investment adviser representative of LBWM.

10. In January 2015 the Division received a complaint that alleged, among other things, that Black had knowingly hired a convicted felon as a consultant for options trading strategies. The Division conducted an on-site examination of Respondents in March 2015, which revealed the following:

Policies and Procedures Manual

11. As a general matter, books and records required to be kept by Respondents were neglected to the point that there were few documents for examination. Binders containing client files and other records appeared organized initially, but upon actual review were discovered to be incomplete, outdated, or completely missing required information.

12. Black indicated that his former partner, Chad Beckstead ("Beckstead"), who had retired in 2006, had been excellent at record keeping, but that record keeping was not Black's "strong suit."

13. Specific compliance deficiencies identified in the examination included the following:

Form ADV, Brochure, and Delivery Log

a. LBWM's Form ADV[1] had not been updated or filed by LBWM since 2011, as is required at least annually by 17 CFR §275.204-1(a) of the Investment Advisers

[1] Form ADV is a uniform document used by investment advisers to register with the United States Securities and Exchange Commission ("SEC") or with state securities regulators.

Act of 1940 ("IA Act") and Utah Administrative Code ("UAC") Rule R164-4-3-(E)(1)(d);

b. The Form ADV Part 2 ("Firm Brochure") and Brochure Supplement[2] had not been updated by LBWM since March 25, 2011, as required by 17 CFR §275.204-2(a)(14)(i), incorporated into the Act through UAC Rule R164-5-1(D)(1);

c. LBWM had not provided the Firm Brochure and Brochure Supplement to clients, as required by 17 CFR §275.204-3(b) of the IA Act and UAC Rule R164-5-1(D)(1);

d. LBWM did not maintain an ADV delivery log, as required by 17 CFR §275.204-2(a)(14)(i) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

Cash Receipts

e. No evidence of cash receipt and disbursement journals was available, as required by 17 CFR §275.204-2(a)(1) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

Securities Transaction Orders

f. No memorandum of each order was kept by LBWM, as required by 17 CFR §275.204-2(a)(3) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

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[2] Form ADV Part 2 requires investment advisers to prepare narrative brochures written in plain English that contain information such as the types of advisory services offered, the adviser's fee schedule, disciplinary information, conflicts of interest, and the educational and business background of management and key advisory personnel of the adviser. The brochure is the primary disclosure document that investment advisers provide to their clients.

Client Correspondence

g. LBWM could not produce a record of client or prospect communications, as required by 17 CFR §275.204-2(a)(7) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

Complaint and Litigation Files

h. No litigation or complaint files were maintained, as required by 17 CFR §275.204-2(a)(14)(iii) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1)[3];

Advertising and Marketing Files

i. LBWM maintained no marketing or advertising files, as required by 17 CFR §275.204-2(a)(11) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

Client Files

j. A random review of client account files showed all files reviewed to be out of date and neglected, and therefore noncompliant with the requirements of 17 CFR §275.204-2 of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1). Those deficiencies included:

i. Advisory agreements, when found, were generally outdated—some from as far back as the early 1990s;

[3] While the examiners determined there had been no complaints to LBWM and no record of legal actions filed against LBWM or Black were found, regulations still require that file folders are created and maintained.

ii. Written advisory agreements between LBWM and clients were outdated or missing;

iii. With the exception of one file, discretionary authority documentation was missing;

iv. Documents granting authority for the custodian used by LBWM to directly pay fees to LBWM were not found;

v. Suitability documents were missing or outdated;

vi. Option agreements were not found in client files;

vii. Margin agreements were not found in client files; and

viii. Notes concerning client meetings and investment decisions were missing or outdated, giving the impression that evaluation and monitoring of client needs and changing circumstances may be neglected.

Bond Requirements

k. In addition, the Division found that while funds were held in an account designated to meet bonding requirements, the account was not in escrow and the value fluctuated below $10,000.00, the minimum required amount for advisers with discretionary authority. Consequently, LBWM did not maintain a surety bond or minimum escrow account value at all times as required by § 61-1-4(6)(a) of the Act and UAC Rules R164-4-4(D)(1), R164-4-5(F)(1) and (F)(4);

Policies and Procedures Manual

l. No policies or procedures document could be produced and was not maintained by LBWM. Failure to maintain a policies and procedures manual is a violation of

17 CFR §275.204-2(a)(17)(i) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

i. Consequently, no record documenting the required annual review of the policies and procedures was found, as required by 17 CFR §275.204-2(a)(17)(ii) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

Code of Ethics

m. LBWM did not have a code of ethics document, as required by 17 CFR §275.204-2(a)(12)(i) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

Financials

n. LBWM failed to maintain general and auxiliary ledgers reflecting asset, liability, reserve, capital, income, and expense accounts, as required by 17 CFR §275.204-2(a)(2) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1); and

o. While trial balances and other financial information were generated at the Division's request during the examination, such records were not maintained on an ongoing basis, as required by 17 CFR §275.204-2(a)(6) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1);

Access Persons

p. While a record of access persons dated March 10, 2015 was provided at the Division's request during the examination, it had not been maintained

continuously as required by 17 CFR §275.204-2(a)(13) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1).

