

Utah Division of Securities Commission
Meeting Minutes
October 4, 2018
9:00 a.m.
Room 403

Division of Securities Staff Present

Tom Brady, Division Director
Vickie Cutler, Commission Secretary
Kenneth Barton, Compliance Director
Dave Hermansen, Enforcement Director
Bryan Cowley, Registration and Licensing Director
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
Chip Lyons, Securities Analyst
Liz Blaylock, Enforcement Investigator
Tyler Huff, Compliance Examiner
Rebecca Taylor, Time-Limited Examiner
Jeff Teichert, Securities Examiner

Other State of Utah Employees

Tom Melton, Assistant Attorney General
Jennifer Korb, Assistant Attorney General
Paula Faerber, Assistant Attorney General
Bruce Dibb, Department of Commerce Administrative Law Judge
Nancy Krippner, Attorney General's Office

Public Present:

Cheryl Haas, Counsel for McGuireWoods LLP

Commissioners Present

Brent Baker, Clyde, Snow & Sessions
Peggy Hunt, Dorsey and Whitney
Gary Cornia
Brent A. Cochran, Crewe Advisors Wealth Management
Lyle White, Fidelity Investments

Minutes: At a 9:05 the meeting was called to order by Commissioner **Brent Baker**. Commissioner **Lyle White** made a motion to approve the minutes from the August 2, 2018 Commission meeting and Commissioner **Gary Cornia** seconded the motion off the record because of technical difficulties. The motion was approved unanimously off the record.

Director's Report: Director Brady provided the Securities Commission an update on recent events in the Division of Securities.

Personnel Updates:

1. Vickie Cutler was introduced as the new Administrative Assistant. She had previously been working as a Family Services Specialist III for the Nevada Division of Welfare and Support Services. Prior to that she worked as an Office Administrator, Compliance Agent and Administrative Secretary.
2. The Compliance Section has been in the process of hiring for two vacancies. They are two examiner positions due to the departure of Heidie George and Francwai Davis. Two great candidates have been hired to fill those positions.
 - a. The Division has hired Tyler Huff as a Compliance Examiner. Tyler has been working in the Registration and Licensing Section as a fellow and most recently was a time-limited Examiner for the past eight months. Prior to that, he practiced securities law with a small firm, interned at the SEC office in the Salt lake Regional Office, and interned with the Corporate Finance Division for the SEC in Washington D. C. He has a bachelor's and J.D. from Brigham Young University.
 - b. The Division has also hired Brock Jackson as a Compliance Examiner. Brock brings industry experience to the Division. He currently works for Fidelity and holds Series 63, 66, and 7 licenses. He has a bachelor's degree from SUU and a Masters in Public Administration from the University of Utah.
3. The Division hired Rebecca Taylor as a time-limited Examiner in the Registration and Licensing Section. Rebecca has been interning for the Division. She is in her 3rd year of her JD program at BYU's J. Reuben Clark School of Law. Rebecca was an intern at the U.S. Securities and Exchange Commission Salt Lake City Enforcement Division during her 2nd year of law school. She has two years of accounting work experience and worked for several years as Vice-President of Finance for a regional health care delivery company in Idaho.
4. The Enforcement Section has an Investigator vacancy it is trying to fill. Brett Bauman left and took a job as an Assistance Special Counsel in the County Attorney's Office of Jackson County, Oregon. This position has been poster.

Stock Market Games:

Years ago when the program looked to be ending the Division, through Keith Woodwell and Karen McMullin's efforts, took on that project and have built it up into a very effective and well respected program that has benefited thousands of children. The Division will continue to support the Stock Market Games however as of November 1, 2018 the State Treasurer's Office will be taking over the administration of the Stock Market Game for the State of Utah. We have had ongoing discussions about this possibility for the past couple of months. The Treasurer's Office has an interest in taking

on this responsibility and for a variety of factors I have made the decision to shift the administrative responsibilities. The Division will continue to support the Stock Market Game, just in a different role.

