DEPARTMENT OF COMMERCE
Heber M. Wells Building, 2nd Floor
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114

BEFORE THE UTAH DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE

IN THE MATTER OF **GLOBA, INC., and KENNETH EXOW ANDAM,** Respondents.	**ORDER ON MOTION FOR SUMMARY JUDGMENT** Case Nos.: **SD-2016-033** **SD-2016-034**

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's Findings of Fact, Conclusions of Law and Recommended Order on Motion for Summary Judgment in this matter are hereby approved, confirmed, accepted and entered by the Utah Securities Commission.

ORDER

The Commission hereby orders as follows:

1. No judgment is to be entered against Globa until a proper factual presentation is made about service of the Motion on the respondent entity.
2. That the respondent, Kenneth Exow Andam ("Andam"), cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 et *seq*.
3. That Andam be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, from acting as an agent for any issuer soliciting funds in Utah, and from being licensed in any capacity in the securities industry in Utah.

4. That a fine be imposed against Andam in an amount to be determined following an evidentiary hearing on the factual issues of the appropriate amount of the fine.
5. The hearing on the amount of the fine will take place on Thursday, October 4, 2018, at 10:00 a.m., or as soon thereafter as the matter may be heard.
6. The Commission will receive oral testimony and documentary evidence on the factual issues of the amount of the fine, and will hear oral argument on the single issue of the amount of the fine. The Commission may also rely upon the Findings of Fact referenced above in making the determination as to the amount of the fine.
7. Both parties are directed to present documentary and oral testimony in a robust manner to assist the Commission in determining the proper amount of the fine to be imposed. Reliance on the referenced Findings of Fact, on proffers of proof, or on oral argument alone will not be sufficient evidence to establish the amount of the fine.

DATED September ~~6th~~ October 4th, 2018.

UTAH SECURITIES COMMISSION:

Brent R. Baker, Member

Brent A. Cochran, Member

Gary Cornia, Member

Peggy Hunt, Member

Lyle White, Member

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of September, 2018, the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR SUMMARY JUDGMENT and a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER ON MOTION FOR SUMMARY JUDGMENT by email to:

the Respondent, Kenneth Ekow Andam, through counsel
MARY C. CORPORON
CHRISTENSEN & JENSEN, P.C.
mary.corporon@chrisjen.com

the Respondent, Globa, Inc., through counsel
Greg Skordas
gskordas@schlaw.com

Jennifer Korb, AAG
jkorb@utah.gov
Counsel for the Division

Sally Stewart
sstewart@utah.gov

/s/ Bruce L. Dibb

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2018, the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR SUMMARY JUDGMENT and a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER ON MOTION FOR SUMMARY JUDGMENT by email to:

the Respondent, Kenneth Ekow Andam, through counsel
MARY C. CORPORON
CHRISTENSEN & JENSEN, P.C.
mary.corporon@chrisjen.com

the Respondent, Globa, Inc., through counsel
Greg Skordas
gskordas@schlaw.com

Jennifer Korb, AAG
jkorb@utah.gov
Counsel for the Division

Vickie L. Cutler
vlcutler@utah.gov

DEPARTMENT OF COMMERCE
Heber M. Wells Building
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114

BEFORE THE UTAH DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE

IN THE MATTER OF NATIONAL GOLD, INC., JAMES C. BARRUS, BRENT C. ALDER, KARLTON W. KILBY, BRENT H. GUNDERSEN, **LLOYD B. SHARP,** Respondents.	**ORDER OF THE COMMISSION** Case Nos.: SD-2017-045 SD-2017-046 SD-2017-047 SD-2017-048 SD-2017-049 **SD-2017-050**

The Commission accepts each of the findings of fact set forth in the September 11, 2018, Findings of Fact, Conclusions of Law and Recommended Order on Motion for Summary Judgment, and incorporates those findings in the present order.

ORDER

The Utah Securities Commission orders as follows:

a. That the Renewed Motion for Default is denied and the Motion for Summary Judgment is granted.

b. That the Respondent, Lloyd B. Sharp, is assessed a fine in the amount of $135,000.00, which is payable on the date of this Order;

c. That Respondent is ordered to cease and desist from engaging in any further conduct in violation of U.C.A. §61-1-1 *et seq.*; and

d. That Respondent, Lloyd B. Sharp, is permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, from acting as an agent for any issuer soliciting funds in Utah, and from being licensed in any capacity in the securities industry in Utah.

DATED September _____, 2018.

UTAH SECURITIES COMMISSION:

_____
Brent R. Baker, Member

_____
Brent A. Cochran, Member

_____
Gary Cornia, Member

_____
Peggy Hunt, Member

_____
Lyle White, Member

Notice of Right to Administrative Review

Review of this Order may be sought by filing a written request for administrative review with the Executive Director of the Department of Commerce within thirty (30) days after the issuance of this Order. Any such request must comply with the requirements of Utah Code Annotated §63G-4-301 and Utah Administrative Code R151-4-902.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2018, the undersigned served a true and correct copy of the foregoing ORDER OF THE COMMISSION by email to:

LLOYD B. SHARP
[redacted]

PAULA FAERBER, AAG
pfaerber@agutah.gov
Counsel for the Division

VICKIE CUTLER
vlcutler@utah.gov

/s/ Vickie L. Cutler

d. That Respondent, Lloyd B. Sharp, is permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, from acting as an agent for any issuer soliciting funds in Utah, and from being licensed in any capacity in the securities industry in Utah.

DATED September 18, 2018.

UTAH SECURITIES COMMISSION:

Brent R. Baker, Member

Brent A. Cochran, Member

Gary Cornia, Member

Peggy Hunt, Member

Lyle White, Member

Notice of Right to Administrative Review

Review of this Order may be sought by filing a written request for administrative review with the Executive Director of the Department of Commerce within thirty (30) days after the issuance of this Order. Any such request must comply with the requirements of Utah Code Annotated §63G-4-301 and Utah Administrative Code R151-4-902.

UTAH SECURITIES COMMISSION
Heber M. Wells Bldg., 2nd Floor
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF **UTAH GOLD AND SILVER DEPOSITORY, LLC,** and **CRAIG ANTHONY FRANCO,** Respondents.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AS TO THE AMOUNT OF THE FINE TO BE IMPOSED AGAINST RESPONDENTS** Case Nos.: **SD-14-019** **SD-14-020** **SD-16-035** **SD-16-036**

This matter was heard by the Commission on two separate Orders to Show Cause filed by the Utah Division of Securities (the "Division").

PROCEDURAL SETTING

On June 30, 2014, the Division filed the first of two Orders to Show Cause (the "2014 OSC"), against Utah Gold and Silver Depository, LLC (hereafter, sometimes "UGSD") and against Craig Anthony Franco ("Franco"). USGD and Franco are sometimes referred to collectively as the "Respondents". The second Order to Show Cause was filed on July 7, 2016 (the "2016 OSC"). The 2014 OSC alleges that Respondents violated the Utah Uniform Securities Act (the "Act") by making material misstatements and omissions in connection with the offer and sale of securities to an investor. The 2016 OSC alleges that Respondents violated

the Act by making material misstatements and omissions in connection with the offer and sale of securities to two investors, while failing to be licensed in the securities industry.

On June 7, 2018, the Division filed a Motion for Summary Judgment and by Order dated August 2, 2018, the Commission determined that based on the admissions made and applicable law that Respondents had committed securities fraud as a matter of law. The amount of any fine to be assessed against the Respondents was reserved for a hearing that took place on August 2, 2018, at which both parties were represented by counsel. These Findings of Fact, Conclusions of Law and Order address this remaining issue of the amount of the fine to be assessed based on the admissions made, the evidence presented at the hearing, the arguments of counsel, and applicable law.

FINDINGS OF FACT

The Commission accepts each of the findings of fact set forth in the July 17, 2018, Findings of Fact, Conclusions of Law and Recommended Order on Motion for Summary Judgment, and incorporates those findings in the present findings and order. In addition to the July 17, 2018 findings of fact, the Commission also finds that:

1. The actual amount of investor losses, in principal amount alone, is $1,040,000.[1]
2. In a parallel criminal case against Franco, he has been ordered to pay restitution in the amount of $1,040,000. No portion of this amount has been paid by Franco.
3. The persistence of the conduct constituting the egregious violations of the securities laws by the Respondents is amply reflected in the fact that it was necessary for the Division to file the 2016 OSC after it had already filed the 2014 OSC.
4. As reflected in the July 17, 2018 findings of fact, Franco did not inform the two victims

[1] This finding as to the amount of total principal losses (acknowledged by all parties at the August 2, 2018 hearing), corrects the misunderstanding reflected in Conclusion of Law "F" in the July 17, 2018 Conclusions of Law.

referenced in the 2016 OSC about his pending felony charges for securities fraud, administrative proceedings, lawsuits and bankruptcies prior to soliciting and obtaining their investment (*See* 2016 OSC at ¶ 10; 2016 Answer at ¶ 21).

5. Under the circumstances of his pending felony criminal charges and the pending 2014 OSC, the Respondents defrauded the investors and victims referenced in the 2016 OSC by taking and losing their investment funds in June of 2015. These alarming facts reflect the persistence of the wrongful and unlawful conduct, and demonstrates the history of the previous violations of the Respondents.

6. The two investors and victims referenced in the 2016 OSC were directly harmed by the unlawful conduct of the Respondents.

7. There was some comment, without any actual evidence produced at the August 2, 2018 hearing by any of the parties, on the issue of whether the victim referenced in the 2014 OSC would be harmed by the loss of his $1,000,000 investment. Without some actual and compelling testimony and supporting documentation indicating to the contrary, it is evident (and it is the finding of this Commission), that the loss of $1,000,000 had a harmful impact upon the investor referenced in the 2014 OSC.

8. There was no evidence produced that reflected that the Respondents cooperated in any meaningful way in the inquiry conducted by the Division concerning the securities violations of the Respondents.

9. Respondents' recidivist behavior demonstrates that no efforts were made by the Respondents to prevent future occurrences of securities violations.

10. The violations of the Respondents demonstrate a pattern of behavior of disregard of the securities laws.

CONCLUSIONS OF LAW

In addition to the conclusions of law inherent in the foregoing findings, this tribunal makes the following additional conclusions of law.

A. The Commission incorporates the conclusions of law set forth in the July 17, 2018, Findings of Fact, Conclusions of Law and Recommended Order on Motion for Summary Judgment, as amended in this pleading.

B. The Commission has the authority to impose a fine. When the 2014 OSC was initiated, the Utah Administrative Code included guidelines for the Commission to use in determining the appropriate amount of a fine. *See* Utah Admin. Code R164-31-1(B). In 2016, the administrative rule was codified into Section 61-1-31 of the Utah Uniform Securities Act.

