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**
CUSO FINANCIAL SERVICES, L.P., CRD #42132 **Respondent.**	Docket No. SD-18-0017

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

1. 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.
2. 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.
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 claims the Division has against Respondent pertaining to the Petition.

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

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

6. 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.

7. Respondent is represented by the law firms of Kaufman Dolowich Voluck LLP and Ballard Spahr LLP, and is satisfied with the legal representation it has received.

I. FINDINGS OF FACT

The Parties

8. CFS is a licensed broker-dealer and SEC Registered Investment Adviser with its primary place of business in San Diego, California. CFS has been licensed in Utah since January 6, 1999. CFS has branch offices located throughout Utah.

9. America First Credit Union ("AFCU") is a federal credit union with its primary place of business in Riverdale, Utah.

Division Examination

10. 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 CFS and the business it conducts through a networking agreement with AFCU, a credit union that is not licensed as a broker-dealer or investment adviser.

11. The Division found that CFS 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 advertising and communications with the public for CFS's services under the networking agreement.

The Chubb Letter and Networking Agreements

12. 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 provided that the activities comply with the Chubb letter, and has taken prior regulatory actions for noncompliance.[2]

13. Networking agreements allow broker-dealers such as CFS to provide non-deposit investment products and services 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.

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

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

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

15. In the Chubb letter, the SEC staff set forth guidance and conditions necessary for a credit union to offer on-premises brokerage services without becoming licensed as a broker-dealer. These conditions include 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.

16. In the years since the Chubb letter, additional regulatory guidance for networking arrangements has been issued by the Financial Industry Regulatory Authority ("FINRA") and NCUA.

17. FINRA Rule 3160 incorporates and codifies key guidance 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]

18. 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" the Chubb letter.[4]

19. 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

[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

nature or risks of brokerage products. In addition, the NCUA Letter advises that credit union members must be informed that the non-deposit investment products offered: are not federally insured; are not obligations of the credit union; are not guaranteed by the credit union; involve investment risk. The NCUA Letter advises that these disclosures are to be made in writing and in a location and type size that are clear and conspicuous to the credit union member.[5]

CFS Written Supervisory Procedures

20. CFS's written supervisory procedures ("WSPs") incorporate many of the regulatory requirements of the Chubb letter, from FINRA and the NCUA Letter.

21. CFS's WSPs *Section V., Communications with the Public, General Content Standards* ("Communications with the Public"), states

"... communications are required to...

- Not make false, exaggerated, unwarranted or misleading statements or claims
- Not omit any material fact that may cause the material to appear misleading
- prominently disclose the name of the FINRA member firm..."

22. Additionally, the *Communications with the Public* section states:

Associated persons should also refer to FINRA Rule 3160, NCUA Letter 10-FCU-03 (Formerly NCUA letter #150), and applicable SEC and State advertising regulations for additional information. All associated persons should be thoroughly familiar with this section prior to distributing any written communications to the public.

All communications and content within each communication should clearly identify CFS as providing the non-deposit investment or securities products and services in a manner that is transparent and distinct from the products and services offered directly by any financial institution that is contracted with the broker-dealer. References or content that

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

may imply that a registered representative is an employee of or otherwise offers services at a financial institution should clearly disclose the relationship with CFS as the broker-dealer and otherwise be accurate and not misleading.

Representative titles reflecting registration with CFS that are used in advertising pieces should never be used in direct conjunction with any non-FINRA member entity names (financial institution name, DBA name, or any other name that is not the broker-dealer). Representative titles should accurately represent the individual's registration with the broker-dealer. One consistent title should be used for multiple references in individual advertising pieces.

...

Graphics and pictures contained in advertisements must not be misleading...

23. CFS's WSPs further require that written communications "unmistakably identify that the representative is acting as an agent of [CFS]..." and that business cards and letterhead "must clearly disclose that the individual is acting as a registered representative of CFS..."

In addition, for business cards:

[t]he name or logo of a financial institution representing the location at which services are provided may appear in the header section of the card. The name of the credit union may also appear directly above the branch location so long as it is preceded by "Located at". The broker-dealer name must be placed in direct proximity to both the title of the registered individual as well as to any "non-member" entity (credit union name or logo.)

For networking agreements that use a separate DBA business name, branding, or logo for marketing purposes, any such name "must not be used in a manner which infers that the non-entity is a broker-dealer or [registered investment adviser] capable of providing investment products or services in and of itself.

24. CFS's WSPs also provide comprehensive standard disclosure language that "should generally be used on most advertisements related to" broker-dealer or investment advisory business:

Non-deposit investment products and services are offered through CUSO Financial Services, L.P. ("CFS"), a registered broker-dealer (Member FINRA/SIPC) and SEC

Registered Investment Advisor [sic]. Products offered through CFS: are not NCUA/NCUSIF or otherwise federally insured, are not guarantees or obligations of the credit union, and may involve investment risk including possible loss of principal. Investment Representatives are registered through CFS. (<Credit Union Name>) OR "The credit union") has contracted with CFS to make non-deposit investment products and services available to credit union members..."The following shortened standard disclosure may be used on an exception basis as approved by the compliance department for use on certain radio advertisements/scripts, directory ads, Automated Teller Machine screens and other advertising with limited space as allowable by industry regulation.

- Investment products and services offered through CUSO Financial Services, L.P. ("CFS") (Member FINRA/SIPC) are:
- Not insured by NCUA/NCUSIF or otherwise federally insured
- Not guarantees or obligations of the credit union
- May involve investment risk including possible loss of principal

25. CFS's WSPs emphasize separate areas between credit union activities and investment services:

FINRA Rule 3160 and NCUA Letter 10-FCU-03 require that investment services are to be conducted in a separate and distinct location from the deposit taking activities of the credit union in order to avoid confusion by credit union members. Representatives must operate in an area of the credit union that is distinguished with one or more CFS signs.
...
Credit Union locations providing investment products and services through CFS must have clear and prominent signage displayed in the separate and distinct area of the credit union where securities are being solicited. The signage should be displayed on either entryways to offices of investment representatives, or on the desks of individuals providing investment services in a manner that is clearly visible to the public. CFS signage may not be displayed in an area of the credit union in which deposit taking activities directly occur. The signage must contain the following language:

Non-deposit investment products and services are offered through CUSO Financial Services, L.P. (CFS) (Member FINRA/SIPC), a registered broker/dealer and SEC Registered Investment Advisor [sic].

Securities, Investment, and Insurance products:

- Are offered through CFS and not the credit union

- Are NOT Federally or NCUA/NCUSIF insured
- Are NOT credit union guarantees or obligations
- May lose value

Networking Agreement with America First Credit Union

26. On or about January 14, 2015, CFS and AFCU entered into a networking agreement for CFS to provide securities brokerage services to AFCU members on credit union premises through CFS's registered representatives. At that time, CFS replaced CUNA Brokerage Services ("CUNA") as the broker-dealer associated with AFCU to provide similar services.

27. After entering the networking agreement, AFCU began using the name America First Financial Solutions ("AFFS") followed by, in smaller print, "Available through CUSO Financial Services, L.P." to market the services offered by CFS. AFFS is not registered with the Utah Division of Corporations as an actual entity or assumed business name ("DBA"), but appears to be intended to brand CFS'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.

28. CFS did not comply with the Chubb letter and other applicable regulations and guidance. Among other things, CFS approved use of AFCU/AFFS promotional materials where the AFCU/AFFS logos appear more prominently than CFS, references to AFCU/AFFS are for more than location and are at the least confusing, and suggest AFCU/AFFS are offering investment products and services.

29. According to the AFCU website (www.americafirst.com) at the time of the Division's examination, the "America First Financial Solutions Team" had seven individuals who were licensed as CFS agents.

30. In preparation for the examination, Division examiners called several CFS representatives at AFCU branch offices and found that the individuals who answered the phone as well as voicemail greetings identified "America First Financial Solutions" rather than the broker-dealer name CUSO Financial Services.

Misleading Advertising Materials Approved by CFS

31. Under a tab entitled "Services" on AFCU's website was a dropdown menu with the heading "Investments Insurance". Directly below that was a link to "America First Financial Solutions" which navigated to an AFFS website located at financialsolutions.americafirst.com. The website had the AFFS name and logo prominently displayed with "Available through CUSO Financial Services, L.P." in a smaller font size.

32. Other references on the website, such as the "Our Team" link likewise navigated to a page containing the AFFS logo and "Your America First Financial Solutions Team" while references to CFS were in small print. Similarly, when a user selected "View Your Investments," the page that opens displayed "America First Financial Solutions" in large print with "Available through CUSO Financial Services, L.P." in smaller print.

