

# Utah Division of Securities Commission Meeting Minutes August 4, 2016

## Division of Securities Staff Present

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

## Other State of Utah Employees

Tom Melton, Assistant Attorney General  
Jennifer Korb, Assistant Attorney General  
Tom Brady, Department of Commerce Deputy Director

## Commissioners Present

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

**Minutes:** At 9:00 am the meeting was called to order by Commissioner Erik Christiansen. Commissioner **Gary Cornia** made the motion to approve the minutes from the May 26, 2016 Commission meeting and Commissioner **Brent Baker** seconded the motion and the motion was approved unanimously.

**Director's Report:** Director Woodwell provided the Securities Committee an update on recent events in the Division of Securities, including the recent departure of two division employees. Director Woodwell stated that the Division will soon be hiring two positions: (1) a Compliance Examiner; and (2) an Enforcement Investigator. Brent A. Cochran

was introduced as a new Securities Commissioner. Mr. Cochran is currently Senior Vice President at Investment Management Consultants. Mr. Cochran will fulfill the remainder of Dave Russon's Commission term.

**Statistical Report and Trends for Fiscal Year 2016 (July 1, 2015 – June 30, 2016)**

1. **Complaints:** The Division received 91 new complaints in FY2016. This continues a downward trend since the peak in the 2009-2012 time frame. In FY2009-FY2012 the Division averaged 225 complaints per year. Since that time we have been trending down (164, 110, 109, 91).
2. **Investigations:** The Division opened 33 new investigations in FY2016. This also continues a downward trend. The seven year average for new investigations is 54 per year. This is likely due to the decreasing number of complaints, but may also be impacted by recent turnover of investigators in our Enforcement Section.
3. **Audits:** The Division opened 100 new audits in FY2016. This continues a trend of an increasing number of audits performed by the Division in the past few years. The average from the past seven years is 62 per year.
4. **Administrative Enforcement Cases:** The Division filed 68 new administrative enforcement cases in FY2016. This is close to the longer-term average from the past seven years of 75 cases filed per year.

**Enforcement Section Report:** Dave Hermansen provided the Securities Commission an update on the Enforcement Section. Mr. Hermansen reported that the amount of complaints received has increased slightly in the last couple of months. The Section has ten new administrative enforcement cases that are in the drafting stage, eight administrative enforcement cases that are currently in litigation, is investigating and screening 20 new cases, and has referred five additional criminal cases to the Attorney General's Office. Dee Randall reached a plea agreement in his criminal case, whereby he pleaded guilty to four counts of second degree enhanced securities fraud as well as one count of pattern of unlawful activity (sentencing scheduled for February 2017).

**Compliance Section Report:** Ken Barton provided the Securities Commission an update on the Compliance Section. YTD 2016 Audit Statistics: 32 new audits, 21 of which are for-cause audits triggered by investor complaints, and 11 of which are routine audits of both investment advisor firms and broker-dealer branch offices. Ratio of for-cause audits to routine audits has spiked again to almost 2:1 compared to a 2015 ratio of 1:1.

The Compliance Section has seven administrative enforcement actions currently in litigation. Three of those actions are on today's agenda for approval of Stipulation and Consent Orders.

The Section has referred three cases to the Utah Attorney General's office for criminal prosecution. Absent a settlement, the securities fraud trial involving defendants Roger Taylor and Richard Smith is scheduled for August 17, 2016. The Scott Stewart fraud trial is on hold pending the State's appeal of the trial court ruling relating to the inclusion of time-barred activities in the State's Pattern of Unlawful Conduct Count.

**Registration and Licensing:** Benjamin Johnson provided the Securities Commission an update on the Registration and Licensing Section. In FY2016, registrations by coordination/qualification fell by 9% compared to FY2015 and Rule 506 Filings have continued to increase gradually. Mr. Johnson also addressed the request from the OTC Capital Markets to have the top tiers of companies listed on the OTC markets to receive a state-level registration exemption that would replace the S&P Manual exemption now that S&P has ceased the publication of their securities manual.

