

Utah Division of Securities Commission
Meeting Minutes
August 2, 2018
9:00 a.m.
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
Liz Blaylock, Enforcement Investigator
Megan Lang, Enforcement Investigator
Sean Fuller, Enforcement Investigator
Brett Baumann, Enforcement Investigator
Tyler Huff, Licensing Intern
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

Public Present:

Stephen Brandley
RoseAnn Brandley
Christopher Brown

Commissioners Present

Brent Baker, Clyde, Snow & Sessions
Peggy Hunt, Dorsey and Whitney
Gary Cornia
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 **Brent Cochran** made a motion to approve the minutes from the May 24, 2018 Commission meeting and Commissioner **Lyle White** 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.

NASAA Symposium:

Director Brady attended the NASAA Symposium in May 2018. He provided highlights of this conference to the Division.

- Attendees were able to work collaboratively through a series of hypothetical fact patterns to tackle a wide range of issues from potential regulatory violations to the challenges that come with managing budgets, staff, and external stakeholders.

Staffing:

- Jason Sterzer was appointed as the Director of the Division of Corporations and Commercial Code effective July 30. He had previously been working as a Securities Analyst for the Division.
- Effective July 30, Francswai Davis was appointed as the Securities Analyst to replace Jason. She had previously been working as an Examiner in the Compliance Section.
- Tyler Huff has been working as an intern in the Registration and Licensing Section. Tyler was offered and he accepted a time-limited position with the Division as an Examiner in the Section effective July 30.
- Milena Palor completed her internship.
- The Division recently hired Rebecca Taylor as an intern. She will be starting the 3rd year of her JD program at BYU's J. Reuben Clark School of Law School. Rebecca was an intern at the U.S. Securities and Exchange Commission Salt Lake City Enforcement Division during her 2nd year of law school. She has two years of accounting work experience and worked for several years as Vice-President of Finance for a regional health care delivery company in Idaho.
- LeeAnn Clark has announced her retirement from state employment. Her last day will be August 10.
- The Compliance Section is in the process of hiring for two vacancies. They are two examiner positions due to the departure of Heidie George and Francswai Davis.

Internal Procedure Change

- From now on, when licensing applications are submitted by firms on behalf of individual licensees they supervise, the Division will be copying the individual agents on all correspondence in addition to the firm, particularly when an action is being taken against their license.

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

- The Section currently has over 51 cases under investigation. There seems to be a rise in the number of complaints. Another type of complaint is now surfacing which involves real estate – specifically house flipping.
- The Section currently has 18 cases under prosecution. Director Hermansen updated the Commissions on various criminal actions that are pending.

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

Exam Statistics YTD 2018- The Compliance Section has initiated twenty examinations, eleven exams were for-cause exams triggered by investor complaints or regulatory agency referrals, 8 are routine examinations.

The Compliance Section has ten administrative and criminal actions in progress.

- An administrative action involves Roger Taylor, which we have on today's agenda for seeking your approval of a SCO.
- On July 25, 2018, the Securities Division filed an Order to Show Cause (OSC) against Kenneth Boyce. The Division conducted a securities fraud investigation into Boyce's actions with a private investment in Bothwell Consulting. Criminal charges were brought by the U.S. Attorney for Oklahoma involving Bothwell principals and Boyce. Boyce plead guilty to one count of Conspiracy to Commit Wire Fraud. Boyce was sentenced to 30 months in prison plus three years of probation, and ordered to pay \$1,475,272.97 in restitution. The OSC seeks to bar Boyce from securities activity in Utah and a fine.
- In March 2018 the Division filed a Petition to Censure and fine 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.
- In April 2018 the Division completed its sweep of broker-dealer activity being conducted in Utah Credit Unions. The Division filed separate three Petitions to Censure and Fine 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.
- On May 29, 2018 Commerce Executive Director Francine Giani issued a Findings of Fact, Conclusions of Law, and Order on Review ("Order") in the One For the Money Financial, Inc. ("OFTMF")/Stephen Abraham Ashton ("Ashton") administrative action. The Order upheld the findings of the Utah Securities Commission ("Commission") issued September 2017. OFTMF and Ashton were found to engage in unlicensed investment adviser activity and failed to cooperate during the Division's examination. The Respondents unlicensed activity occurred over several years and involving hundreds of Utah investors, mostly seniors. The Order affirmed the Commission's \$250,000 fine. The Respondents have files appeal the Utah State Court of Appeals.
- In January 2017 the Division filed a petition alleging securities fraud 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. The Division's administrative action stay was lifted due to an anticipated sentencing date for Mr. Sampson. The sentencing date has been postponed as a result the stay was reinstated pending Sampson's sentencing and payment of restitution.