33. Business cards approved by CFS for its licensed agents prominently display the AFFS name and logo, with references to CFS displayed in smaller print.

34. Folders used to hold documents given to clients after a consultation also display the AFFS name and logo prominently on the front with "Available through CUSO Financial Services, L.P." displayed in smaller print under the AFFS name and logo. The bottom of the folder reads "INSURE * INVEST * RETIRE". CFS's corporate office information and other disclosures are on the back of the folder.

35. The Division examiners interviewed CFS Program Manager ("Program Manager") and two licensed agents of CFS, Registered Rep. 1 and Registered Rep. 2.

Program Manager Interview

36. On or about February 10, 2016, Division examiners met with Program Manager at the AFCU City Creek branch located at 60 E. South Temple in Salt Lake City. Also in the interview, via telephone from CFS's home office in San Diego was OSJ, who is the assigned supervisor for CFS representatives working in AFCU branches.

37. Program Manager's main responsibility is serving as the liaison between CFS and the credit union. He indicated he is employed by CFS but works very closely with credit union management and employees. Program Manager hires and trains broker-dealer agents and works with the credit union to market CFS's investment services to credit union members.

38. Program Manager told Division examiners the following:

    a. AFCU switched from CUNA as its broker-dealer to CFS at the beginning of 2015.

    b. The branding of "America First Financial Solutions" was driven by AFCU management.

c. AFCU management wanted the investment side of the business to feel like it was part of the credit union, rather than a separate entity where the broker-dealer agent is "hanging out in the office but not really a part of [the credit union.]"

d. AFCU wanted AFFS to have similar graphics as the credit union to overcome the perceived disconnect between the credit union and the investment side of the business.

e. AFCU management "dictated" the marketing and Program Manager/CFS generally "piggy-back" on what the credit union wants to do.

f. The credit union's prior broker-dealer, CUNA, would not cooperate with AFCU in its desire to create an investment business that appeared to members to be part of the credit union.

g. Instead, CUNA insisted on maintaining its status as a separate entity and as a result there was "a lot of friction" between the credit union and broker-dealer. Program Manager surmised that issue may have been part of the reason for AFCU severing a 20-plus year relationship with CUNA in favor of establishing a new relationship with CFS.

h. CFS favored the approach of a common appearance between the credit union side of the business and the investment side of the business. Program Manager added that CFS will "happily kind of play in the background and [credit union] can push your brand forward."

Registered Rep. 1 Interview

39. Registered Rep. 1 maintained an office at the Salt Lake Metro Branch of AFCU, located at 455 East 500 South ("Salt Lake Metro Branch"). At the time of the interview, he had been with CFS for just over one year. The Division examiners noted that the Salt Lake Metro branch had no signage displaying CFS as the broker-dealer. Registered Rep. 1 and Program Manager explained that they were transitioning Registered Rep. 1's office to the Salt Lake Metro Branch, and were waiting for construction that would open a first-floor office for Registered Rep. 1.

40. The office where the interview was conducted was also used by AFCU mortgage officers whose business cards were displayed on another desk in the office.

41. Registered Rep. 1 discussed and provided a copy of a poster used in the branches that offered members a free appointment with him as a financial adviser. The poster had his picture and prominently displayed in large font "America First Financial Solutions" and disclosed CFS in smaller font. The poster was not displayed in the Salt Lake Metro Branch, but Registered Rep. 1 told the Division examiners that the poster was on display in other branches.

42. Registered Rep. 1 also provided the Division examiners his business card. On the business card, the AFFS logo is prominently displayed while the CFS disclosure is presented in smaller font.

43. When Division examiners asked Registered Rep. 1 how he thought his clients would respond if asked who he worked for, he responded that they would say he works for CFS

or AFFS. When Division examiners asked that question to a random sample of four of Registered Rep. 1's clients, all answered that he worked for AFCU.

44. When asked who clients would go to if they had a complaint, Registered Rep. 1 said he thought they would go to AFCU first.

Registered Rep. 2 Interview

45. On or about February 17, 2016, Division examiners interviewed Registered Rep. 2 at the AFCU branch located at 4768 Harrison Boulevard, Ogden, Utah ("Harrison branch"). Registered Rep. 2 had been with CFS (and previously CUNA) since January 19, 2009. The Harrison branch displayed "America First Financial Solutions" prominently on advertising, signage, and business cards. CFS was generally disclosed but in a smaller font size.

46. A poster was displayed at the entrance to the branch with Registered Rep. 2's picture and "America First Financial Solutions" prominently displayed, offering a free appointment with her. Like Registered Rep. 1's poster, CFS disclosures were included but in a smaller font.

47. Registered Rep. 2's office, although somewhat segregated from the rest of the credit union by glass walls, did not display any prominent indication that it was a CFS office.

48. On the walls of Registered Rep. 2's office, there was a framed picture of AFCU's Board of Directors, Supervisory Committee, and Loan Review Committee and a framed Morningstar chart displaying Ibbotson SBBI historical information with the name of "Members Insurance & Investments", which was the marketing name used by the credit union when CUNA was its broker-dealer. Registered Rep. 2 explained that the transition

from CUNA to CFS had minimal, if any, impact on clients. She said the biggest confusion for clients was the similarity between the two firm names.

49. When Division examiners asked Registered Rep. 2 how she thought clients would respond if asked who she worked for, Registered Rep. 2 emphatically stated that the clients would say she worked for CFS. Of seven clients interviewed by the Division, four indicated Registered Rep. 2 worked for AFCU, three indicated they didn't know who she worked for and two of those three thought she may have been employed by either AFCU or an entity other than CFS.

50. Consistently throughout AFCU's communications with the public, including credit union websites, in branch offices, business cards, posters, and agent voicemail greetings, virtually all marketing pieces used to communicate with the public prominently display "America First Financial Solutions" as the entity handling investments for credit union members. While references to CFS are typically disclosed, they are generally in a smaller font and easily missed. "America First Financial Solutions" appears more prominently than CFS in all advertising and promotional materials and is not included for the sole purpose of identifying the location where CFS's services are available.

51. Moreover, the uses of the various names AFCU, AFFS, CUSO and CFS make it unclear who the CFS agents work for and through which entity their services are provided.

52. The three branches visited by Division examiners for on-site interviews had offices available for use by the CFS representatives, each of which was separate from the normal credit union deposit activity areas. However, none of the three offices had exterior signs identifying CFS as the broker-dealer and indicating it is a member of FINRA. Some of

the office space used by CFS representatives is also used by credit union employees. Desktop disclosure signs identifying CFS are used when representatives use the offices and stored in a desk drawer otherwise. Each office had a desktop disclosure sign identifying CFS, but did not otherwise clearly display CFS's name on the office space itself as required under Chubb and in the networking agreement between CFS and AFCU.[6]

53. Division examiners also visited the AFCU South Salt Lake branch located at 3499 South State Street. No CFS representatives were present but an out-of-date brochure titled "Investments and Retirement" with a subtitle "Plan for the lifestyle you deserve with America First" was displayed in a rack with other credit union marketing pieces. At the top of each page was the brochure title and "America First Credit Union." Page 12 of the brochure indicated the services discussed were provided by AFCU's "partner service firm" CUNA. As indicated above, AFCU's relationship with CUNA had discontinued in January 2015. The back cover of the brochure stated "Here at America First Credit Union, we know how important your retirement is to you. That's why we work extra hard to ensure you have the financial planning and guidance you need to help you attain all your goals during this crucial life state." While page 12 had CUNA disclosures, there were no CUNA logos in the brochure but numerous credit union logos.

54. During the period of 2014 through 2017, CFS earned gross dealer concessions ("GDC") from credit union business.

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[6] Section 1.2a states that "The exterior and interior of the Service Centers will display standardized signs and materials developed by CFS to identify the Service Centers as a CFS service location.

II. CONCLUSIONS OF LAW

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

Misleading Advertising

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

56. The common theme arising from CFS's networking agreement with AFCU is that significant efforts were expended to create the appearance of an investment entity that was part of the credit union organization without sufficient distinction of CFS's role as the broker-dealer. With "America First Financial Solutions" no actual entity was created but a name using part of the credit union name was used along with a portion of the credit union logo. "America First Financial Solutions" downplayed CFS as the sole provider of investment services, diminished required disclosures, and blurred the clear separation between the credit union and broker-dealer as required by Chubb and other regulations described herein.

Misleading Public Communications

57. CFS's failure to reasonably supervise resulted in CFS:

a. publishing, circulating or distributing public communications that CFS knew or should have known contained misleading statements;

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

c. failing to disclose its name in communications and correspondence more prominently than "America First Financial Solutions."

