

**Utah Division of Securities Commission  
Meeting Minutes  
May 25, 2017**

**Division of Securities Staff Present**

Keith Woodwell, Division Director  
LeeAnn Clark, Commission Secretary  
Kenneth Barton, Compliance Director  
Dave Hermansen, Enforcement 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  
Francswai Davis, Securities Examiner  
Jason Sterzer, Securities Examiner  
Bryan Cowley, Securities Examiner  
Russ Bulloch, Securities Examiner  
Nathan Summers, Securities Examiner  
Heidie George, Securities Examiner

**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 (Excused)  
Brent Baker, Clyde, Snow & Sessions (Excused)  
Lyle White, Fidelity Investments

**Public Present:**

Joseph Scott  
Susan Speirs, Utah Jump\$tart Coalition  
Paula Faeber, Kruse, Landa, Maycock and Ricks, LLC

**Minutes:** At 9:00am the meeting was called to order by Commissioner **Erik Christiansen**. Commissioner **Lyle White** made the motion to approve the minutes from the March 23, 2017 Commission meeting and Commissioner **Brent Cochran** 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. Director Woodwell presented Chair Erik Christiansen with an appreciation plaque. Chair Christiansen was thanked for his eight years of dedicated service to the Securities Commission. Director Woodwell referred to the Utah Court of Appeals Opinion in the Jack Phillips vs Department of Commerce matter. Director Woodwell stated that this case has been remanded to the Commission for further consideration. Director Woodwell asked Attorney General Tom Melton to review the Opinion and how it will affect the Commission's calculation of administrative fines in the future. AG Melton highlighted a few matters that were generally raised in the Phillips' case:

1. **Statute of Limitation.** Utah Court of Appeals found that there was no statute of limitations applicable to administrative proceedings. AG Melton said that this finding is a limited holding because the Securities Statute has changed since the Phillips matter was argued before the Commission.
2. **Fine Limitation.** AG Melton reported another issue the Utah Court of Appeals addressed in the Opinion was whether our fines are limited to \$10,000 in the administrative context. Both findings will, in the future, determine how a financial analysis is presented and how administrative fines are calculated. The finding is limited by the legislative changes to the Securities Act that were made after the Phillips case was heard by the Commission. The factors to be considered in determining the amount of an administrative fine that were previously outlined in a Division Rule are not codified in Section 61-1-31 of the Act. AG Melton also mentioned several federal securities law cases that are relevant to the issue of calculating fines. Chair Christiansen asked that these securities law cases be circulated to the group.
3. **Eighth Amendment Issues.** The Utah Court of Appeals outlined factors relating to the Eighth Amendment prohibition of excessive penalties that should be considered by the Commission when they reconsider the fine.

**Enforcement Section Report:** Dave Hermansen provided the Securities Commission an update on the Enforcement Section. Mr. Hermansen reported that the Section currently has an Enforcement Investigator position still available. The Section has received a steady flow of complaints. The Section is investigating 25 cases. Of the 25 cases, seven are ready to be screened for administrative action and five are being sent to the Attorney General's office for criminal prosecution. The Section has 17 cases that are unassigned, 14 outstanding OSCs, and eight OSCs in the drafting stage. The Section has 23 cases with the Attorney General's Office that are in some form of prosecution. Mr. Hermansen provided an update on the Stephen L. Brandley case. Brandley's sentencing will take place next month.

**Compliance Section Report:**

Audit Statistics YTD 2017- The Compliance Section has initiated 18 audits. Ten audits were for-cause audits triggered by investor complaints or regulatory agency referrals; eight routine audits were opened. Audits were opened for both investment advisor firms and broker-dealer branch offices. The percentage of routine audits is 44%; this is the first six month period time in 24 months where the percent of routine audits is greater than 25%. Mr. Barton believes this is good news for the Compliance Section since routine audits generally can help reduce the number of potential complaints. The

Section has six administrative actions in progress. Two actions with Stipulation and Consent Orders pending Commission approval today. One is scheduled for an administrative hearing on August 7<sup>th</sup>, 8<sup>th</sup> and, 9<sup>th</sup>. In two actions an Order to Show Cause or Petition to Censure and Fine has been filed with the respondents; one administrative action involving a Dee Randall agent, Dean Hamilton, has been stayed pending an appeal of Hamilton's criminal case. The Compliance Section has referred three cases to the Utah Attorney General's office for criminal prosecution.