C. The Commission has carefully reviewed each of the required factors in determining the amount of the fine to be assessed.

D. The securities violation of the Respondents were egregious and repeated.

E. Respondents' sole argument is that the phrase "other matters as justice may require" (as reflected in U.C.A. §61-1-31(8)), contemplates that a reduced fine would be appropriate because any fine competes with the payment of restitution. This argument is unavailing.

F. The need to deter the Respondents from committing further violations in the future, in light of the violations of the past, warrant the imposition of a meaningful fine.

ORDER

The Utah Securities Commission orders as follows (repeating some of its August 2, 2018 Order entered in this matter):

a. That the Respondents are assessed a fine in the amount of $300,000.00, which is payable jointly and severally by the Respondents on the date of this Order;

b. That Respondents are ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 *et seq.*; and

c. That Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, from acting as an agent for any issuer soliciting funds in Utah, and from being licensed in any capacity in the securities industry in Utah.

DATED September 4, 2018.
October

UTAH SECURITIES COMMISSION:

Brent R. Baker, Member

Brent A. Cochran, Member

Gary Cornia, Member

Peggy Hunt, Member

Lyle White, Member

Notice of Right to Administrative Review

Review of this Order may be sought by filing a written request for administrative review with the Executive Director of the Department of Commerce within thirty (30) days after the issuance of this Order. Any such request must comply with the requirements of Utah Code Annotated §63G-4-301 and Utah Administrative Code R151-4-902.

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of ~~September~~ October, 2018, the undersigned served a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AS TO THE AMOUNT OF THE FINE TO BE IMPOSED AGAINST RESPONDENTS by email to:

the Respondents, Craig Anthony Franco
and Utah Gold and Silver Depository, LLC,
through counsel,

Christopher G. Bown
chris@stowellandcrayk.com
chris@lawscb.com

and to the Division:

Tom Melton, AAG
Jennifer Korb, AAG
tmelton@agutah.gov
jkorb@agutah.gov

~~LeeAnn Clark~~ Vickie Cutler
Administrative Secretary

UTAH SECURITIES COMMISSION
Heber M. Wells Building
160 EAST 300 SOUTH, 2nd Floor
SALT LAKE CITY, UTAH 84114

BEFORE THE UTAH DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE

IN THE MATTER OF **STEPHEN BRANDLEY, JAMES CAMERON LEE,** and **CLEARWATER FUNDING, LLC,** Respondents.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AS TO AMOUNT OF FINE IMPOSED AGAINST RESPONDENTS** Case Nos.: **SD-16-039** **SD-16-040** **SD-16-041**

On August 2, 2018, the Commission conducted an administrative hearing on the issue of the amount of the administrative fine to be assessed against the respondents, Stephen Brandley ("Brandley") and Clearwater Funding, LLC ("Clearwater"). Liability for the fine and admissions of violations of the Utah securities laws are set forth in the June 27, 2018 Stipulation (the "Stipulation"), among the Securities Division (the "Division"), Brandley and Clearwater. The remaining respondent, James Cameron Lee, has executed a separate stipulation with the Division. For purposes of this Order, reference will be made to Brandley and Clearwater as the "Respondents" (without regard to James Cameron Lee).

By an order executed by the Commission on August 2, 2018 (the "August 2nd Order"), the terms of the Stipulation were accepted by the Commission and made binding on the Respondents.

FINDINGS OF FACT

The Commission accepts each of the findings of fact set forth in paragraphs 8 through 65 of the Stipulation of the Respondents, and incorporates those findings in the present findings and order. In addition to the findings in the Stipulation, the Commission also finds that:

1. The investor and victim of the securities fraud and violations of the Respondents invested $675,000 with the Respondents. Of this amount, more than $510,000 in principal alone remains unpaid.
2. Of the repaid amount, James Cameron Lee paid $105,000, and Brandley has paid approximately $55,000. However, $50,000 of this amount was not paid until the time of sentencing of Brandley in a parallel criminal proceeding.
3. The investor and victim of the securities fraud and violations of the Respondents was a 79 year old widow at the time of her investment, and is a vulnerable adult as referred to in U.C.A. §61-1-31(7). The Respondents should have known that she was a vulnerable adult.
4. The investor and victim of the securities fraud and violations of the Respondents has died since the filing of these administrative proceedings, and she lived out the remaining years of her life after her investment without the use of, or income on, her $675,000 lost funds.
5. The investor and victim of the securities fraud and violations of the Respondents was directly harmed by the violations of the securities laws by the Respondents.
6. The circumstances of the egregious conduct of the Respondents in violation of the securities laws in this matter include the fact that of the $675,000 investment, $470,000 was invested in what was purported to be Standby Letters of Credit, a financial

instrument in which the Respondents had no prior investment experience.

7. Further, the Respondents invested the funds of an elderly widow in an investment that they stated promised a return of 100% (doubling her money in one year), when they had never experienced a return of such magnitude in any of their prior business experience, whether personal investments and business experience, or business transactions of others.

8. The remaining $205,000 of the investment proceeds were used by the Respondents to pay a commission to James Cameron Lee and to pay other debts and obligations of the Respondents, including payments to a prior investors.

9. The seriousness, nature and circumstances of these actions are egregious.

10. The Respondents did cooperate in some measure in the inquiry conducted by the Division concerning the violation in this matter.

11. Although there was no evidence produced that showed violations of the securities laws by the Respondents prior to the single $675,000 investment in 2011, the Respondents made two additional offerings to the investor. First, by letter dated September 10, 2012, Brandley offered to pay the investor and victim $350,000 in less than one month, and $1 million on or before August 17, 2013 with interest in the amount of 20%. Then, in October 2012, Brandley offered the investor and victim an investment contract entitled "Equity Agreement between Clearwater Funding LLC and [the investor]." This agreement offered an equity stake in an entity known as "Delta 2." These were apparent offers of investment instruments subject to the securities laws.

12. A significant fine is warranted in this matter to deter the Respondents from committing additional securities violations in the future.

CONCLUSIONS OF LAW

In addition to the conclusions of law inherent in the foregoing findings, this tribunal makes the following additional conclusions of law:

A. The Commission has the authority to impose a fine. When the 2011 investment was made in this matter, the Utah Administrative Code included guidelines for the Commission to use in determining the appropriate amount of a fine. *See* Utah Admin. Code R164-31-1(B). In 2016, the administrative rule was codified into Section 61-1-31 of the Utah Uniform Securities Act and the factors for consideration are essentially the same in the prior rule as now in the statutory provision.

B. The Commission has carefully reviewed each of the required factors in determining the amount of the fine to be assessed.

C. The securities violations of the Respondents were egregious and the harm to the investing widow was substantial.

ORDER

The Utah Securities Commission orders as follows (repeating some of its August 2nd Order and the Stipulation entered in this matter):

a. That the Respondents are assessed a fine in the amount of $175,000.00, which is payable jointly and severally by the Respondents on the date of this Order;

b. If Respondents materially violate any term of the August 2nd Order (other than the payment of the imposed fine), after notice and an opportunity to be heard before an administrative law judge solely as to the issue of a material violation, Respondents shall jointly and severally be fined an additional amount of $50,000.00, which shall immediately be due and payable;

c. That Respondents are ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §61-1-1 *et seq.*; and

d. That Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, from acting as an agent for any issuer soliciting funds in Utah, and from being licensed in any capacity in the securities industry in Utah.

DATED October 4, 2018.

UTAH SECURITIES COMMISSION:

Brent R. Baker, Member

Brent A. Cochran, Member

Gary Cornia, Member

Peggy Hunt, Member

Lyle White, Member

Notice of Right to Administrative Review

Except as may otherwise have been agreed to by Brandley and Clearwater in their June 2018 written Stipulation with the Division, review of this Order may be sought by filing a written request for administrative review with the Executive Director of the Department of Commerce within thirty (30) days after the issuance of this Order. Any such request must comply with the requirements of Utah Code Annotated §63G-4-301 and Utah Administrative Code R151-4-902.

CERTIFICATE OF SERVICE

I hereby certify that I have the 4th day of October, 2018, served these FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AS TO AMOUNT OF FINE IMPOSED AGAINST RESPONDENTS on the parties of record in this proceeding by email to:

Stephen Brandley and Clearwater Funding, LLC
[redacted]

James Cameron Lee, through counsel

Mark W. Pugsley
[redacted]

and to the Division:

Thomas M. Melton, AAG
Jennifer Korb, AAG
tmelton@agutah.gov
jkorb@agutah.gov

[BD2]

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
ARENAL ENERGY CORPORATION;	Docket No. SD-18-0023
RICHARD CLAYTON REINCKE;	Docket No. SD-18-0024
ERIC DUNBAR JOHNSON, CRD#2384891;	Docket No. SD-18-0025
LARS DAVID JOHNSON;	Docket No. SD-18-0026
CHRISTOPHER BRADLEY ERWIN;	Docket No. SD-18-0027
MATTHEW HAL MARCHBANKS;	**Docket No. SD-18-0028**
Respondent.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Matthew Hal Marchbanks ("Marchbanks"), hereby stipulate and agree as follows:

1. Arenal Energy Corporation ("Arenal"), Richard Clayton Reincke ("Reincke"), Eric Dunbar Johnson ("Johnson"), Lars David Johnson ("L. Johnson") Christopher Bradley Erwin ("Erwin") and Matthew Hal Marchbanks (collectively "Respondents") have been the subject of an investigation by the Division into allegations that they violated the Utah

Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1(2) (securities fraud), and § 61-1-1(3) (securities fraud), and § 61-1-3 (unlicensed activity) while engaged in the offer or sale of securities in the state of Utah.

2. On or about May 15, 2018, the Division initiated an administrative action against Respondents by filing an Order to Show Cause.

3. Respondent Marchbanks hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondent Marchbanks pertaining to the Order to Show Cause.

4. The administrative action against Arenal, Reincke, Johnson, L. Johnson and Erwin is still pending.

5. Respondent Marchbanks admits that the Division has jurisdiction over him and over the subject matter of this action.

6. Respondent Marchbanks hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

7. Respondent Marchbanks has read this Order, understand its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent Marchbanks to enter into this Order, other than as described in this Order.

8. Respondent Marchbanks is represented by attorney Erik Christiansen and is satisfied with the legal representation he has received.

FINDINGS OF FACT

9. Arenal is a purported environmental remediation solutions company operating out of Dallas, Texas, and is registered with the Texas Secretary of State. Johnson is listed as a Director of Arenal.

10. Marchbanks was at all relevant times a resident of Utah and has never been licensed to sell securities in any capacity.

11. The Division's investigation of this matter revealed that from May 2012 to June 2013, in connection with the offer or sale of securities in the state of Utah, Respondents made material misrepresentations and omissions to investors, and collected approximately $202,000 in investor monies in connection therewith.