Failure to Follow Networking Arrangement Disclosure Requirements

58. CFS 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.

59. In so doing, CFS failed to follow regulatory requirements for networking agreements with credit unions. Although those requirements are well established and addressed in its own written supervisory procedures as described in paragraphs 21-26, CFS failed to implement, enforce and follow policies and procedures reasonably designed to detect and prevent its numerous violations, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

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

61. CFS 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.

62. CFS is censured, and pursuant to Section 61-1-6 of the Act, in consideration of the factors set forth in Section 61-1-31, CFS shall pay a fine of $100,000.00 within ten (10) days following entry of this Order.

63. Within 365 days following entry of this Order, CFS 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. The remedial actions will apply equally to investment advisory services where applicable, and shall include but not be limited to the following:

Use of Names/Location Indicator/Department Identifier and References to Credit Union

a. CFS shall require that any names used as a location indicator or department identifier ("location indicator") for CFS services pursuant to a networking agreement ("CFS Services") comply with the policy attached hereto as Exhibit A.

Branding

b. CFS 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 CFS Services comply with the requirements outlined in Exhibit A.

c. CFS shall ensure that all CFS business conducted on the credit union's premises is done so in an area that is physically separate from the credit union's deposit taking activities to the extent practicable, and that prominent CFS exterior and/or interior signage consistent with the promotional materials requirements described herein is clearly visible. To avoid confusion or blurring of lines between CFS Services and credit union services or products, CFS shall avoid displaying promotional materials, including but not limited to business cards for CFS registered representatives, posters, or brochures where deposit taking activities take place or in locations containing promotional materials for credit union products or services.

Web Pages

d. Web sites that link to a CFS site or reference CFS Services shall continue to disclose that a person is leaving the credit union web site and shall clearly communicate and disclose the separation that exists between CFS and the credit union. Investment-related web pages must clearly and prominently identify CFS and not the credit union as the provider of investment services and are subject to the promotional materials requirements described above in subparagraph b. Any reference to the "America First Financial Solutions Team" shall prominently add and include CFS's name in such reference.

Registered Representatives

e. CFS shall ensure that its registered representatives ("CFS RRs") consistently identify themselves as CFS RRs when offering CFS products or services, including in voicemail greetings. CFS RRs' voicemail greetings may announce the individual as a registered representative of CFS "located at" the credit union.

f. CFS RRs shall use job titles, business cards, name plates, letterhead, and signature lines that comply with Exhibit A. CFS RRs may use a location identifier name in their email address. If a CFS RR has separate credit union duties as a credit union employee, he or she 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 CFS RRs are subject to the provisions described in Exhibit A and to that end, CFS 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. CFS RRs must clearly communicate to prospective or existing clients that investments are offered through CFS. CFS 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 CFS.

i. CFS shall send a letter not unacceptable to the Division to all Utah AFCU member clients restating that CFS is the broker-dealer, that CFS provides broker-dealer services on credit union premises, and that such services are separate from those provided by the credit union.

Creating a Culture of Compliance - Training

j. CFS 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, CFS's written supervisory procedures, Utah law, and the terms of this Order. In that regard, CFS shall provide specific training to CFS 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, CFS 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. CFS 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

64. 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.

65. 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.

66. 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.

67. 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 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 65, 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 CFS in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or other tribunal.

68. 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 27th day of November, 2018

K Barton

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:

Tom Melton
Assistant Attorney General
Counsel for Division

Dated this 14th day of November, 2018

CUSO Financial Services, L.P.

Its EVP/CCO

Approved:

Stefan R. Dandelles
Kaufman Dolowich Voluck LLP
Counsel for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by CFS, are hereby entered.
2. CFS shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. CFS is censured.
4. Pursuant to Section 61-1-6 of the Act, in consideration of the factors set forth in Section 61-1-31, CFS shall pay a fine of $100,000.00 within ten (10) days following entry of this Order.
5. CFS shall undertake the remedial actions as described in paragraph 63 above.

BY THE UTAH SECURITIES COMMISSION:

DATED this 29th day of November, 2018

Brent Baker

Brent Cochran

Gary Cornia

Peggy Hunt

Lyle White

CERTIFICATE OF MAILING

I certify that on the 29th day of November, 2018, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Stefan R. Dandelles
Kaufman Dolowich Voluck
135 South LaSalle Street, Ste. 2100
Chicago, IL 60603
Counsel for Respondent

Executive Secretary

Exhibit A

Name and Use Requirements for Utah Broker-Dealers/Investment Advisers With Credit Union Networking Arrangements

November 13 2018

The Utah Division of Securities ("Division"), using guidance from applicable regulatory sources (including but not limited to SEC's Chubb No-Action Letter and FINRA Rules 2210 and 3160), below sets forth requirements for marketing and public communications by broker-dealer / investment adviser firms offering services in Utah via networking arrangements with credit unions.

NETWORKING ARRANGEMENTS USING PARTY NAMES ONLY

Under a valid networking arrangement when the parties use only their respective entity names and all references to the credit union are solely as a location identifier using the language "Located at [Credit Union reference]", the BD/IA firm name must clearly and conspicuously identify itself as the licensed securities entity. The "Located at [Credit Union reference]" must be of equal or smaller prominence relative to the broker dealer name.

For Example:

CUSO Financial Services, L.P.
Located at Acme Credit Union
or

CUSO Financial Services, L.P.
Located at
Acme Credit Union
or

FINANCIAL SOLUTIONS
available through CUSO Financial Services L.P.
(Usage of "Financial Solutions" without a reference to the name of the credit union must be designed to avoid misleading consumers to believe non-deposit investment services are provided by the credit union (*e.g.*, "Financial Solutions" should not mimic the imagery of the credit union's branding)).

Note: The use of any credit union brand imagery must also be of equal or smaller prominence to the brand imagery of the securities licensed BD/IA firm

For Example:

CUSO Financial Services, L.P.
Located at Acme Credit Union 

NETWORKING ARRANGEMENTS USING A DBA NAME

The Division will allow licensed broker-dealer and/or investment adviser firms in conjunction with valid credit union networking arrangement to use a "doing business as" name ("DBA name") in place of the credit union name. However, the use of a DBA name must not be misleading to investors. Any communications referencing the credit union 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 credit union; and
- Not be used in manner to lead an investor to believe the DBA named entity is the provider of securities licensed activities

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 Brand Name Uses the Terms "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 words "Credit Union," or other qualifiers. In place of "Credit Union the broker/dealer or investment adviser can substitute a term such as "Financial", "Financial and Insurance Services", "Financial Solutions", "Financial Services", "Financial Center", "Investment Services", "Investment Center" or another term not unacceptable to the Division.

A partial list of terms the Division would find unacceptable includes: Wealth Services, Wealth Planning, Wealth Management, Wealth Center, Wealth Group, Investment Planning, Investment Management, Advisory Services, Advisory Management, Advisory Planning, Advisory Center, Advisory Group, Financial Planning, or Financial Management.

For example, if the financial institution's brand name is Acme Credit Union, acceptable DBA names are:

- ACU Financial; or
- Acme Investment Services

"Acme Credit Union Investment Services" or "ACU Wealth Services" or "Acme Wealth Services" would be unacceptable DBA names.

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

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

1) Change its institutional brand name to include the words "Credit Union" or other qualifier, so there is a distinction between the financial institution's brand name 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 the brand name for Acme Credit Union), the DBA name: (i) may not use the same acronym; and (ii) must use the term "Financial", "Financial and Insurance Services", "Financial Solutions", "Financial Services", "Financial Center", "Investment Services", or "Investment Center" or another term not unacceptable to the Division.

   A partial list of terms the Division would find unacceptable includes: Wealth Services, Wealth Planning, Wealth Management, Wealth Center, Wealth Group, Investment Planning, Investment Management, Advisory Services, Advisory Management, Advisory Planning, Advisory Center, Advisory Group, Financial Planning, or Financial Management.

   For example:

   - If the financial institution uses an acronym such as "ACU" as the brand name for Acme Credit Union and the brand name does not use the term " "Credit Union" or other qualifier, ACU must:
     - Change its branding to "Acme 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., "Acme Financial and Insurance Services"), "Financial Services", "Financial Center", "Investment Services", or "Investment Center" or another term not unacceptable to the Division.

3) If the financial institution's brand name does not use an acronym, the DBA may use the term "Financial", "Financial and Insurance Services", "Financial Solutions", "Investment Services", "Investment Center", "Financial Services," or "Financial Center" or another term not unacceptable to the Division.