1. The securities fraud case involving Michael Aitken has been settled with a plea agreement. Aitken pleaded guilty to 2<sup>nd</sup> degree felony securities fraud, was placed on probation for 24 months, was ordered to pay, and has paid already almost \$65,000 in court ordered restitution. His name will be added to the white collar crime registry.
2. The securities fraud case involving George Marshall is ongoing. Marshall is charged with two counts of securities fraud, one count of unlicensed activity and one count of the sale of unregistered securities.
3. The Scott Stewart securities fraud trial is still delayed pending a Utah Supreme Court ruling related to the use of time barred dismissed count witnesses providing testimony relating to the State's Pattern of Unlawful Activity Count against Stewart.

**Registration and Licensing:** Benjamin Johnson provided the Securities Commission an update on the Registration and Licensing Section. Mr. Johnson reported that his report will address various Division Rule amendments and repeals that require Commission approval.

1. **Rule 164-2-1 (Amendment):** The reason for changing the Division's Rule is to bring us in line with the revised SEC rules on when an investment adviser can charge performance based compensation. The Division proposes increasing the threshold amount for assets under management to qualify for performance based compensation from \$750,000 to \$1.0 million and the threshold for net worth at the time the contract is entered into from \$1.5 to \$2.1 million.
2. **Rule 164-4-3 (Amendment):** The Division proposes adding the "Certified Investment Management Analyst (CIMA)", awarded by the Investment Management Consultants Association to the list of approved designations that qualify for a waiver of the examination requirement for investment adviser representatives.
3. **Rule 164-14-2n (Repeal):** The reason for the repeal is that the SEC has now repealed the companion federal exemption Rule 505 provision that this Rule referenced.

Commissioner **Erik Christiansen** called for a motion to approve the proposed rule changes. Commissioner **Lyle White** made the motion to approve the Division Rule 164-2-1, Rule 164-4-3 amendments and Rule 164-14-2n repeal. **Brent Cochran** seconded the motion and the motion was approved unanimously.

#### **Investor Education Report:**

SUMMARY – Since the last Commission meeting in March, the Division has participated in 14 events with an estimated audience of 1,800 people. Going forward the Division has 27 events already scheduled between July-Nov.

1. **Stock Market Game Update:** The Stock Market Game Spring 2017 Student Session ended on April 21 with 1,062 teams participating through 96 teachers' registrations. The awards banquet was held on May 12, 2017. For the 2016-17 school year, it is estimated that approximately 6,500 students participated through 182 teacher registrations. Funds held by the Utah Jump\$tart Coalition are paying all the Stock Market Game expenses such as team fees, awards and banquet costs. Stock Market Game dates for the next school year have been set and are being distributed to past participants along with additional marketing and seminars at upcoming Utah State Board of Education conferences in June and our annual day-long teacher training scheduled for August 8.
2. **Individual Help Session Report:** Through increased outreach with our investor protection message, we often have individuals request additional help after an event or through a referral from another agency. In 2016, we had a total of 19 Individual Help sessions. We've seen a dramatic increase in this portion of our Investor Education program. In the past five months, we have had 22 such requests. In these Individual meetings, we always indicate that we cannot provide investment advice but our job is to provide more education. The circumstances and ages of these individuals are widely varied.

**Utah Jump\$tart Coalition:** Susan Speirs addressed the Commission and reviewed how previous grants awarded to the Utah Jump\$tart Coalition have been used and how the current funds requested will be spent. Director Woodwell responded to questions and indicated support for this request. The Commission approved the grant for \$15,000.