2018 NASAA Enforcement Report:

Information is submitted from each state, members and provinces in Canada by survey and NASAA analyzes trends. Some interesting findings were discussed by Tom Brady:

1. Survey reveals that seniors remain a primary target of fraudsters.
2. NASAA identified the offer and sale of unregistered securities offerings as the scheme used by individuals most often to victimize seniors and other vulnerable adults.
3. Enforcement Actions: large increase, 24%, against unregistered individuals and firms.
4. A 9% increase in actions against registered individuals and firms. It's significant because it reverses a two-year trend of registered individuals and firms constituting the majority of Enforcement Actions.
5. First time in three years IA firms and representatives significantly outnumbered broker-dealer firms and agents as respondents in state enforcement actions. This is a new trend. It mirrors Utah in some respects except it's a misleading statistic because our actions against IA's are typically through routine audits, for cause actions are against broker-dealers. It's along the lines of 50/50 in total enforcement actions.
6. Investigations: growing number of investigations of unregistered individuals. Increase of 40% since 2015. In light of recent state enforcement efforts against fraudulent activity involving crypto-currencies, this trend is likely to continue. Certainly true for our Enforcement Section in Utah. Since November over 50% of our complaints have involve crypto-currencies as the product being sold.

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

1. Tom's numbers reported fall right in with what we are seeing in the state of Utah.
2. There are currently 56 cases being investigated. We have 20 that are being prosecuted, 9 Order to Show Cause documents that need to be drafted, we have 4OSCs that are stayed currently and 8 that are outstanding that are trying to be settled or move forward.
3. Criminal Activities:
 - a. On 8/13/2018 Mark Bowman and Manley Logan entered into a pleading of Securities fraud each in Third District Court. About a week and a half ago Manley Logan was sentenced for his involvement in that case, 36 months of probation and to pay restitution. Mr. Bowman will be sentenced next month and it will be reported on at the next commission meeting.
 - b. On 8/23/2018 criminal charges were filed by Salt Lake County, this is in the case of Mojo Fitness and misuse of \$50,000, the charges included 1 count of securities fraud and 1 count of theft.
 - c. On 8/27/2018 the Utah Attorney General's Office filed criminal charges against Thomas Schultz and his entity Stove in a Can, the charges included 8 counts of securities fraud and 1 count of pattern of unlawful activity.
 - d. On 9/24/2018 Dallas Tall, in the Accelerated Wealth Case, after pleading guilty to 2 third degree felonies he's currently in prison on other charges and has other charges pending on him. He will be incarcerated in excess of 15 years based on the other charges. He pleaded guilty to 2 third degree felonies but we charged him with 9 felonies including 5 counts of securities fraud and 1 count of pattern of unlawful activity. To date in that particular case investors are still owed in excess of \$1.8 million.
 - e. On 9/27/2018 in the Big Jersey case that involved other agencies one of the main salespeople, Johnathan Shockaire, pleaded guilty to 2 felony counts of conspiracy to commit fraud and money laundering. He will be sentenced in late November 2018 on those charges.
 - f. On 9/28/2018 Utah Attorney General's Office filed an Order to Show Cause against one of our past respondents Jeppesen; a hearing was held in our office. In the Criminal Court he was ordered to pay \$488,000 in restitution and should have been paid by now, he did not pay it, so the Order to Show Cause was issued and Judge Hansen presided over that, Mr. Jeppesen did not appear, and a \$25,000 arrest warrant was issued for bail. A new hearing is scheduled for Mr. Jeppesen on 10/12/2018 with Judge Hansen.

