

**Utah Division of Securities Commission
Meeting Minutes
January 25, 2018
Room 403**

Division of Securities Staff Present

Keith Woodwell, Division Director
LeeAnn Clark, Commission Secretary
Kenneth Barton, Compliance Director
Dave Hermansen, Enforcement Director
Bryan Cowley, Registration and Licensing Director
Karen McMullin, Investor Education Coordinator
Chip Lyons, Securities Analyst (Excused)
Jason Sterzer, Securities Analyst
Liz Blaylock, Enforcement Investigator
Megan Lang, Enforcement Investigator
Francswai Davis, Securities Examiner
Russ Bulloch, Securities Examiner
Heidie George, Securities Examiner
Sally Stewart, Securities Receptionist

Other State of Utah Employees

Tom Melton, Assistant Attorney General (Excused)
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, Crewe Advisors Wealth Management
Gary Cornia, Brigham Young University (Excused)
Lyle White, Fidelity Investments
Peggy Hunt, Dorsey and Whitney, LLP

Minutes: At 9:05 am the meeting was called to order by Commissioner **Brent Baker**. Commissioner **Brent Cochran** made the motion to approve the minutes from the December 7, 2017 Commission meeting and Commissioner **Peggy Hunt** 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.

Division Staffing:

- The Enforcement Section has a new investigator, Megan Lang. Megan has a law degree from the Lewis and Clark Law School and eight years of experience working at Wells Fargo and as an attorney in private practice. The Compliance section is conducting interviews to backfill two positions.

Legislation:

- Senate Bill 88, "Financial Exploitation and Vulnerable Adults" sponsored by Senator Curt Bramble. The bill adopts the NASAA Model Act to Protect Vulnerable Adults. Passed

out with a favorable recommendation by the Senate Business and Labor Standing Committee on January 23rd. The Bill is currently pending on the Senate Floor, working on a few amendments requested by SIMFA.

Enforcement Section Report: Dave Hermansen provided the Securities Commission an update on the Enforcement Section.

- Jason Sterzer was recently promoted to fill the position of Enforcement Analyst.
- The Enforcement Section is seeing a huge increase in cryptocurrency and BitCoin activity, which has triggered additional complaints.
- The Enforcement Section currently has 28 cases assigned to investigators, 22 unassigned cases and the Section has received several new complaints.
- The Enforcement Section has 30 open administrative cases, of which seven have been stayed pending criminal prosecution and eight are still waiting to be drafted. The Section has 24 cases have been filed and referred for criminal action. Mr. Hermansen referenced specific Enforcement cases that have criminal activity and are in the sentencing stage.
- The first criminal case is against Donnelle Schroeder. Respondent Schroeder enticed her husband's 92 year old grandmother to invest money. The victim invested \$421,000 from 2008 to 2016. The Respondent Schoeder made false statements regarding the victim's investments. The case was investigated by Liz Blayock. Criminal charges were filed against Schoeder by the Utah Attorney's Office consisting of 13 counts of securities fraud and one count of pattern of unlawful activity. Respondent Schoeder was sentenced in 5th District Court by Judge Walton to a term of 1-15 years. After the original sentencing the Judge amended and reduced the sentence to a 3rd degree felony and sentenced Schoeder to 0-5 years at the Utah State Prison.
- The second criminal case is against Douglas Beecher. For the past 14 years Beecher has been engaged in taking funds from investors and investing in the Stock Market and other ventures. Respondent Beecher is a licensed CPA and did many of the victim's taxes; therefore he knew how much money they had. Respondent Beecher enticed his victims to invest over \$2 million dollars over several years. Respondent Beecher was criminally charged with 17 counts of securities fraud and one count of pattern of unlawful activity. Beecher pleaded guilty to 5 second degree felonies including the pattern. In order to avoid sentencing Respondent Beecher was allotted 6 months to raise restitution funds. At his sentencing hearing no restitution funds were provided. Respondent Beecher was sentenced to an indeterminate term of 1-15 years for each count to run concurrently.
- The third criminal case is against Kenny Andam. The Utah County Attorney's Office prosecuted the criminal case against Andam. Andam solicited funds from two investors to "start-up" a bank for a line of credit. Andam promised the investors that their money would be secured by a bank in London. All of the funds were used for other businesses or personal use. Andam was charged with one count of securities fraud, one count of unlicensed activity, one count of money laundering, and one count forgery. Andam pleaded guilty to one pattern of unlawful activity and was ordered to pay full restitution in the amount of \$317,000. Andam promised to pay full restitution by the end of next month.
- The forth criminal case is against Craig Franco. Franco has been criminally charged by the Utah Attorney General's Office in 2014 and 2016 in two separate cases. Both cases involve soliciting investors for gold/silver coins and a gold shipment. Respondent Franco received a sentence of 1-15 years in the Utah State Prison.

