

Utah Division of Securities Commission
Meeting Minutes
March 22, 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 (Excused)
Chip Lyons, Securities Analyst
Jason Sterzer, Securities Analyst
Liz Blaylock, Enforcement Investigator
Megan Lang, Enforcement Investigator
Sean Fuller, Enforcement Investigator
Francswai Davis, Securities Examiner
Russ Bulloch, Securities Examiner
Heidie George, Securities Examiner
Nathan Summers, Securities Examiner
Nadene Adams, Licensing 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

Public Present:

Laura Polacheck, AARP Utah
Dan Luke, Utah Financial Planners Association

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 9:05 am the meeting was called to order by Commissioner **Brent Baker**. Commissioner **Brent Cochran** made the motion to approve the minutes from the January 25, 2018 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.

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. The final bill allows for the initial stay on transactions or disbursements to be put in place for up to 10 days by the firm if the firm suspects there may be elder financial exploitation. The firm has to report it within two business days to the Division of Securities and Adult Protective Services. The bill passed and has been signed by Governor Herbert, effective date is May 2018. Director Woodwell will continue to provide the Commission updated information regarding Senate Bill 88.

Staffing:

- The Compliance Section recently hired a new Securities Examiner – Jeff Teichert. Mr. Teichert is an attorney and will be an asset to the Division. The Division still has two vacancies to fill – 1) Securities Examiner and 2) Enforcement Investigator.

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

- 1) The first case is against Jersey Consulting. This case was a joint effort between multiple US/State of Utah agencies. Dee Johnson is the lead investigator. Mr. Johnson provided an informative report. In January of 2018 the Division concluded an investigation against Jersey Consulting. Jersey Consulting came up with a concept where they would process road base, dirt, material gathered from road sides as well as a gravel pit. These products would then be processed into gold, silver, platinum and palladium. Multiple agencies participated in a raid to obtain physical evidence. Respondents collected over \$8 million from over 100 investors. There were multiple material misstatements and omissions as well as misuse of funds. Several of the solicitors have been summoned and appeared. They are now awaiting trial. This case, with its respective solicitors, is being prosecuted criminally.
- 2) The Enforcement Section had one sentencing from a recent case. The case involved Respondent Greg Crook/PAWS, Inc. Respondent Crook allegedly claimed to have had Bluetooth feeding machine for animals. This Bluetooth feeding technology could be activated via smart phone. Respondent Crook used investor funds for personal gain. The sentencing of Respondent Greg Crook was on February 1, 2018. He pled guilty to two counts of forgery of which were third degree felonies and was ordered to pay full restitution to investors.

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 Brent Baker called for a motion to approve. Commissioner **Gary Cornia** made the motion to approve the AARP of Utah Grant and Commissioner **Brent Cochran** seconded the motion and the motion was approved unanimously.

Grant Request for Utah Financial Planning Association: Dan Luke addressed the Commission and reviewed how previous grants to Utah Financial Planning Association 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 \$5,000.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Brent Cochran** made the motion to approve the Utah Financial Planning Association and Commissioner **Peggy Hunt** seconded the motion and the motion was approved unanimously.

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

- 1) Exam Statistics YTD 2018- The Compliance Section has initiated fifteen examinations. Five exams were for-cause exams triggered by investor complaints or regulatory agency referrals, ten were routine examination. The Compliance Section has five administrative and criminal actions in progress. In February 2018 the Division filed an Order to Cause against Roger E. Taylor; this administrative action follows the Division criminal referral to the Utah Attorney General's office. Taylor pled guilty to one count of Pattern of Unlawful Conduct a 2nd degree felony agreed to pay \$200,000 in court ordered restitution \$1.6m in full restitution; the Division seeks to bar Taylor from the securities industry.
- 2) In January 2017 the Division filed a petition alleging securities fraud as well as several dishonest and unethical conduct violations by My Investment Advisor, a Utah state-covered registered investment adviser firm, and its principals Eric Sampson and Niki Sampson. The Division referred Mr. Sampson to the U.S. Attorney's office for criminal prosecution. On January 11, 2018 the U.S. Attorney filed felony securities fraud charges against Mr. Sampson. In February 2018 Mr. Sampson consented to a guilty plea with the U.S. Attorney, Sampson agreed to pay \$3,000,000 in investor restitution; his criminal sentencing is scheduled for May 2018, affording Mr. Sampson time to raise money for investor restitution. The Division's administrative action has been stayed pending the completion of Sampson's criminal case.
- 3) Another administrative action involves Dean Hamilton, an agent involved in the Dee Randall/ Horizon Notes securities fraud scheme. Mr. Hamilton pled Guilty to Misdemeanor attempted securities fraud and was sentenced to 250 days in jail. The Division's administrative action has been stayed pending an appeal of Hamilton's criminal case.
- 4) Another administrative action involves "One for the Money Financial and Stephen Abraham Ashton." In a September 2017 filing this Commission ruled Ashton held himself out as a provider of investment advice without a securities license, issuing a \$250,000 fine. Mr. Ashton has appealed these findings. The appeal is in Agency Review with the Executive Director of the Utah Department of Commerce.
- 5) The final Compliance Section action involves Scott Stewart, his criminal 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:

Director Keith Woodwell provided the Securities Commission an update on the Investor Education Section.

