

**Utah Division of Securities Commission  
Meeting Minutes  
September 22, 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  
Anna Crandall, Enforcement Investigator  
Mandy Krueger, Enforcement Investigator  
Jason Sterzer, Securities Examiner  
Bryan Cowley, Securities Examiner  
Russ Bulloch, Securities Examiner  
Nathan Summers, Securities Examiner  
Sally Stewart, Division Receptionist

**Other State of Utah Employees**

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

**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

**Public Present:**

Brad Bertoch, [www.VentureCapital.org](http://www.VentureCapital.org)  
Wade Baris, USU FPA  
Brooke Gunnell, USU FPA  
Wendy Andreason, USU FPA  
Gary Holyoak, USU FPA  
Andrew Kenney, USU FPA  
Annie Fiala, USU FPA  
E. Vance Grange, USU FPA  
Bradley Stevens, IEC of Utah

**Minutes:** At 9:00 am the meeting was called to order by Commissioner Erik Christiansen. Commissioner **Lyle White** made the motion to approve the minutes from the August 4, 2016 Commission meeting and Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

**Director's Report:** Director Woodwell provided the Securities Commission an update on recent events in the Division of Securities, including the recent hire of a new investigator and a new examiner. Director Woodwell introduced Bruce Dibb as the new Department of Commerce Administrative Law Judge. ALJ Dibb has a wealth of experience in the private practice arena. Director Woodwell said that the evidentiary hearing that is scheduled for the December Commission meeting will proceed forward.

The effort to collect administrative fines and to boost our Education Fund balance has paid off. The Division has received around \$100,000 in administrative fines since the last Commission meeting. Director Woodwell stated that we anticipate some of the cases the Division is currently investigating will bring significant fine amounts to the Education Fund balance over the next 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 decreased. The Section has only two pending complaints that have not been assigned to an investigator. The Section has 21 open cases that are currently being investigated; 22 that are in litigation, ten outstanding OSCs and nine OSCs in the drafting stage. Two of the Section Investigators are studying to take the FINRA Series 66 exam. The Attorney General's Office filed criminal charges against David Scott consisting of seven counts of enhanced securities fraud as well as one count of pattern of unlawful activity. A plea deal was arranged whereby Scott waived the preliminary hearing, the time for sentencing and pleaded guilty to securities fraud. Mr. Hermansen expressed appreciation to his new and current staff for a job well done.

**Compliance Section Report:** Ken Barton provided the Securities Commission an update on the Compliance Section. YTD 2016 Audit Statistics: the Compliance Section initiated 35 new audits; 24 audits were for-cause audits triggered by investor complaints; 11 audits were routine audits of both investment advisor firms and broker-dealer branch offices. YTD 2016 for-cause audits represent 69% of all audits, compared to only 50% in 2015. Common allegations in the complaints are unsuitable investment recommendations, breach of fiduciary duty, and other broker-dealer/investment adviser misconduct. The Compliance Section has four administrative actions in progress. In three actions an Order to Show Cause or Petition to Censure and Fine has been filed with the respondent, and one administrative action is stayed pending criminal action. The Section has referred three cases to the Utah Attorney General's office for criminal prosecution. The securities fraud trial involving defendants Roger Taylor and Richard Smith was postponed to February 2017. The Scott Stewart fraud trial is anticipated to be delayed into 2017 pending appeal. On September 12, 2016 the Utah Court of Appeals certified the matter to the Utah Supreme Court for appellate review and determination. At issue is a Trial Court ruling relating to the use of

time barred acts as evidence to prove the State's Pattern of Unlawful Conduct Count against Stewart. In the securities fraud case involving defendants George Marshall and Michael Aitken, a preliminary hearing was conducted and a ruling for bind over is pending briefing by the parties and settlement discussions; briefing deadline is October 28, 2016.

**Registration and Licensing:** Benjamin Johnson provided the Securities Commission an update on the Registration and Licensing Section. The Section is moving forward with creating a new crowdfunding notice filing rule, modeled after the NASAA template. The proposed new rule will have a processing fee attached. The anticipated implementation date is the end of this fiscal year.