12. Respondents used investor monies in a manner that is inconsistent with what the investors were told at the time of solicitation of their investments.

13. Respondents solicited investments on behalf of Arenal, a company which purportedly developed products that could be used to clean up toxic spills, and received compensation in connection therewith. During all times relevant to the allegations asserted herein, Respondents were not licensed in the securities industry in Utah.

14. The investment opportunities offered and sold by Respondents are stocks, promissory notes and/or investment contracts.

15. Stocks, promissory notes and investment contracts are securities under §61-1-13 of the Act.

16. To date, investors are owed at least $186,375 in principal alone.

INVESTOR S.L.

OFFER AND SALE OF A SECURITY

17. In or around November 2012, Marchbanks approached Investor S.L., a Utah resident,

about an investment opportunity in Arenal. Marchbanks represented that he knew some of the managers at Arenal and that Arenal was offering friends and family stock before the company went public.

18. In or around November 2012, Investor S.L. was invited to participate in a conference call with Marchbanks and Johnson. Marchbanks and Johnson made various statements and representations to Investor S.L. regarding the investment opportunity in Arenal, including but not limited to, the following:

a. That Arenal would go public within the next year;

b. That Investor S.L. could purchase Arenal stock for $0.10 per share;

c. That the shares of Arenal stock would be worth $1.00 or more when the company went public;

d. That Johnson was experienced at taking companies public;

e. That Arenal had a lot of government contracts and would likely be receiving more;

f. That several other investors were investing large amounts of money into the company; and

g. That Marchbanks had purchased 50,000 shares.

19. In reliance on Marchbanks' and Johnsons' statements and representations, as set forth in paragraph 18, Investor S.L. decided to invest in Arenal. On or around November 27, 2012, Investor S.L. mailed a check to Arenal in the amount of $5,000, made payable to Arenal.

20. In exchange for his investment, Investor S.L. received an Arenal stock certificate for 50,000 shares in the company. Investor S.L.'s investment monies were deposited into Arenal's BBVA account.

21. An analysis of the Arenal BBVA account records revealed that Investor S.L.'s funds were used in a manner that is inconsistent with what Investor S.L. was told by Marchbanks and Johnson when he decided to invest, including large cash withdrawals, payments to prior investors, and bank fees.

22. In connection with the offer or sale of securities, Marchbanks and Johnson made material misrepresentations to Investor S.L. including, but not limited to, the following:

a. That Arenal would soon go public, when in fact, they had no reasonable basis on which to make this representation, and in fact, the company never went public;

b. That stock in Arenal would increase in value after the company went public, when in fact, they had no reasonable basis on which to make this representation; and

c. That Arenal had already been awarded government contracts and would obtain more, when in fact, they had no reasonable basis on which to make this representation, and in fact, Arenal did not have any government contracts.

23. In connection with the offer or sale of securities, Marchbanks and Johnson failed to disclose material information to Investor S.L. including, but not limited to, the following:

a. That other investor monies were used in a manner that was inconsistent with what they were told at the time of solicitation of their investments; and

b. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents and their business enterprise, Arenal, relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principals involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment;

vii. Whether the securities offered were registered in the state of Utah; and

viii. Whether Marchbanks and Johnson were licensed to sell securities in the state of Utah.

24. Respondent Marchbanks has paid full restitution to Investor S.L.

CONCLUSIONS OF LAW

FIRST CAUSE OF ACTION
Securities Fraud under § 61-1-1(2) of the Act

25. As described herein, in connection with the offer or sale of securities to **Investor S.L.**, Respondent Marchbanks directly or indirectly misrepresented material facts or omitted material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of Section 61-1-1(2) of the Act.

SECOND CAUSE OF ACTION
Securities Fraud under § 61-1-1(3) of the Act

26. As described herein, in connection with the offer or sale of securities, Respondent Marchbanks directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on investors, in violation of Section 61-1-1(3) of the Act. That conduct includes but is not limited to the conversion and misuse of investor monies for purposes not disclosed to or authorized by investors, including personal use of monies.

THIRD CAUSE OF ACTION
Unlicensed Activity under § 61-1-3(1) of the Act

27. It is unlawful for a person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

28. As described herein, Respondent Marchbanks was not licensed in the securities industry in any capacity when he offered and sold securities on behalf of Arenal to investors, and received compensation in connection therewith, in violation of Section 61-1-3(1) of the Act.

REMEDIAL ACTIONS/SANCTIONS

29. Respondent Marchbanks admits the Division's Findings of Fact and Conclusions of Law, pertaining to unlicensed activity only. Respondent Marchbanks further neither admits nor denies the Division's Findings of Fact and Conclusions of Law, pertaining to securities fraud and consents to the below sanctions being imposed by the Division.

30. Respondent Marchbanks represents that the information he has provided to the Division as part of its investigation is accurate and complete.

31. Respondent Marchbanks agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

32. Respondent Marchbanks agrees to not apply for securities licensure for a period of one year after entry of this Order. At the end of the one-year period, Respondent Marchbanks can apply for a securities license in Utah following the standard licensing procedures.

33. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a total fine amount of $2,500 against Respondent Marchbanks to be paid to the Division within three days after the entry of this Order.

FINAL RESOLUTION

34. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

35. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondent consents to entry of an order in which the fine is increased to $7,500 and becomes immediately due and payable. Notice of the violation will be provided to Respondent at his last known address, and to his counsel if he has one. If Respondent fails to request a hearing within ten (10) days following the notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

36. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions,

and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

37. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this ____ day of _____, 2018

_____
Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this ____ day of _____, 2018

_____
Matthew Hal Marchbanks

Approved:

_____
Paula Faerber
Assistant Attorney General
Counsel for Division

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondent admits as set forth in paragraph 29, are hereby entered.
2. 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.
3. Respondent shall not apply for securities licensure for a period of one year after entry of this Order. At the end of the one-year period, Respondent Marchbanks can apply for a securities license in Utah following the standard licensing procedures.
4. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondent shall pay a fine of $2,500 to the Division pursuant to the terms set forth in paragraph 34.

fraud and consents to the below sanctions being imposed by the Division.

30. Respondent Marchbanks represents that the information he has provided to the Division as part of its investigation is accurate and complete.
31. Respondent Marchbanks agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.
32. Respondent Marchbanks agrees to not apply for securities licensure for a period of one year after entry of this Order. At the end of the one-year period, Respondent Marchbanks can apply for a securities license in Utah following the standard licensing procedures.
33. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a total fine amount of $2,500 against Respondent Marchbanks to be paid to the Division within three days after the entry of this Order.

FINAL RESOLUTION

34. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.
35. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondent consents to entry of an order in which the fine is increased to $7,500 and becomes immediately due and payable. Notice of the violation will be provided to Respondent at his last known address, and to his counsel if he has one. If Respondent fails to request a hearing within ten (10) days following the notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.
36. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.
37. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 2nd day of August, 2018

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this ____ day of _____, 2018

Matthew Hal Marchbanks

Approved:

BY THE UTAH SECURITIES COMMISSION:

DATED this 4th day of October, 2018

Brent Baker

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

CERTIFICATE OF MAILING

I certify that on the 4th day of October, 2018, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

ERIK CHRISTIANSEN
PARSONS BEHLE & LATIMER
201 S MAIN ST SUITE 1800
SALT LAKE CITY, UTAH 84111

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
KENNETH BOYCE, CRD#4176987 **Respondent.**	**Docket No. SD-18-0034**

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondent Kenneth Boyce, CRD #4176987, ("Respondent") hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. On or about July 25, 2018 the Division initiated an administrative action against Respondent by filing a Notice of Agency Action ("NOAA") and Order to Show Cause ("OSC").
3. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all

12. Respondent was licensed by the Utah Department of Insurance to sell insurance products in Utah from 2000 until 2015.

13. Lawrence Bothwell ("Bothwell") is an individual who resided in Oklahoma City, Oklahoma during the period relevant to this action.

14. Bothwell Consulting, LLC ("BC") is a defunct limited liability company that was formed by Bothwell on July 18, 2007 in Oklahoma.

15. Bothwell Capital Holdings Corporation ("BCHC") (together with BC, the "Bothwell Entities") is a defunct Wyoming corporation formed by Bothwell on June 23, 2009. It was administratively dissolved on August 10, 2010. BCHC appears to be an entity formed to continue to raise money from investors after the Oklahoma Department of Securities started an investigation into Bothwell and BC.

16. Bothwell was the CEO of BC and owned and controlled BCHC.

17. Roger Salmonson ("Salmonson"), is a Massachusetts resident who originally developed and marketed a pain relieving ointment called Menastil through a company called Claire Ellen Products ("CEP"). Bothwell cultivated a relationship with Salmonson over several years and the two became friends. On multiple occasions Bothwell attempted to purchase the rights to Menastil from Salmonson. Salmonson tried to convince Bothwell that it would cost too much money for Bothwell to purchase the rights to Menastil and encouraged Bothwell to focus his business efforts elsewhere. Although Salmonson and Bothwell discussed the rights to Menastil and ownership of CEP, nothing was ever finalized and Bothwell ultimately never obtained any rights to market or distribute the product. Salmonson later learned that Bothwell was raising money from investors through BC, claiming to own Menastil and CEP.

annuity contract had a guaranteed payout of $76,901 if held to the maturity date of August 20, 2014.

23. Respondent guaranteed SM that SM would double his money in 15 months and that it would be worth surrendering the annuity.

24. Respondent also told SM that Bothwell would make up the difference on the taxes and surrender charges SM was required to pay on the annuity transaction.

25. According to Bank Midwest (BMW) BCHC's xxxxxx6239 account records, show on January 29, 2010 the account balance was $10.80. On February 22, 2010, SM's net annuity proceeds of $65,195.14 were deposited into the BCHC account bringing the balance to $65,205.94. Immediately following SM's deposit, on February 22, 2010 $38,300 was wired out of BCHC account to Scott Dubs ("Dubs"). Dubs is listed as the CFO of BCHC. On the same day, Stephen Bowe ("Bowe") had a check made out to BMW to purchase a cashier's check. BMW issued a cashier's check paid to Bowe for $26,800. Bowe is listed as BCHC's Legal Counsel and Director of Financial Compliance. Bowe was the only signatory on the BMW account and was identified as the person opening the account. On February 26, 2010, the ending account balance was $35.94. On March 17, 2010 Bowe withdrew the remaining $35.94 closing the account.

26. Bank records show that SM's money was withdrawn from the BCHC account for personal use and was not used for any business purposes.

27. On February 23, 2010, Dubs wired $6,230 to Respondent's Zions Bank account XXXXX3870 to pay a commission for the SM investment.

c. Bothwell would make up the difference SM paid in surrender fees and taxes;

d. Respondent put in some of his own money to make up the difference in the fees and taxes paid as a result surrendering the annuity; and

e. SM was purchasing stock at $.10/share when it was priced at $1.00/share although there was never any proof of the stock being valued at $1.00/share.

