

Utah Division of Securities Commission
Meeting Minutes
January 26, 2017

Division of Securities Staff Present

Keith Woodwell, Division Director
LeeAnn Clark, Commission Secretary
Kenneth Barton, Compliance Director
Dave Hermansen, Enforcement Director (Excused)
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
John Bickmore, Enforcement Investigator
Francswai Davis, Securities Examiner
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, Crewe Advisors
Gary Cornia, Brigham Young University
Brent Baker, Clyde, Snow & Sessions (Excused)
Lyle White, Fidelity Investments

Public Present:

Laura Polacheck, AARP Utah

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 September 22, 2016 Commission meeting and Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Director's Report: Director Woodwell provided the Securities Commission an update on recent events in the Division of Securities, including the recent hire of a new

investigator and a new examiner. Director Woodwell discussed future meeting dates including an evidentiary hearing scheduled for April 27 and 28.

2017 Legislative Session Update:

- **HB0106 – Utah Uniform Securities Act Amendments.** Representative Craig Hall is the sponsor. Proposing a very minor change in the privacy right of action statute of our Code, Section 61-1-22. It would affect the way interest is calculated on an award that a private plaintiff would be entitled to if they prove securities fraud was committed against them. This bill does not impact the Division; therefore, the Division does not plan to speak to it. Director Woodwell will provide an update at the next Securities Commission Meeting.
- **HB0171 –Securities Exemptions Amendments.** Representative Brian M. Green is the sponsor. Director Woodwell said that this bill creates a real estate/intrastate crowdfunding exemption. It would be limited only to companies where the primary business will own commercial real estate. This exemption is narrowly tailored and is not a broad intrastate crowdfunding exemption. Director Woodwell stated that the Division would prefer that this bill be a broad-based crowdfunding exemption and is open for any type of business as long as they meet the requirements. Director Woodwell will provide an update at the next Securities Commission Meeting.
- **SB0109 – Small Employer Retirement Program.** Senator Todd Weiler is the sponsor. Director Woodwell indicated that this bill is not within the Securities Code, but the Division supports it. The idea is that small employers can set-up retirement plan(s) for their employees through a government market place. They do not have to contract with a specific 401K provider on their own. The State of Utah Treasurer would contract with at least two different providers. They would set-up a menu of investment options for plan participants. The menu of investment options must be approved through the Utah Treasurer’s Office. The bill also includes an oversight board. One of the board members is the Department of Commerce Executive Director or her designee. Director Woodwell will provide an update at the next Securities Commission Meeting.

Enforcement Section Report: Dee Johnson provided the Securities Commission an update on the Enforcement Section. Mr. Johnson reported that Anna Crandall, Enforcement Investigator, has resigned; she accepted another full-time position. Two of the Section’s investigators are attending NASAA Enforcement Training in Columbus, Ohio. Two criminal cases have been filed with the Utah Attorney General’s Office. The Section has 29 open cases that are currently being investigated.

Compliance Section Report: Kenneth Barton provided the Securities Commission an update on the Compliance Section. Audit Statistics 2016- The Compliance Section initiated a total of 45 audits. Thirty-six audits were for-cause audits triggered by investor complaints or regulatory agency referrals; nine routine audits were opened on both investment advisor firms and broker-dealer branch offices. In 2016 for-cause audits represent 80% of all audits. For comparison for-cause audits account for only 50% Compliance Section audits in both 2015 and 2014. The 30% increase was driven by allegations of fraud, unsuitable investment recommendations, breach of fiduciary duty, unauthorized transactions, and other broker-dealer/investment adviser misconduct. The Section has seven administrative actions in progress. Four actions are on today’s

agenda for an approval of Stipulation and Consent Orders, one action is scheduled for an administrative hearing on April 27th and 28th, in two actions an Order to Show Cause or Petition to Censure and Fine has been filed with the respondent, and one administrative action was stayed pending criminal action which was recently resolved. The Section has referred three cases to the Utah Attorney General's Office for criminal prosecution.

- On December 20th 2016 in the securities fraud case involving George Marshall and Michael Aitken, the court bound over for trial two counts of securities fraud, one count of unlicensed activity and one count of sale of an unregistered security for each defendant.
- On January 10th 2017 the State entered into a plea agreement with defendants Roger Taylor and Richard Smith. Smith pursuant to his agreement pled guilty to one count of Pattern of Unlawful Conduct a 2nd degree felony. Smith was sentenced to pay \$200,000 in restitution of which he has paid \$100,000 with the remaining \$100,000 to be paid in monthly installments of \$1,667 for the next five years, which is the period of his probation, plus 250 hours of community service. Taylor, pursuant to his agreement pled guilty to one count of Pattern of Unlawful Conduct a 2nd degree felony, was sentenced to pay \$200,000 in restitution to be paid in monthly installments of \$1,667 for the next ten years, which is the period of his probation, plus 500 hours of community service.