Compliance Section Report: Ken Barton provided the Securities Commission an update on the Compliance Section.

- Exam Statistics for calendar year 2017- The Compliance Section has initiated 44 examinations. Nineteen exams were for-cause exams triggered by investor complaints or regulatory agency referrals, 25 were routine examinations.
- The Compliance Section has three administrative actions in progress. One administrative action involving Dee Randall agent, Dean Hamilton, has been stayed pending an appeal of Hamilton's criminal case. The second administrative action involves My Investment Advisor and Eric Sampson. In January 2017, the Division filed a petition alleging securities fraud as well as several dishonest and unethical conduct violations. The Division referred the case to the US Attorney's Office for criminal prosecution. The administrative action has been stayed pending the criminal case. The third action against One for the Money Financial and Stephen Abraham Ashton is currently in Agency Review with the Executive Director of the Utah Department of Commerce.
- The Compliance Section has thirteen administrative actions in the drafting progress.
- The Compliance Section has referred one other case to the Utah Attorney General's office for criminal prosecution. 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. Last month the parties presented oral arguments before the Court.

Investor Education:

Karen McMullin provided the Securities Commission an update on the Investor Education Section.

2017 Event Statistics:

- In 2017, the Division participated in 67 events, with an estimated audience total of 14,957. This is a 22% increase in the number of events, with a slight drop of 1.5% in audience totals.
- Of the 2017 events, 29 of the 67 were for individuals age 50+.
- In 2017, Karen McMullin and Heidie George participated in 41 individual education sessions to help those who requested a personal education appointment. This number is almost double the 2016 requests.

2017 Goals Update:

- To increase the awareness of Elder Financial Exploitation, as just mentioned, almost half of our events involved the "AARP eligible" crowd. This segment of the population is most receptive to the investor protection message and very proactive in coming forth with questions and asking for additional help after events. As a side note, AARP was one of our partners on several of the 29 events.
- The Division participated in all 19 of the URS Educational Seminars in 2017. The audience total at these seminars was 1,881. We have been invited back by URS for the 2018 seminar season. In addition, through these seminars, we were also connected with other URS related conferences and spoke with the School District Business Officials at their annual conference, the Association of Educational Office Professionals during their annual meeting and have been invited to participate in the PEHP sponsored seminars in 2018 which involve pre-retirees and those presently retired.
- Involvement in the Stock Market Game continues to gain momentum. In 2017, 186 teachers sponsored 2,314 teams involving an estimated 9,000 students. Compare those numbers to 2016 and we have experienced a 7% growth in team participation in the last year.
- The Division has seen an amazing growth in the number of teachers using the Stock Market Game outside the Wasatch Front. Of the 62 teachers registered for the Spring

Game which starts in 2 weeks, 29 are from schools over an hour away from the Salt Lake City area.