32. Respondent omitted the following material facts regarding an investment in BC:

a. Respondent was not properly licensed to sell the BC investment; and

b. Both Bothwell and BC were being investigated by the Oklahoma Department of Securities.

33. SM has not received any money back from his investment in BC and is owed his principal of $65,205.94 plus interest.

Investors KL and CL

34. KL and CL are residents of Nephi, Utah. KL and CL invested in BC around October or November 2009. KL and CL were insurance clients of Respondent and had invested with and purchased insurance from Respondent before investing in BC. Respondent had a relationship of trust with KL and CL before they invested in BC.

35. Division investigators contacted the KL and CL by phone and learned they had invested $15,000 in BC on the recommendation of Respondent. During the conversation with the Division investigator, KL and CL stated they have felt that Respondent was more like a financial advisor to them and not just an insurance agent. KL and CL continued to use Respondent as an agent/advisor.

40. On November 4, 2009, several wires were drawn on the account as well as a cash withdrawal. One wire for $2,800 went to Sophia Moss (Bothwell's girlfriend). A second wire for $3,640 was sent to the account of Lesa Boyce (Respondent's wife). A third wire for $4,000 was sent to Daniel Carlisle ("Carlisle") (a BC executive located in Alabama). The last transaction was a check written out to cash for $4,500 and signed by Bowe.

41. Contrary to Respondent's representations to investors, the associates of BC used KL and CL's money for personal use and not the investment represented by Respondent.

42. On June 28, 2010, Respondent emailed KL and CL what appears to be a manufactured statement. The email shows KL and CL's initial investment as $30,000 (they only invested $15,000). The balance shows a "Total Value of Investment to Date" of $60,027.39. This is more than four times what KL and CL invested. Language on the "account statement" said it was created at the request of Respondent and was purportedly prepared by Bothwell. Respondent claimed that the account statement was forwarded to him by Bothwell and he just passed it on to KL and CL. Respondent was not able to provide any evidence of the email being originated by Bothwell. Respondent would have known the account statement figures were false and passing it on would be fraudulent. Respondent told the FBI that he discovered that BC was a scam in March of 2010 almost four months before the erroneous "account statement." Respondent was misleading KL and CL to believe their investment was still doing well and that their money was safe.

43. When Respondent finally disclosed to KL and CL the BC investment was a scam, he did not disclose his participation. He played off his participation in BC and the scam by telling KL and CL he had lost over $200,000 of his own money in the investment. When asked,

investment described to WL and SL was a debenture agreement with a 20% annual return. Boyce told WL and SL that after the first year, they could convert the money into shares in the company for $.10/share since the company was going to go public very soon.

49. WL and SL told Division investigators that in addition to Boyce, three or four other individuals came to their house to solicit the investment in BC.

50. Boyce did not give WL and SL any paperwork. Respondent explained to them that he would keep all their paperwork and documents in their file at his office so they did not have to bother with them.

51. In a November 9, 2010 FBI interview, WL stated after time passed with no return the WL contacted Respondent. Respondent recommended WL and SL convert their investment money into "shares" with Bothwell Consulting, but WL and SL did not ever receive share certificates. WL stated Respondent claimed he has invested $250,000 with Bothwell Consulting and he had not received his shares.

52. WL and SL have not received any money back from their investment in BC and are owed $27,770.35 in principal alone.

Investor SM2

53. SM2, a resident of Wisconsin, was on vacation in Florida in January 2009, when she met Respondent and others. SM2's boyfriend met Respondent, Bothwell and two others in Target and made plans to meet for dinner.

54. During dinner, Respondent and Bothwell discussed BC and Menastil, and told SM2 how great the returns would be for anyone who invested in the beginning stages of the company.

Investor SK

62. SK resides in Plymouth, Utah. SK was long-time client of Respondent and considered him a good friend. In November/December of 2009, Respondent and Carlisle approached SK about investing in BC. According to SK, Respondent explained the investment as a good retirement choice for her funds and convinced her to withdraw money from of some mutual funds she held in a retirement account and invest in BC. Respondent told SK to deposit the retirement funds in her bank at Box Elder County Credit Union ("BECCU") and then he would give her the wiring instructions to wire the funds to BCHC's bank (Bank Midwest).

63. Bank records show that on December 4, 2009, SK wired $33,557.80 into BCHC's bank account at BMW account number xxxxxx6239. The balance in the BCHC account prior to this wire was $10. On the day the funds were credited, several wires were disbursed from the account. The outgoing wires included:

    a. A wire to Carlisle (employee/solicitor) for $3,000;

    b. A wire to Lesa Boyce (Respondent's wife) for $3,000;

    c. A wire to Trisha Burns (possible solicitor) for $4,000;

    d. A wire to Scott B Dubs (listed as company CFO) for $5,500; and

    e. A wire Sophia Moss (Bothwell's girlfriend) for $13,000.

64. Bowe withdrew $4,875 in cash from the account which left the account balance, after fees, at $110.80 at the end of the month. The following month, Bowe withdrew $100 from the account leaving a balance at $10.80. None of SK's investment money was used for investment purposes.

deposit was wired to the Bankers Bank Oklahoma ("BBO") account number XXX7722, and on June 22, 2009, $15,000 was wired to the same bank. The entity affiliated with the BBO bank account was BC.

72. Bank records from BBO show shortly after receiving the $50,000 in wires, $4,550 was wired to an account associated with Respondent's wife, Lesa.

73. KM and PM contacted Respondent around March of 2010 requesting money from their investment to cover expenses from the treatment of PM's brain cancer. Respondent told them he was going to get their money back, but according to KM and PM they just kept getting excuses from Respondent. PM passed away in November 2010, and left his wife some insurance money to live on. KM continued to contact Respondent about getting her money back but continued to get excuses. KM told Respondent she was going to use another advisor with the money she got from the insurance payout and Respondent was upset with her. KM stopped contacting Respondent around February/March 2011.

74. Even though Respondent continued to assure KM that he would get her money back, to date KM has not received any of the $50,000 principal she is owed.

Investors DS and AS

75. DS and AS reside in Brigham City, Utah. DS and AS invested $75,000 in BC in November/December 2008. Respondent had previously advised DS and AS on some retirement assets and built a relationship of trust with DS and AS before asking them to invest in BC.

76. In 2012, DS and AS told the Division investigator that Respondent approached them around November 2008 about investing in BC. After Respondent convinced them of the great

The Division investigators told Respondent that he needed to inform DS and AS that their money is gone. Respondent agreed to comply.

80. DS and AS said they do not think Respondent made any money on the BC deal. When asked why they thought Respondent did not make any money on the deal, DS and AS stated, Respondent had told them he had invested a lot of money in the BC deal himself and has lost all of his investment.

81. Other than some traveling and other minor expenses, Respondent could not provide any proof he made the large personal investment in BC that he told investors he made.

82. After DS and AS invested in BC, two wires were sent from BC First United bank account to Lesa Boyce's bank account. The first wire was on November 26, 2008 for $4,000, the second wire was on December 31, 2008 for $3,000. These appear to be commission payments to Respondent for the DS and AS investment.

83. To date DS and AS have not received any of their money back from the BC investment. DS and AS were misled by Respondent into believing their money was no longer invested in BC.

84. DS and AS are owed $75,000 in principal plus interest.

Investor MP

85. MP resides in Malad, Idaho. MP invested $50,000 in BC in October 2008. Respondent had known MP for many years and had previously sold MP a variable annuity in his IRA account. Respondent and other BC associates solicited MP to invest in BC.

86. According to an FBI interview given by MP, Respondent came to MP's house to show him a new pain relieving ointment called Menastil. While Respondent was meeting with MP he pitched him on the idea of investing in BC which was bringing Menastil to market. MP did

92. MP is owed $50,000 in principal, plus interest.

Investor LB

93. LB was a resident of Malad, Idaho. He passed away on March 20, 2016 at the age of 94. LB was the father-in-law of MP. LB invested $25,000 in BC. LB had known Respondent for several years and Respondent had been LB's advisor on other investments. On April 28, 2009, LB gave Respondent a cashier's check drawn on Ireland Bank in Idaho. Respondent deposited that cashier's check into a BECCU BC account number X3325 in Utah over which Respondent had signatory authority. On the day Respondent deposited the check, Respondent wired $20,000 of LB's $25,000 to BC's account at BBO. On April 29, 2009, $5,000 was wired to Lesa Boyce from BC. Both the check and the wire came from accounts associated with BC. With the remaining $5,000 in the BECCU BC account, two checks in the amounts of $1,500 and $2,500 were written to an individual not known to be associated with BC. The remaining funds were withdrawn in cash.

94. According to an FBI interview, LB had asked Respondent if there was any chance that he could lose his money. Respondent assured LB that it was safe because it was backed-up by a trust and an annuity so no money would be lost. LB did not receive any of his money back from his investment in BC and is owed $25,000 in principal, plus interest.

Investor LD

95. LD resides in Grapevine, Texas. LD met Richardson through an online dating website in 2008. Through email she told Richardson that she had inherited some money due to her mother passing away in June of 2008. Richardson told LD that he could help her invest the

invested $20,000 in January 2009. LT was guaranteed a 20% return for a one-year investment and could redeem the money after one year.

99. According to LT's FBI interview, Bothwell and BC starting using Respondent's office as a place of business in early 2009. Shortly after she invested, LT was offered a position with BC and moved to BC's headquarters in Texas. LT's main duties included scheduling travel for BC employees and other secretarial tasks. After June 2009, LT did not receive any pay from BC and continued to work for no wages believing she would be compensated by Bothwell and BC due to the success of the company. She was told after Menastil was brought to market she would be paid $100,000 per year plus bonuses.

100. LT discussed her investment in BC with her parents CG and BG. After hearing about the investment from their daughter CG and BG invested some of their own money in BC. According to their FBI interview, Respondent presented the investment to CG and BG. CG and BG sent a personal check to BC in the amount of $20,000. Respondent told them they were guaranteed a return of $5,000 annually on their investment.

101. After learning about the scam and the loss of their money LT's husband DT committed suicide. Neither LT nor her parents have received any money back from their investment in BC. It appears Respondent did not receive any compensation from the LT or CG and BG investment.

102. DT is owed $20,000 in principal, plus interest. CG and BG are owed $20,000 in principal, plus interest.

e. Bothwell would make up the amount investors paid in surrender fees and taxes.

f. Boyce put in some of his own money to make up the difference in fees and taxes paid as a result of surrendering the annuities.

