

**Utah Division of Securities Commission
Meeting Minutes
October 19, 2017
Room 451**

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
John Bickmore, Enforcement Investigator
Liz Blaylock, Enforcement Investigator
Sean Fuller, Enforcement Investigator
Francswai Davis, Securities Examiner
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
Paula Faerber, Assistant Attorney General
Bruce Dibb, Department of Commerce Administrative Law Judge

Commissioners Present

Brent Baker, Clyde, Snow & Sessions
Brent A. Cochran, IMC Investments
Gary Cornia, Brigham Young University
Lyle White, Fidelity Investments
Peggy Hunt, Dorsey and Whitney, LLP

Public Present:

Brad Bertoch, Wayne Brown Institute dba VentureCapital.org

New Business: Peggy Hunt was introduced as a new member of the Securities Commission. Ms. Hunt currently works at Dorsey & Whitney's Bankruptcy Practice Group and has been working in the area of bankruptcy and receivership law for over 25 years. Ms Hunt was sworn in by Department of Commerce Administrative Law Judge Dibb.

Brent Baker was nominated to assume the role of Chair of the Securities Commission. Commissioner **Gary Cornia** made a motion to appoint **Brent Baker** as the new Chair and **Brent Cochran** seconded the motion and the motion was approved unanimously.

Minutes: At 9:00 am the meeting was called to order by Commissioner **Gary Cornia**. Commissioner **Brent Baker** made the motion to approve the minutes from the August 7, 2017 Commission meeting and Commissioner **Brent Cochran** seconded the motion and the motion was approved unanimously.

Grant Request for Wayne Brown Institute dba VentureCapital.org: Brad Bertoch addressed the Commission and reviewed how previous grants to the Wayne Brown Institute dba VentureCapital.org 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** called for a motion to approve the grant request. Commissioner **Lyle White** made the motion to approve 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, including the recent hire of a new enforcement investigator, Sean Fuller. Director Woodwell said that the Division still has one vacancy for an enforcement investigator. Mr. Woodwell provided the Commission a preview of the 2018 Legislative Session. The Division is proposing legislation to adopt the NASAA Model Act on the protection of vulnerable adults from financial exploitation. This NASAA Model Act has been adopted in at least 18 states. Commissioner White asked if there was any proposed legislation to adopt a state-level fiduciary standard similar to the Department of Labor rule. Director Woodwell addressed his question, explained the state-level fiduciary duty adopted in Nevada, and stated that he is not aware of any effort in Utah to pass legislation on a state-level fiduciary standard.

Enforcement Section Report: Dave Hermansen provided the Securities Commission an update on the Enforcement Section. Mr. Hermansen reported that the Enforcement Section has filed two Orders to Show Cause and three Stipulation and Consent Orders. Four criminal cases have been filed with the Utah Attorney General's Office.

Compliance Section Report: Kenneth Barton provided the Securities Commission an update on the Compliance Section. Audit Statistics YTD 2017- The Compliance Section has initiated 34 examinations. Seventeen exams were for-cause exams triggered by investor complaints or regulatory agency referrals, seventeen routine exams were opened. Exams were opened for both investment advisor firms and broker-dealer branch offices. Mr. Barton noted that the percentage of complaint driven exams in 2017 is 50%; compared to 71% in 2016. This is good news for the Compliance Section since routine exams generally can help improve overall regulatory compliance with the hope of reducing investor complaints. The Compliance Section has four administrative actions in progress. In the administrative action involving One for the Money Financial and Stephen Abraham Ashton the respondents have filed a Request for Agency Review

with the Executive Director of the Department of Commerce. The Compliance Section has referred two cases to the Utah Attorney General's office for criminal prosecution.

The securities case involving George Marshall been settled with a plea and abeyance agreement. Marshall pled guilty to 3rd degree sale of an unregistered security; the abeyance period is five years; Marshall will pay \$50,000 in court ordered restitution. 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.

Investor Education

SUMMARY – Since the last Commission meeting in May, the Division has participated in 26 events with an estimated audience of 4,540 people. For the remainder of 2017, the Division has 10 events scheduled between Oct. 18-Nov. 29.

URS Seminars:

- The Division has participated in 18 of the 19 URS seminars and shared the Investor Protection message and material with approximately 1,800 URS members. The 19th URS Pre-Retirement seminar for 2017 will be held on Nov. 3rd.

Stock Market Game Update:

- The Stock Market Game Fall 2017 10 week Student Session began on Sept. 25th with 1,515 teams (which involves approximately 4,549 students) registered through 79 teachers' registrations. The Fall Session ends on Dec. 1st with the Awards Banquet scheduled for Jan. 5, 2018.
- Regional Teacher training opportunities in 2018 for the Stock Market Game are being offered by the Division to teachers statewide. These trainings are being organized and coordinated through the Utah State Board of Education's CTE Financial Literacy Specialist, Travis Cook and Utah JumpStart. The first day long regional training is scheduled in Richfield on January 23, 2018.
- In addition, three online Stock Market Game training courses are being created and will be offered through the Canvas Learning Management System as a Massive Open Online Course. The three courses will provide Stock Market Game training to Utah educators teaching in Elementary (4-6 grades), Jr./Middle School (7-9 grades) and High School (10-12 grades) and can be used by Utah teachers throughout the year.