   For example:

- If the institutional branding is "AcmeWorld" without the use of 'Credit Union,' or other qualifier, AcmeWorld can:
    - Change its institutional branding to "AcmeWorld Credit Union" 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 Financial".

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, except that the following shall not be required to be displayed on business cards, name plates and/or envelopes utilizing a DBA name:

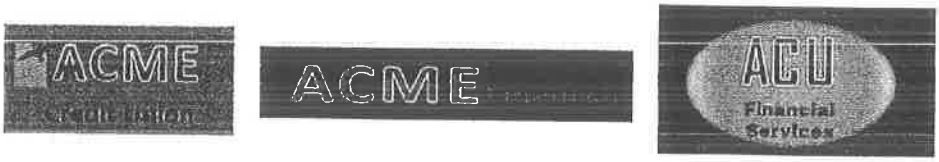
Securities and advisory services are offered through [Name of broker-dealer and/or investment adviser firm], a registered investment advisor and broker-dealer, (member FINRA/SIPC). Insurance products are offered through [Name of broker-dealer or insurance licensed firm], or its licensed affiliates. [credit union name and DBA name] are not registered as a broker-dealer or investment advisor. Registered representatives of [Name of broker-dealer and/or investment adviser firm] offer products and services using [DBA name], and may also be employees of [credit union name]. These products and services are being offered through [Name of broker-dealer and/or investment adviser firm] or its affiliates, which are separate entities from, and not affiliates of, [credit union name or the DBA name]. Securities and insurance offered through [Name of broker-dealer and/or investment adviser firm] 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 cannot use the same or similar imagery combinations (elements of imagery include: logos, fonts, color, etc.) associated with the credit union. The Division is less concerned with what imagery elements are changed and more concerned that the changes create a genuine distinction.

Example to illustrate removing logos and imagery changes resulting in a genuine distinction:



Example of use of similar CU logo and imagery changes not creating a genuine distinction.

2. The DBA name must be in an equal or a smaller font size as the broker-dealer/ investment adviser firm on marketing materials, websites, social media sites, business cards, letterhead, envelopes, promotional materials, communications with the public, etc.

   For example,

   CUSO Financial Services L.P.
   ACU Investment Services

3. The broker-dealer/ investment adviser firm name must be equal or more prominent in placement and usage than the DBA name on marketing materials, website, business cards, social media sites, letterhead, envelopes, promotional materials, communications with the public, etc.

   For example,

   CUSO Financial Services L.P. ACU Investment Services
   or

   CUSO Financial Services L.P.
   ACU Investment Services
   or

   ACU Investment Services
   CUSO Financial Services L.P.
   also acceptable **Available through CUSO Financial Services** LP
   or

ACU Investment Services
CUSO Financial Services L.P.
also acceptable Available through CUSO Financial Services L.P.
or

ACME
FINANCIAL SOLUTIONS
Available through CUSO Financial Services L.P.
or

ACME
FINANCIAL SOLUTIONS
Available through CUSO Financial Services L.P.
or

Acme Financial Solutions
Available through CUSO Financial Services L.P.

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 THE LICENSES OF:	STIPULATION AND CONSENT ORDER
ASPEN CAPITAL MANAGEMENT, LLC, CRD#226559;	Docket No. SD-18-0003
JOHN REED CROSIER, CRD# 2787111;	Docket No. SD-18-0004
CHAD EVERETT LOVELAND, CRD# 2837851; and	Docket No. SD-18-0005
DANIEL J. MATHESON, CRD# 5076892	Docket No. SD-18-0006
Respondents	

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondents Aspen Capital Management, LLC ("ACM"), John Reed Crosier ("Crosier"), Chad Everett Loveland ("Loveland") and Daniel J. Matheson ("Matheson") (collectively "Respondents") hereby stipulate and agree as follows:

1. 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, *et seq.*, as amended.

2. On or about March 27, 2018 the Division initiated an administrative action against Respondents by filing a Petition to Censure Licensees and Impose a Fine.

3. Respondents hereby agree 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 Respondents pertaining to the Petition.

4. Respondents admit that the Division has jurisdiction over them and over the subject matter of this action.

5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

6. Respondents have read this Order, understand its contents, and voluntarily agree 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 Respondents to enter into this Order, other than as described in this Order.

7. Respondents are represented by the law firm of Heideman & Associates, and are satisfied with the legal representation they have received.

I. FINDINGS OF FACT

The Parties

8. ACM, a Utah limited liability company, is an investment adviser firm located at 1150 South Bluff Street, Suite 6, in St. George, Utah. ACM has been licensed as an investment adviser in Utah since September 2015.

9. Crosier is a resident of St. George, Utah, and is the founder and designated official of ACM. He has been licensed in Utah as an investment adviser representative of ACM since September 2015. Prior to forming ACM, Crosier was a licensed investment adviser representative of My Investment Advisor, Inc. ("My IA"). Crosier has been in the

securities industry since 1996 and has passed the FINRA Series 63 and the Series 66 exams.

10. Loveland is a resident of St. George, Utah, and has been a licensed investment adviser representative of ACM from September 2015 to the present. Prior to ACM, Loveland was an investment adviser representative of My IA. Loveland has been in the securities industry since 1996 and has passed the FINRA Series 63 and Series 66 exams.

11. Matheson is a resident of Lehi, Utah, and has been a licensed investment adviser representative of ACM from September 2015 to the present. Prior to ACM, Matheson was a licensed investment adviser representative of My IA. Matheson has been in the securities industry since 2006 and has passed the FINRA Series 63 and Series 65 exams.

12. ACM is owned and managed by Crosier and Loveland.

Background

13. On May 4, 2015, ACM, through Crosier as its designated official, submitted an investment adviser firm application to the Division. The Division reviewed the application and worked with Crosier over the course of several months to correct deficiencies in the application. ACM's investment adviser application was approved by the Division on September 17, 2015.

14. As the designated official of ACM, Crosier is responsible for the supervision of ACM's business, including the accuracy of information provided to clients and information provided to the Division.

15. ACM and its representatives do not manage client assets. Instead, they act as solicitors for third-party investment advisers that manage client monies. Respondents receive a fee (in most cases 1% of client assets under management) for the referrals. Crosier,

Loveland, and Matheson acted in a similar solicitor capacity while they were associated with My IA.

16. Respondents' business model targets public employees who have retirement accounts through Utah Retirement Services ("URS").[1] Respondents solicit clients to transfer monies from their URS accounts to a Charles Schwab Personal Choice Retirement Account ("PCRA") through which a third-party investment adviser manages client monies.

17. As described below, Respondents' use of the URS logo and URS references in advertising materials falsely represented that Respondents have an affiliation with, or are otherwise providing services through URS.

18. In September 2015, Crosier, Loveland, Matheson, and others left My IA and transferred their clients from My IA to ACM, without properly disclosing the change to clients or seeking client consent to do so. Respondents also took physical possession of original client files belonging to My IA for accounts serviced by Crosier, Loveland, Matheson and other representatives who moved to ACM, and failed to properly repaper client files to document the change of investment adviser.

Client B.P.

19. In October 2016, the Division received a complaint related to ACM from B.P., a resident of South Jordan, Utah. Shortly thereafter, Division examiners met with B.P. and separately interviewed several other ACM clients.

[1] URS is an independent state agency that offers retirement and insurance benefits to Utah public employees.

20. During an interview with the Division, B.P. indicated that in 2012, Crosier and Loveland approached B.P. at his office in South Jordan, Utah, to offer their investment advisory services. They made numerous representations, including but not limited to the following:

a. that B.P. should transfer retirement funds from his URS account to a Charles Schwab PCRA, and that Crosier and Loveland would invest B.P.'s monies in a safer, more conservative plan.

b. that Crosier and Loveland were affiliated with or employed by URS; and

c. that Crosier and Loveland could provide clients with more active account management than clients who did not transfer their funds to a PCRA.

21. Based on the above representations by Crosier and Loveland, B.P. opened a PCRA account with Charles Schwab and transferred his 401(k) and 457 plan retirement monies from URS.