Commissioner **Erik Christiansen** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the Utah Jump\$tart Coalition Grant and Commissioner **Brent Cochran** 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 \$16,099.02. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

**Consideration and Approval of Proposed Orders:**

**Mario Ozuna, Adam Ozuna and Home Safety Modification: SD-16-0059, SD-16-0060, SD-16-0061: Order on Motion for Default**

Jennifer Korb reported that an adjudicative proceeding was initiated pursuant to a November 20, 2015 Notice of Agency Action and Order to Show Cause against Respondents. On January 12, 2016, the Presiding Officer issued an order staying the proceedings. On December 1, 2016, after the conclusion of the parallel criminal matter, the order was lifted. The ALJ issued a Scheduling Order for December 16, 2016. Pursuant to the Scheduling Order, Respondents had until January 12, 2017 to file a response. An extension was granted until March 31, 2017. The Respondents failed to file a response by the deadline. Under the terms of the proposed Default Order, all

allegations outlined in the Division's Order to Show Cause are deemed to be true. The Respondents are ordered to pay a fine, jointly and severally, in the amount of \$4,000 to the Division, due and payable in full within five days of the entry of the final Order. The Order also includes a cease and desist order and a permanent securities bar against Respondents.

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

**William Clayton Cox: SD-15-0039: Order on Division's Motion for Summary Judgment**

Jennifer Korb reported that the Notice of Agency Action and Order to Show Cause were sent to the Respondent on August 18, 2015. On August 25, 2015, Respondent filed a general denial of the allegations and requested a stay during the pendency of the parallel criminal action. On September 26, 2016, after the conclusion criminal action, the lifted the stay and issued a Scheduling Order. On February 8, 2017 the Division filed a Motion for Summary Judgment. Respondent did not oppose the Motion, and on February 24, 2017 the Division filed a request to Submit for Decision. The parties did not request oral argument. Under the terms of the proposed order, Respondent is ordered to pay a fine of \$10,500 to the Division, offset dollar for dollar for any restitution paid to the investors by Respondent for a period of 30 days after entry of this Order. Should the Respondent fail to provide proof to the Division of restitution payments within 30 days, the full \$10,500 shall be payable immediately and subject to collection. The Order also includes a cease and desist order and a permanent securities bar against Respondent.

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

**My Investment Advisor, Inc., SD-17-0010: Stipulation and Consent Order as to My Investment Advisor, Inc.**

Jason Sterzer reported that on or about January 20, 2017 the Division initiated an administrative action against Respondent by filing a Petition to Revoke, Bar and Impose a Fine. Under the terms of the proposed order Respondent agrees to undertake remedial measures to include but not limited to: (1) disclosing this action to all clients in writing; (2) disclosing to clients that Respondents' ownership and management are separate from Respondent Eric Sampson (the previous owner of My Investment Adviser); and (3) other remedial measures as directed by the Division. The Division imposes no fine. The Order includes a cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state. The companion case against Respondent Eric Sampson will continue.

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

**Travis L. Higgins and UCI Wealth Advisors, LLC: SD-17-0011, SD-17-0012:  
Stipulation and Consent Order**

Jason Sterzer reported that on or about February 8, 2017 the Division initiated an administration against Respondents by filing a Petition to Revoke, Bar and Impose a Fine. Under the terms of the proposed order Respondents hereby agree to pay a fine of \$2,500 within 90 days following the entry of this Order. The Order includes a cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state. Respondents' licensures are revoked and going forward they will not have any clients in Utah, will not share compensation for any client(s) in Utah and they will not seek licensure in Utah.

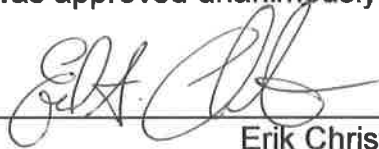
Commissioner **Erik Christiansen** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the proposed Default Order. Commissioner **Brent Cochran** seconded the motion and the motion was approved unanimously.

**Future Meeting Schedule:**

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 May 25, 2017 Division of Securities Commission Meeting. Commissioner **Lyle White** made a motion adjourn the Commission meeting and Commissioner **Brent Cochran** seconded the motion and the motion was approved unanimously. Meeting adjourned at 11:00 am.

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



Erik Christiansen, Chairman

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

8/7/17