107. In communications with investors, Boyce omitted the following material facts:

a. Boyce was not properly licensed to sell the BC investment.

b. The securities of BC were not registered as required by law and were not exempt from registration.

c. While Boyce was licensed to sell certain securities, he did not identify BC as an outside business activity on his Form U4[2] or seek approval from his employing firm to do so. It appears Boyce was selling away from his firm. Boyce continued to solicit sales in BC even after he was not licensed to sell securities.

d. Bothwell and BC were being investigated by the Oklahoma Department of Securities.

108. It appears that Boyce provided at least two false account statements to investors after discovering BC was a scam.

Criminal Case

109. On June 17, 2014, criminal charges were filed against Boyce, Bothwell and Richardson alleging conspiracy, wire fraud, and money laundering.

[2]The Form U4, Uniform Application for Securities Registration or Transfer, is filed with FINRA and the Division in order for an individual to become licensed as a securities agent in Utah. Form U4 requires the disclosure of all business activities conducted by licensed individuals. It is the agent's responsibility to ensure the form is accurate.

Unlicensed Agent under §61-1-3(1)

115. As described herein, Respondent acted as an agent for BC, and received commissions, when he was not licensed as an issuer agent, in violation of Section 61-1-3(1) of the Act.

Sale of Unregistered Securities Under § 61-1-7 of the Act

116. The investments offered and sold by Respondent are securities as defined under Section 61-1-13 of the Act. The securities were not registered with the Division, do not qualify for any exemption from registration, and are not federal covered securities for which any notice filing was made, in violation of Section 61-1-7 of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

117. Respondent admits the Division's Findings and Conclusions, and consents to the sanctions below being imposed by the Division.

118. Respondent agrees to cease and desist from violating the Act and agree to comply with the requirements of the Act in all future business in this state.

119. Respondent agrees to be barred from associating with any broker-dealer or investment adviser licensed in Utah or with any issuer raising capital in Utah.

120. Pursuant to Utah Code Ann. Section 61-1-6, in consideration of the factors set forth in Section 61-1-31 of the Act, the Division imposes a fine of $300,000 to be offset by any restitution paid by Respondent in the criminal case. If Respondent remains current and completes his restitution payments, Respondent's fine owed to the Division will be

be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

123. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

124. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 20 day of August, 2018.

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:

Paula W. Faerber
Counsel for the Division

Dated this 13 day of Sept, 2018.

Kenneth Boyce

Approved:

09/20/2018

Greg Skordas
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted by Respondent, are hereby entered.

2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.

3. Respondent is barred from associating with any broker-dealer or investment adviser licensed in Utah or with any issuer raising capital in Utah.

4. Respondent is ordered to pay a fine of $300,000 to be offset by any restitution paid by Respondent in the criminal case. If Respondent remains current and completes his restitution payments, Respondent's remaining fine owed to the Division will be waived. In the event that Respondent does not pay his restitution as ordered by the Court, the fine will become due and payable to the Division.

BY THE UTAH SECURITIES COMMISSION:

DATED this 4th day of October, 2018.

Brent Baker

Brent Cochran

Gary Cornia

Peggy Hunt

Lyle White

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
LPL FINANCIAL LLC, CRD#6413	Docket No. SD-18-0013
Respondent.	

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondent LPL Financial LLC ("LPL" or "Respondent") hereby stipulate and agree as follows:

1. This Stipulation and Consent Order ("Order") represents the Division's policy on use of branding and marketing credit union networking business as of the date it is entered.
2. Respondent has been the subject of an examination by the Division into allegations that it violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
3. On or about April 5, 2018 the Division initiated an administrative action against

Respondent by filing a Petition to Censure Licensee and Impose a Fine.

4. Respondent hereby agrees to settle this matter with the Division by way of this Order. If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the Petition.

5. Respondent admits that the Division has jurisdiction over it and the subject matter of this action.

6. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on its behalf.

7. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.

8. Respondent is represented by the law firm of McGuireWoods LLP and is satisfied with the legal representation it has received.

I. FINDINGS OF FACT

The Parties

9. LPL is a California limited liability company. Its sole member is LPL Holdings, Inc. which is a Massachusetts corporation. LPL is a securities broker-dealer registered with the United States Securities and Exchange Commission ("SEC"), a member of the Financial Industry Regulatory Authority ("FINRA") and licensed in all fifty (50) states, the District of Columbia, Puerto Rico, and the Virgin Islands. LPL Financial is also

registered as an investment adviser with the SEC. LPL has been licensed as a broker-dealer in Utah since 1983 and has been notice-filed with Utah as a federally registered investment adviser since 1991.

10. Cyprus Credit Union Inc. ("Cyprus") is a federal credit union with its primary place of business in West Jordan, Utah

11. Mountain America Credit Union ("MACU") is a federal credit union with its primary place of business in West Jordan, Utah.

Division Examination

12. In 2015 and 2016 the Division conducted examinations of broker-dealers transacting business in Utah on the premises of Utah credit unions. Those examinations included LPL and the business it conducts through networking agreements with Cyprus and MACU, both of which are credit unions that are not licensed as broker-dealers or investment advisers.

13. The Division found that LPL failed to comply with the regulatory requirements governing networking arrangements between broker-dealers and credit unions, approved the use of misleading sales and advertising materials and other information provided to customers and the public, failed to follow and enforce its policies and procedures, and failed to reasonably supervise the business run through the credit unions.

The Chubb Letter and Networking Agreements

14. In 1993 a no-action letter ("Chubb letter" or "Chubb") was issued by the United States

Securities & Exchange Commission ("SEC") staff.[1] While an SEC no-action letter is not binding or controlling authority, the Chubb letter has been recognized by Utah and other state securities regulators as setting the minimal standards required for credit unions to offer on-site brokerage services through a networking agreement with a broker-dealer. The Division has previously permitted such agreements so long as the activities are in compliance with Chubb, and has taken two prior regulatory actions for noncompliance.[2]

15. Networking agreements allow broker-dealers such as LPL to gain instant access to potential clients – credit union members – by having their agents on-site in credit union locations. Credit unions in return gain a competitive advantage and the benefit of being able to offer those additional services to their members, and pursuant to the Chubb letter may receive a fee based upon business arising from the networking relationship.

16. A material distinction exists between traditional bank products offered through credit unions such as CDs, checking or savings accounts, which are insured by the National Credit Union Administration ("NCUA"), and nondepository investment products offered through broker-dealers, which are not NCUA insured. Those products include stocks, bonds, government and municipal securities, mutual funds, and variable annuities, all of which have greater risks, market volatility and are not insured or guaranteed. For those reasons, as a matter of policy it is critical that credit union members fully understand the

[1] https://www.sec.gov/divisions/marketreg/mr-noaction/chubb112399.pdf

[2] See Division Case Nos. SD-07-0022, -0023, -0024, and -0027.

difference between credit union products and broker-dealer products, and which products are offered through which entity.

17. Accordingly, in the Chubb letter, the SEC staff set forth the conditions and requirements necessary for a credit union to offer on-premises brokerage services without becoming licensed as a broker-dealer. Among those requirements are the following:

a. the broker-dealer must provide its services in an area that is physically separate from the credit union's regular business activities, in such a way as to clearly segregate and distinguish its services from those of the credit union;

b. the broker-dealer must exclusively control, supervise, and be responsible for all securities business conducted in the credit union;

c. the broker-dealer must approve and be responsible for all materials used to advertise or promote the investment services provided by its representatives, and such materials will be deemed to belong to the broker-dealer;

d. advertising and promotional materials must indicate clearly that:

   i. brokerage services are being provided by the broker-dealer and not the credit union;

   ii. the credit union is not a licensed broker-dealer; and

   iii. the broker-dealer is not affiliated with the credit union.

e. references to the credit union in advertising or promotional materials must be for the sole purpose of identifying the location where brokerage services are available and will not appear prominently in such materials.

18. In the years since the Chubb letter, additional regulatory guidance for networking arrangements has been issued by FINRA and NCUA.

19. FINRA Rule 3160 incorporates and codifies key requirements from the Chubb letter with respect to distinguishing services and products offered by the broker-dealer from those of the credit union, including the clear display of the broker-dealer's name in the area in which its services are provided.[3]

20. NCUA is the federal agency that charters and supervises federal credit unions. Pursuant to a 2010 NCUA Letter to Credit Unions 10-FCU-03 ("NCUA Letter"), federal credit unions "must structure their securities activities carefully to strictly meet the terms of SEC guidance applicable to federal credit unions contained in" Chubb.[4]

21. The NCUA Letter further emphasizes the need to distinguish credit union activities from broker-dealer activities, to avoid misleading or confusing credit union members as to the nature or risks of brokerage products, and to ensure that appropriate disclosures are made in writing and in a location and type size that are clear and conspicuous to the credit union member.[5]

LPL Written Supervisory Procedures

22. LPL's written supervisory procedures incorporate many of the regulatory guidance and applicable requirements from FINRA, the Chubb letter, and the NCUA Letter.

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[3] http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9093

[4] *See* 10-FCU-03 at 2. https://www.ncua.gov/Resources/Documents/LFCU2010-03.pdf

[5] *Id.* at 6-7.

23. At the time, LPL's procedures regarding *Communications with the Public* ("Communications Guidelines"), Section 26.1.1, *Overview,* states "[c]ommunications with the public are subject to the rules and regulation set forth by FINRA, SEC, MSRB, as well as state government."

24. At the time, the Communications Guidelines, Section 26.1.1, also state: "All communications must:

- Be based on principles of fair dealing and good faith
- Be fair and balanced
- Give the investor a sound basis for evaluating the facts
- Not omit material information, including risk disclosures
- Not make exaggerated, unwarranted or misleading statements, opinions, or claims
- Not contain untrue or false statements
- Not contain predictions or projections of actual investment results
- May not imply that past performance will recur."

25. At the time, Section 26.8.1 of the Communications Guidelines, *Advisors affiliated with Banks or Credit Unions – Overview,* states in part:

> LPL Financial advisors operating on the premises of financial institutions are subject to special considerations in addition to the policies stated herein.
>
> FINRA Rule 3160 and the Interagency Statement on Retail Sales of Non-deposit Investment Products impose further requirements for advisors who operate on the premises of a financial institution.
>
> . . .
>
> In addition to disclosing the nature and risk of the non-deposit investment product, any communication [with a credit union member] must indicate clearly that the brokerage services are being provided by LPL Financial, not the financial institution, and that the customer will be dealing with LPL Financial with respect to non-deposit investment products. The following disclosure is required on investment webpages that are posted to a financial institution's website and may be required on materials if the relationship between the financial institution and LPL Financial needs further explanation.

"[Insert name of financial institution] is not a registered broker-dealer and is not affiliated with LPL Financial."

References to the financial institution in communications should be solely for the purpose of identifying the location where brokerage services are available.

. . .

The financial institution's name may not be used in a way that is misleading or confusing, such as appearing in a disproportionate size, or appearing in an excessive number of times in the communication, so that it is unclear as to which entity is offering broker-dealer services.