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

**Statistics** – Since last Commission Meeting in May, the Division has participated in 11 events: seven URS seminars, two IE events focused on seniors and two events related to the Stock Market Game. The total audience for the 11 events was approximately 1,765 people. The FY2016 statistics show involvement in 69 events with an audience total of 17,766.

**Stock Market Game Update** –Stock Market Game information for the upcoming school year was sent to all High School principals in the state. The Division also attended the annual Business and Marketing Conference sponsored by Utah State Board of Education and the Utah Charter Network summer conference. At each conference, workshops were offered to educators regarding Stock Market Game registration, and curriculum integration. On Aug. 2, a full-day teacher training was held at the Heber Wells Building where teachers throughout the state received hands on training for using the Stock Market Game in the coming year in their classrooms. Along with the daylong training, two three-week teacher promo sessions have been offered this summer where the teachers can have access to the Stock Market Game teacher support center and play the game on their own for three weeks. Thirty educators have registered for this opportunity.

**Elder Financial Exploitation** – In July, the Division presented a “Pass It On” seminar to 70 members of the Senior Medicare Patrol. This group includes Aging and Adult Services employees and volunteers who work to help seniors detect Medicare fraud. The message behind the “Pass It On” program sponsored by the Federal Trade Commission is to educate seniors who are typically hesitant to report that they have been scammed. The program encourages the senior to pass on what they know about scams to a friend, a neighbor or a relative. The Pass It On program includes information on topics such as Identity theft and charity fraud. At this Senior Medicare Patrol conference, our investor protection message included information about the new Utah Uniform Power of Attorney Act. Specifics of the new law were discussed with emphasis placed on Section 75-9-120, *Liability for Refusal to Accept Acknowledged Power of Attorney*, which encourages financial professionals to report any suspicion of elder financial exploitation. This Act can be used by financial institutions and any other third party that receives powers of attorney, in coordination with the Utah Adult Protective Services Statute, to detect and prevent elder financial abuse by unscrupulous agents.

**URS** – Our partnership with URS continues to provide opportunities to share our Investor Protection message with Public Employees. Discussions with seminar attendees at registration and seminar breaks demonstrate the message is appreciated

and needed. We also continue to meet on an individual basis with people who request additional education.

**Education and Training Fund Report:**

Following the presentation of the Education and Training fund accounting by Benjamin Johnson, Commissioner **Gary Cornia** made the motion to approve the funding request, in the amount of \$41,690.00, to the Education and Training Fund. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

**Consideration and Approval of Proposed Orders**

**Kenneth Shawn Whitehead; SD-160018: Recommended Order on Motion for Default.**

Jennifer Korb reported that on or about April 19, 2016, an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondent was ordered to file a response to the order within a 30-day period. Respondent failed to respond. An initial hearing was held on June 15, 2016, Respondent failed to appear. Because Respondent failed to file a Response, the ALJ recommended that a default judgement against the Respondent be entered. In the Recommended Default Order, Respondent is ordered to pay a fine of \$1,008,750 to the Division, with \$201,750 of the fine due and payable in full upon receipt of this Order. The remaining \$807,000 is subject to offset for a period of 30 days of this Order, on a dollar-for-dollar basis for any restitution paid to investors. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondent.

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

**Theodore Lamont Hansen and Zurich Holdings Limited Liability Company; SD-14—52, SD-14-0054: Stipulation and Consent Order.**

Dave Hermansen reported that on or about October 29, 2014, an administrative proceeding was initiated against Respondents pursuant to a Notice of Agency Action and Order to Show Cause. Respondents and the Division have agreed to settle this matter with a Stipulation the Consent Order. Under the terms of the Consent Order, the Division imposes a total fine of \$20,000 against Respondents, jointly and severally. The fine shall be paid as follows: (a) \$10,000 paid within 30 days following the entry of this Order; and (b) \$10,000 paid within 60 days following the entry of this Order. If Respondents materially violate any terms of the Order, the fine becomes due immediately and subject to collection. The Stipulation and Consent Order includes a cease and desist order and a permanent securities bar against the Respondents.

