

**Utah Division of Securities Commission
Meeting Minutes
December 7, 2017
Room 451**

Division of Securities Staff Present

Keith Woodwell, Division Director
LeeAnn Clark, Commission Secretary
Kenneth Barton, Compliance Director (Excused)
Dave Hermansen, Enforcement Director (Excused)
Bryan Cowley, Registration and Licensing Director
Karen McMullin, Investor Education Coordinator
~~Chip Lyons, Securities Analyst~~
Andreo Micic, Securities Analyst
John Bickmore, Enforcement Investigator
Liz Blaylock, Enforcement Investigator
Sean Fuller, Enforcement Investigator
Francswai Davis, Securities Examiner
Jason Sterzer, Securities Examiner
Russ Bulloch, Securities Examiner
Nathan Summers, Securities Examiner
Heidie George, 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, Crewe Advisors Wealth Management
Gary Cornia, Brigham Young University
Lyle White, Fidelity Investments
Peggy Hunt, Dorsey and Whitney, LLP

Minutes: At 9:00 am the meeting was called to order by Commissioner **Brent Baker**. Commissioner **Brent Baker** made the motion to approve the minutes from the October 19, 2017 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.

Division Staffing:

- Benjamin Johnson resigned as Director of Licensing and Registration and Bryan Cowley has been promoted to replace him.
- Andreo Micic will be resigning as Securities Analyst for the Enforcement Section in January and will be replaced by Jason Sterzer.
- Hired a new investigator, Megan Lang, who will start next week.
- Compliance section will be hiring two new examiners.

Legislation:

- Adopting the NASAA Model Act to Protect Vulnerable Adults; still waiting on an official draft from the Legislature; bill would require reporting of suspected financial exploitation and give immunity for properly reporting the information to the Division of Securities and Adult Protective Services.

Morgan v. Department of Commerce:

- Utah Court of Appeals decision was filed today, December 7th, upheld the ruling that the Securities Commission was correct to conclude that there was not a statute of limitations applicable to an administrative action brought under the Utah Uniform Securities Act. The Evidentiary hearing was held before the Commission on August 27-28, 2015. Morgan sold investment opportunities to several of his co-workers at engineering firm. Morgan promised to use the invested funds to make hard money loans on real estate development projects. The Commission concluded that Morgan made material misstatements and omissions in connection with the sale of securities and fined Morgan \$140,000.

Enforcement Section Report: Andreo Micic provided the Securities Commission an update on the Enforcement Section.

- The Enforcement Section currently has 29 cases assigned to investigators, ten unassigned cases and the Section has received several new complaints. Twenty-eight cases have been filed and referred for criminal action, including three cases with the US Attorney's office, three cases with Utah County and 22 cases with the State Attorney General's office.
- The Enforcement Section has filed three Orders to Show Cause. Mr. Micic reported that the Section has filed three criminal actions.

Compliance Section Report: Francswai Davis provided the Securities Commission an update on the Compliance Section. Audit Statistics YTD 2017- The Compliance Section has initiated 43 examinations. 19 exams were for-cause exams triggered by investor complaints or regulatory agency referrals, 24 are routine examination. In 2017 56% of the section's exams will be routine exams; that is the highest percentage of routine exams in the last five years.

- The Compliance Section has three administrative actions in progress. In one action Paula Faerber will present a default order for your approval today. One administrative action involving a Dee Randall agent, Dean Hamilton, has been stayed pending an appeal of Hamilton's criminal case. The third administrative action involves One for the Money Financial and Stephen Abraham Ashton which is in Agency Review with the Executive Director of the Utah Department of Commerce.
- The Compliance Section has referred one 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.

Investor Education:

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

- In the last 8 weeks, the Division has participated in 11 events with an estimated audience of 609 people.
- The Year-end totals for 2017 show the Division participated in 67 events, involving approximately 15,000 people.
- The Division's website has a total of 272 pages. Using Google Analytics, Ms. McMullin checked the Website usage for the Investor Education webpages. In the top 50 visited pages 10 pages or 20% are Investor Education related.

New Publications for 2018 include:

Red Flags of Guardian Abuse
A "Division Information/Contact" Card
A Large, Basic Investor Education brochure

Free Material continues to be available in large quantities from the Federal Trade Commission, FDIC, Consumer Financial Protection Bureau and FINRA.