The Scott Stewart fraud trial is delayed pending an appeal to the Utah Supreme Court relating to a ruling against the State on the use of time-barred dismissed count witnesses providing testimony relating to the State's Pattern of Unlawful Activity Count.

Renewal Statistics:

- The total number of state covered investment adviser firms has reached 234; a 9% increase from December 2015 and 91% increase since December 2011. The almost doubling of IA firms is a function of the Dodd-Frank Act change where firms with assets up to \$100m became state covered advisers and a steady annual increase of new firms being licensed.
- There are now almost 115,000 broker-dealer/investment adviser representatives with Utah licensees.
- 2017 renewal fees totaled \$7.4m, a 2.0% percentage increase over 2015 renewal fees.

Investor Education: Karen McMullin provided the Securities Commission an update on Investor Education events. Ms. McMullin shared the following highlights:

- During the last quarter of 2016, the highlight of the Division's involvement in 12 Investor Education events was our potential impact on the age 50+ population in raising awareness of and avoiding Elder Financial Exploitation.
- The Fall Stock Market Game Student Session set a new registration high with 1,114 teams and 86 teachers participating. The spring SMG Student Session begins on Feb. 13.
- Total outreach audience during the last quarter, including the estimate on Stock Market Game participants, is 5,158.

- Updating and adding to the Investor Education section of the Division website. This will include a new component called “Investor University.” Coordinating the newly updated 12 FINRA education modules, this will be available on the Division website. Also creating a new eight-page hard copy pamphlet. At events, the pamphlet will be distributed to encourage increased education about investing which will then direct the public to the “Investor University” webpage on the Division’s website and give them access to the 12 modules. Also adding a “Whistle Blower” referral form.

Investor Education 2017 Goals:

- 1) Elder Financial Exploitation using NASAA’s Senior Safe. This program includes a brochure for the public and a “Quick Response Chart” for those assisting customers or clients to report red flags.
- 2) Continue partnership with URS – Outreach to members; resulting in additional invitations to schools, association meetings and possible local policy creation.
- 3) Stock Market Game – offer two Student Sessions, day long teacher training, two teacher promo sessions
- 4) NASAA – IE toolkit for workplace – “Don’t Wait Until It’s too Late” – initiate education within corporations with non-profit material.

Registration and Licensing: Benjamin Johnson provided the Securities Commission an update on the Registration and Licensing Section. There was a 23% decline of coordinated registrations at the state level during the past year. Rule 506 filings have increased by 5%.

Rule 164-14-2b: Mr. Johnson reported on proposed changes to Rule 164-14-2b. Standard and Poor’s Corporation has discontinued the publication of their securities manual. NASAA and the other state regulators have been approached by OTC Markets Group, Inc. The group is requesting that the top two tiers of their listing service be designated as a recognized securities manual. Numerous states, by rule or order, have moved forward with that designation. The other changes to the Rule stem from feedback received from both OTC Markets and private vendors. Both entities have indicated that Utah’s language in this rule, as it now exists, leads to some uncertainty. This Rule change is meant to alleviate the uncertainty.

Rule 164-15-4: Mr. Johnson reported on proposed additions to Rule 164-15-4. Proposed change is to add a paragraph to include the notice filing that offers and sales securities in an offering exempt under the federal Regulation Crowdfunding.

Commissioner **Erik Christiansen** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the proposed rule changes. Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Grant Request for AARP Utah Laura Polacheck addressed the Commission and reviewed how previous grants to AARP Utah 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 **Erik Christiansen** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the AARP Utah Grant and Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Education and Training Fund Report:

Following the presentation of the Education and Training fund accounting by Benjamin Johnson, Commissioner **Erik Christiansen** called for a motion to approve. Commissioner **Brent Cochran** made the motion to approve the funding request, in the amount of \$55,921. Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Consideration and Approval of Proposed Orders

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

Wayne Jones reported that on or about October 29, 2014, the Division filed a Notice of Agency Action and Order to Show Cause against Respondents David Lyle Turner, Theodore Lamont Hansen and Zurich Holdings Limited Liability Company. The administrative proceeding against Respondents Hansen and Zurich was resolved by the execution of a Stipulation and Consent Order. Respondent Turner and the Division agreed to settle this matter by way of a Stipulation and Consent Order. The Consent Order imposes a fine of \$12,000. The first installment of \$6,000 is due to the Division within three days of the Order. The balance of \$6,000 shall be due within 12 months of the date of the Order. The Stipulation and Consent Order also includes a cease and desist order and a permanent securities bar against Turner.

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

Artisan Group, LLC; Kenneth Eugene North d.b.a. New Century; New Century Funding, Inc., SD-11-0046, SD-110047; Stipulation and Consent Order

Wayne Jones reported that on about October 29, 2014, the Division filed a Notice of Agency Action and Order to Show Cause against Respondents. Respondents and the Division agreed to settle this matter by way of a Stipulation and Consent order. The Consent Order imposes a fine in the amount of \$15,000. The first installment of \$7,500 is due within three days of the Order. The balance of \$7,500 is due no later than 24 months after the entry of the Order. The Stipulation and Consent Order also includes a cease and desist order and a permanent securities bar against the Respondents.