Associating with or Employing a Barred Individual

14. Beginning in approximately June 2010, Black hired Eugene Laff ("Laff"), CRD#300434, as a "consultant". Laff purportedly had expertise in options trading strategies and Black wanted to add options trading to the services available to LBWM clients.

15. Laff was previously criminally convicted of felony securities fraud and four other felony charges including conspiracy, wire fraud, and obstruction of justice, and sentenced to 5 years in federal prison for manipulating the prices of three penny stocks. At the time of the violative conduct, Laff was Chairman of the Board of Directors, Chief Executive Officer, and controlling shareholder of a brokerage firm, Haas Securities Corporation, CRD#2104, which was a member of the New York Stock Exchange.

16. In addition, by order dated November 29, 1999, Laff was permanently barred by the United States Securities & Exchange Commission ("SEC") from associating with any broker or dealer.

17. In a June 2015 interview with the Division, Black admitted that prior to retaining Laff, he knew Laff had a felony conviction, had spent time in prison, and was unable to work in the securities industry. Black denied, however, knowing that the felony conviction and prison time were as a result of securities fraud, and initially denied knowing that Laff had been actually barred from working in the securities industry.[4] Laff, however, told the

[4] Black first told the Division that he understood Laff's felony conviction and prison time was related to a failed floral business. Later in the interview, however, he said he knew it had to do

Division he made full disclosure to Black of all the facts and circumstances pertaining to his criminal prosecution and bar.

18. Black told the Division he believed at the time he retained Laff that as long as Laff was "at arm's length" and did not meet with clients Laff could advise LBWM on options trades as a "consultant" without violating the industry bar.

19. For a fifteen month period from June 2010 through fall of 2011, Black spoke with Laff "virtually every morning". Laff prepared recommendations for specific options trades and strategies. Black then effected the transactions in client accounts.[5] Black told the Division he probably followed Laff's recommendations 80% of the time.

20. There was no written contract between the parties, although Laff was apparently providing similar services to an Arizona investment adviser firm pursuant to a written agreement.

21. LBWM paid Laff a total of $105,400 in compensation during that timeframe.[6]

22. By fall of 2011, Black concluded that the options strategies took too much time and did not significantly outperform his previous buy-and-hold investing approach. Black terminated the agreement with Laff and ceased trading options.

23. Despite Black's statement that he understood Laff was prohibited from meeting with clients, Laff, through Black, met with at least two LBWM clients. One investor, F.M.,

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with securities but that he never asked Laff for any additional information. Black also later acknowledged that Laff had told him he was barred from the securities industry.

[5] Approximately twenty LBWM clients decided to utilize options trading for their accounts.

[6] Black told the Division Laff was only paid $10,000 per calendar quarter, for a total of $40,000.00 annually.

met with Laff several times at Black's house to learn about the options strategy, and also played golf with Laff and Black.[7]

24. Although Black told some LBWM clients about Laff's history, he did not disclose it to others. F.M. told the Division Black did not tell him Laff was convicted of securities fraud, nor that he was barred from associating with broker-dealers. Client K.W. also told the Division Black did not disclose Laff's fraud conviction or bar.

II. CONCLUSIONS OF LAW

Omissions of Material Facts under § 61-1-1(2) of the Act

25. In connection with the offer and sale of securities, Respondents omitted to state material facts to clients and on Form ADV, including but not limited to, the following:

a. that Respondents had associated with or employed a barred individual;

b. that Laff's bar was a result of a felony securities fraud conviction; and

c. that Laff's association with or employment by LBWM was a violation of the Act.

Associating with or Employing Barred Individual § 61-1-3(4)(a)(iii)(A)(II) of the Act

26. Section 61-1-3(4)(a)(iii)(A)(II) provides that it is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to providing investment advice if the individual is barred from employment or association with a broker-dealer. As described herein, Respondents violated the Act by

[7] Black told the Division F.M. stopped by Black's home as Black and Laff were concluding a meeting, and that Black introduced F.M. to Laff at that time. Black stated that F.M. had already implemented the options trading strategy at that time and Black introduced Laff as the "brains" behind the strategy. However, both Laff and F.M. told the Division they met together at Black's home so that Laff could explain to F.M. the proposed options strategy prior to implementing it in F.M.'s portfolio.

associating with or employing Laff, a barred individual, in activities related to providing investment advice.

Failure to Maintain Books and Records under § 61-1-5(1) of the Act

27. Investment advisers are required to maintain books and records as part of their advisory business. As described in paras. 11 to 13 above, numerous books and records were incomplete, outdated, or not maintained, and could not be provided during the examination.

III. REMEDIAL ACTIONS/SANCTIONS

28. Respondents admit they failed to maintain books and records as described herein. Respondents neither admit nor deny the Division's other Findings and Conclusions, and consent to the sanctions below being imposed by the Division.

29. Respondents represent that the information they have provided the Division as part of its investigation is accurate and complete.

30. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.

31. Respondents agree to withdraw their licenses within thirty (30) days following entry of this Order.

32. Pursuant to Utah Code Ann. Section 61-1-6 and in consideration of the guidelines contained in Utah Admin. Code Rule R164-31-1, the Division imposes a fine in the amount of $40,000.00. The fine shall be paid in full within thirty (30) days following entry of this Order.