26. At the time, Section 26.8.2 of the Communications Guidelines, *Advisors affiliated with Banks or Credit Unions – Nature and Risk of Non-Deposit Investment Products*, states in part:

Communications that announce the location of a financial institution where broker-dealer services are provided or that are distributed on the premises of a financial institution or at such other location where the financial institution is present or represented, must disclose that securities products are provided by LPL Financial. The broker-dealer disclosure must be used by advisors in communications that include, but are not limited to radio or television broadcasts, signs, posters and brochures.

27. At the time, Section 26.8.3 of the Communications Guidelines, *Advisors affiliated with Banks or Credit Unions – DBAs for Financial Institution Programs*, states in part: "When a financial institution uses a DBA name, there are the following requirements:

- FINRA member name (i.e., LPL Financial) must be shown clearly and prominently. Specifically, it should say "Securities offered through LPL Financial."
- The relationship between LPL Financial and any other entity must be clearly identified in the communication and must not be confusing. . . .
- If different products are offered by the member and nonmember, it should be easy to determine which products are offered by which entity.
- When advisors are identified in the communication, the relationship between the registered individual and each of the firms named should be clear. In the financial institution context, names that would give disproportionate prominence to the financial institution or create confusion as to which entity is offering securities would be prohibited. . . .

. . .

- Any email address using a compliance-approved DBA name must be hosted by or journaled through one of the LPL Financial-approved email vendors.

28. Finally, at the time, Section 26.14 of the Communications Guidelines, *Advisors affiliated with Banks or Credit Unions – Office Signage*, states: "Registered office locations must be clearly identified within building signage and lobby directories. They must also:

- Prominently disclose "LPL Financial" so that it is visible before or upon entering the office; and
- Prominently display the Securities Investor Protection Corporation (SIPC) sign."

Networking Agreement with Cyprus Credit Union Inc.

29. On or about January 13, 2011, LPL and Cyprus entered into a networking agreement for LPL to provide securities brokerage services to Cyprus members on Cyprus premises through LPL's registered representatives.

30. In 2010, Cyprus registered the assumed business name ("DBA") "Cyprus Investment Services" ("CIS") with the Utah Division of Corporations and Commercial Code. The on-site investment services provided by LPL are marketed using the "CIS" name, which appears intended to brand LPL's services as part of the credit union rather than disclosing such services are provided through a separate company – a licensed broker-dealer – pursuant to a networking agreement.

31. LPL did not comply with financial institution regulatory guidance and requirements governing networking arrangements. Among other things, LPL approved use of Cyprus/CIS promotional materials where the Cyprus logo appears more prominently than that of LPL, references to Cyprus are for more than location and are at the least

confusing, and suggest CIS is offering investment products and services without sufficient distinction of LPL's role as the broker-dealer.

32. Cyprus has eighteen branch offices, all of which may be used for LPL client meetings. LPL has two representatives, Registered Rep. 1 and Registered Rep. 2, who provide investment services on credit union premises.

33. Registered Rep. 1 has passed the FINRA Series 4, 6, 7, 24, 63, and 65 examinations and is licensed with LPL as both a broker-dealer agent and investment adviser representative.

34. Registered Rep. 2 has passed the FINRA Series 6, 7, 63, 65, and 66 examinations and is licensed with LPL as both a broker-dealer agent and investment adviser representative.

35. On February 24, 2016, the Division conducted an announced field examination with Registered Rep. 1 at the LPL branch office located within Cyprus Credit Union's headquarters located on Center View Drive in West Jordan, Utah. Upon entering the building, examiners proceeded to Registered Rep 1's office which was on the first floor. The only signage referring to LPL was a small 5" x 5" sign in the entrance window to the office lobby. The office lobby wall, however, had a significantly larger CIS sign that was 4' x 3' in size.

36. On March 17, 2016, the Division conducted an announced field examination with Registered Rep. 2 at the LPL branch office located within Cyprus Credit Union on 1381 West 9000 South in West Jordan, Utah. Upon entering the building, examiners proceeded to Registered Rep 2's office which was on the first floor around the corner from the teller lines. There was no signage referring to LPL in the office lobby. In the

office, there was one SIPC sign on the cabinet and a second SIPC / LPL sign on Registered Rep. 2's credenza.

Misleading Materials Approved by LPL

37. In February 2016, Cyprus' marketing team created an icon for CIS, which consists of the same logo as the credit union, to be used on Registered Rep. 1's email signature line. Although LPL approved the logo, Registered Rep. 1 stated that there was no discussion as to the size or prominence of the logo.

38. The CIS logo appears on other CIS documents provided to clients after a consultation, such as letterhead, envelopes, promotional folders and business cards. The CIS logo appears in a much larger font than the LPL disclosures on those items and on Registered Rep. 1's email signature.

39. Registered Rep. 1 uses a Cyprus rather than LPL email address: Registered Rep. 1@cypruscu.com. Registered Rep. 1's email signature, as approved by LPL, includes his name followed by the title of "Program Manager / Wealth Consultant." Beneath Registered Rep. 1's title is "Cyprus Investment Services" with the Center View Way address, phone, fax, and cell phone numbers.

40. Below that in a large font is the credit union logo and "Cyprus Investment Services." A smaller-font disclosure below states:

> "Securities offered through LPL Financial, member FINRA/SIPC. . . The investment products sold through LPL Financial are not insured Cyprus Credit Union deposits and are not NCUA insured. These products are not obligations of Cyprus Credit Union and are not endorsed, recommended or guaranteed by Cyprus Credit Union or any government agency."

41. Registered Rep. 1's current business card, approved by LPL, provides no title for Registered Rep. 1 but instead says "Cyprus Investment Services" below his name, includes his Cyprus email address and a large CIS logo, but no LPL logo. The bottom of the card, in very small print states: "Securities offered through LPL Financial, member FINRA/SIPC."

42. The letterhead approved by LPL and used by Registered Rep. 1 has a logo header for CIS but no LPL logo. The bottom of the letter head states in fine print "Securities offered through LPL Financial, member FINRA/SIPC" and includes Registered Rep. 1's name and contact information, but no title.

43. Registered Rep. 1's voicemail message does not state a job title or mention LPL, but begins "Hi, you have reached Registered Rep. 1, with Cyprus Investment Services. . ."

44. Registered Rep. 1's LinkedIn profile states that he is a "Senior Investment Advisor" at CIS.[6]

45. Registered Rep. 2's introductory letter to clients, approved by LPL, states "Please allow me to introduce myself as the new LPL Investment Advisor Representative with Cyprus Investment Services assigned to you and your accounts."

46. Registered Rep. 2's LinkedIn profile states that he is a "Senior Investment Advisor" at LPL Financial and Cyprus Credit Union Investment Services.

[6] Section 5.3.1 of LPL's written supervisory procedures requires supervisory review of social media profiles on LinkedIn, as well as training for those who use social media.

47. Registered Rep. 2's business card, as approved by LPL, has the CIS logo but no LPL logo, identifies him as a "Senior Investment Advisor" and only states in fine print on the bottom of the card "Securities offered through LPL Financial, member FINRA/SIPC." Similarly, Registered Rep. 2's voicemail identifies him as a "Senior Investment Advisor" with CIS and does not mention LPL. Registered Rep. 2's approved email address, included on his business card, is Registered Rep. 2@cypruscu.com.

48. Although Section 26.6.1.3. of LPL's written supervisory procedures lists numerous approved titles for use by representatives depending on which licenses they hold, "Senior Investment Advisor" is not among them. Moreover, Section 26.6.2.1. prohibits the use of nonexistent or self-conferred degrees or designations.[7]

Websites

49. At the time of the Division's examination, Cyprus's website, located at www.cypruscu.com, lists "Investment Services" under the accounts tab below savings accounts and above certificate accounts. Choosing "Investment Services" navigated to "Cyprusinvestmentservices.com".

50. That website uses the same colored font and logo art as Cyprus' logo, with the substitution of "Investment Services" for "Credit Union" appearing after "Cyprus."

[7]Even though "Senior Investment Advisor" was approved by LPL, it appears that the title came from Cyprus. After Registered Rep. 2 expressed specific concerns with use of that title, LPL approved him using his designation as a Certified Financial Planner ("CFP") instead when he reorders business cards in the future, but did not require an immediate change.

51. When a client logs in and views an account statement online, the statements include CIS' logo at the top of the statement and the LPL logo at the bottom left corner. If printed, the LPL logo disappears.

52. Further, the website includes a CIS logo with the text, "Welcome to Cyprus Investment Services, where you'll find a wealth of information on investment and retirement planning." The only information on the website regarding LPL is at the bottom of the page in the fine-print boilerplate disclosure.

Business Entity Confusion

53. During the examination, Registered Rep. 1 stated that CIS was a department within Cyprus Credit Union that was created when Cyprus changed its business model from having an independent contractor to having employees.

54. Registered Rep. 1 trains Cyprus employees to spot interest rate complainers, self-employed individuals and retirees, and ask whether those members would like to meet "our investment guy".

55. Having a department for investment services and referring to Registered Rep. 1 as the "program manager" or "investment guy" could lead members to believe that "Cyprus Investment Services" is a broker-dealer or investment adviser and that Registered Rep. 1 is an agent or investment adviser representative of CIS, without sufficient distinction of LPL's role as broker-dealer.

56. During the Division's examination, Registered Rep. 2 referred to himself as a financial advisor, but his business card – approved by LPL – and voicemail represent that he is a

"Senior Investment Advisor with Cyprus Investment Services." His email signature contains the title "Certified Financial Planner."[8] Registered Rep. 2's business card was available to clients in the business card holder in Cyprus' lobby mixed in with credit union business cards.

57. Registered Rep. 2's nameplate contains Cyprus' logo and color scheme but does not refer to LPL.

58. Both Registered Rep. 1 and Registered Rep. 2 downplayed their relationships with LPL, with Registered Rep. 1 stating LPL is "just a broker dealer we've chosen to run our [credit union] business through." Registered Rep. 2 stated that LPL was "just an entity in the background" that "most people don't care" about.

59. Three out of four of Registered Rep. 1's clients contacted by Division examiners believed that Cyprus was Registered Rep. 1's employer. When asked about LPL, one client understood it was a brokerage firm but said he believed it had no direct relationship to the credit union.

60. During the period of 2014 through 2017, LPL earned gross dealer concessions from investments offered through its networking agreement with the credit union.

Networking Agreement with Mountain America Credit Union

[8] The Certified Financial Planner ("CFP") designation requires the successful completion of course work and examinations and is issued by the CFP Board. Although Registered Rep. 2 is a CFP in good standing, identifying himself as a CFP in relation to "CIS" is misleading and problematic. Section 26.6.1.3 of LPL's written supervisory procedures requires that when using the term 'financial planner' "it must be clear that the title is held through LPL Financial. This can be done by placing 'LPL' in front of the title."