22. During their initial meeting and for the duration of their adviser-client relationship, Crosier and Loveland failed to provide B.P. with a Form ADV Part 2[2] or any other documentation disclosing material information about My IA, its services and representatives, and subsequently also failed to provide the same for ACM. That

[2] Form ADV is used by investment advisers to register with the United States Securities and Exchange Commission ("SEC") or with state securities regulators. Section 203 of the Investment Advisers Act of 1940 requires investment advisers to furnish each advisory client and prospective advisory clients with a written disclosure statement which may be either a copy of Part 2 of its Form ADV or a written document or brochure that contains at least the information required by Part 2 of Form ADV. Form ADV Part 2 requires investment advisers to prepare narrative brochures written in plain English that contain information such as the types of advisory services offered, the adviser's fee schedule, disciplinary information, conflicts of interest, and the educational and business background of management and key advisory personnel of the adviser. The brochure is the primary disclosure document that investment advisers provide to their clients.

information is required to be provided before or at the time the advisory relationship begins, and annually after that.[3]

23. Crosier and Loveland, for 2012 and each year thereafter, omitted to disclose material information to B.P., including but not limited to the following:

a. that a third-party investment adviser, and not Crosier and Loveland or their associated firms, My IA and ACM, would be actively managing B.P.'s accounts;

b. that in addition to compensating Crosier and Loveland, B.P. was also paying fees to a third-party adviser.

c. failing to provide a Form ADV Part 2 describing the firms' business models, services and other required information about Crosier and Loveland and their associated firms;

d. failing to provide B.P. with a written investment advisory agreement and an opportunity to review the terms of the agreement;

e. failing to disclose Crosier's 2010 Chapter 7 bankruptcy (U.S. Bankruptcy Court, District of Utah (Salt Lake City) Bankruptcy Petition No. 10-31981) ("Crosier bankruptcy");

f. failing to disclose Loveland's 2012 Chapter 7 bankruptcy (U.S. Bankruptcy Court, District of Utah (Salt Lake City) Bankruptcy Petition No. 12-20993)("Loveland bankruptcy"); and

g. failing to disclose that Respondents in fact were not affiliated in any way with URS.

[3] 17 CFR 275.204-2; Utah Admin. Code Rule R164-5-1(D)(1)(adopting and incorporating SEC Rule 204-2(a)(14)(i); *see also* 17 CFR 275.204-3 (setting forth brochure delivery requirements).

24. After losing approximately 7.44% in his account during a period of substantial market gains, B.P. moved his monies elsewhere.

Client S.N.

25. During an interview with the Division, S.N. indicated that, sometime during 2012, Crosier and Loveland approached S.N. at his office in South Jordan, Utah to offer their investment advisory services. They told S.N. that My IA, through Crosier and Loveland, would actively manage S.N.'s IRA monies once the funds were transferred from URS to a PCRA with Charles Schwab. They did not disclose that a third-party adviser would actually be managing the account.

26. At the time of his interview on October 25, 2016, S.N. had not been informed by Crosier and Loveland that they a) had terminated their relationship with My IA and started a new firm, ACM, and b) had transferred S.N.'s account from My IA to ACM in or about October 2015.

27. Respondents failed to provide a Form ADV or other disclosure documents for ACM.

28. Respondents did not disclose to S.N. the Crosier bankruptcy or the Loveland bankruptcy.

Client G.W.

29. Like B.P. and S.N., Client G.W. was solicited by Crosier and Loveland sometime in 2012 at his office in South Jordan, Utah. He was not provided a Form ADV or a firm brochure, or other information relating to the operations of business model of My IA or any additional information about its services or representatives.

30. Among other things, Crosier and Loveland failed to disclose the amount of advisory fees to be charged, but told G.W. that such fees would be lower than what G.W. was paying at URS.

31. Although his monies were invested with a third-party money manager that had a solicitor's agreement with Crosier and Loveland, G.W. believed he was invested in a mutual fund and told the Division he was not aware of any solicitor agreements between My IA or ACM and other third-party advisers.

32. Respondents also failed to disclose the Crosier and Loveland bankruptcies to G.W.

Division Examination of ACM's St. George Branch Office

33. On November 4, 2016, the Division conducted an on-site examination of ACM's books and records at ACM's St. George, Utah branch office.

34. Upon arrival, Division examiners interviewed Crosier and gave him a written request for certain firm documents – records required to be maintained by ACM – to be provided by the end of the day.

35. Crosier provided some of the requested records, but ACM either failed to adequately maintain or did not provide to the Division the following records:

a. a sample copy of ACM's advisory contract;

b. copies of all letterhead, brochures, newsletters, seminar materials or advertisements by the firm for the last two years;

c. a Form ADV delivery log, or evidence that ACM's Form ADV was delivered to clients;

d. evidence that third party managers' Form ADVs were delivered to clients;

e. a record of all written code of ethics acknowledgment forms signed by affiliated persons of ACM;

f. a copy of the most recent fee schedule; and

g. incoming and outgoing correspondence files.

36. During the examination, Division examiners also identified the following deficiencies:

a. ACM client files contained original My IA client documents, which, during the licensing process the Division had admonished ACM needed to remain with My IA;

b. ACM did not have written advisory contracts between ACM and clients, but instead only provided clients with third party managers' advisory contracts;

c. a significant portion of ACM's client files contained one-page "Solicitor Agreements" between clients and My IA, and not ACM;

d. Contrary to Crosier's representations during his interview, ACM failed to repaper client files or document the change of investment adviser from My IA to ACM;

e. ACM did not require representatives to review the code of ethics and sign a code of ethics acknowledgment form;

f. ACM did not maintain incoming or outgoing correspondence files;

g. ACM claimed it does not market or advertise, but a website for an insurance agency Matheson is affiliated with, The Altus Group ("Altus Group"), showed that Altus Group advertised on behalf of ACM;

h. representatives of ACM did not deliver ACM's Form ADV to most of ACM's clients;[4]

i. ACM and Loveland failed to properly disclose Loveland's 2012 bankruptcy on his Central Registration Depository ("CRD")[5] record;

j. Although ACM's ADV indicates it does not have custody of client monies, examiners found client account login information including usernames, passwords, birthdates, social security numbers, driver license numbers, PIN numbers and other personal information for nine (9) accounts in client files[6]; and

k. Two client files contained blank forms that had been signed by clients.

37. In some cases, ACM representatives had clients sign a one-page "Solicitor Agreement" which Respondents claimed served as ACM's advisory contract. That document was reportedly created by My IA. Crosier told examiners that when he left My IA, ACM adopted the same form document and changed the header to reflect ACM instead of My IA.

38. According to Respondents, the "Solicitor Agreement" also served to inform clients of the transition from My IA to ACM. However, the vast majority of client files did not contain

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[4]Crosier acknowledged that ACM's Form ADV was not provided to most ACM clients. During an interview with Division examiners, Crosier initially told the Division examiners that he provides the Form ADV to clients through ACM's website (which would not have been a sufficient method of Form ADV delivery to clients). However, while unsuccessfully attempting to navigate to Form ADV through ACM's website, Crosier acknowledged he was mistaken and that Form ADV had never been uploaded to the website.

[5] CRD is a database maintained by states and the Financial Industry Regulatory Authority ("FINRA"). CRD contains employment, licensing, and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives. It is the responsibility of the individual to ensure that all material information, including bankruptcies, are accurately reported on CRD.

[6] This is problematic and may constitute custody. Advisers with custody of client monies or securities are subject to additional requirements, including maintaining a bond and filing audited financial statements with the Division. *See* Utah Administrative Code ("UAC") Rules R164-4-5(F) and R164-5-3(D)(1).

a signed copy of that form and those that did contained copies of agreements between clients and My IA, not ACM.

39. Moreover, the "Solicitor Agreement" failed to contain information required to be disclosed in an investment advisory contract.[7]

Division Examination of ACM's Lehi Branch Office

40. As a follow up to the Division's visit of ACM's St. George office, on or about November 10, 2016, Division examiners conducted an on-site examination of ACM's Lehi branch office, located on 2484 North Quail Drive, Lehi, Utah 84043.

41. Upon arrival, Division examiners interviewed Matheson and requested that records identified in a Division document request be provided by the end of the day.

42. During the examination, the Division examiners identified the following deficiencies:

a. While reviewing ACM records, Division examiners discovered that ACM files at the Lehi branch office contained original signed documents, in violation of ACM's Compliance Policies and Procedures manual, which requires that the Lehi branch office transfer all original client files to the St. George office and retain copies on-site in Lehi;

b. As with the St. George office, ACM did not have written advisory contracts between clients and ACM but instead only gave clients a third-party advisory contract;

[7] It is a dishonest or unethical practice to enter any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the client. Utah Admin. Code Rule R164-6-1g(E)(16).

c. ACM did not have a Form ADV delivery log, or evidence that ACM's Form ADV was delivered to clients;

d. ACM did not have any evidence that third party managers' Form ADVs were delivered to clients;

e. ACM did not maintain incoming or outgoing correspondence files;

f. Matheson had not signed a code of ethics acknowledgment form;

g. Despite ACM's claims that the firm did not engage in active marketing, a review of Altus Group's website[8] revealed that Altus Group advertised on behalf of ACM by offering Altus' clients securities-related services, purportedly through ACM;

h. Matheson hosted a seminar and distributed brochures that advertise on behalf of ACM which prominently displayed the URS logo on the front page; and

i. Matheson told the Division that he occasionally meets with clients at Altus Groups' offices in Taylorsville and not at the Lehi branch office.