Update on the 2017 Investor Education Goals:

- **URS Partnership**

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. URS explains, from their seminar feedback, that the Division's Investor Protection message is appreciated and needed. In conjunction with that success, PEHP (Public Employees Health Plan) has also invited the Division to participate in 6-10 large PEHP events in 2018 which involve Pre-retirement and retired aged individuals.

Stock Market Game Update:

- **Fall Student Session: Dec. 1, 2017 End of Game Totals**

- 90 advisors; 1,252 teams; 4,458 participants; 87 schools
- This semester SMG Winners are located statewide from elementary, Jr./Middle and High Schools:
 - 2 teams from Alpine District;
 - 2 teams from Davis District;
 - 1 team each from Cache, Carbon, Wasatch,
 - 1 private
 - 1 charter school.

- SMG Banquet will be held on Friday, Jan. 5th, 2018 at the Joseph Smith Memorial Bldg. Student speeches are prepared and presented, and are typically the highlight of the event. As a reminder, all Stock Market Game related expenses including team fees and banquet costs are covered through Utah JumpStart. Three online Stock Market Game Teacher Orientation Courses have been created which are available through the learning management system

called CANVAS. The course is designed to be completed in about 2 hours and gives Utah teachers in grades 4-12 the information and tools to begin using the Stock Market Game immediately.

- Coordination efforts are taking place with the Utah Board of Education to help market the CANVAS course and make it readily available to educators statewide. SIFMA has also expressed interest in offering it to teachers throughout the nation. The feedback from Utah educators, who have previewed and evaluated the course in the past month, has been extremely positive.

Registration and Licensing:

Bryan Cowley provided the Securities Commission an update on the Registration and Licensing Section. The Registration and Licensing Section evaluates corporate finance, securities registration/exemptions along with broker-dealer/investment advisor applications. Mr. Cowley highlighted and introduced the Section staff who work tirelessly behind the scenes.

Education and Training Fund Report:

Bryan Cowley presented the Division of Securities the Education and Training fund accounting to the Commissioners. Mr. Cowley reported that several changes have been made to the Education Fund in terms of categorizing expenses. Director Woodwell further stated that these changes will more accurately reflect the actual expense accounting of the 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 \$10,151.12 to the Education and Training Fund. Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Consideration and Approval of Proposed Orders:

Town and Country Bank, Inc.; SD-17-0040: Stipulation and Consent Order.

Paula Faerber reported In February 2017 Town and Country Bank's Board of Directors voted in favor of a motion to extend the preferred stock offering from February 1, 2017 – March 31, 2017. Current Series A Preferred Stock and /or Common Stock shareholders were not informed of Town and Country Bank's extension of its Series A Preferred Stock offering. On February 28, 2017 the consultant purchased the remaining 37,200 shares. Town and Country Bank did not amend its offering circular, issue an addendum to its offering circular or contact its current Series A Preferred Stock shareholders in any manner to inform investors about new information. Ms. Faerber further reported that on or about September 20, 2017 the Division initiated an administrative action by filing an Order to Show Cause against Town and Country Bank alleging that they violated the Act. Respondent hereby agrees to settle this matter with the Division by way of a Stipulation and Consent Order. The Securities Commission imposes a total fine amount of \$15,000 against the Respondent. The total amount shall be paid within 10 days after entry of the 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.

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

Commissioner **Brent Cochran** seconded the motion and the motion was approved unanimously.

Casey J. Wilson, SD-17-0035: Stipulation and Consent Order

Liz Blaylock reported that while Respondent Casey J. Wilson was employed as an unlicensed sales agent of Cunningham Energy, he received a total of \$1,725 in commissions from the sale of securities to one Utah Investor. During all times relevant to the transactions, Respondent was not licensed to sell securities in the State of Utah. Ms. Blaylock further reported that on or about June 15, 2017 the Division initiated an administrative action against Cunningham Energy and its agents by filing an Order to Show Cause. Respondent hereby agrees to settle this matter with the Division by way of a Stipulation and Consent Order. The Division's Findings and Conclusions, which Respondent neither admits nor denies, are hereby entered. Respondent shall pay a total fine amount of \$2,500 and disgorgement of profits in the amount of \$1,725. The fine amount shall be paid within 10 days after entry of this 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 is barred from associating with any 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 **Peggy Hunt** seconded the motion and the motion was approved unanimously.