**Investor Education:** Karen McMullin provided the Securities Commission an update on Investor Education events. Ms. McMullin shared feedback from the public on each of the Division's 2016 Investor Education initiatives which include: 1) retirement education for public employees; 2) administration of the Stock Market Game; and 3) support programs educating seniors about Elder Financial Exploitation.

**Grant Request for Wayne Brown Institute dba VentureCapital.org:** Brad Bertoch addressed the Commission and reviewed how previous grants to Wayne Brown Institute have been used and how the current funds requested will be spent. Director Woodwell responded to questions and indicated support for the request. The Commission approved the grant for \$20,000.

Commissioner **Gary Cornia** made the motion to approve the Wayne Brown Institute Grant and Commissioner **Lyle White** seconded the motion. The motion was passed unanimously.

#### **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 \$18,882.31, to the Education and Training Fund. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

#### **Consideration and Approval of Proposed Orders**

##### **Michael L. Douros and Real Estate Equity Solutions, LLC, SD-16-0013, SD-16-0014: Order on Motion for Default.**

Wayne Jones reported that on or about April 12, 2016, an adjudicative proceeding was initiated pursuant to a Notice of Agency Action and Order to Show Cause. Respondents were ordered to file a response to the order within a 30-day period. Respondents failed to respond. An initial hearing was held on June 1, 2016, Respondents failed to appear. Assistant Attorney General Jones discovered another address and resent the Notice of Agency Action and Order to Show Cause. An initial hearing was scheduled for August 3, 2016, but Respondents failed to appear. Because Respondents failed to file a Response, the ALJ recommended that a default judgement against the Respondents be entered. In the Recommended Default Order,

Respondents are ordered to pay a fine of \$71,875 to the Division, with \$14,375 of the fine due and payable in full upon receipt of this Order. The remaining \$57,500 is subject to offset for a period of 30 days from the date of this Order, on a dollar-for-dollar basis for any restitution paid to the investor. The recommended order also includes a cease and desist order and a permanent securities bar against the Respondent.

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

**Gary C. Nielson SD-15-0049: Order on Motion for Default.**

Jennifer Korb reported that on or about September 16, 2015, an administrative proceeding was initiated against the Respondent pursuant to a Notice of Agency Action and Order to Show Cause. On October 27, 2015, pursuant to a motion and stipulation filed by Respondent's counsel, the proceeding was stayed in light of the associated criminal action. On June 21, 2016 the stay was lifted. On August 3, 2016 a scheduling conference was scheduled. Respondent was ordered to file a response to the order within a 30-day period. Respondent failed to respond. Because the 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 \$75,000 to the Division, with \$15,000 of the fine due and payable in full upon receipt of this Order. The remaining \$60,000 has been paid in full to the 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 Stipulation and Consent Order. Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

**Lori Anderson and SMTS Association a Utah DBA, SD-16-0030, SD-16-0031: Stipulation and Consent Order.**

Dave Hermansen reported that on or about June 14, 2016, the Division initiated an administrative action against Respondents, through the issuance of an Order to Show Cause and Notice of Agency Action. Respondents and the Division have agreed to settle this matter with a Stipulation the Consent Order. Under the terms of the Consent Order, Respondents agree to pay timely full restitution as ordered in the associated criminal action. The Division imposes a total fine of \$100,000 against Respondents, jointly and severally. If Respondents timely pay full restitution as ordered in the Criminal Action, the entire amount of the fine will be waived. The Stipulation and Consent Order also includes a cease and desist order and a permanent securities bar against the Respondents.

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

**Future Meeting Schedule:**

December 1, 2016, room 451, starting at 9am  
December 2, 2016, room 403, starting at 9am (hearing)  
January 26, 2017, room 451, starting at 9am  
March 23, 2017, room 403, starting at 9am  
May 25, 2017, room 403, starting at 9am

Commissioner **Erik Christiansen** called for a motion to adjourn the September 22, 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 10:15 am.

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



Erik Christiansen, Chairman

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

1/26/2017