- The administrative action involving Dean Hamilton an agent involved in the over \$70,000,000 dollar Dee Randall Horizon Notes securities fraud scheme. The Division's administrative action has been stayed pending an appeal in Hamilton's criminal case.
- The final Compliance Section action involves Scott Stewart, his criminal securities fraud trial is delayed pending the scheduling of a new trial date. The Utah Supreme Court ruled in favor of the State allowing for witnesses of time barred dismissed counts to providing testimony relating to the State's Pattern of Unlawful Activity Count against Stewart.
 - On February 28, 2018 the Division filed an Order to Show Cause ("OSC") in the Matter of Roger E Taylor and FFCF Investors, LLC. This is a companion administrative action to a criminal filing by the Utah Attorney General. In January 2017 Taylor pled guilty to one count of Pattern of Unlawful Conduct a 2nd degree felony. Taylor was sentenced to pay \$200,000 in court ordered restitution and \$1.6m in full restitution, ten years of probation, plus 500 hours of community service. In the OSC the Division alleges securities fraud and unlicensed activity. The Division seeks for Taylor to be barred from the securities industry and pay a fine of \$200,000 which will be offset by court ordered restitution payments.

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

Event Statistics May 24-Aug. 2, 2018

During the last 9 weeks, the Division has participated in 12 events, with an estimated audience total of just over 2,700** people. The events included 8 URS seminars, 2 PEHP Medicare seminars and 2 conferences sponsored by the Utah State Board of Education. The two Summer Stock Market Game sessions for "Teachers Only" have involved 18 educators. The annual Stock Market Game Day-long Teacher Training is scheduled for next Tuesday, Aug. 7 and there are 24 teachers registered, many of which are new to the program.

FY 2018 Statistics

During FY 2018, the Division of Securities participated in 70 events with a total estimated audience of 20,548. In addition, during that time, we have scheduled 22 individual appointments where requests were made by the public after events for individual help with specific investment/retirement questions. In these appointments, additional education was provided, referrals to other agencies were made and follow-up was provided if needed. Several of these appointments have provided perspective on future education efforts and have resulted in complaints filed.

Stock Market Game/InvestWrite Update

- During the 2017-18 school year, the participation in the Stock Market Game has been record setting. The statistics from the two Student Sessions are as follows: 217 advisors registered to use the Stock Market game and their teams placed trades by the end of the fifth week. These advisors sponsored 2,621 teams which

- included 9,158 students. The Spring InvestWrite awards were delivered to winning teachers and students in Logan, Layton and Stansbury Park.
- The 3 Stock Market Game Teacher Orientation CANVAS Courses I created for Elementary, Junior and High School educators have enabled the possibility of remote training for teachers. There have been 102 requests for the CANVAS courses and invitations have been sent to all 102.
 - Marketing for the two Stock Market Game Student Sessions for the 2018-19 school year is ongoing through email blasts, conferences, and word of mouth among the teachers. Registrations are starting to come in for the Fall Session.
 - As of June 2018, the Utah JumpStart account, which is used to pay the Stock Market Game expenses, has \$51,557.93. This fund will be adequate for approximately 2 years at the current level of expenditures and participation. Several discussions have taken place regarding the financial future of the Stock Market Game and the resources available to continue to offer it to Utah educators and students in the coming years.