Donald Daniel, SD-17-0027: Default Order

Jennifer Korb reported that on or about June 15, 2017 the Division initiated an administrative action against Respondent Donald Daniel by filing an Order to Show Cause. On August 16, 2017 the Presiding Officer conducted an initial hearing; Respondent Daniel failed to appear. The Division filed a Motion for Default and Memorandum in Support; Respondent failed to respond. The Presiding Officer finds that pursuant to Utah Code, proper factual and legal bases exist for a default order against Respondent. Respondent shall pay a fine of at least \$400,000 to the Division within 5 five days of entry of this 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 is permanently barred from associating with any broker-dealer or investment advisor licensed in Utah.

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

Jack Phillips, SD-12-0001: Stipulation and Consent Order

Keith Woodwell reported that on or about January 3, 2012 the Division initiated an administrative action against Respondents Jack Phillips and James Elliot by filing an Order to Show Cause. Respondent James Elliot never responded to the Division's action and a Default Order was entered on February 20, 2014, including a fine of \$412,500. The Division made a criminal referral to Salt Lake County for the same

conduct at issue in this case, but the criminal charges were filed after the statute of limitations has elapsed and the criminal case was dismissed. The Division alleged that Respondent Phillips committed securities fraud by making material misrepresentations and omissions in connection with the sale of two different securities to two Utah couples. The first offering involved a multi-level marketing company (GIT) that engaged FOREX trading and sold discount vacation condominium cards. The second offering involved a scheme to import raw emeralds from Brazil and resell them at a large profit in the United States. The case was heard by the Securities Commission on March 27 and April 21, 2014. The Commission found in favor of the Securities Division, ordering Phillips to cease and desist from further violations of the Securities Act and fining him \$413,750. Following agency review, Respondent Phillips appealed the Commission by order to the Utah Court of Appeals, citing issues related to the statute of limitations, the authority to assess a civil penalty or administrative fine, whether the order was an improper order of restitution, and challenging the amount of the fine and how it was calculated by the Commission. On May 18, 2017 the Court of Appeals issued its decision, finding that the action was not barred by any statute of limitations and that the order did not constitute an impermissible order of restitution. The Court of Appeals did find that the Commission had erroneously interpreted and applied the fine assessment guidelines in the relevant administrative rule, and the appellate court set aside the civil penalty of \$413,760. The Court directed the Commission to reconsider the amount of the fine in light of the opinion. The Division and Phillips have now reached a settlement on the remaining issue of the amount of the fine and entered into a Stipulation and Consent Order. Respondent Phillips shall pay to the Division a fine of \$75,000. Respondent agrees to pay \$25,000 to the division, \$41,500 to the Perschs and \$8,500 to the Reutlingers. If these payments are paid in full paid within 10 days of this Order, the Division will consider the fine fully satisfied. If the payments are not made, the fine of \$75,000 will be sent to the Office of State Debt Collection.

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.

Ascendus Capital Management, LLC, Richard T. Smith; SD-10-0070, SD-10-0071: Default Order.

Paula Faerber reported that on or about October 5, 2010 Division initiated an administrative action against Respondents Ascendus Capital Management and Richard T. Smith by filing an Order to Show Cause. On July 28, 2017 the Presiding Officer sent Respondents a Notice of Prehearing Conference in this matter to be held August 31, 2017; Respondents failed to appear. On October 27, 2017 the Securities Division filed a Motion for Default and Memorandum in Support. Respondents failed to respond to the Division's Motion for Default. Respondents have previously failed to respond to the Division's Motion to Lift Stay, Request to Submit for Decision, and Order to Show Cause/Notice of Agency Action. The Presiding Officer finds that pursuant to Utah Code, proper factual and legal bases exist for a default order against Respondents. Respondents shall pay a fine of \$115,000 payable to the Division with dollar for dollar credit of up to \$100,000 for amounts Respondents pays in court-appointed restitution. 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 are permanently barred from associating with any 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 Order on Motion for Default. Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Future Meeting Schedule:

- January 25, 2018 room 403 starting at 9am
- 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 December 7, 2017 Division of Securities Commission Meeting. Commissioner **Brent Cochran** made a motion adjourn the Commission meeting and Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously. Meeting adjourned at 10:35 am.

Approved:  _____
Brent Baker, Chairman

Date: 1/25/18