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

1. Exam Statistics YTD 2018: 21 Compliance Exams were initiated, 16 exams were For Cause exams triggered by investor complaints or regulatory agency referrals, 5 are routine exams. The difference between the For Cause exams and Routine exams is primarily of function of being understaffed. Whenever the Division is understaffed priority is on For Cause exams that involve an investor complaint or an agency referral that we believe needs to be looked at quickly. As a result of prioritization the Division will always give preference to the For Cause exams over routine exams.
2. Compliance has also completed 15 Investment Advisor License approval exams.
3. Compliance has filed 8 administrative actions and referred 3 criminal actions. Two of the administrative actions are on the 10/04/2018 agenda to seek approval for negotiated Stipulation and Consent Orders. Two administrative actions are stayed pending the conclusion of criminal court cases. One administrative action is on appeal with the Utah Court of Appeals with no information since our last commission meeting. Three administrative actions are still in progress with the Division seeking negotiated settlements or disposition via hearing. For the 3 criminal referred actions one case is completed with regard to the Guilt and Innocent section of the case and the Division is awaiting a sentencing hearing that has been delayed and rescheduled to allow the Defendants an opportunity to raise funds for victim restitution. One case is stayed pending an appeal. The third criminal case is with the Trial Court with no new information to report since our last commission meeting.

Question 1: When you go in for a For Cause exam is your scope of exam focused on whatever the complaint has been doing or do you expand it a little more broadly? Ken responded that each For Cause exam is look at carefully and typically the Division will begin with the scope specific to the investor complaint but then typically it begins to turn out a bit to see if there are other investors in that branch office or investment advisor firm that would also potentially be subject to the same kind of issue the complainant had but really it depends on the nature of the complaint. But, we do not exclusively look at the one specific investor if we have good cause to expand the Division will expand to the point of conducting a full exam.

Question 2: How often do you do the random exams, how often do you get to each place? The primary population of the people the Division will do exams for is going to be the state-covered investment advisor firms. Of the state-covered investment advisor firms the Divisions has about 250 of those licensees. So, with 5 Examiners that are available at full staff, if half of those exams are For Cause exams that could involve that population there are, the bulk of all routine exams are going to be that population. If you look at 25 to 50 exams per year you are looking a 10 year cycle time. There are certain investment advisor firms that offer very narrow services such as a referral firm, without money management, a low-risk advisor firm, are going to be moved down and the higher-risk investment advisor firms, typically one that might offer in addition to normal market products, alternative investment products and investments in alternative investments the Division has a RISK program where the Division assigns a numerical value based on characteristics of the firm and the Division sorts that by risk. (22:18)

Question 3: Does the Division do any targeted areas and target those verses more random?

The Division calls those sweep exams, and the Division has done a few sweep exams recently on broker-dealer firms looking at a very narrow specific item which are individuals on heightened supervision for the broker-dealer firms that are located with their home office in the state of Utah so the Division conducted that vary narrow exam. The credit union cases involving the firms, one of which is on today's agenda, would be an example of a sweep exam where the Division goes in and looks at an advertising situation.

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

1. In the past commission meeting it was discussed on average the Division has about 50 RIA licensing applications each year.
2. The trend in applications, something that Chair Brent Baker discussed at the Securities Section CLE, is to use a compliance consultant.
3. Sheila Thomas began tracking the applications in 2014. Over the past 4 years, of the 257 applications 105 did not have a consultant or 40%. She has received 27 applications from different consulting firms. The highest are:
 - a. RIA in a Box 21 with applications
 - b. XY Planning 14 with applications
 - c. RIA Registrar with 11 applications
 - d. NCS Regulatory 8 with application
 - e. Received at least 8 of the 257 applications from law firms
 - f. 1 from CPA
4. There are pros – applications are uniform; less expensive for daily compliance and audit preparation than attorneys; can create a culture of compliance.
5. There are cons as compared to attorneys, e.g., no legal support, no representation, no privilege.
6. Cost is about \$3k to start and \$200-\$2k a month for ongoing compliance.
7. For the time being, the trend is to have someone else on the side of the adviser in the process of licensing with the State of Utah.