61. In 2008, LPL and MACU entered into a networking agreement for LPL to provide securities brokerage services to MACU members on credit union premises through LPL's registered representatives.

62. In June 2016, Division examiners conducted announced field examinations at LPL's branch offices located within MACU branches in South Ogden and Sandy, Utah. As part of the examination the Division interviewed "Wealth Advisor" Registered Rep. 3; "Sales Manager" Registered Rep. 4; "Wealth Advisor" Registered Rep. 5 and "Sales Manager" Registered Rep. 6, who are all employees of MACU and securities agents licensed with LPL.

63. Registered Rep. 3 passed the FINRA Series 7 and 66 examinations and was licensed with LPL as both a broker-dealer agent and investment adviser representative until May 2017.

64. Registered Rep. 4 has passed the FINRA Series 7 and 66 examinations and is licensed with LPL as a broker-dealer agent.

65. Registered Rep. 5 has passed the FINRA Series 6, 7, 31, 63 and 65 examinations and is licensed with LPL as both a broker-dealer agent and investment adviser representative.

66. Registered Rep. 6 has passed the FINRA Series 7 and 66 examinations and is licensed with LPL as both a broker-dealer agent and investment adviser representative.

67. LPL did not comply with financial institution regulatory guidance and requirements governing networking arrangements. Among other things, LPL has failed to train and supervise the LPL Registered Representatives ("LPL RRs") relative to regulatory

requirements and guidance as evidenced by a lack of clear distinction and separation in the MACU culture between the credit union and registered representative roles.

Lack of Distinction and Separation Between Roles in MACU Culture

68. At the time it was issued, the Chubb letter recognized that some individuals who became licensed as broker-dealer agents pursuant to a networking agreement would also be employees of the financial institution with separate duties being performed specifically for the financial institution outside of broker-dealer activities. Significantly, the MACU/LPL individuals interviewed by the Division all disclaimed having any credit union responsibilities despite emphasizing that the credit union rather than LPL was their employer.

69. During an interview with Registered Rep. 3 and 4, Registered Rep. 4 explained to the examiners that advisors and sales managers dislike being identified as "the LPL guys". Registered Rep. 4 went on to state,

> we hope that the member doesn't feel like, oh, I'm going outside of the credit union. We hope that we say, no, this is a credit union feel. Certainly, LPL provides us the platform to be able to give you meaningful wealth management tools and securities, but it's not the LPL team. We work for Mountain America.

70. The practice at MACU is to display the required logo that indicates "LPL at Mountain America," but the culture continues to emphasize MACU over LPL to portray MACU as a one-stop shop for members to receive traditional credit union services as well as investment advice.

71. Another example of the emphasis on MACU over LPL is that the LPL advisers use macu.com email addresses exclusively. When asked why the macu.com address is used rather than an LPL address, Registered Rep. 4 responded,

> So the members understand where we're coming from. The members really know us as their Mountain America wealth advisors. . . [w]e do explain the LPL relationship, but LPL is unknown to them, in large part. We talk about how it's the largest independent broker dealer nationally and . . . kind of the breadth and depth that they provide us as the credit union, but . . . they recognize us as MACU.

72. In an interview with Registered Reps. 5 and 6, Registered Rep. 6 stated,

> we have the stereotype that we're trying to debunk where they call us "the LPL guy". . . We have clients who do that and we hate that because we want them to think of us as a partner, just like any of the other partners. . . . they always refer to us as the LPL guy and we hate that . . . because it makes us feel like we're outside of the credit union and... because we're an employee of the credit union we always have to remind them and say, "We're an employee of Mountain America."

73. When asked how a client would know whether he was acting as a MACU employee or a representative of LPL, Registered Rep. 5 responded,

> That's a good question. They know I work for the credit union but they also know that I'm separate from them in that I don't do loans, I don't do cash transactions, I can't take care of typical bank-related activities. So, they know from that aspect that I am a separate entity, but I am working for the credit union. . . but they also associate me with LPL because all their statements come from LPL.

74. When asked to introduce themselves as they would to prospective clients, neither Registered Rep 5 nor Registered Rep. 6 mentioned LPL.

75. Registered Rep. 5 told examiners that "[w]e're not contract employees. We work for the credit union, so we want to be treated like we work for the credit union."

76. During a conversation with examiners regarding training provided to MACU employees who might refer members to the LPL representative, Registered Rep. 6 stated "that's

something Mountain America is really cognizant of. We feel . . . we feel like it's proprietary to us that, um, our members have a Mountain America experience . . . Mountain America feels that if...if our investment team or wealth management team were to separate from the credit union that they couldn't be able to control [the Mountain America experience]."

77. When asked by examiners who, in their opinion, drove the marketing and advertising, Registered Rep. 5 responded, "Credit union. LPL doesn't do any. . . in my mind, it's the credit union that drives the advertising. Now, once again, they partner with LPL to make sure everything is compliant, because any advertising has to go through LPL's compliance."

Additional Concern of Unlicensed Branch Employees

78. "Licensed Branch Employees" are credit union employees who are licensed with LPL but typically function in the credit union side of the business. They are licensed in order to assist members with basic investment needs and questions when the designated licensed agent is unavailable or out of the office.

79. Examiners found at least one MACU employee who was designated and acting as a Licensed Branch Employee, but who was not licensed with LPL.

80. Examiners were provided with a list of all "Licensed Branch Employees" across MACU branches. Of the 36 listed only 11 were licensed in their state of residence, 14 were identified as having an "Active" Rep ID status, and 12 were identified as "Needs to be Registered".

81. During the period of 2014 through 2017, LPL earned gross dealer concessions from investments offered through its networking arrangements with credit unions.

II. CONCLUSIONS OF LAW

Failure to Supervise Under § 61-1-6(2)(a)(ii)(J) of the Act

Misleading Advertising

82. As described herein, LPL approved and permitted the use of numerous misleading marketing, advertising, promotional and other materials in its business conducted on the premises of Cyprus.

83. The common theme in LPL's networking agreement with Cyprus in particular is that great efforts were expended to create the appearance of an investment entity that was part of the credit union organization without sufficient distinction of LPL's role as the broker-dealer. In the case of Cyprus, a DBA was used with similar imagery to the credit union, and used with credit union logos to brand and market the purported investment entity to credit union members. "Cyprus Investment Services" downplayed LPL and diminished or negated required disclosures, and blurred the clear separation between the credit union and broker-dealer as required by Chubb and other regulations as described herein. Given that LPL has a networking agreement with MACU, which entered into a consent order in 2007 with the Division, indicates that LPL should have known that such order with MACU was Utah's position on networking arrangements.

Misleading Public Communications

84. LPL's failure to reasonably supervise resulted in LPL:

a. publishing, circulating or distributing public communications that LPL knew or should have known contained misleading statements of material fact;

b. failing to ensure its communications were clear and not misleading; and

c. failing to prominently disclose its name in communications and correspondence.

Failure to Follow Networking Arrangement Disclosure Requirements

85. LPL failed to clearly identify itself as the entity providing broker-dealer services and distinguish its broker-dealer services from those of the credit union, and in some cases failed to conduct its services in areas that clearly displayed its name.

86. In so doing, LPL failed to follow regulatory requirements for networking agreements with credit unions. Although those requirements are well established and addressed in detail in its own written supervisory procedures as described in paragraphs 22 - 28, LPL failed to implement, enforce, and/or follow policies and procedures reasonably designed to detect and prevent its numerous securities law violations, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.

87. LPL permitted Registered Rep. 1 and Registered Rep. 2 to hold themselves out as "Senior Investment Advisors" with "Cyprus Investment Services" which is not licensed as an investment adviser. LPL's approval of the misleading materials likewise permitted the credit union to misrepresent the services offered through LPL.

88. LPL failed reasonably to supervise MACU by permitting the culture at MACU to flourish, which blurs the line between securities functions and credit union functions and

emphasizes the agents' connections with MACU, while minimizing their connection to LPL.

89. Finally, many of the violations and supervisory failures described herein are the same as those that led to the Division's 2007 actions against MACU and the prior broker-dealer with which it had a networking agreement. Through Stipulation and Consent Orders ("SCOs") MACU and the broker-dealer agreed to specific remedial actions going forward, including ceasing the use of a misleading credit union DBA name, which MACU and LPL complied with, and changes to communications with the public, marketing, advertising, compensation and oversight by the broker-dealer. LPL is – or should be – well aware of those requirements.

III. REMEDIAL ACTIONS/SANCTIONS

90. LPL neither admits nor denies the Division's Findings and Conclusions, but consents to the sanctions below being imposed by the Division.

91. LPL agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.

92. LPL has cooperated with the Division throughout the exam and throughout the pendency of this matter.

93. LPL is censured, and pursuant to Section 61-1-6 of the Act, in consideration of the factors set forth in Section 61-1-31, LPL shall pay a fine of $200,000.00 within ten (10) days following entry of this Order.

94. LPL represents it has undertaken a comprehensive review of its business conducted on the premises of financial institutions, including credit unions. Specifically, LPL represents that review covered all areas of networking arrangements, including networking agreements, supervisory structure and controls, cash and non-cash compensation, marketing and verbal and written customer disclosures. LPL further represents it has conducted a *de novo* review of Cyprus and MACU marketing materials for the period of 2012 to the present.

95. Within 365 days following entry of this Order, LPL shall have undertaken and completed remedial actions necessary to ensure compliance with this Order, and shall submit a summary report of updated information and materials to the Division. An interim report of steps taken toward completing the remedial actions will be presented to the Division 180 days after entry of this Order. The remedial actions will apply equally to investment advisory services where applicable, and shall include but not be limited to the following:

Use of DBA and References to Credit Union

a. LPL shall require that all DBA names and their usage comply with the DBA policy attached hereto as Exhibit A.

Branding

b. LPL shall ensure that all advertisements, correspondence, letterhead, envelopes, brochures, web pages, business cards, seminar materials, presentations and any similar communications with the public ("promotional materials") relating to LPL services under

the networking agreement ("LPL Services") comply with the requirements outlined in Exhibit A.

c. LPL shall ensure that all LPL business conducted on the credit union's premises is done so in an area that is physically separate from the credit union's regular business activities to the extent practicable, and that prominent LPL signage consistent with the promotional materials requirements described herein is clearly visible.

Web Pages

d. Credit union/DBA web sites that link to an LPL site or reference LPL Services shall disclose that a person is leaving the credit union/DBA web site and shall clearly communicate and disclose the separation that exists between LPL and the credit union/DBA. Investment-related web pages must clearly and prominently identify LPL and not the credit union as the provider of investment services and are subject to the promotional materials requirements described above in subparagraph b. Credit union/DBA web sites that contain a BrokerCheck link shall reference LPL when referring to financial professionals.