IV. FINAL RESOLUTION

33. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondents acknowledge 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, Respondents expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

34. If Respondents materially violate 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, Respondents consent to entry of an order in which:

a. Respondents admit the Division's Findings of Fact and Conclusions of Law as set forth in this Order; and
b. any payments owed by Respondents pursuant to this Order 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 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.

35. 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 actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them.

36. 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 12th day of July, 2016

K Barton

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 11th day of July, 2016

[redacted]

Laurence Dewey Black
Larry Black Wealth Management

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Approved:

Mark W. Pugsley
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted in part as set forth in paragraph 28 but which are otherwise neither admitted nor denied by Respondents, are hereby entered.
2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondents shall withdraw their licenses within thirty (30) days following entry of this Order.
4. Pursuant to Utah Code Ann. Section 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondents shall pay a fine of $40,000.00. The fine shall be paid in full within thirty (30) days following entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this 4th day of August, 2016

Brent R. Baker

Brent Baker

Erik Christiansen

Gary Cornia

Brent A. Cochran

Lyle White

CERTIFICATE OF MAILING

I certify that on the 4th day of August, 2016, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Mark W. Pugsley
RAY QUINNEY & NEBEKER P.C.
36 South State Street, 14th Floor
Salt Lake City, UT 84145-0385
Counsel for Respondents

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: **JOSEPH L. JACOBY, CRD#2619787** **Respondent.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-16-0009**

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and the Respondent, Joseph L. Jacoby ("Jacoby" or "Respondent") hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*
2. On or about February 19, 2016, the Division initiated an administrative action against Respondent by filing an Order to Show Cause.
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 him 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 his 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 Marc S. Gottlieb and is satisfied with the representation he has received in this matter.

I. FINDINGS OF FACT

The Parties

8. Jacoby 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 a broker-dealer agent of Legend Securities, Inc. ("Legend"), CRD#44952.

9. Jacoby has taken and passed the FINRA Series 7, General Securities Representative Examination, and Series 63, Uniform Securities Agent State Law Examination.

10. 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.

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 Depository[1] ("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. 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.

14. In addition, a current FINRA arbitration proceeding is pending against Jacoby[2], alleging unauthorized and aggressive trading that resulted in significant customer losses.

15. Legend was named as a respondent in a Petition to Censure Licensee and Impose a Fine filed by the Division contemporaneously with this action. That action was resolved through a consent order entered May 26th, 2016.

16. 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

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[1]CRD 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.

[2]FINRA Case No. 11-03076.

May 2006 until June 2011, when he terminated his Utah license.[3]

Division Investigation

Investor K.P.

17. 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:

18. 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.

19. 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).

20. 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

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[3]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. For more information, see: http://www.sec.gov/litigation/admin/2011/34-64502.pdf

$550,970 to $147,430 as of October 31, 2009.[4]

21. Commissions and fees paid to Jacoby/Legend through markups and markdowns during that period, however, totaled at least $180,288.[5] 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.

22. 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. That action was later settled with the respondents' payment to K.P. of $117,000.

23. K.P. suffered from numerous health problems and passed away in 2012.

Unsuitable Investments and Trading

24. Jacoby's securities recommendations and his trading activities in K.P.'s account were unsuitable for K.P.

25. According to trade tickets provided by Legend,[6] 69% of the transactions in K.P.'s account were marked as solicited, or recommended, by Jacoby.

26. 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

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[4]K.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%.

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

[6]Legend failed to produce trade tickets for nearly half of the 233 transactions in K.P.'s account.

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.

27. 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.

28. 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)."[7]

29. 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.

30. Jacoby communicated with K.P. exclusively by telephone. The two never met in person.

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[7]Where 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.

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

32. 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.

33. 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".[8] 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.

34. 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

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[8]When 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.

purposes to facilitate K.P.'s withdrawals.[9]

Leveraged, Inverse ETF Trades

35. K.P. had no knowledge of leveraged, inverse ETFs, commonly referred to as non-traditional ETFs, prior to opening his Legend account.

36. 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.

37. 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.[10]

38. 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

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[9]According 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 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.

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

completely unsuitable for non-speculative investors with long-term investment objectives.

39. Jacoby placed 62 transactions in leveraged and inverse ETFs, which were particularly ill-suited to K.P.'s needs, as, among other things, K.P. was not seeking market speculation or implementing a sophisticated daily trading strategy.

40. 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.

41. 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

42. The 233 trades placed by Jacoby in K.P.'s account benefitted Jacoby and Legend to the significant financial detriment of K.P.

43. 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.

44. 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.

45. 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.

46. In the aggregate, for the 26 months Jacoby managed K.P.'s account, Jacoby turned over the account approximately 14.93 times.

47. 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.

48. The portfolio turnover and amount of commissions paid far exceed acceptable industry standards. Given the commissions paid, the account would have had to earn 28% annually to merely break even.

49. 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

50. While Legend permitted discretionary trading accounts, K.P.'s account was never established as a discretionary account.