New Administrative Rule – Financial Literacy

A new Utah Administrative Rule -Rule R277-704 titled “Financial and Economic Literacy: Integration into Core Curriculum and Financial and Economic Literacy Student Passports” became effective on July 1, 2018. The rule “**directs the Utah State Board of Education to work with financial and economic experts and private and non-profit entities to develop and integrate financial and economic literacy and skills into the public school curriculum at all appropriate levels**” (*and to develop a financial and economic literacy student passport which is optional for students and tracks student mastery of financial and economic literacy concepts.*)

The rule includes “a **program or series of activities developed locally to encourage the understanding of financial and economic literacy among students and their families and to assist public school educators in making financial and economic literacy an integrated and permanent part of the public school curriculum.**”

One key component of the Rule, which I believe the Division of Securities Investor Education program can help fill states: “The Utah State Office of Education shall provide professional development for all areas of financial and economic literacy utilizing the expertise of community and business groups and shall provide information and resources for teaching about financial and economic literacy without promoting specific products or businesses;”

While the “burden for action” for this Rule is on the Utah State Office of Education, the Division of Securities staff has the “financial and economic experts” to promote this type of literacy among students and their families and we are currently working with the Board of Education to provide this type of assistance.

Future Events Scheduled

Fourteen events have been scheduled between now and the first of 2019. This includes a URS Pre-Retirement Seminar happening today in Richfield, with Jeff

Teichert, a new examiner and member of the Investor Education committee, handling it.

**This number includes 1,700 educators who attended the USBE CTE Conferences held in Saratoga Springs and Lehi on June 13 & 14, 2018. The Division participated in these events by sponsoring a table, submitting Stock Market Game related material to the conference website, and provided 3 Stock Market Game seminars to educators. Thirty teachers were trained in the seminars during these two conferences.

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

- Introduce Tyler Huff: BYU Law graduate – worked at SEC, BYU fellowship, took February Bar.
- The licensing and registration section evaluates corporate finance securities registrations, exemptions, along with processing broker-dealer and investment adviser applications.
- Last meeting Director Cowley discussed the number of Broker Dealer Firms (1,496) BD Agents (120,202), Investment Adviser Firms that are Federal (1,108) and State covered (238). Over the past month or so, if there were one area of questions that we are receiving more than any other area, it is involving cryptocurrencies – all kinds of different questions.
 - Is it legal to mine for bitcoin?
 - Can I be in compliance with Securities Law if I do an initial coin offering?
 - Do I need a license to help others invest in bitcoin?
 - What can I do if my son is investing in bitcoin and I think it's a Ponzi scheme?
 - Can we set up a bitcoin ATM?
 - Is it legal to mine for bitcoin? This question we received from a city business office that needed to know whether they could issue a business license. Answer. YES, it is legal to mine bitcoin but there have been instances of people stealing resources such as electricity and processing power, which would be illegal.

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 \$35,757.47, to the Education and Training Fund. Commissioner **Lyle White** seconded the motion. The motion was approved unanimously.

Consideration and Approval of Proposed Orders:

Stephen Brandley, Clearwater Funding, LLC; SD-16-0039; SD-16-0041: Stipulation and Consent Order. Dee Johnson

Dee Johnson reported that on or about September 7, 2016, the Division initiated an administrative against Clearwater and its agents by filing Notice of Agency Action and an Order to Show Cause. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order. This Order will fully resolve all claims the

Division has against Respondents pertaining to the Order to Show Cause. Respondent admits that the Division has jurisdiction over him and over the subject matter of this action. It is hereby ordered that:

1. Respondent shall cease and desist from engaging in any further conduct in violation of the Utah Code;
2. Respondent shall pay a fine, jointly and severally, of (a) \$40,000 to be paid to the Division within three days after the entry of the order and (b) \$20,000 in equal quarterly payments, paid in full no later than 24 months after entry of the Order.
3. 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 **Gary Cornia** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Lyle White** seconded the motion. The motion was approved unanimously.