43. The advertisements, brochures, seminar materials and Altus' website, including information targeting URS clients, displaying URS and Charles Schwab logos and other URS and Schwab references are materially misleading because they falsely suggest that ACM is affiliated with URS and/or Charles Schwab, when, in fact, no affiliation exists between ACM and those entities.

[8] Altus Group is an insurance agency of which Matheson was identified as a Senior Vice President and Senior Managing Partner.

44. Matheson used an undisclosed[9] outside business entity, Altus Group, and its website, WEALTHSTRATEGIES.ME, to advertise on behalf of ACM. Matheson published misleading statements on the website, including, but not limited to, the following:

a. "Many 401(k) plans allow participants to delegate the management of their investments to an authorized financial advisor. This option provides employees an additional level of investment guidance and investment options they may not otherwise receive. URS allows you to work with a financial advisor of your choosing to manage the investments within their URS account through a Charles Schwab Personal Choice Retirement Account (PCRA). A PCRA is administered and tracked within the URS system. All investments remain within the URS system, are recorded and appear on the participant's regular quarterly statement." (emphasis added).

These representations can reasonably be understood to suggest, among other things, that Respondents are specially designated "URS-authorized" financial advisors. In addition, Respondents failed to disclose that a PCRA can be utilized with or without an investment adviser. Moreover, the statement is inaccurate because a PCRA is not administered or tracked by URS, and statements from URS will only reflect the account balance and not the holdings of a PCRA;

b. In a disclaimer on the bottom of the homepage and other pages of Altus' website, Altus claimed to offer its clients securities through ACM when, in fact,

[9] Matheson's Form U4, a document filed with the Division in order for an individual to become licensed in Utah, did not disclose any activities with Altus Group. Form U4 requires the disclosure of all business activities conducted by licensed individuals. It is the individual's responsibility to ensure the form is accurate and complete.

ACM is not affiliated with Altus, Altus is not a licensed broker-dealer or investment adviser, and ACM does not provide any securities services other than soliciting investors for third-party providers.

45. Matheson told Division examiners that he spends 90-95% of his time on his insurance business through Altus. However, the Altus affiliation and time spent are not disclosed as required on his Form U4, and there is no evidence of written approval from ACM or an outside business activities disclosure form. The sole reference to those activities is on ACM's Form ADV Part 2B which merely discloses that he is an insurance producer without any additional information.

II. CONCLUSIONS OF LAW

Dishonest or Unethical Practices under § 61-1-6(2)(a)(ii)(G) of the Act

(All Respondents)

46. Dishonest and unethical business practices under Utah Admin. Code ("UAC") Rule R164-6-1g(E)(8) include misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

47. As described above, Respondents engaged in dishonest and unethical business practices including, but not limited to, the following:

a. Respondents failed to properly inform clients that Crosier, Loveland, and Matheson left My IA and moved to ACM.

b. Respondents failed to offer their clients the option of moving from My IA to ACM, and instead unilaterally moved all their client accounts to ACM without client authorization and consent;

c. Respondents failed to provide a Form ADV Part 2 to clients to disclose the business model, nature of services offered by ACM, Crosier and Loveland bankruptcies, fees and other material information;

d. Respondents falsely suggested that Respondents were affiliated with URS;

e. Respondents failed to disclose that Respondents do not actively manage client accounts but instead act as solicitors for third-party investment advisers; and

f. Respondents failed to disclose Matheson's outside business activities with Altus Group on his Form U4 and on ACM's Form ADV Part 2B.

48. Respondents engaged in a dishonest and unethical business practice under UAC Rule R164-6-1g(E)(13) when they published, circulated, or distributed an advertisement not in compliance with SEC Rule 206(4)-1, which contained untrue statements of a material fact, or which was otherwise false or misleading, including, but not limited to, the following:

a. Respondents targeted URS participants, prominently displayed the URS and Charles Schwab logos, and by so doing falsely suggested that that they were affiliated with URS and/or Charles Schwab when, in fact, no affiliation exists between Respondents and those business entities;

b. Respondents made false and misleading representations to clients about the risks and costs of investments held at URS; and

c. Respondents claimed to offer Altus Group's clients securities through ACM when, in fact, ACM is not affiliated with Altus in any way, nor was ACM providing any services other than soliciting investors for third-party providers.

49. Dishonest and unethical business practices in UAC Rule R164-6-1g(E)(16) include entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

50. Respondents engaged in a dishonest or unethical business practice when they failed to enter into written investment advisory contracts with their clients, and the one-page "Solicitor Agreement" failed to include the above information required to be provided in advisory contracts.

Books and Records Violations under § 61-1-5 of the Act (ACM)

51. Section 61-1-5 of the Act requires that a licensed investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the division by rule prescribes.

52. UAC Rule R164-5-1(D) requires each investment adviser licensed in Utah to make, maintain and preserve books and records in compliance with SEC Rule 204-2 (17 CFR 275.204-2 (August 12, 2010)), which is adopted and incorporated by reference.

53. Section 17 CFR 275.204-2(a)(11) requires that investment advisers maintain, in their books and records "a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly to 10 or more persons (other than persons connected with such investment adviser) and if such notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor."

54. ACM failed to properly maintain copies of all advertising materials, including seminar materials and the content utilized on Altus Group's website to advertise on behalf of ACM, and consequently failed to provide all advertising materials requested by the Division.

55. Section 17 CFR 275.204-3 requires that investment advisers deliver a brochure, and one or more brochure supplements to each client or prospective client that contains all information required by Part 2 of the Form ADV. Those must be delivered before or at the time the investment adviser enters into an advisory contract and annually after that. In addition, Section 17 CFR 275.204-2(a)(14)(i) requires the investment adviser to maintain a Form ADV and brochure delivery log.

56. ACM's Compliance Policies and Procedures Manual, page 43 requires "On an annual basis, within 120 days of ACM's fiscal year end, all existing clients will receive a copy of ACM's disclosure brochure that includes or is accompanied by the summary of material changes. John Crosier will ensure that a copy of each client's annual delivery of the disclosure documents or a dated sample copy of the annual delivery letter and a log of all

clients to whom the annual delivery is sent is maintained. In addition, a log of all clients requesting a copy of any disclosure documents will be maintained."

57. ACM did not comply with the Form ADV delivery requirements under 17 CFR 275.204-2 and -3 or its own Policies and Procedures manual, because Respondents failed to provide clients with copies of Form ADV and brochures and failed to keep a record of Form ADV/brochure delivery to any client of ACM.

58. Section 17 CFR 275.206(4)-3 requires ACM to maintain all written agreements entered into as a solicitor with each investment adviser; to produce the investment adviser's brochure to the client; and provide clients with a separate written disclosure document.

59. ACM entered into solicitor agreements with third-party advisers but failed to provide clients with a brochure for the third-party adviser, failed to maintain evidence such was provided, and failed to provide clients with separate written disclosure documents as outlined in 17 CFR 275.206(4)-3.

60. Pursuant to 17 CFR 275.206(4)-3, solicitors, among other things, are required to maintain and provide to customers written disclosure documents containing the following information: (1) the name of the solicitor; (2) the name of the investment adviser; (3) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser; (4) a statement that the solicitor will be compensated for his solicitation services by the investment adviser; (5) the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and (6) the amount, if any, for the cost of obtaining the account a client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser if such

differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

61. ACM failed to create, maintain, and provide to customers written disclosures as required by Rule 206(4)-3. Moreover, many client files did not contain solicitor agreements, and those that did lacked the required information and pertained to My IA rather than ACM.

62. Section 17 CFR 275.204-2(a)(12) requires that investment advisers maintain, in their books and records: "(i) a copy of the investment adviser's code of ethics adopted and implemented pursuant to §275.204A-1 that is in effect, or at any time within the past five years was in effect; (ii) a record of any violation of the code of ethics and of any action taken as a result of that violation; and (iii) a record of all written acknowledgements as required by §275.204-1(a)(5) for each person who is currently or within the past five years was, a supervised person of the investment adviser."

63. Crosier provided the Division examiners a copy of ACM's Compliance Policies and Procedures Manual which included ACM's code of ethics, but admitted that he did not have ACM's representatives sign written acknowledgments after reviewing the code of ethics.