Question 1: Explain what the Consultant does? Example: if the individual is a broker-dealer and they are leaving a broker-dealer firm to pursue business themselves, get clients, etc. and want to become a state covered registered investment advisor they need to fill out an application with us. During the application process we're going to ask them for several documents: a written supervisor procedure, form ADV, getting on the CRD, etc. Most of the individuals on the ED side are familiar with products but not familiar with the regulation and they'll outsource the compliance function to a Compliance Consult typically during the initial stages so they can get on track.

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

1. Since the last Commission meeting in August, the Division has participated in 9 events with an estimated audience of 972. The events included URS Educational Seminars, PEHP Medicare Seminars, a Stock Market Game Training for teachers and a Consumer Fraud and Business Symposium.
2. In 2018, the Division has participated in 57 events with an estimated audience total of 19,107.

3. Stock Market Game Update - The Fall 2018 10 week Student Session began on Sept. 24. At the present time, there are 1617 teams participating under the registration of 94 advisors. The estimated number of students participating statewide is 4,469.
4. Over the past 6 weeks, the Division of Securities has been working with the Utah State Treasurer's Office to take over the administration of the Stock Market Game beginning on November 1, 2018. After this date, all Stock Market Game related events going forward will be handled by the Treasurer's Office, including the Awards Banquet scheduled for January 4, 2019.
5. UCFFEE Report – The Utah State Treasurer David Damschen held a meeting on Sept. 25 to reconvene the Utah Council on Financial and Economic Education (UCFFEE). Tom Brady represented the Division at this meeting where the changes in the administration of the Stock Market Game were discussed and the efforts for continued Financial Literacy collaboration throughout the State were offered.
6. Future Events – We presently have three events scheduled in Oct. and Nov. Due to the increased caseload, the Division has declined invitations to participate in additional events during Oct., Nov. and Dec.
7. Success Stories – In July of 2016, I met a URS member at a URS Pre-Retirement Seminar. After hearing the Division's Investor Protection message, the member asked additional questions and indicated the desire for additional education for he and his wife as they prepare for retirement. They came to our office for an individual education appointment and also kept in contact afterward with additional questions. In Sept. 2018, the URS member recognized me in another location at another event and explained how helpful the additional education was for he and his wife. He responded with the following: "I am pleased to inform you that the services and investment tools provided were an absolute success in helping get our retirement back on track. Thank you so much for taking time to educate both if us on investments."

Education and Training Fund Report:

Bryan Cowley presented the Division of Securities Education and Training Fund Report and noted the NASAA addition. Following the presentation of the Education and Training fund Commissioner **Brent Baker** called for a motion to approve. Commissioner **Gary Cornia** made the motion to approve the funding request, in the amount of \$20,000.00, to the Education and Training Fund. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

Back on the record at 10:05 A.M.

Consideration and Approval of Proposed Orders:

LPL Financial LLC, CRD #6413, SD-18-0034: Stipulation and Consent Order. (Tom Melton)

Tom Melton reported LPL is a California limited liability company and a securities broker registered with the SEC, a member of FINRA and a member in all 50 states including D.C, Puerto Rico and the Virgin Islands. It is also a federal covered Investment Advisor with the SEC. LPL conducts business in Utah through networking agreements with, among others, Cyprus Credit Union and Mountain America Credit Union who are not licensed as broker-dealers. In 2015 and 2016 the Division conducted examinations and alleged that LPL failed to comply with regulatory guidance and requirements governing network agreements which resulted in the filing of a petition in April 2018. This Order will fully resolve all claims the Division has against Respondents pertaining to the Order to Show Cause.