51. 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.

52. 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.

53. On April 15, 2011, FINRA took regulatory action against Jacoby for the unauthorized exercise of discretion in K.P.'s account from approximately January 2009 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]."[11]

54. 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.

55. 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

56. 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.

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[11]As 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

57. 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 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.

58. 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

59. 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%)

60. 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.

61. 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.[12]

Fraudulent Practices

62. Jacoby knew K.P. had retired early due to health disabilities and that he had ongoing health problems; that he had limited income; that the sources 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. Nevertheless, Jacoby excessively traded or churned K.P.'s account, and made unsuitable and unauthorized investments that greatly enriched Jacoby and Legend to the detriment of K.P.

[12]According 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.

II. CONCLUSIONS OF LAW

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

63. As described herein, Jacoby churned K.P.'s account, making trades excessive in size and frequency in view of the financial resources and character of the account, which paid him significant commissions. Jacoby's conduct constitutes dishonest or unethical practices under Utah Admin. Code ("UAC") Rule R164-6-1g(C)(2), applicable to agents through (D)(7).

64. Jacoby's conduct also violates FINRA Rules 2010, 2310/2111, the violation of which are also dishonest or unethical practices under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7).

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

65. Jacoby's recommendations and trading activities in K.P.'s account were unsuitable given K.P.'s disabled and retired status, objectives, financial situation, and needs, which conduct constitutes dishonest or unethical practices under UAC Rule R164-6-1g(C)(3), applicable to agents through (D)(7).

66. Jacoby's conduct also violates FINRA Rules 2010, 2090, 2310/2111, the violation of which are also dishonest or unethical practices under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7).

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

67. Jacoby exercised discretion in K.P.'s account without first obtaining written discretionary authority from K.P., which constitutes dishonest or unethical practices under UAC R164-6-1g(C)(5), applicable to agents through (D)(7).

68. Jacoby's conduct also violates FINRA Rules 2510, the violation of which is also a dishonest or unethical practice under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7).

Securities Fraud - Act, Practice, Course of Business Operating as a Fraud Under § 61-1-1(3)

69. Jacoby, in connection with the offer, sale, or purchase of securities, engaged in acts, practices, and a course of business which operated as a fraud or deceipt on K.P., which include but are not limited to:

a. excessively trading or churning K.P.'s account in view of the financial resources and character of the account in order to generate substantial commissions;

b. making investments in K.P.'s account that were not suitable based upon K.P.'s disabled and retired status, objectives, financial situation, and needs;

c. exercising unauthorized discretion in K.P.'s account without first obtaining written discretionary authority from K.P.;

d. violating industry rules and standards, including FINRA Rules 2010 (high standards of commercial honor and just and equitable principles of trade), 2090 (know your customer), 2310/2111 (suitability and excessive trading), and 2510 (discretion);

e. creating self-serving broker notes that were inconsistent with actual account activity, his statements to FINRA, and were materially incomplete; and

f. marking trade tickets "unsolicited" in K.P.'s and other client accounts for trade activities occurring in multiple accounts on the same day; and

g. disregarding Legend policies and procedures as described herein.

III. REMEDIAL ACTIONS/SANCTIONS

72. For purposes of this proceeding only, Respondent admits that he exercised discretion in K.P.'s account without prior written authorization from K.P.[13] Respondent neither admits nor denies the Division's other Findings and Conclusions, but consents to the sanctions below being imposed by the Division.

73. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.

74. 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.

75. Respondent agrees to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in this state.

76. Pursuant to Utah Code Ann. Section 61-1-20, in consideration of the factors set forth in Utah Code Ann. Section 61-1-31 and in light of Respondent's financial situation and ability to pay, the Division imposes a fine as follows:

a) Respondent shall make a lump sum payment of $40,000.00 within ten (10) days following entry of this Order; or

b) Respondent shall pay a fine of $50,000.00 according to the following schedule: an initial payment of $2,500.00 within ten (10) days following entry of this Order and, thereafter, Respondent shall pay at least one-third of the remaining balance

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[13]Respondent may take contradictory positions, assert defenses and/or deny the Division's findings and conclusions in any arbitration, civil, or criminal proceeding that does not involve the State of Utah.

($15,833.33) annually on the anniversary date of the initial payment. The remaining balance shall be paid in full within thirty-six (36) months of the initial payment date.

IV. FINAL RESOLUTION

77. 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 prejudgment of the Commission, and such waiver shall survive any nullification.

78. 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 be $50,000.00 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.

79. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from 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 him have no effect on, and do not bar, this administrative action by the Division against him. 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 78 above, and may be introduced as evidence against Respondent in any arbitration, civil, criminal, or regulatory actions.

80. 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 19th day of July, 2016

K Barton
Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this ___ day of _____, 2016

_____
Joseph L. Jacoby

be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

79. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from 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 him have no effect on, and do not bar, this administrative action by the Division against him. 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 78 above, and may be introduced as evidence against Respondent in any arbitration, civil, criminal, or regulatory actions.