Failure to Supervise under § 61-1-6(2)(a)(ii)(J) of the Act
(ACM, Loveland and Crosier)

64. ACM, Loveland and Crosier failed to reasonably supervise by, among other things, not establishing, maintaining, and enforcing policies and procedures aimed to prevent violations of the securities laws as described herein, failing to disclose accurate, material information to clients, using misleading advertising materials, permitting the use of blank signed forms in client files, and failing to maintain basic books and records, warranting

sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act. Although procedures to avoid many such violations are specifically addressed in ACM's Compliance Policies and Procedures Compliance, those procedures were not followed or enforced.

65. ACM and Crosier's failure to supervise likewise violates FINRA Rule 3110 which is a dishonest or unethical practice under R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

66. Respondents neither admit nor deny the Division's Findings and Conclusions, but consent to the sanctions below being imposed by the Division.

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

68. Within sixty (60) days following entry of this Order, ACM agrees to retain a compliance consultant, not objectionable to the Division, to address the issues raised in this action. ACM agrees to promptly implement the recommendations of the consultant and shall report to the Division the specific actions undertaken. Those actions shall include:

a. disclosing this action to all clients in writing;

b. disclosing to all clients in writing that ACM is a separate and distinct entity from My Investment Adviser and from any third party advisers for which ACM acts as a solicitor; and

c. ensuring that all documents required to be provided to clients and potential clients are properly created, maintained, delivered, and documented in ACM's books and records.

69. Pursuant to Section 61-1-6 of the Act, and in consideration of the factors set forth in

Section 61-1-31 of the Act, Respondents shall pay fines to the Division as follows:

a. ACM, Crosier, Loveland, jointly and severally ("ACM fine"): $25,000.00 to be paid in equal annual payments over a period of 3 years, with each annual payment due on or before the calendar date of entry of this Order;

b. Matheson: $4,000.00 to be paid within one year of the date of this order.

Up to $5,000 of the ACM fine may be offset for documented expenses related to the compliance consultant. That documentation shall be provided to the Division within 120 days of the entry of this Order. If Respondents do not submit such documentation within that period, no $5,000 offset of the fine is allowed.

IV. FINAL RESOLUTION

70. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondents acknowledge 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, Respondents expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

71. If Respondents materially violate 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, Respondents consent to entry of an order in which Respondents admit the Division's Findings of Fact and Conclusions of Law. Notice of the violation will be provided to Respondents' counsel and sent to Respondents' last known addresses. If Respondents fail 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 Respondents 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 Respondents or to otherwise enforce the terms of this Order. Respondents further agree 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.

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

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73. 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

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 20 day of December 2018

John Crosier, individually and on behalf of
Aspen Capital Management

Chad Loveland

Daniel Matheson

Approved:

Paula Faerber
Assistant Attorney General
Counsel for Division

Approved:

Justin D. Heideman
Justin R. Elswick
Heideman & Associates
Counsel for Respondents

73. 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 27th day of November, 2018

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 21st day of November, 2018

John Crosier, individually and on behalf of
Aspen Capital Management

Chad Loveland

Daniel Matheson

Approved:

Paula Faerber
Assistant Attorney General
Counsel for Division

Approved:

Justin D. Heideman
Justin R. Elswick
Heideman & Associates
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by Respondents, are hereby entered.

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

3. Respondents shall take remedial actions as set forth in paragraph 68.

4. Pursuant to Section 61-1-6 of the Act, and in consideration of the factors set forth in Section of the factors set forth in Section 61-1-31 of the Act, Respondents shall pay fines to the Division as follows:

   ACM, Crosier, Loveland, jointly and severally ("ACM fine"): $25,000.00 payable as described in paragraph 69 a.;

   Matheson: $4,000.00 to be paid within one year of the date of this Order.

   Up to $5,000 of the ACM fine may be offset for documented expenses related to the compliance consultant. That documentation shall be provided to the Division within 120 days of the entry of this Order. If Respondents do not submit such documentation within that period, no $5,000 offset of the fine is allowed.

BY THE UTAH SECURITIES COMMISSION:

DATED this 29th day of November, 2018

Brent Baker

Brent Cochran

Gary Cornia

Peggy Hunt

Lyle White

CERTIFICATE OF MAILING

I certify that on the 29th day of November, 2018, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Justin D. Heideman
Justin R. Elswick
HEIDEMAN & ASSOCIATES
2696 North University Ave. Ste. 180
Provo, UT 84604
Counsel for Respondents

Executive Secretary

DEPARTMENT OF COMMERCE
HEBER M. WELLS BLDG, 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 **TEXAS ENERGY MUTUAL, LLC,** **RODNEY L. POPE,** **CHET M. INGLIS, and** **ROBERT W. GILLIAM,** Respondents.	**DEFAULT ORDER** Case Nos.: **SD-2018-018** **SD-2018-019** **SD-2018-020** **SD-2018-021**

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's recommended order on the Motion for Default in this matter is hereby approved, confirmed, accepted and entered by the Utah Securities Commission.

ORDER

The Utah Securities Commission ("Commission") accepts the allegations outlined in the Order to Show Cause and finds that they are true. The Commission hereby orders that the default of each of the Respondents is entered pursuant to this Order.

The Utah Securities Commission further orders that:

a. Respondents cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 et seq.;

b. Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and

c. Respondents pay severally a fine to the Utah Division of Securities within five (5) days of entry of the this Order in the following amounts;

- Texas Energy Mutual, LLC, $10,000.00;
- Rodney L. Pope, $15,000.00;
- Chet M. Inglis, $15,000.00; and
- Robert W. Gilliam, $15,000.00.

DATED this 29th day of November, 2018.

UTAH SECURITIES COMMISSION:

Brent R. Baker

Brent A. Cochran

Gary Cornia

Peggy Hunt

Lyle White

NOTICE

Pursuant to U.C.A. §63G-4-209, a defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer. A defaulted party may seek agency review under U.C.A. §63G-4-301, only on the decision of the presiding officer on the motion to set aside the default.

DATED this 29th day of November 2018

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Lyle White

Peggy Hunt

Gary Cornia

Brent A. Cochran

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of November, 2018, served this DEFAULT ORDER and a copy of the DEFAULT FINDINGS OF FACT, CONCLUISONS OF LAW AND RECOMMENDED ORDER on the parties of record in this proceeding set forth below by mailing a copy thereof, properly addressed by first class mail, with postage prepaid, to:

RODNEY POPE
Individually and as a manager
and director of Texas Energy Mutual, LLC
[redacted]

CHET M. INGLIS
Individually and as a manager
and director of Texas Energy Mutual, LLC
[redacted]

ROBERT W. GILLIAM
[redacted]

TEXAS ENERGY MUTUAL, LLC
c/o United States Corporation Agents, Inc., Registered Agent
9900 Spectrum Drive
Austin, TX 78717

and by email on the 29th day of November, 2018 to

Jennifer Korb
Assistant Attorney General
jkorb@agutah.gov
Counsel for the Division

DEPARTMENT OF COMMERCE
HEBER M. WELLS BLDG, 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 **TEXAS ENERGY MUTUAL, LLC,** **RODNEY L. POPE,** **CHET M. INLGIS, and** **ROBERT W. GILLIAM,** Respondents.	**DEFAULT FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER** Case Nos.: **SD-2018-018** **SD-2018-019** **SD-2018-020** **SD-2018-021**

This adjudicative proceeding was initiated pursuant to a May 11, 2018 Notice of Agency Action and an Order to Show Cause ("OSC") which were mailed to Texas Energy Mutual, LLC, Rodney L. Pope, Chet M. Inglis, and Robert W. Gilliam (the "Respondents) at their individual last known addresses via regular and certified mail. Based upon the postal tracking information attached as Exhibit "B" to the motion of the Division, mailing was complete as to each of the Respondents.

The Notice of Agency Action directed the Respondents to file a Responsive pleading within 30 days of the date of the OSC and directed the Respondents to participate in a prehearing conference on July 11, 2018. By notices mailed to the same mailing addresses, this tribunal continued the prehearing conference to July 13, 2018. On July 13, 2018, the Presiding Officer conducted the prehearing conference at the Division's offices. The Respondents did not appear at the prehearing conference and have not filed responsive pleadings in this matter.

The Division filed a Motion for Default Order and Memorandum in Support (the "Motion") on November 1, 2018. The Respondents have failed to respond to the Motion.

FINDINGS OF FACT

1. The Notice of Agency Action directed the Respondents to file a responsive pleading within 30 days of the date of the OSC and directed the Respondents to participate in a prehearing conference on July 11, 2018. By notice mailed to the same mailing addresses used in the Notice of Agency Action, this tribunal continued the prehearing conference to July 13, 2018.

