

**Utah Division of Securities Commission**  
**Meeting Minutes**  
**May 24, 2018**  
**Room 451**

**Division of Securities Staff Present**

Tom Brady, Division Director  
LeeAnn Clark, Commission Secretary  
Kenneth Barton, Compliance Director  
Dave Hermansen, Enforcement Director  
Bryan Cowley, Registration and Licensing Director  
Dee Johnson, Investor Education Director  
Karen McMullin, Investor Education Coordinator  
Chip Lyons, Securities Analyst  
Jason Sterzer, Securities Analyst  
Liz Blaylock, Enforcement Investigator  
Megan Lang, Enforcement Investigator  
Sean Fuller, Enforcement Investigator  
Brett Baumann, Enforcement Investigator  
Tyler Huff, Licensing Intern  
Sally Stewart, Receptionist

**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:**

Christy Tribe, Junior Achievement of Utah  
John Jeppesen

**Commissioners Present**

Brent Baker, Clyde, Snow & Sessions  
Brent A. Cochran, Crewe Advisors Wealth Management  
Lyle White, Fidelity Investments

**Minutes:** At 9:05 am the meeting was called to order by Commissioner **Brent Baker**. Commissioner **Lyle White** made a motion to approve the minutes from the May 24, 2018 Commission meeting and Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

**Director's Report:** Tom Brady was introduced as the new Director of the Division of Securities. Director Brady provided the Securities Commission an update on recent events in the Division of Securities.

**Staffing:**

- Elliott Clark, Examiner in the Compliance Section. Elliott is an attorney and is moving to Utah from Mississippi. Elliott will begin his employment with the Division on June 11, 2018.
- Brett Baumann, Enforcement Investigator. Brett is an attorney and has been practicing law in the State of Oregon for the past 10 years. Brett started May 21, 2018.
- Heidie George has accepted a position with URS. She worked in the Compliance Section for over five years.

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

- The Section currently has over 50 cases under investigation. There seems to be a rise in the number of complaints. The types of complaints include an influx of oil and gas and cyber currency.
- The Section currently has 22 cases under prosecution. They include 21 outstanding OSCs, with six stayed pending criminal action and four in the drafting stage.

**Compliance Section Report:** Ken Barton provided the Securities Commission with an update on the Compliance Section and Exam Statistics YTD 2018.

- The Compliance Section has initiated 15 examinations. Seven exams were for-cause exams triggered by investor complaints or regulatory agency referrals and eight were routine examinations. The Compliance Section has nine administrative and criminal actions in progress. In March 2018 the Division filed a Petition to Censure and Fine against Aspen Capital Management, LLC and its agents John Crosier, Chad Loveland, and Daniel Matheson. The Division's Petition alleges eleven dishonest and unethical business practices ranging from failing to provide required disclosures to clients, misleading advertising, failing to supervise agent activity, and several books and records violations.
- In April 2018 the Division completed its sweep of broker-dealer activity being conducted in Utah Credit Unions. The Division filed three separate Petitions to Censure and Fine on the following broker-dealer firms: LPL Financial, LLC, Cetera Advisor Networks, LLC, and CUSO Financial Services. The Petitions allege the firms failed to comply with the regulatory requirements governing networking arrangements between broker-dealers and credit unions; the firms approved the use of misleading sales and advertising materials and other communications provided to customers and the public; the firms failed to follow and enforce their own policies and procedures relating to credit union operations; and the firms failed to reasonably supervise the business each firm ran through credit unions.
- In February 2018 the Division filed an Order to Cause against Roger Taylor. This administrative action follows the Division's criminal referral to the Utah Attorney General's office. Taylor pled guilty to one count of Pattern of Unlawful Conduct, a 2<sup>nd</sup> degree felony, and agreed to pay \$200,000 in court ordered restitution with \$1.6m in full restitution. The Division seeks to bar Taylor from the securities industry.
- 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 US 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, scheduled for May 2018, was postponed until Mr. Sampson time to raise money for investor restitution. The Division's administrative action and stay has been lifted and a new scheduling order will be forth coming.
- The administrative action involving Dean Hamilton, an agent involved in the over \$70,000,000 dollar 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 in Hamilton's criminal case.
- The administrative action involving One for the Money Financial and Stephen Abraham Ashton is being appealed and is currently in Agency Review with the Executive Director of the Utah Department of Commerce.
- 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:** Karen McMullin provided the Securities Commission with an update on the Investor Education Section.