80. 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 19th day of July, 2016

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 8th day of July, 2016

[redacted]
Joseph L. Jacoby

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Approved:

Marc S. Gottlieb
Counsel for Respondent

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Approved:

Marc S. Gottlieb
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 72 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 is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in this state.
4. Pursuant to Utah Code Ann. Section 61-1-20, in consideration of the factors set forth in Utah Code Ann. Section 61-1-31 and in light of Respondent's financial situation and ability to pay, Respondent shall pay a fine as set forth in paragraph 76 above.

BY THE UTAH SECURITIES COMMISSION:

DATED this 4th day of August, 2016

Brent Baker

Erik Christiansen

Brent Cochran

Gary Cornia

Lyle White

Certificate of Mailing

I certify that on the 4th day of August, 2016, I mailed, by certified mail, a true and correct copy of the fully executed Stipulation and Consent Order to:

Marc S. Gottlieb
Sanders Ortoli Vaughn-Flam Rosenstadt LLP
501 Madison Avenue - 14th Floor
New York, NY 10022
Counsel for Respondent

Certified Mail # 70150640000353093967

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

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

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
ROBERT HAWKES POTTER, CRD#1198202 **Respondent.**	**Docket No. SD-16-0007**

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondent Robert Hawkes Potter ("Potter" or "Respondent") hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.

2. On or about February 4, 2016, the Division initiated an administrative action against Respondent by filing a Petition to Censure, Bar 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 Petition.

4. Respondent admits that the Division has jurisdiction over him 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 his behalf.

6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as 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 Jeremy Reutzel and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

8. Potter was a series 7, 63, and 65 licensed investment adviser representative ("IAR") and broker-dealer agent with Cambria Capital, LLC ("Cambria"), CRD#113760. Potter began his career in the securities industry in 1988 when he joined Lehman Brothers Inc. in Salt Lake City. In August 1992, Potter left Lehman Brothers Inc. and obtained a position with Salomon Smith Barney Inc. where he remained until December 1998. In February 1999, Potter became associated with Financial West Group, and in March 1999 he also established Eagle Gate Securities Inc., and was listed as the Principal of the firm. Potter left Eagle Gate Securities in 2005, and from 2005 until August 2011 Potter associated with Wachovia Securities, which was subsequently acquired by Wells Fargo Advisors, LLC, where he remained until he joined Cambria on August 3, 2011.

9. In July 2015, Cambria opened an internal investigation of Potter concerning use of unapproved means of communication with clients, commingling customer funds, and

misleading/false statements with respect to account value, essentially leading to a guarantee of profits. As a result of the firm's review of this matter, Potter's employment with Cambria was terminated on August 3, 2015.

10. On September 3, 2015, the Financial Industry Regulatory Authority ("FINRA") issued a permanent bar against Potter for failing to cooperate with FINRA's investigation, prohibiting Potter from employment in the securities industry. On September 28, 2015, the National Futures Association ("NFA") barred Potter from associating with any NFA member after an investigation revealed that Potter was acting as an unlicensed futures commission merchant, when, under Potter's instruction, a customer wired funds to Potter's personal bank account.

Potter's Employment with Cambria and Failure to Disclose Loans from Clients

11. On December 23, 2011, and every year thereafter, Potter completed and signed Cambria's annual compliance questionnaire. In the questionnaires, Potter acknowledged that he understood Cambria's Written Supervisory Procedures ("WSPs"), securities laws, and FINRA rules, including all provisions relating to obtaining loans from clients, and represented that he did not have any outside business activities to report. Despite his signed attestations, on numerous occasions Potter concealed one or more loans with clients from Cambria, the Division, and the United States Securities & Exchange Commission ("SEC"), in violation of securities laws and firm policies.

12. After first associating with Cambria, on December 23, 2011 Potter opened both a personal investment account and retirement account with Cambria. Potter used unapproved loans from clients to trade in his personal brokerage account.

13. On March 28, 2012, after Potter signed the 2011 annual compliance questionnaire attesting that he had not received loans from Cambria clients, Shane Philbrick, Cambria's Chief Compliance Officer, discovered a promissory note attached to email correspondence between Potter and a client of the firm. The firm did not further investigate the loan because Potter explained that the loan agreement was entered into before Potter joined Cambria.

14. On November 13, 2012, in response to a significant increase in trade errors by Potter, Cambria initiated an internal investigation and found several issues relating to Potter's trading, including an increase in trade corrections, issues in margin accounts, and deposited checks with insufficient funds. As a result of the firm's investigation, on November 13, 2012 Potter was placed on heightened supervision, which significantly restricted both his personal and client account activity.

15. On May 20, 2014, Cambria initiated a second internal investigation of Potter's conduct as it related to potential violations of firm procedures and/or FINRA rules after a review of Potter's email communications revealed multiple promissory notes revealing that Potter may have been borrowing money from clients during his association with Cambria. The investigation revealed that Potter had failed to disclose loans received from Cambria clients, including approximately $50,000 borrowed from J.J., $50,000 borrowed from L.N., a $50,000 revolving line of credit with M.C., and undisclosed amounts borrowed from C.H. and G.H. Potter argued that all of these loans were received from those individuals as friends prior to his broker-dealer agent-client relationship with each of them. Cambria reported the investigation to FINRA by filing a 4350 Disclosure and

Complaint Filing form.