2018 Investor Education Goals include:

- 1) Initiate contact w/corporations for Employee Education Opportunities (new)
- 2) Increase Division Website Education & update the "For Investor" pages
- 3) Participate in URS and PEHP Educational Seminars
- 4) Sponsor Stock Market Game & provide ongoing teacher training support
- 5) Participate in educational opportunities about Elder Financial Exploitation

Event Update

- 1) Since the last Commission Meeting on January 25th, the Division has participated in 17 investor education events with a total audience of approximately 2,386. Not included in

this count are two large events happening today (March 22) which involve a URS Retirees Seminar and an AARP Real Possibilities event.

- 2) The Stock Market Game Spring Session is in its sixth week. After deleting the inactive teams, which saved about \$2,600 in team fees this semester, there are 1,370 teams participating which include approximately 4,700 students.

Success Stories

- 1) In response attending a URS seminar over a year ago, an individual contacted the Division and asked for help regarding several annuity purchases made via events sponsored by her school district. Heidie and Karen met with her at the Division's offices and afterwards, this response was sent: - "The meeting at your office went so well; so informative. "I'm afraid if I tell my friends about this great resource, they will inundate your office with requests for appointments!"
- 2) In January, Heidie and Karen trained eight teachers in the Central Region on how to use the Stock Market Game with their classes. 100% of the teachers registered for the Spring Student Session. Prior to the game beginning in Feb., a teacher responded with this comment: "Our students are very excited for the game to start and are taking a genuine interest in understanding and reviewing stocks, bonds, etc., with real companies! Thank you again for bringing the SMG to our high school."

Registration and Licensing:

Bryan Cowley provided the Securities Commission an update on the Registration and Licensing Section. Mr. Cowley stated that over the past month or so, there have been array of questions that the Section has received involving cryptocurrencies – samples are below:

- 1) Is it legal to mine bitcoin?
Answer: Yes, it is legal to mine bitcoin, but there have been instances of people stealing resources such as electricity and processing power, which is illegal.
- 2) Can I be in compliance with Securities Law if I do an initial coin offering?
Answer: Yes, if the initial coin offering is more aligned with pre-paid services or a gift card rather than structured as a security, where there is an expectation of reselling at a profit.
- 3) Do I need a license to help others invest in bitcoin?
Answer: It depends on whether bitcoin is a security; it could be considered an investment contract as defined in 61-1-13 of the Utah Securities Act. "Investment in Common Enterprise (bitcoin) for expectation of profit (bitcoin) derived from managerial efforts of another.

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:

New Point Development, LLC, Donnielle K. Schroeder; SD-17-0043, SD-17-0044: Default Order: Tom Melton/ Jennifer Korb

Jennifer Korb reported that October 17, 2017 the Division initiated an administrative action by filing a Notice of Agency and an Order to Show Cause. The Order to Show Cause states that from January 2009 to April 2016 Responders made material misrepresentations and failed to disclose material facts to investor and collected approximately \$421,000 in investor monies. The Notice of Agency Action and Order to Show Cause instructed the Respondents to file a response within 30 days of the mailing date. Respondents were further instructed to appear at an initial hearing scheduled for December 13, 2017. Respondents failed to appear or respond to the Order. Respondents are ordered to pay fine of \$521,000 to the Division due and payable in full upon receipt of final order. Of this fine amount, \$421,000 shall be subject to offset on a dollar-for-dollar basis for any restitution paid to the investor pursuant to the restitution order in the criminal case against Donnielle Schroeder. 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 amended Default Order. Commissioner **Lyle White** seconded the motion and the motion was approved unanimously.