**Investor Education Events Update:**

- Since the last Commission Meeting in March 2018, the Division has participated in twelve events with an estimated participation of approximately 2,200 people.
- The events included seminars and conferences for seniors, URS educational seminars, and events relating to the Stock Market Game and InvestWrite Essay Contest.
- Two events stood out as experiences of particularly "high rates of return".

- The first is the URS Retirees Seminar held on March 22, 2018. Fifty-eight URS members who have retired attended. After giving the investor protection message, the IE section was inundated with questions and requests for individual meetings. The interest level was extraordinary for this size group.
- The second was the Statewide Elder Abuse Conference held on May 15, 2018, in Richfield. The 300 conference attendees include a variety of people who assist the Elderly by working in communities and senior centers, with legal assistance groups or as employees of the Division of Aging and Adult Services or Adult Protective Services. The breakout seminar presented had about 40 people attend and the topic was the Federal Trade Commission's "Pass It On" program, presented with an "Investor Protection" twist. Since the conference the request for follow-up material or for presentations has been very positive.

**Stock Market Game/InvestWrite Update:**

- On April 20th, the Spring 2018 Student Session of the Stock Market Game ended. During this session, 1,369 teams consisting of 4,700 students participated under the registration of 127 advisors. The awards banquet was held on May 11, 2018 with three members of the Securities Commission in attendance. Their attendance was greatly appreciated.
- The dates for the 2018-19 Stock Market Game sessions have been set and include two Summer Teacher Promo Sessions and two student sessions held in the Fall and Spring.
  - A day long teacher training is also scheduled for August 7, 2018 at the Heber Wells building. We will be partnering with the Utah State Board of Education to provide professional development credit for the day long training.
  - This information will also be presented at two statewide conferences in June held for the Business and Marketing and Family and Consumer Science Teachers.
- The Spring InvestWrite Award results are expected from SIFMA this week. Teachers will be contacted and winners will be notified. The awards will be sent accordingly.

**Individual Appointments:**

- Since January 29, 2018, the Division has had 12 individual appointment requests in response to the public asking for additional education after events, or as a URS referral. These appointments have been held in the Division's office; and several have resulted in complaints being filed.

**Investor Education Success Stories:** Below are three success stories.

The first one came via email after an individual appointment. It was a referral from URS.

- "I wanted to thank you for the time you spent with my husband and myself this morning; the information you were able to provide us was invaluable to us as we approach retirement."
- "The 2-1/2 hours you spent with us is some of the most valuable time we have spent for our future planning. You started the meeting out by outlining our goals and all of them were met plus much more! You are a valuable asset to the residents of Utah, and I am glad that our URS representative pointed us in your direction."

The second success story is from an email received from a retired teacher who recently came to our office for an individual appointment and sent the following response:

- "Original Response - Decades ago I trusted a man because he was allowed to sell an investment product in the faculty room of the high school where I taught. I signed papers to have \$100 taken out of my payroll check monthly for years and years until I had over \$30,000 in the account. Right before I retired, I realized it was a poor investment because I had made only 3 percent on that money at a time when the stock market had made much higher returns. I tried to educate myself throughout my career, but as a single mother and high school English teacher, I didn't have the time or know how to best educate myself about major financial decisions like this. During the last few months of my career, I spoke to another financial planner who was allowed in my school. I told him I wanted to get a better return from that money and he said he could help me. He took the money from that other plan and put it into an annuity. I am now trying to get the money out of that high-cost annuity and move it into the Utah Retirement System. I try not to think of how much more money I would have now if I would have put the money there in the first place."
- This response was read by Director Keith Woodwell in April 2018 while speaking at the Utah Association of School Business Officials. We've received feedback that since then, several school

districts are re-evaluating their district policies about allowing outside vendors in schools during contract time.