16. After FINRA initiated its own investigation of Potter's loans, on February 3, 2015, Potter provided Cambria with a "Net Worth Statement," which purportedly disclosed, among other things, all of Potter's personal loans from Cambria clients. This document revealed loans received from a business entity, as well as six individuals who were non-clients of the firm. The total amount in disclosed loans at that time was $916,500. In addition, Potter disclosed a total of $285,500 from three business entities, all entities owned and controlled by M.C., a Cambria client, and all characterized as commercial loans by Potter.

17. In early 2015, Potter produced a list to the SEC disclosing "all Promissory Notes made to [sic] Robert Potter." In addition to the loans from the aforementioned individuals, the list includes individuals whose names were not disclosed to Cambria or FINRA, including P.B., J.H., H.B., and C.P., all non-clients of the firm. The borrowed amount totals approximately $1,377,000, at least $460,500 more than Potter disclosed to Cambria in February 2015. Potter also revealed to the SEC that he received loans from V.S. and K.L., both non-clients, and S.D., a Cambria client. On the list provided to the SEC, Potter claimed that most lenders were non-clients.

18. On October 21, 2015, after meeting with Potter, the Division uncovered numerous other loans which were not disclosed to Cambria, FINRA, or the SEC. Potter characterized these loans a "trading checks," and denied that they should be characterized as personal loans from clients. During his interview with the Division, Potter remained elusive in his responses and only minimally cooperated so as not to reveal the extent of these practices.

19. In addition to the loans disclosed in Potter's Net Worth Statement, the Division's investigation has revealed that Potter borrowed additional funds from clients, including the following:

a. Between 2011 and August 2015, Potter borrowed approximately $15,000 from F.C., a client of Cambria, without disclosing the loan to the firm.

b. Between 2011 and August 2015, Potter borrowed at least $40,000 from S.D., a client of Cambria, without disclosing the loan to the firm.

c. Between 2011 and August 2015, Potter borrowed monies from J.D., a client of Cambria, without disclosing the loan to the firm.

d. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least $75,000 from C.H. and G.H., clients of Cambria, without disclosing the loan to the firm.

e. Between 2011 and August 2015, Potter borrowed at least $10,000 from J.J., a client of Cambria, without disclosing the loan to the firm.

f. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least $24,000 from J.P., a client of Cambria, without disclosing the loan to the firm.

g. Between 2011 and August 2015, Potter borrowed at least $1,500 from T.P., a client of Cambria, without disclosing the loan to the firm.

h. Between 2011 and August 2015, Potter borrowed $15,000 from J.T., a client of Cambria, without disclosing the loan to the firm.

C.A.'s Purported Investments through Potter

20. In January 2015, Potter solicited C.A., an acquaintance and owner of a construction company in Arizona, to invest in crude oil. Potter told C.A. that the investment

guaranteed profits and that C.A. would be investing in crude oil as a customer of Cambria. Instead of providing C.A. with a new account application, on January 21, 2015 Potter provided C.A. with wiring instructions for Potter's personal account with America First Credit Union ("AFCU"). Potter never opened a Cambria account for C.A. and never made any investments in crude oil on behalf of C.A. Instead, through numerous text messages, Potter falsely represented that he made the investment, and lied about the performance of the account. Of note:

a. On or about January 22, 2015, C.A. wired $5,000 to Potter's personal AFCU account.

b. On or about February 11, 2015, C.A. instructed Potter to sell his crude oil interest if the value dropped below $6,200—Potter claimed that the current value on that day was $7,500.

c. On March 2, 2015, Potter told C.A. that his account value totaled $7,800.

d. On March 23, 2015, C.A. wired an additional $5,000 to Potter's AFCU account.

e. On April 14, 2015, Potter told C.A. that the current value on that day was $7,500. After C.A. requested $7,000 from his account, Potter told C.A. that he wired the funds on April 20, 2015.

f. After C.A. inquired about the funds on May 4, 2015, Potter admitted to C.A. that he made a $30,000 error in his personal trading account and that C.A.'s funds were deposited into that account.

21. On July 28, 2015, C.A. called Cambria's CCO Shane Philbrick and informed him of his investment with Potter. Philbrick's investigation into the matter revealed that C.A. was not a Cambria client and that Potter had traded C.A.'s investment funds in Potter's personal brokerage account. Additionally, Philbrick could not find transactions in

Potter's personal brokerage account which corresponded with the dates C.A.'s investments were supposedly made. C.A. provided Philbrick with a text message conversation between C.A. and Potter in support of his claims.

22. In August 2015, Cambria terminated Potter for his violation of Cambria's client communication policies.[1]

23. Additionally, Potter admitted to the Division that he concealed his business relationship with C.A. when he was interviewed by the SEC.

Written Supervisory Procedures

24. Cambria's WSPs, since 2011 to the present, have strictly prohibited all loans from customers, stating, "No registered representative of the firm shall borrow money from or lend money to any customer of such person unless: The lending or borrowing arrangement meets one of the following conditions: (a) customer is a member of the immediate family; (b) the customer is a financial institution regularly engaged in providing credit, financing and/or loans; (c) customer and registered representative are both registered persons of the same firm; (d) the lending arrangement is based on a personal relationship with the customer; or (e) the lending arrangement is based on a business relationship outside of the broker/customer relationship."