Individual Help Sessions:

- 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. Since January 2017, we have had 28 such requests.

Registration and Licensing: Benjamin Johnson provided the Securities Commission an update on the Registration and Licensing Section. Mr. Johnson provided some filing statistics regarding the corporate finance area. Coordinated registrations with the SEC continue a downward trajectory. 506(b) offerings continue to stay vigorous, and 506(c) offerings are down.

Education and Training Fund Report:

Following the presentation of the Education and Training fund accounting by Benjamin Johnson, Commissioner **Gary Cornia** called for a motion to approve. Commissioner **Brent Baker** made the motion to approve the funding request, in the amount of \$68,958.57 to the Education and Training Fund. Commissioner **Brent Cochran** seconded the motion and the motion was approved unanimously.

Consideration and Approval of Proposed Orders:

Cunningham Energy, LLC; SD17-0031; Stipulation and Consent Order

Liz Blaylock reported that on or about June 15, 2017 the Division initiated an administrative action against Cunningham Energy, LLC and its agents by filing an Order to Show Cause. The Division alleged that Cunningham Energy employed unlicensed sales agents to solicit investments from Utah investors and improperly paid securities commissions to whose agents. As part of the Stipulation and Consent Order Cunningham Energy agrees to pay a total fine amount of \$25,000, \$15,000 of which shall be paid within 10 days upon entry of the Order. The remaining \$10,000 shall be paid to the Division within 60 days of the Entry of the Order. Respondent also agrees to cease and desist from violating the Act and is barred from associating with any broker-dealer or investment advisor for a period of two years from the date of the Order.

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

Kendall T. Turley; SD-17-0026; Stipulation and Consent Order

Liz Blaylock reported that on or about June 14, 2017 the Division initiated an administrative action against Accelerated Wealth and other associated entities and individuals by filing and Order to Show Cause. The Division alleged that Turley has solicited a Utah investor and had made misrepresentations and material omissions in connection with solicitation. As part of the Stipulation and Consent Order, Turley agrees to settle this matter by paying a fine in the amount of \$5,000 to the Division. Respondent agrees to make the first payment including half of the fine (\$2,500) plus the full amount of disgorgement (\$400) within 60 days of the Order. Second and final payment (\$2,500) is due within 12 months from the first payment. Respondent shall cease and desist from violating the Act and agrees to not seek licensure for a period of five years.

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

Wheeler Resource Recovery and Scott A. Johnson; SD-17-0017, SD-17-0020; Stipulation and Consent Order

Liz Blaylock reported that on or about March 30, 2017, the Division initiated an administrative action against Respondents Wheeler Resource Recovery and Scott A.

Johnson by filing an Order to Show Cause. The Division alleged that Respondents solicited Utah investors and collected securities commissions without being properly licensed with the Division. Respondents hereby agree to settle this matter with the Division by way of a Stipulation and Consent Order and pay a fine of \$15,000, jointly and severally, upon the entry of the Order. Additionally Respondent Scott A. Johnson shall disgorge \$26,293.74 in commissions to the Division, paid in equal monthly payments over a period of 12 months. Respondents shall cease and desist from violating the Act and agrees to not seek licensure for a period of two years.

Commissioner **Gary Cornia** called for a motion to approve. Commissioner **Brent Baker** made the motion to approve the proposed Order on Motion for Default. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

Donald A. Daniel; SD-17-0014; Default Order

Paula Faerber reported that an administrative proceeding was initiated against Daniel pursuant to a March 8, 2017 Notice of Agency Action and Order to Show Cause. On May 3, 2017, the Division filed an Amended Order to Show Cause. On June 15, 2017, Administrative Law Judge Dibb conducted an initial hearing. Respondent failed to appear. In the Default Order Respondent is ordered to pay a fine of \$100,000 to the Division within five days of the final Order and is ordered to cease and desist from violating the Act and is permanently barred from associating with any broker-dealer or investment advisor.

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

Kim Isaacson; SD-17-0016; Stipulation and Consent Order

Bryan Cowley reported that on or about March 28, 2017 an administrative action against Respondent Kim Isaacson was initiated by filing a Petition to Revoke, Bar and Impose a fine. On May 31, 2017, Respondent filed an Answer to the Petition. The Division alleged that Respondent misstated the balance in a client's account over an extended period of time and engaged in other dishonest and unethical business practices. Respondent hereby agrees to settle this matter with the Division by way of the Stipulation and Consent Order by paying a fine of \$130,000, with \$100,000 of the fine being offset, dollar for dollar, by proof of restitution paid to the investor. Respondent shall pay the remaining fine of \$30,000 in three equal installments of \$10,000. The first installment is due within five days of the entry of this Order. The second installment is due on or by September 30, 2018 and the third installment is due September 30, 2019. Respondent shall cease and desist from violating the Act and is permanently barred from associating with any broker-dealer or investment advisor.

Commissioner **Gary Cornia** 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.

Future Meeting Schedule:


December 7, 2017 Room 403 starting at 9am

January 25, 2018 room 403 starting at 9am

March 22, 2018 room 403 starting at 9am

May 24, 2018 room 403 starting at 9am

Commissioner **Gary Cornia** called for a motion to adjourn the October 19, 2017 Division of Securities Commission Meeting. Commissioner **Brent Baker** 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:  _____
Brent Baker, Chairman

Date: 12/7/17 _____