- Creating and offering the CANVAS course, which helps orient new teachers to the Stock Market Game, has resulted in 53 invitations sent to individuals to have access to the course.
- The initiative to begin offering education in the workplace started right here in the Department of Commerce. Three "Fiscally Fit" brown bags were held during 2017 sponsored by the Department's Wellness Committee headed up by our own LeeAnn Clark. The fourth is scheduled for next week. We hope to continue to grow the program as the need for additional basic financial education impacts choices made on a daily basis.

2018 Goals:

- The investor education committee will meet next week where our 2018 goals will be finalized. At the present time, I have 37 events calendared in 2018 with 10 more pending.

2018 Publications:

- A new Division "Info Card" has been printed and will be distributed at a variety of events. URS, particularly, requested this type of publication to use when they refer member for help. A new tri-fold brochure titled, "It's Your Money-Save, Invest and Protect It" was submitted to the UCI printing facility at the prison yesterday and copies will be available soon.

Registration and Licensing:

Bryan Cowley provided the Securities Commission an update on the Registration and Licensing Section. Mr. Cowley provided the Commission information from the Regulator Renewal Summary Report which is a report pulled from the Central Registration Depository (CRD) operated by FINRA

Broker Dealer:

- 1,496 Broker Dealer Firms paid \$299,200 in fees, \$200 per firm.
- 120,202 Broker Dealer Agents paid \$7,212,120 in fees, \$60 per agent.

Investment Advisor

- 1,349 Investment Adviser Firms paid \$122,700 in fees; \$100 for Federal covered IAs and \$50 for State covered IAs.
- There are 1,108 Federal Covered Investment Adviser Firms & 238 State Covered Investment Adviser Firms. Fed Covered paid \$110,800 while State Covered paid \$11,900 for a total of \$122,700
- 5,318 Investment Adviser Representatives, paid \$365,900 in Fees, \$50 per agent
- Total of all fees collected was \$7,899,920 which was up \$345,680 from 2016.

Education and Training Fund Report:

Following the presentation of the Education and Training fund, Commissioner **Brent Baker** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the funding request, in the amount of \$21,373.45, to the Education and Training Fund. Commissioner **Brent Cochran** seconded the motion and the motion was approved unanimously.

Consideration and Approval of Proposed Orders:

Karlton Kilby; SD-17-0048: Stipulation and Consent Order

Liz Blaylock reported that on or about October 31, 2017 the Division initiated an administrative action against Respondent Karlton Kilby by filing a Notice of Agency Action/Order to Show Cause. Ms. Blaylock further stated that National Gold is a purported mining company in West Valley City, UT and is registered with the Utah Division of Corporations and Commercial Code.

Respondent Karlton Kilby was a resident of Virginia and/or Florida during all times relevant to the allegations. Respondent Kilby has never been licensed in the securities industry in the state of Utah. The Division's investigation of this matter revealed that, Respondent offered securities of National Gold, a Utah company, to at least two investors. National Gold used investor monies in a manner that is inconsistent with what Respondent told investors at the time of solicitation of their investments. Respondent neither admits nor denies the Division's Finding of Fact and Conclusions of Law and consents to the sanctions being imposed by the Division. Respondent hereby agrees to settle this matter with the Division by way of a Stipulation and Consent Order. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the State of Utah. Respondent agrees to not sell securities in Utah and agrees to not affiliate with a broker-dealer or investment advisor licensed in Utah.

Commissioner **Brent Baker** 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.

Kevin Thibeau, Jan Bolton, Scott Johnson; SD-17-0032, SD-17-0033, SD-17-0034: Stipulation and Consent Order