25. The WSPs allow for loans from clients under certain exceptions listed under FINRA Rule 3240. The exception that would most closely apply in this matter is the exception for a lending arrangement that is "based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the

[1] Cambria's WSPs prohibit communicating with clients through text messaging.

registered person not maintained a relationship outside of the broker-customer relationship." However, these exceptions do not apply here. Under FINRA Rule 3240, for the exception to apply, the licensee is required to notify the broker-dealer **prior to entering into a lending arrangement, and the broker-dealer must pre-approve such arrangements in writing.** On multiple occasions, Potter concealed loans he received from Cambria clients. The Division's investigation revealed that, in total, Potter borrowed more than $1.5 million from clients.

26. Potter violated Cambria's WSPs, and thus his employment agreement, on numerous occasions, ultimately resulting in his termination from the firm on August 3, 2015.

II. CONCLUSIONS OF LAW

FINRA and NFA Industry Bars

27. On September 3, 2015, FINRA issued a permanent bar against Potter for failing to cooperate with FINRA's investigation, prohibiting Potter from employment in the securities industry. On September 28, 2015, NFA barred Potter from associating with any NFA member after an investigation revealed that Potter was acting as an unregistered futures commission merchant, when under Potter's instruction, a customer wired funds to Potter's personal bank account.

28. Under Section 61-1-6(2)(a)(ii)(D) of the Act, Potter's FINRA and NFA bars warrant the Utah Securities Commission ("Commission") issuing an order to bar him from associating with a licensed broker-dealer or investment adviser representative in the State of Utah.

Securities Fraud – Misrepresentation/Omissions of Material Fact

29. In connection with the offer or sale of securities, Potter violated Section 61-1-1(2) of the Act by misrepresenting or omitting material facts necessary in order to make his statements not misleading, including but not limited to:

a. Potter told C.A. that C.A. would invest in crude oil when, in fact, C.A.'s funds were deposited into Potter's personal AFCU checking account and never used to invest in crude oil but instead, among other things, were used to cover Potter's overdraft charges in his personal checking account.

b. On or about February 11, 2015, C.A. instructed Potter to sell his crude oil interest if the value dropped below $6,200—Potter claimed that the current value at the time was $7,500 when, in fact, no account in C.A.'s name existed at Cambria, and thus no account value could have been assessed and communicated to C.A..

c. On March 2, 2015, Potter told C.A. that his account value totaled $7,800 when, in fact, no account in C.A.'s name existed at Cambria, and thus no account value could have been assessed and communicated to C.A..

d. On March 23, 2015, Potter convinced C.A. to wire an additional $5,000 to Potter's AFCU account, and continued representing to C.A. that the funds were in C.A.'s Cambria account when, in fact, a Cambria account for C.A. was never created and the funds were used by Potter for personal purposes.

e. Potter failed to disclose to C.A. that C.A. was never a client of Cambria.

f. Potter failed to disclose to C.A. that C.A.'s funds would be used to cover Potter's overdraft amounts in his personal checking account.

g. Potter failed to disclose to C.A. that C.A.'s funds would be used to purchase other securities in Potter's personal brokerage account, but not crude oil.

h. Potter failed to disclose to C.A. that Potter's access was restricted at Cambria and that he could no longer purchase commodities investments at the firm.

Dishonest or Unethical Practices – Violation of FINRA Rules

30. Between 2011 and 2015, on numerous occasions, in violation of Cambria's WSPs and FINRA Rule 3240,[2] Potter failed to request and receive approval prior to entering into numerous loans with Cambria clients, and concealed from Cambria numerous loans he entered into with clients.

31. On February 3, 2015, Potter provided Cambria with a "Net Worth Statement" which putatively disclosed all of Potter's loans from Cambria clients and loans from other individuals. That document revealed loans received from a business entity and six individuals. In February 2015 Potter produced a list to the SEC purportedly disclosing all promissory notes issued by Potter. In addition to the loans from the aforementioned individuals, the list includes clients whose names were not previously identified to Cambria. On the list produced to the SEC, Potter claimed that several lenders were non-clients of Cambria. However, a complete client list obtained by the Division from Cambria revealed that Potter borrowed funds from clients, which he did not disclose to Cambria, including the following:

[2] FINRA Rule 3240 prohibits registered persons from borrowing money from customers, unless a member's written supervisory procedures allow the borrowing of money from customers, and the registered person receives written permission from the associated member prior to borrowing or lending money from customers.

a. Between 2011 and August 2015, Potter borrowed approximately $15,000 from F.C., a client of Cambria, without disclosing the loan to the firm.

b. Between 2011 and August 2015, Potter borrowed at least $40,000 from S.D., a client of Cambria, without disclosing the loan to the firm.

c. Between 2011 and August 2015, Potter borrowed monies from J.D., a client of Cambria, without disclosing the loan to the firm.

d. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least $75,000 from C.H. and G.H., clients of Cambria, without disclosing the loan to the firm.

e. Between 2011 and August 2015, Potter borrowed at least $10,000 from J.J., a client of Cambria, without disclosing the loan to the firm.

f. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least $24,000 from J.P., a client of Cambria, without disclosing the loan to the firm.

g. Between 2011 and August 2015, Potter borrowed at least $1,500 from T.P., a client of Cambria, without disclosing the loan to the firm.

h. Between 2011 and August 2015, Potter borrowed $15,000 from J.T., a client of Cambria, without disclosing the loan to the firm.