It is hereby ordered that:

1. Respondent shall cease and desist from violating the act and complying in the future;
2. Respondent has agreed to a censure;
3. Respondent shall pay a fine, jointly and severally, of (a) \$200,000 to be paid to the Division within ten days after the entry of the order and;
4. Respondent has agreed to the following:
 - a. LPL will require that all DBA names and their uses comply with a DBA policy attached to the Stipulation and Consent Order which was negotiated by both parties;
 - b. LPL will ensure that all advertisements, correspondences, letterhead, brochures, web pages, business cards relating to LPL Services under a networking agreement comply with the requirements;
 - c. All LPL business conducted on credit union premises will be in an area physically separate from the credit union's regular business activities;
 - d. All prominent LPL signage will be clearly visible;
 - e. Website – clearly disclose that a person is leaving the credit union, or DBA site, and clearly communicate the distinction;
 - f. LPL will ensure that their registered representatives employed by the credit union consistently identify themselves as LPL registered representatives when offering LPL services including in voicemail greetings;
 - g. LPL registered representatives will use job title, business cards, name plates, email address, etc. that will comply with the guidelines in the DBA policy;
 - h. LPL also agrees that it's associated persons will create a culture of compliance in a matter consistent with FCC and FINRA guidance, LPL's own written supervisory procedures, Utah law and the terms of this order;
 - i. LPL will provide specific training to its registered representatives in Utah credit unions and will submit proposed training materials to the Division prior to their implementation;
 - j. Within 365 days LPL has agreed to conducted unannounced examinations with no fewer than 6 branch offices to ensure compliance;

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Peggy Hunt** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

Globa, Inc; Kenneth Ekow Andam; SD-16-0033, SD-16-0034: Order on Motion for Summary Judgment (Jennifer Korb)

Jennifer Korb reported this matter is on the agenda today because there is a pending Motion for Summary Judgment that was filed by the Division on August 3, 2018. Respondents filed a response to the Motion through his counsel Mary Corporon on August 13, 2018. In that response Respondents didn't oppose the granting of summary judgment and agreed that it would be appropriate and only took issue with the fine amount. The Division replied in support of the Motion on August 20, 2018, respondent Globa, Inc. failed to respond to the Motion and no hearing was requested. Order being entered October 4, 2019 will only be for what the parties agreed to. The next hearing, March 21, 2019, hearing will address the fine.

It is hereby ordered that:

1. No judgment is to be entered against Global until a proper factual presentation is made about service of the Motion on the respondent entity.
2. Respondents cease and desist from engaging in any further conduct in violation of Utah Code Ann 61-1-1.
3. Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah.
4. A fine should 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.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Peggy Hunt** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

Lloyd B. Sharp; SD-17-0050: Order of the Commission

Paula Faerber and Tom Melton reviewed the circumstances of this case. Respondent did not attend the hearing resulting in a default being discussed. The 'Renewed Motion for Default of Lloyd Benton Sharp' was presented to the Commission and it was agreed that a new order would be prepared based on the Renewed Motion outlining the events, law and considered fine amounts.

Commissioner **Brent Baker** called for a motion to deny. Commissioner **Gary Cornia** made the motion to deny the Motion for Default and Summary Judgment. Commissioner **Lyle White** seconded the motion. The motion was denied unanimously.

Utah Gold and Silver Depository, LLC; Craig Anthony Franco; SD-14-0019, SD-14-0020, SD-16-0035 and SD-16-0036: Findings of Fact, Conclusion of Law and Order as to the Amount of the Fine to be Imposed Against Respondents. (Jennifer Korb)

Jennifer Korb reported that at the last commission meeting held August 2, 2018 the Commission heard argument regarding the appropriate amount of the fine. The Division's Motion for Summary Judgment had already been granted but the fine was in dispute and argument was presented by each side regarding the fine.