National Gold, Inc., James C. Barrus, Brent C. Alder, Brent H. Gundersen, Lloyd B. Sharp; SD-17-0045, SD-17-0046, SD-17-0047, SD-17-0048, SD-17-0049, SD-17-0050: Default Order: Paula Faerber

Paula Faerber reported that on or about October 31, 2017 the Division initiated an administrative action against Respondents National Gold et al by filing a Notice of Agency and an Order to Show Cause. A prehearing conference was held on December 19, 2017. The Administrative Law Judge was informed that Respondent Karlton W. Kilby had entered into a Stipulation and Consent Order with the Division. Of the remaining Respondents, all but Lloyd B. Sharp have had some communication with the Division or Administrative Law Judge. Each of the named Respondents has failed to attend or participate in the properly schedule prehearing conference and each has failed to respond to the Order to Show Cause. The named Respondents are ordered to pay to the Division, jointly and severally, a fine of \$850,000. 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 **Lyle White** made the motion to approve the proposed Default Order. Commissioner **Gary Cornia** seconded the motion and the motion was approved unanimously.

Lane Bird; SD-11-0026: Default Order: Paula Faerber

Paula Faerber reported that on or about March 24, 2011 the Division initiated an administrative action against Respondent by filing a Notice of Agency and an Order to Show Cause. On April 4, 2011 Respondent was charged in a criminal action. The facts underlying the criminal case are the same as those in the administrative action. On April 18, 2011, Respondent filed and was granted a motion to stay the administrative action pending resolution of the Criminal Action. The stay was temporarily lifted in September 2013 and Respondent filed an answer. In October 2013, a motion to re-enter the say was granted. On August 28, 2017, the Division filed a Motion to Lift Stay. The Motion was granted by the Administrative Law Judge. The prehearing conference was scheduled for October 26, 2017 and the Respondent was represented by legal counsel. On November 30, 2017, the Division made a timely filing of an Amended Order to

Show Cause. The Respondent has not filed any opposition memorandum or affidavit in support thereof. As a consequence, the Respondent, as the non-moving party, has not presented evidence that is sufficient to establish a genuine issue of material fact, and the Division is entitled to judgment as a matter of law. Respondent pay a fine of \$275,000 to the Division with \$110,276.83 of the fine due and payable in full upon entry of the final order. The remaining \$164,723.17 of the fine subject to offset for a period of one year following the date of the final order on a dollar for dollar basis for any restitution paid to the harmed investors. 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 **Brent Cochran** made the motion to approve the proposed Default Order. Commissioner **Peggy Hunt** seconded the motion and the motion was approved unanimously.

Copper Basin, LLC, Brandon Edward Clark, Adrian Jeremy Tuttle; SD-17-0053, SD-17-0054, SD-17-0055: Default Order: Paula Faerber

Paula Faerber reported that on or about November 28, 2017 the Division initiated an administrative action against Respondents Copper Basin, LLC et al by filing a Notice of Agency and an Order to Show Cause. A prehearing conference was scheduled January 22, 2018. None of the Respondents appeared personally or through counsel at the prehearing conference. Respondents are ordered to pay the Division, jointly and severally, a fine of \$128,000. 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 **Brent Cochran** made the motion to approve the proposed Default Order. Commissioner **Peggy Hunt** seconded the motion and the motion was approved unanimously.

Cortney Blaine Pierce; SD-16-0046: Stipulation and Consent Order: Dave Hermansen

Dave Hermansen reported that on or about November 7, 2016 the Division initiated an administrative action by filing a Notice of Agency and an Order to Show Cause against Respondent Cortney Blaine Pierce. Respondent hereby agrees to settle this matter with the Division by way of a Stipulation and Consent Order. Respondent admits that the Division has jurisdiction over him and the subject matter of this action. The Division's Findings and Conclusions, which Respondent admits are hereby entered. The Division imposes a total fine amount of \$10,000 against Respondent. Respondent agrees to pay \$5,000 on or before March 31, 2018 and the remaining balance of \$5,000 to be paid in full on or before March 31, 2019. 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 Stipulation and Consent Order. Commissioner **Peggy Hunt** seconded the motion and the motion was approved unanimously.

Casey Wilson; SD-17-0035: Stipulation and Consent Order: Liz Blaylock

Liz Blaylock reported that Respondent Casey Wilson hereby agrees to settle this matter with the Division by way of an amended Stipulation and Consent Order. As described herein, Respondent was not licensed in the securities industry in any capacity when he solicited investments from at least one Utah resident, provided investment advice to investors. Respondent received a combined total of \$1,725.00 in commission for engaging in the offer or


sale of securities in the State of Utah. Respondent neither admits nor denies the Division's Finding of Fact and Conclusions of the Law. Respondent represents that the information provided to the Division as part of its investigation is accurate and complete. Respondent is ordered to pay disgorgement of commission in the amount of \$1,725.00. 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 shall be prohibited from soliciting investor funds in the State of Utah for a period of two years. At the end of the two-year period, Respondent is permitted to apply for a securities license in Utah following the standard licensing procedures.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Lyle White** 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:

- 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 March 22, 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: 5/24/18