Registered Representatives

e. LPL shall ensure that its registered representatives ("LPL RRs") who are employees of the credit union consistently identify themselves as LPL RRs when offering LPL products or services, including in voicemail greetings.

f. LPL RRs shall use job titles, business cards, name plates, letterhead, and signature lines that comply with Exhibit A. LPL RRs may use a DBA name in their email address

or may use an email address that references both LPL Financial and credit union or LPL and the the credit union. Any LPL RRs that have separate credit union duties as credit union employees shall use separate credit union business cards, letterhead, e-mail addresses, etc. when assisting clients with credit union products or services.

g. Business cards for LPL RRs are subject to the provisions described in Exhibit A and to that end, LPL shall be prominently identified by name and logo and shall prominently display all required disclosures. Any reference to the credit union is limited to location only.

h. LPL RRs must clarify to prospective or existing clients that investments are offered through LPL. LPL RRs who have minimal or no credit union duties as a credit union employee shall not lead prospective or existing clients into believing his/her credit union employment is significant or meaningful to investment services offered by LPL. LPL RRs shall inform clients when offering investments that the investments are offered through LPL which is separate and apart from their employment at the credit union.

i. LPL shall send its plain English disclosure document that it is sending to new clients to all current Utah CIS member clients.

Creating a Culture of Compliance - Training

j. LPL associated persons, including any credit union program managers (or similar) shall create a culture of compliance to conduct broker-dealer operations and investment activities in a manner fully consistent with SEC and FINRA guidance, LPL's written supervisory procedures, Utah law, and the terms of this Order. In that regard, LPL shall

provide specific training to LPL RRs located in Utah credit unions, and shall submit proposed training materials to the Division prior to implementation. Training shall include but not be limited to the authority and guidance discussed and referenced in this Order.

k. Within 365 days following entry of the Order, LPL shall conduct unannounced examinations of no fewer than six (6) branch offices in Utah located on credit union premises to ensure compliance with the remedial actions described herein. LPL will provide the results of those examinations in writing to the Division, including any deficiencies noted and actions taken to remedy any deficiencies.

IV. FINAL RESOLUTION

96. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

97. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative law judge solely as to the issue of a material violation, Respondent consents to entry of an order in which Respondent admits the Division's Findings of Fact and Conclusions of Law. Notice of the violation will be

provided to Respondent's counsel and sent to Respondent's last known address. If Respondent fails to request a hearing within ten (10) days following notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

98. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against it arising in whole or in part from its actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against it have no effect on, and do not bar, this administrative action by the Division against it.

99. This Order waives any disqualification in applicable state laws, rules and regulations; the Order is not intended to form the basis of any disqualification under federal securities laws, rules or regulations, including Regulation A and Rules 504 and 506 of Regulation D or under FINRA rules; and the Order is not intended to be a final order based upon violations of any state statute, rule, or regulation that prohibits fraudulent, manipulative or deceptive conduct. Except in an action by the Division to enforce the obligations of

this Order and as described in paragraph 97, any acts performed or documents executed in furtherance of the Order (a) may not be deemed or used as an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; and (b) may not be deemed or used as an admission of, or evidence of, any such alleged fault or omission of LPL in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or other tribunal. Nothing in this Order or in other documents exchanged between the parties (including any asserted violations) is intended to form the basis for any disqualification under the laws of any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands; under the rules or regulations of any securities or commodities regulator or self-regulatory organizations; or under the federal securities laws, including but not limited to, Section 3(a)(39) of the Securities Exchange Act of 1934 and Regulation A and Rules 504 and 506 of Regulation D promulgated under the Securities Act of 1933. Furthermore, nothing in this Order or in other documents exchanged between the parties is intended to form the basis for disqualification under the FINRA rules prohibiting continuance in membership or disqualification under other SRO rules prohibiting continuance in membership. This Order is not intended to be a final order based upon violations of any state statute, rule or regulation that prohibits fraudulent, manipulative or deceptive conduct.

100. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe,

or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 28 day of September, 2018

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 28 day of September, 2018

LPL Financial, LLC

Approved:

Tom Melton
Assistant Attorney General
Counsel for Division

Approved:

Cheryl L. Haas
McGuireWoods LLP

or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this ____ day of _____, 2018

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:

Tom Melton
Assistant Attorney General
Counsel for Division

Dated this 28 day of September, 2018

LPL Financial, LLC

Approved:

Cheryl L. Haas
McGuireWoods LLP

or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this ____ day of _____, 2018

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:

Tom Melton
Assistant Attorney General
Counsel for Division

Dated this 28 day of September, 2018

LPL Financial, LLC

Approved:

Cheryl L. Haas
McGuireWoods LLP

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by LPL, are hereby entered.
2. LPL shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. LPL is censured.
4. Pursuant to Section 61-1-6 of the Act, in consideration of the factors set forth in Section 61-1-31, LPL shall pay a fine of $200,000 within ten (10) days following entry of this Order.
5. LPL shall undertake the remedial actions as described in paragraph 95 above.

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of_____, 2018

Brent Baker

Brent Cochran

Gary Cornia

Peggy Hunt

Lyle White

CERTIFICATE OF MAILING

I certify that on the 4th day of October, 2018, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Cheryl L. Haas
McGuireWoods LLP
1230 Peachtree Street, N.E.
Suite 2100, Promenade
Atlanta, Georgia 30309-3534
Counsel for Respondent

Executive Secretary

EXHIBIT A

EXHIBIT A

DBA Name Requirements
For Utah Only

Financial institutions (i.e., credit unions) may use a "doing business as" name ("DBA name(s)") to offer financial products and services through licensed broker-dealer and/or investment adviser firms in conjunction with valid networking arrangements. However, the use of a DBA name must not be misleading to investors. Communications referencing the financial institution and/or a DBA named party/entity in a manner which implies either are securities licensed is misleading and a violation of the Utah Uniform Securities Act.

In order to not confuse investors, the DBA name must:

- Be distinct from the name and branding of the financial institution*; and
- Not be used in manner to lead an investor to believe the DBA named party/entity is securities licensed.

*Note: The preferred form of distinction is for the DBA name to not include the name of the financial institution or its affiliated entities. If the DBA name includes the financial institution's name additional measures, as set forth below, must be taken to create a clear distinction.

In addition to the above standard all DBA names must adhere to specific naming convention, disclosure, and usage requirements outlined below:

I. Naming Convention Requirements

A. When the Financial Institution Uses the Term "Credit Union," or Other Qualifier in its Institutional Branding

If the financial institution's branding includes the word "Credit Union" or other qualifier, the DBA name cannot include the word "Credit Union" or other qualifier.

For example, if the institutional branding is Acme Credit Union, acceptable DBA names are:

- ACU Investment Services (preferred); or
- Acme Investment Services

"Acme Credit Union Investment Services" would not be an acceptable DBA name.

B. When the Financial Institution Does Not Use the Term "Credit Union," or Other Qualifier in its Institutional Branding

If the financial institution's branding does not include the word "Credit Union," or other qualifier, the financial institution must use one of the following three options:

1) Change its institutional branding to include the word "Credit Union," or other qualifier, so there is a distinction between the financial institution's branding and the DBA name. Additionally, if using this option, the DBA name must comply with the requirements set forth under Section I.A above.

2) If the financial institution's branding uses an acronym (e.g., ACU is used for Acme Credit Union), the DBA name: (i) may not use the same acronym; and (ii) must use the term "Financial and Insurance Services" (preferred when product offering includes securities and insurance), "Financial Services," "Financial Center," "Investment Services," or "Investment Center". Other DBA names must be pre-approved and may not include any of the prohibited names below.

   Prohibited names include: Wealth Services, Wealth Planning, Wealth Management, Wealth Center, Wealth Group, Investment Planning, Investment Management, Investment Group, Advisory Services, Advisory Management, Advisory Planning, Advisory Center, Advisory Group, Financial Planning, Financial Management, and/or Financial Group.

   For example:

   - If the financial institution's branding for Allied Credit Union uses an acronym such as "ACU" without the use of "Credit Union" or other qualifier, ACU must:

     - Change its branding to "Allied Credit Union" and comply with the requirements set forth in Section I.A above; or

     - Not use the ACU acronym and must include the term "Financial and Insurance Services (i.e., "Allied Financial and Insurance Services"), "Financial Services," "Financial Center," "Investment Services," or "Investment Center." Other DBA names must be pre-approved and may not include any of the prohibited names above.

3) If the financial institution's branding does not use an acronym, the DBA may use the term "Financial and Insurance Services," "Investment Services," "Investment Center," "Financial Services," or "Financial Center." Other DBA names must be pre-approved and may not include any of the prohibited names above.

For example:

- If the institutional branding is "AcmeWorld" without the use of 'Credit Union,' or other qualifier, AcmeWorld can:
    - Change its institutional branding to "AcmeWorldCreditUnion" and comply with Section I. above; or
    - Leave its institutional branding as is and create a DBA name that contains the term "Financial" or other similar terms, such as "AcmeWorld Investment Services".

II. Disclosure Requirements

The following disclosure is required to be displayed in a clear and prominent manner on all communications with the public utilizing a DBA name:

Securities and advisory services are offered through LPL Financial (LPL), a registered investment advisor and broker-dealer, (member FINRA/SIPC). Insurance products are offered through LPL, or its licensed affiliates. [Credit Union name and DBA name] are not registered as a broker-dealer or investment advisor. Registered representatives of LPL offer products and services using [d/b/a name], and may also be employees of [credit union name]. These products and services are being offered through LPL or its affiliates, which are separate entities from, and not affiliates of, [credit union name or the d/b/a name]. Securities and insurance offered through LPL or its affiliates are:

Not Insured by [FDIC or NCUA] or Any Other Government Agency / Not [Credit Union] Guaranteed / Not [Credit Union] Deposits or Obligations / May Lose Value

III. Usage Requirements

1. DBA names must appear distinct from the credit union. Thus, they cannot use the same logos or color combinations.

   Example to illustrate imagery changes resulting in a genuine distinction:

Example of imagery changes creating a distinction without a difference:

The DBA name must be co-branded with equal or smaller font size as LPL Financial on marketing materials, websites, social media sites, business cards, letterhead, envelopes, promotional materials, communications with the public, etc.

For example:

LPL Financial
BB Investment Services

2. LPL Financial must be at least equal size as the DBA name, and the DBA name must be shown with equal or less prominence in placement and usage than LPL Financial on marketing materials, website, business cards, social media sites, business cards, letterhead, envelopes, promotional materials, communications with the public, etc.

   For example:

   LPL Financial BB Investment Services
   or

   LPL Financial
   BB Investment Services
   or

   BB Investment Services
   LPL Financial
   or

   BB Investment Services
   LPL Financial