James Cameron Lee; SD-16-0040: Stipulation and Consent Order. Dee Johnson

Dee Johnson reported that on or about September 7, 2016, the Division initiated an administrative against Clearwater and its agents by filing Notice of Agency Action and an Order to Show Cause. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order. This Order will fully resolve all claims the Division has against the Respondent pertaining to the Order to Show Cause. Respondent admits that the Division has jurisdiction over him and over the subject matter of this action. It is hereby ordered that:

1. Respondent shall cease and desist from engaging in any further conduct in violation of the Utah Code;
2. Respondent shall pay a fine in the amount of \$10,000 to the Division within 5 days of this Order.
3. 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 **Gary Cornia** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Lyle White** seconded the motion. The motion was approved unanimously.

PAWZ Inc. and Greg Andrew Crook; SD-16-0049; SD-16-0050: Stipulation and Consent Order. Dee Johnson

Dee Johnson reported that on or about November 30, 2016, the Division initiated an administrative against PAWZ and its agent by filing Notice of Agency Action and an Order to Show Cause. Respondents here by agree to settle this matter with the Division by way of a Stipulation and Consent Order. The Order will fully resolve all claims the Division has against Respondents pertaining to the Order to Show Cause. Respondents admit that the Division has jurisdiction over Respondents and the subject matter of this action. It is hereby ordered that:

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, jointly and severally, pay a fine in the amount of \$10,000. Fine amount of \$1,000 is due within 10 days of entry of the Order and a payment is of \$4,000 is

due within two years. Payment of the remaining \$5,000 is eligible for offset, of up to \$5,000, for any money paid to investor.

3. Respondents are 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 Stipulation and Consent Order. Commissioner **Peggy Hunt** seconded the motion. The motion was approved unanimously.

Roger Edward Taylor; FFCF Investors, LLC; SD-18-0001, SD-18-0002: Stipulation and Consent Order. Ken Barton

Ken Barton reported that on or about February 28, 2018, the Division initiated administrative action against Roger Edward Taylor and its agents by filing Notice of Agency Action and an Order to Show Cause. Respondents hereby agree to settle this matter with the Division by way of a Stipulation and Consent Order. The Order will fully resolve all claims the Division has against Respondents pertaining to the Order to Show Cause. Respondents admit that the Division has jurisdiction over Respondents and the subject matter of this action.

It is hereby ordered that:

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 fine \$200,000, to be offset by any restitution paid by Respondent in the criminal case;
3. Respondents are 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 Stipulation and Consent Order. Commissioner **Gary Cornia** seconded the motion. The motion was approved unanimously

Total RIG Services, LLC; Dyad Environmental LLC, TTU Enterprises LLC, Black Rock Aggregates LLC, Summit Oilfield Services, LLC, Ryan Richard West; SD-18-0007, SD-18-0008, SD-18-0009, SD-18-0010, SD-18-0011, SD-18-0012: Recommended Order on Default. Jennifer Korb

Jennifer Korb reported that on March 30, 2018 Division initiated an administrative proceeding by filing a Notice of Agency Action and an Order to Show Cause. A prehearing conference was scheduled in this matter and was held on May 29, 2018. Respondent West participated by telephone in the conference on his own behalf for Total RIG Services, LLC, Black Rock Aggregates, LLC and Summit Oilfield Services, LLC. The Named Respondents failed to file responsive pleadings in this matter. The Named Respondents were further invited and reminded to file responsive pleadings by June 19, 2018. No default is taken in this Order as Default as to DYAD Environmental, LLC or TTU Enterprises.

It is hereby ordered that:

1. Respondents cease and desist from engaging in any further conduct in violation of the Utah Code;
2. Respondents assessed a fine jointly and severally in the amount of \$175,000 to the Division due within 30 days of the order. The Named Respondents jointly and

severally shall pay restitution, on the date of the entry of this default, of \$200,530, \$70,000, \$100,000, and \$100,000 to investors;

3. 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 **Brent Baker** seconded the motion. The motion was approved unanimously.

Future Meeting Schedule:

October 4, 2018, room 403 starting at 9 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 August 2, 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 10:15 am.

Approved: _____
Brent Baker, Chairman

Date: _____