Commissioner **Erik Christiansen** called for a motion to approve. Commissioner **Brent Cochran** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Jeffrey A. Larson; Peak Asset Management, LLC SD-16-0044, SD-16-0045: Order on Motion for Default.

Jennifer Korb reported that on or about October 18, 2016, an administrative proceeding was initiated against the Respondents pursuant to a Notice of Agency Action and Order to Show Cause. On December 15, 2016 an initial hearing was scheduled.

Respondents failed to appear. Respondents were ordered to file a response to the order within a 30 day period. Respondents failed to respond. Because the Respondents failed to file a response, Administrative Law Judge Dibb recommended that a default order against the Respondents be entered. In the Recommended Default Order, Respondents are ordered to pay a fine of \$50,000 due to the Division, with a dollar-for-dollar offset for restitution. In the criminal action, Larsen was ordered to pay restitution in the amount of \$217,206, at a rate of at least \$600 per month. The Default Order also includes a cease and desist order and a permanent securities bar against the Respondents.

Commissioner **Erik Christiansen** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the proposed Order on Motion for Default.

Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Walter Frederick Schwarz; Lone Peak Asset Management Inc., SD-16-0020, SD-16-0021; Stipulation and Consent Order

Russ Bulloch reported that on or about May 19, 2016, an adjudicative proceeding was initiated pursuant to a Petition to Censure and Impose a Fine. Respondents and the Division agreed to settle this matter by way of a Stipulation the Consent Order. Within 30 days following entry of this Order, Respondents agree to retain a compliance consultant to address the issues raised in this Order. Respondents agree to promptly implement the recommendations of the consultant and report to the Division specific actions undertaken. Respondents are ordered to pay a fine of \$25,000 to the Division, with \$5,000 paid within 30 days of the entry of this Order. The remaining \$20,000 is due within 120 days of the entry of this Order. The Stipulation and Consent Order also includes a cease and desist order against the Respondents.

Commissioner **Erik Christiansen** called for a motion to approve. Commissioner **Brent Cochran** made the motion to approve the proposed Stipulation and Consent Order.

Commissioner **Gary Cornia** seconded the motion and the motion was approved.

Robert L. Duvalois; RD3, Inc.; Jason Schwarz: SD-16-0022, SD-16-0023, SD-16-0024: Stipulation and Consent Order

Russ Bulloch reported that on or about May 19, 2016, an adjudicative proceeding was initiated pursuant to an Order to Show Cause. Respondents and the Division agreed to settle this matter by way of a Stipulation the Consent Order. Within 30 days following entry of this Order, Respondent Duvalois agrees to limit his functions to ministerial or clerical. Respondent Jason Schwarz agrees to take prompt action to remove any online references that refer to him as an investment advisor or licensed in the securities industry. Respondents Duvalois and RD3 are ordered to pay a fine of \$15,000 jointly to the Division within 30 days of the entry of this Order. Respondent Jason Schwarz is ordered to pay a fine of \$3,500, which is due within 30 days of the entry of this

Stipulation and Consent Order. The Stipulation and Consent Order also includes a cease and desist order against the Respondents.

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

John Jacob Ashton, SD-16-0016; Stipulation and Consent Order

Ken Barton reported on or about April 13, 2016, an adjudicative proceeding was initiated pursuant to an Order to Show Cause. Respondent John Jacob Ashton and the Division agreed to settle this matter by way of a Stipulation the Consent Order. Respondent agrees that unless and until he becomes licensed he will clearly disclose that he is not licensed to provide investment advice. Respondent agrees to refrain from requesting or reviewing client or prospective client securities accounts. Respondent Ashton is ordered to pay a fine of \$6,500 to the Division, with \$1,000 due within ten days following entry of this Order. The remaining balance shall be paid in full within 24 months following entry of the Order. The Stipulation and Consent Order also includes a cease and desist order against the Respondent.

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

Future Meeting Schedule:

- March 23, 2017, room 403, starting at 9am
- April 27 & 28, 2017, room 403, starting at 9am
- May 25, 2017, room 403, starting at 9am
- August 3, 2017, room 403, starting at 9am
- September 28, 2017, room 403, starting at 9am
- December 7, 2017, room 403, starting at 9am

Commissioner **Erik Christiansen** called for a motion to adjourn the January 26, 2017 Division of Securities Commission Meeting. Commissioner **Gary Cornia** made a motion adjourn the Commission meeting and Commissioner **Lyle White** seconded the motion and the motion was approved unanimously. Meeting adjourned at 11:10 am.

Approved: _____
Erik Christiansen, Chairman

Date: _____