- “Thank you so much for helping me through this whole process! It is such a financial relief to have this issue resolved. It was also a good learning experience on personal growth. I’m so glad that I took notes during our meetings so that I can go back and review what I learned from you.”

The third success story is from the Stock Market Game.

- This response shows some of the challenges teachers face with using the Stock Market Game, such as access to computer labs and end of year testing requirements. This teacher did not bring a team to the banquet but his response indicates success nevertheless. He is a 6<sup>th</sup> grade teacher in Saratoga Springs and has already registered to use the program next year; and will be attending the day long training in August 2018.
- “My kids LOVED it this year! We, sadly, weren’t able to do much the last month due to testing - we didn’t have access to computers because all the other teachers needed them. Many students started speaking with their parents about the stock market and even starting their own small accounts. It was amazing!”

### **Registration and Licensing:**

Bryan Cowley provided the Securities Commission with an update on the Registration and Licensing Section.

- One specific area that the Licensing and Registration Section is involved in is the Regulation D; Rule 506 (b) and (c). Regulation D (Reg D) is an SEC regulation governing private placement exemptions. Reg D allows usually smaller companies to raise unlimited capital through the sale of equity of debt securities without having to register their securities with the SEC. The purpose and spirit of Reg D is to allow small companies that otherwise could not afford normal SEC registration access to capital markets.
- Rule 506 Exemptions of Regulation D are the most widely used exemption from SEC Registration; split into two options based on whether the issuer will engage in general solicitation or advertising to market the securities. “In an offering that qualifies for Rule 506 exemption, an issue may raise an unlimited amount of capital from an unlimited number of “accredited investors” and up to 35 non-accredited investors” under 506(b).
- Under SEC Rule 501, accredited investors are individuals who meet certain minimum income \$200K individual or \$300K married or a net worth levels \$1 million not including home, or certain institutions such as trusts, corporations or charitable organizations that meet minimum asset levels.

### **Registration and Licensing Changes:**

- Investment securities offerings rules were relaxed by allowing general advertising and soliciting. [80 years – Enacted during Great Depression]. In April 2012, Congress passed the Jumpstart and Business and Startups Act (JOBS ACT) that directed the SEC to remove the prohibition on general solicitation or general advertising for securities offerings relying on Rule 506 provided that sales are limited to accredited investors and the issuer reasonably verifies that all purchases are accredited investors.
- The determination of the reasonableness of the steps taken to verify an accredited investor is an objective assessment by an issuer. An issuer is required to consider the facts and circumstances of each purchaser and the transaction. Nevertheless, the SEC provided a non-exclusive list of methods that issues may be used to satisfy the verification requirement for individual investors.
- **Facts:**
  - Obtain Funding Faster than IPO
  - Disclosure Documentation (less than required for public offering)
  - Not exempt from Antifraud/Civil Liability

### **Education and Training Fund Report:**

Following the presentation of the Education and Training fund, Commissioner **Brent Baker** called for a motion to approve. Commissioner **Brent Cochran** made the motion to approve the funding request, in the amount of \$22,399.56, to the Education and Training Fund. Commissioner **Lyle White** seconded the motion. The motion was approved unanimously.

**Grant Request for Junior Achievement of Utah:** Christy Tribe addressed the Commission and reviewed how previous grants to the Junior Achievement of Utah have been used; and how the current funds requested will be spent. Director Brady 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 Junior Achievement of Utah grant and Commissioner **Lyle White** seconded the motion. The motion was approved unanimously.