It is hereby ordered that:

1. Respondent shall pay a \$300,000.00 fine.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Peggy Hunt** made the motion to approve the fine. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously

Stephen Brandley; Clearwater Funding, LLC; SD-16-0039 and SD-0041: Findings of Fact, Conclusion of Law and Order as to Amount of Fine Imposed Against Respondents. (Jennifer Korb)

Jennifer Korb reported Respondent, James Cameron Lee, has already been settled and his settlement has been approved. Arguments regarding the fine against Respondents were heard at the last commission meeting on August 2, 2018 and presented by each party. Respondents and the Division entered into a Stipulation and Consent order, which was approved, but the fine was left to be determined by the Commission. It is hereby ordered that:

1. Respondents assessed a fine jointly and severally in the amount of \$175,000.00 on the date of this order.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Peggy Hunt** made the motion to approve the proposed Default Order. Commissioner **Brent Baker** seconded the motion. The motion was approved unanimously.

Matthew Hal Marchbanks, SD-18-0028: Stipulation and Consent Order (Paula Faerber)

Stipulation & consent order Mr. Marchbanks as all of the rest of the parties have been stayed pending the outcome of a criminal case against two of the parties. Respondent has chosen to move forward with the Stipulation and Consent. The Divisions investigation was from May 2012 to June 2013 and connected with the offer and sale of a security in Arenal Energy. The respondents jointly made material misrepresentations and omissions and collected approximate \$202, 000.00 in investor money. Respondent played a small role, there was one investor he talked to that invested \$5,000.00 in Arenal Energy and has voluntarily paid that money back to investors even though the money was forwarded to Arenal Energy. In the Stipulation and Consent order Respondent admits the findings and conclusions pertaining to unlicensed activity but neither admits or denies the remaining allegations in the Order to Show Cause. It is ordered that:

1. Respondent will cease and desist from violating the act and to comply with the requirements of the act in all future business in Utah;
2. Respondent agrees not to be licensed or apply for a license in the Securities industry for a period of one year after the entry of this order;
3. Respondent will pay a fine of \$2,500.00 to be paid to the Division within three days after the entry of the order.

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

Kenneth Boyce, SD-18-0034: Stipulation and Consent Order (Paula Faerber)

Ken Barton presented that this is a companion administrative action based on a criminal referral. In 2012 the Division initiated a for cause examination in to the activities of Respondent. The Division received an investor complaint that Respondent recommended the liquidation of the investor's annuity contracts, which Respondent had sold to the investor, to purchase an investment with Bockweld Consulting LLC. During the course of the investigation, the Division discovered other Utah investors, outside of the original complainant, whom Respondent had solicited and sold investments in Bockweld Consulting LLC to. In total, Respondent solicited and sold \$300,000 worth of investments in Bockweld Consulting LLC to Utah investors. Investor's money was being deposited into accounts to pay for Respondents commissions and to other Bockweld Consulting LLC principal's individual accounts. The Division learned of a criminal investigation being headed by the U.S. Attorney for Oklahoma into Bockweld Consulting LLC including Respondents activity. Respondent's misrepresentations and omissions through Bockweld Consulting LLC were presented. It is ordered that:

1. Respondent will cease and desist from violating the act and to comply with the requirements of the act in all future business in Utah;
2. Respondent will admit to the Division's findings and conclusions;
3. Respondent is barred from working with any issuer raising capital in Utah;

- Respondent will pay a fine of \$300,000.00 to be offset by any restitution payments made as a result of the criminal case. Should Respondent fail to meet his obligations to the court ordered restitution payments Respondent would be subject to pay the Divisions fine.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Peggy Hunt** made the motion to approve the proposed Default Order. Commissioner **Gary Cornia** seconded the motion. The motion was approved unanimously.

Back on the record at 11:47 A.M.

Future Meeting Schedule:

November 29 & 30, 2018; room 403 starting at 9:00 am

January 10 & 11, 2018; room and time TBD

March 21, 2019; room and time TBD

Commissioner **Brent Baker** called for a motion to adjourn the October 4, 2018 Division of Securities Commission Meeting. Commissioner **Brent Cochran** made a motion adjourn the Commission meeting and Commissioner **Lyle White** seconded the motion. The motion was approved unanimously. Meeting adjourned at 10:15 am.

Date: _____

Approved: _____
Brent Baker, Chairman