Liz Blaylock reported that on or about June 15, 2017 the Division initiated an administrative action against Cunningham Energy and its agents by filing a Notice of Agency Action/Order to Show Cause. On June 10, 2016 the Division received a phone call from a prospective investor who was interested in investing with Cunningham Energy, who reported to the Division that numerous individuals in Utah had purchased oil and gas investments from Cunningham Energy. A search of the Division's records revealed that the Division did not receive registration or exemption notices or filings from Cunningham Energy for these investments. Consequently, Division Examiners contacted Cunningham Energy's compliance officer in Texas and informed him that it appeared to the Division that Cunningham Energy was selling oil and gas investments in Utah without prior registration. Respondents Thibeau, Bolton and Johnson were employed and/or engaged by Cunningham Energy and acted as agents of Cunningham Energy. Respondent hereby agrees to settle this matter with the Division by way of a Stipulation and Consent Order. Respondent Thibeau agrees to pay \$47,661.00 in disgorgement of commissions to the Division with \$11,915.25 paid within 10 days after entry of this Order and the balance to be paid in equal quarterly payments over the period of 24 months. Respondent Bolton agrees to pay \$24,616.00 in disgorgement of commissions to the Division with \$6,154.00 paid within 10 days after entry of this Order and the balance to be paid in quarterly payments over a period of 24 months. Respondent Johnson agrees to pay \$45,275.00 in disgorgement of commissions to the Division with \$11,318.75 paid within 10 days after entry of this Order and at the balance to be paid in equal quarterly payments over a period of 24 months. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the State of Utah. Respondents shall not solicit investor funds in the State of Utah for a period of two years. At the end of the two-year period, Respondents can apply for a securities license in Utah following the standard licensing procedures.

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

Theral L. Ledward, Wealth Building Systems; SD-16-0037, SD-16-0038: Order of Adjudication and Second Amended Findings of Fact, Conclusions of Law and Proposed Order

Department of Commerce Administrative Law Judge Dibb reported that on March 23, 2017 the matter of Respondents Theral L. Ledward and Wealth Building Systems, LLC was heard by four

members of the Securities Commission. On April 17, 2017, the Commission approved, confirmed, and accepted the findings of fact and conclusions of the law and entered its Order. On May 15, 2017, Respondents filed a Request for Administrative Review with the Executive Director of the Utah Department of Commerce. In the Request for Review the Respondents argued that the Order was incomplete because the Commission failed to properly apply Section 61-1-31 of the Act in determining the amount of the fine, and failed to consider mitigating circumstances. Respondents also argued that the Commission erred when it issued a fine amount that was larger than the amount requested by the Division. In the Order on Review the Executive Director found that the Respondents failed to establish that the Commission is bound by the Division's recommendation on the fine amount. The Executive Director also found that the Order did not disclose enough detail regarding how the Commission determined the fine amount. For this reason, the Executive Director remanded the matter to the Commission for further consideration as to the fine amount. At the direction of the Commission, the Division filed on October 19, 2017 its Amended Findings of Fact, Conclusions of Law and Proposed Order. On November 8, 2017, the Respondents filed their Opposition to the Division's Amended Findings of Fact, Conclusions of Law and Proposed Order. Based on the filings of the parties, the Order on Review and the Commission's deliberations and review of the Second Amended Findings of Fact, Conclusions of the Law and Recommended Order dated January 22, 2018 the Commission adopts the findings, conclusions and recommended order entirety and enters the following: 1) Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the State of Utah. 2) Respondent agrees to not sell securities in Utah and agrees to not affiliate with a broker-dealer or investment advisor licensed in Utah. 3) Respondents are jointly and severally ordered to pay a fine in the amount of \$100,000 to the Division within 30 days of entry of this Order.

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

Future Meeting Schedule:

March 22, 2018 room 403 starting at 9am
May 24, 2018 room 403 starting at 9am
August 2, 2018 room 403 starting at 9am
September 27, 2018 room 403 starting at 9am
November 29, 2018 room 403 starting at 9am

Commissioner **Brent Baker** called for a motion to adjourn the January 25, 2018 Division of Securities Commission Meeting. Commissioner **Brent Cochran** made a motion adjourn the Commission meeting and Commissioner **Lyle White** seconded the motion and the motion was approved unanimously. Meeting adjourned at 10:20 am.

Approved:  _____
Brent Baker, Chairman

Date: 3/22/18