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

**David Lyle Turner; SD-14-0053: Stipulation and Consent Order.**

Dave Hermansen reported that on or about October 29, 2014, an adjudicative proceeding was initiated against Respondent pursuant to a Notice of Agency Action and Order to Show Cause. Respondent and the Division have agreed to settle this matter with a Stipulation the Consent Order. Under the terms of the Consent Order the Division imposes a total fine of \$4,000 against Respondent to be paid within 30 days following the entry of this Order. The Order also requires that for a period of two years from the date of entry of this Order, the Respondent shall not apply for licensure with the Division in any capacity.

Following questions from the Commissioners regarding the appropriateness of a fine amount of only \$4,000, Commissioner **Lyle White** made the motion to deny the proposed Stipulation and Consent Order. **Brent Baker** seconded the motion and the proposed Stipulation and Consent Order was denied.

**Laurence Dewey Black, Larry Black Wealth Management fka Beckstead, Black & Associates, Inc.; SD-16-0011, SD-16-0012: Stipulation and Consent Order.**

Russ Bulloch reported that on or about March 22, 2016, the Division initiated an administrative action against Respondents, through the issuance of a Petition to Censure and Impose a Fine. Respondents and the Division have agreed to settle this matter with a Stipulation the Consent Order. Under the terms of the Consent Order, the Division imposes a total fine of \$40,000 against Respondents. The fine shall be paid within 30 days following the entry of this Order. The Stipulation and Consent Order also includes a cease and desist order and a permanent securities bar against the Respondents.

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

**Joseph L. Jacoby; SD-16-0009: Stipulation and Consent Order.**

Ken Barton reported that on February 19, 2016 the Division initiated an administrative action against Respondent, through the issuance of a Notice of Agency and Order to Show Cause. Respondent and the Division have agreed to settle the matter by way of a Stipulation and Consent Order. Under the terms of the Consent Order, the Division imposes a total fine of \$50,000 against Respondent with the following terms: (a) Respondent shall make a lump sum payment of \$40,000 within ten days following the entry of this Order; or (b) Respondent shall pay a fine of \$50,000 according to the following schedule, an initial payment of \$2,500 due within ten days following the entry of this Order and thereafter, Respondent shall pay at least one-third of the remaining balance (\$15,833.33) annually on the anniversary date of the initial payment. The Stipulation and Consent Order also includes a cease and desist order and a permanent securities bar against the Respondent.

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

**Robert Hawkes Potter, SD-16-0007: Stipulation and Consent Order.**

Andreo Micic reported that on February 4, 2016 the Division initiated an administrative action against Respondent, through the issuance of a Petition to Censure, Bar and Impose a Fine. Respondent and the Division have agreed to settle this matter with a Stipulation the Consent Order. Under the terms of the Consent Order the Division imposes a total fine of \$30,000 against Respondent. An initial payment of \$10,000 is due within ten days following the entry of this Order. The remaining balance shall be paid within 24 months following the entry of this Order. The Stipulation and Consent Order also includes a cease and desist order and a permanent securities bar against the Respondent.

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

**Future Meeting Schedule:**

September 22, 2016, room 403, starting at 9am  
December 1, 2016, room 403, starting at 9am  
December 2, 2016, room 403, starting at 9am (hearing)  
January 26, 2017, room 451, starting at 9am

Commissioner **Erik Christiansen** called for a motion to adjourn the August 4, 2016 Division of Securities Commission Meeting. Commissioner **Lyle White** made a motion adjourn the Commission meeting and Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously. Meeting adjourned at 10:35 am.

Approved: \_\_\_\_\_



Erik Christiansen, Chairman

Date: \_\_\_\_\_

9/22/2016