32. As part of an ongoing pattern of concealing the use of client funds obtained from loans or otherwise, between January 2015 and July 2015, Potter used unapproved methods of communication when, in violation of Cambria's WSPs and FINRA Rule 2210,[3] he sent text messages to C.A. discussing an investment opportunity with him and leading him to

[3] FINRA Rule 2210 requires all retail communication, including electronic communication, to be approved by a qualified registered principal of the member before the earlier of its use or filing with FINRA's Advertising Regulation Department.

believe that he was a Cambria client with a brokerage account at the firm when, in fact, he was not a client of Cambria. Potter sent numerous text messages to C.A. instructing him to wire funds and discussing the alleged purchases, values, and sale of a crude oil investment.

33. Potter's conduct violates FINRA Rules 3240 and 2210, which constitutes a dishonest or unethical practice under Utah Admin. Code Rule R164-6-1g(C)(28), applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Dishonest or Unethical Practices – Borrowing Money from a Customer

34. Between 2011 and 2015, on numerous occasions, in violation of securities laws, Potter engaged in the act of borrowing money from clients without receiving prior approval from Cambria, including the following:

a. Between 2011 and August 2015, Potter borrowed approximately $15,000 from F.C., a client of Cambria, without disclosing the loan to the firm.

b. Between 2011 and August 2015, Potter borrowed at least $40,000 from S.D., a client of Cambria, without disclosing the loan to the firm.

c. Between 2011 and August 2015, Potter borrowed monies from J.D., a client of Cambria, without disclosing the loan to the firm.

d. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least $75,000 from C.H. and G.H., clients of Cambria, without disclosing the loan to the firm.

e. Between 2011 and August 2015, Potter borrowed at least $10,000 from J.J., a client of Cambria, without disclosing the loan to the firm.

f. Between 2011 and August 2015, Potter borrowed, over the course of at least two loans, at least $24,000 from J.P., a client of Cambria, without disclosing the loan to the firm.

g. Between 2011 and August 2015, Potter borrowed at least $1,500 from T.P., a client of Cambria, without disclosing the loan to the firm.

h. Between 2011 and August 2015, Potter borrowed $15,000 from J.T., a client of Cambria, without disclosing the loan to the firm.

35. Potter's borrowing from clients constitutes dishonest or unethical practices under R164-6-1g(D)(1) of the Act, warranting sanctions under Section 61-1-6(2)(a)(ii)(G).

III. REMEDIAL ACTIONS/SANCTIONS

36. Respondent admits to borrowing from clients in violation of the securities laws and Cambria's policies and procedures. Respondent neither admits nor denies the Division's other Findings and Conclusions and consents to the sanctions below being imposed by the Division.

37. 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.

38. Respondent agrees to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as a principal or agent for any issuer soliciting investor funds in this state.

39. Pursuant to Utah Code Ann. Section 61-1-6, in consideration of the factors contained in Utah Code Ann. Section 61-1-31 and in light of Respondent's financial situation and ability to pay, the Division imposes a fine in the amount of $30,000.00. An initial payment of $10,000.00 is due within ten (10) days following entry of this Order, and the

remaining balance shall be paid within twenty-four (24) months following entry of the Order.

IV. FINAL RESOLUTION

40. Respondent acknowledges that this Order, upon approval by the 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 prejudgment of the Commission, and such waiver shall survive any nullification.

41. 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 the fine amount is increased to $50,000.00 and is 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.

42. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions,

and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

43. 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 20th day of July, 2016

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 18th day of July, 2016

[redacted]
Robert Hawkes Potter

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Approved:

Jeremy Reutzel
Counsel for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted in part by the Respondent as set forth in paragraph 36 above, and which are otherwise neither admitted nor denied by 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 is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as a principal or agent for any issuer soliciting investor funds in this state.
4. Pursuant to Utah Code Ann. Section 61-1-6, in consideration of the factors contained in Utah Code Ann. Section 61-1-31 and in light of Respondent's financial situation and ability to pay, the Division imposes a fine in the amount of $30,000.00, to be paid as set forth in paragraph 39 above.

BY THE UTAH SECURITIES COMMISSION:

DATED this 4th day of August, 2016

Brent Baker

Erik Christiansen

Brent Cochran

Gary Cornia

Lyle White

CERTIFICATE OF MAILING

I certify that on the 4th day of August, 2016, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Jeremy Reutzel
Bennett Tueller Johnson & Deere
3165 E. Millrock Drive, Ste. 500
Salt Lake City, UT 84121-4704
Counsel for Respondent

Executive Secretary