**Consideration and Approval of Proposed Orders:**

**Douglas P. Beecher; AMALIA, LLC; ASOM Group, Inc.; and Alpine MTG Associates, LP: SD-16-0003, SD-16-0004, SD-16-0047 SD-16-0048; Order on Motion for Default:** Jennifer Korb

Jennifer Korb reported that on January 12, 2016 the Division initiated this administrative proceeding by filing a Notice of Agency Action and an Order to Show Cause. An initial hearing was held on March 2, 2016 and Respondents did not appear. On November 28, 2016 the Division filed an Amended Order to Show Cause which added ASOM Group, Inc. and Alpine MTG Associates, LP as respondents. On January 12, 2017, Respondents' counsel filed an Appearance of Counsel on behalf of all respondents. On January 12, 2017, the presiding officer entered an Order staying proceedings pending resolution of the criminal action against Mr. Beecher. On January 11, 2018 the Division filed a motion to lift the stay based on the resolution of the criminal action. On January 24, 2018 the presiding officer issued an Order Lifting Stay and Notice of Prehearing Conference. Pursuant to the Scheduling Order set forth at the prehearing conference, Respondents' responsive pleadings were due on February 22, 2018. Respondents have not filed responsive pleadings. On March 19, 2018, counsel for the Division sent an email to Respondents' counsel putting him on notice that the Division intended to seek a Default Order. No pleadings were filed. Findings of fact:

- (1) All allegations outline in the Division's Amended Order to Show Cause are true;
- (2) Respondents cease and desist from engaging in any further conduct in violation of the Utah Code;
- (3) Respondents are assessed a fine, and jointly and severally pay \$450,000 to the Division; and
- (4) Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the amended Default Order. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

**Empire Financial Services, LLC; Bret R. Cartwright: SD-17-0051, SD-17-0052: Order on Motion for Default:** Jennifer Korb

Jennifer Korb reported that on November 28, 2017 the Division initiated an administrative proceeding by filing a Notice of Agency Action and an Order to Show Cause. On January 24, 2018, counsel for the Division contacted, via email, Respondents' counsel in the parallel criminal matter and they were informed of the pending administrative action against Respondents. Counsel for the Division gave such legal counsel until February 2, 2018 in which to file a Notice of Appearance on behalf of respondents. Such legal counsel responded to the email and acknowledged the request. No legal counsel appeared in this matter. The NOAA and OSC instructed Respondents to file a response within 30 days of the mailing date and to appear at an initial hearing scheduled January 22, 2018. Respondents did not appear at the hearing in person or through a representative. Findings of Fact:

- (1) All allegations outlined in the Division's order to show case are true;
- (2) Respondents cease and desist from engaging in any further conduct in violation of the Utah Code;
- (3) Respondents ordered to pay a fine of \$100,000 to the Division;
- (4) Respondents permanently barred from associating with any broker-dealer or investment adviser 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 **Lyle White** seconded the motion. The motion was approved unanimously.

**John Zane Jeppesen; Jeppesen Land Properties; SD-16-0042; SD-16-0043: Stipulation and Consent Order:** Jennifer Korb

Jennifer Korb reported that on or about September 26, 2016 initiated an administrative action against Respondents by filing an Order to Show Cause. From approximately 2010 to 2014 while conducting business in or from Utah, Respondents offered and sold promissory notes and/or investment contracts to at least six investors and collected approximately \$555,000 in connection therewith. Investors were promised returns of up to 20% on their invested principal. To date, the six investors are still owed approximately \$488,830 in principal alone. The Division's Findings and Conclusions, which are admitted by Respondents are hereby entered:

- (1) Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state;
- (2) Respondents are barred from associating with any broker-dealer or investment adviser licensed in Utah;
- (3) Pursuant to Utah Code Ann. Section 61-1-20 and in consideration of the factors contained in the Utah Code Ann. Section 61-1-31, Respondents shall pay a fine, jointly and severally, to the Division in an amount to be determined and order the Commission. Fine amount will be determined after a hearing is held.

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. The motion was approved unanimously.

**Future Meeting Schedule:**

August 2, 2018; room 451 starting at 9:00 am  
September 27, 2018; room 403 starting at 9:00 am  
November 29, 2018; room 403 starting at 9:00 am

Commissioner **Brent Baker** called for a motion to adjourn the May 24, 2018 Division of Securities Commission Meeting. Commissioner **Brent Cochran** made a motion adjourn the Commission meeting and Commissioner **Lyle White** seconded the motion. The motion was approved unanimously. Meeting adjourned at 10:05 am.

Approved:  \_\_\_\_\_  
Brent Baker, Chairman

Date: 8/2/18