2. On July 13, 2018, the presiding officer conducted the prehearing conference at the Division's offices. Each of the Respondents failed to appear at the hearing, either in person, by telephone or through counsel, and have made no contact with the Division or its counsel.

3. The Respondents have each failed to file responsive pleadings in this matter, though ordered to do so in the Notice of Agency Action.

4. The presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(b) and (c), a proper factual and legal basis exists for entering a default order against each of the Respondents.

5. In the present case, Respondents raised $50,000.00 from a Utah investor, misrepresenting and omitting material facts related to the sale of securities to the investor and engaging in other fraudulent conduct. The investor is still owed $50,000.00 in principal alone.

6. Respondents did nothing to cooperate with the Division's investigation and have taken no actions to mitigate the harm caused by the violations.

7. The individual Respondents were the subject of a federal criminal prosecution for conduct associated with raising investor funds. They were convicted and were ordered to pay

restitution of more than $13 million dollars. The funds of the Utah investor in this matter are included in the amount of the federal restitution order (Motion at p. 5).

CONCLUSIONS OF LAW

A. Pursuant to Utah Code Ann. Section 63G-4-209(1)(b) and (c), a proper factual and legal basis exists for entering a default order against the Respondents.

B. "After a default judgment is handed down, a defendant admits to a complaint's well-pleaded facts and forfeits his or her ability to contest those facts" (see the Tenth Circuit case of *Tripodi v. Welch*, 810 F.3d 761, 764; 2016 U.S. App. LEXIS 502; based upon securities fraud tried in the Federal District Court for the District of Utah against principally Utah defendants). This principle of law applies equally to the facts alleged against the Respondents in the OSC in this matter.

C. The Respondents 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 Utah Securities Act (the "Act").

D. The Respondents directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on the Utah investor, in violation of Section 61-1-1(3) of the Act. That conduct includes but is not limited to Respondents' conversion and misuse of investor monies for purposes not disclosed to or authorized by the Utah investor, including personal use of monies.

E. None of the Respondents were licensed in the securities industry when they offered and sold securities to the Utah investor. The individual Respondents received compensation in connection with the sale of securities, in violation of Section 61-1-3(2)(a) of the Act.

F. The recommended fine amounts detailed below were determined after consideration of the guidelines included in Utah Code Ann. §61-1-31.

G. The Division's motion for default considered the seriousness, nature, circumstances, extent and persistence of the conduct constituting the violation; the harm to other persons resulting either directly or indirectly from the violations; the absence of cooperation by Respondents with the investigation; the efforts by Respondents to prevent future occurrences of the violations; efforts by Respondents to mitigate the harm caused, including any disgorgement or restitution paid to the investors; any prior offenses by Respondents; the need for deterrence; and such other matters as justice may require.

RECOMMENDED ORDER

The presiding officer recommends that the Utah Securities Commission make findings and an order as follows:

a. The allegations contained in the Division's Order to Show Cause are accepted as true;

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

c. Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and

d. Respondents pay severally a fine to the Utah Division of Securities within five (5) days of the entry of the Default Order of the Commission in the following amounts:

- Texas Energy Mutual, LLC, $10,000.00;
- Rodney L. Pope, $15,000.00;
- Chet M. Inglis, $15,000.00; and
- Robert W. Gilliam, $15,000.00.

DATED November 14th, 2018.

UTAH DEPARTMENT OF COMMERCE

Bruce Dibb, Presiding Officer

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 AS TO GLOBA, INC.** Case Nos.: **SD-2016-0033** **SD-2016-0034**

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's Findings of Fact, Conclusions of Law and Recommended Order on Motion for Summary Judgment as to Globa, Inc., dated November 23, 2018, are hereby approved, confirmed, accepted and entered by the Utah Securities Commission.

ORDER

The Commission hereby orders as follows:

1. Judgment is entered against Globa, Inc. ("Globa") and a fine imposed of $417,000.00, reduced on a dollar-for-dollar basis by any amount paid in restitution to the investor/victims in this matter (up to the maximum amount of setoff of $317,000.00, whether such restitution is paid before or after the date of this Order).
2. That the respondent, Globa, cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 et *seq*.
3. That Globa 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.

DATED November 20th, 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

Agency review of this order may be obtained by filing a request for agency review with the Executive Director of the Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of this order. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Section 63G-4-101 et seq. of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of November, 2018, the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR SUMMARY JUDGMENT AS TO GLOBA, INC. 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

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 EKOW ANDAM,** Respondents.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER ON MOTION FOR SUMMARY JUDGMENT AS TO GLOBA INC.** Case Nos.: **SD-2016-0033** **SD-2016-0034**

The Utah Division of Securities (the "Division"), has filed a Motion for Summary Judgment (the "Motion") in the above entitled matter against the Respondents. The Utah Securities Commission has granted summary judgment as to liability with regard to the Respondent, Kenneth Ekow Andam ("Andam"), reserving the amount of the fine for a hearing on March 21, 2019.

The Respondent, Globa, Inc. ("Globa"), has filed no opposition to the Motion. On October 24, 2018, Globa participated through counsel in a supplemental prehearing conference in this matter and Globa was afforded to an including November 8, 2018 in which to file an opposition to the Motion (see October 25, 2018 Order on Supplemental Prehearing Conference, p.1). Globa has not filed an opposition to the Motion.

SUMMARY JUDGMENT

U.C.A. §63G-4-102(4) provides in relevant part that Chapter 4 of Title 63G "does not preclude . . . the presiding officer during an adjudicative proceeding from . . . granting a timely

motion . . . for summary judgment if the requirements of . . . Rule 56 of the Utah Rules of Civil Procedure are met by the moving party." This statutory language, therefore, provides that this tribunal is to rely upon Rule 56 of the Utah Rules of Civil Procedure in addressing the Respondent's motion.

Rule 56 of the Utah Rules of Civil Procedure provides that the moving party is entitled to summary judgment if it demonstrates that there is "no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law" Utah R. Civ. P. 56(a) (2016). Rule 56(c) requires that this demonstration be made by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials" Utah R. Civ. P. 56(c)(l)(A). The non-moving party must support the assertion that a fact is genuinely disputed in the same fashion. *Id.*

Once the moving party asserts that there are no issues of material fact in dispute, the burden shifts to the non-moving party "to present evidence that is sufficient to establish a genuine issue of material fact." *Orvis v. Johnson*, 2008 UT 2, ¶ 7, 177 P.3d 600, 602 (citing *Waddoups v. Amalgamated Sugar Co.*, 2002 UT 69, 54 P.3d 1054). In applying this standard for summary judgment, a tribunal must view the material facts to which there is no genuine issue "in the light most favorable to the nonmoving party." *Hillcrest Inv. Co. v. Utah Dep't of Transp.*, 352 P.2d 128, 131; 2015 Utah App. LEXIS 141.

FINDINGS OF FACT

1. Andam is the president of Globa (admitted by Andam and Globa in ¶3 of their Answer to Order to Show Cause). The actions of Globa in this matter were under the direction of Andam.
2. These findings incorporate by this reference paragraphs 10 through 21 of the opening

memorandum of the Division, which allegations are admitted by Andam in paragraph 3 on the second page of Andam's Opposition memorandum to the Motion.

3. There is no issue as to whether Globa has violated the Utah Uniform Securities Act. As to the underlying securities violations, Andam "agrees that there is no genuine issue of material fact in this case. The outcome of the parallel criminal case [against Andam] is dispositive of that inquiry" (Opposition memorandum of Andam, pp. 2, ¶4).

4. Until recent restitution paid by Andam, the victims of the securities fraud of the Respondents were owed $317,000 in principal alone.

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 allegations outlined in the Order to Show Cause in this matter and in paragraphs 10 through 21 of the Motion provide a sufficient factual and legal basis for the entry of a judgment against Globa as a matter of law as to the securities violations set forth in the Order to Show Cause.

B. The actions of the Respondents constituted violations of, and securities fraud under, U.C.A. §61-1-1.

C. U.C.A. Section 61-1-20 "allows the Division to use adjudicative procedures in the administrative forum to petition the Division of Securities director to enter cease and desist orders, impose fines and bar persons from the securities industry in the state of Utah." *Mack v. Utah State Dep't of Commerce*, 2009 UT 47, ¶ 27, 221 P.3d 194, 202. In evaluating whether to impose these sanctions, the presiding officer and the Commission should look to the facts and circumstances of each case to determine an appropriate sanction. A cease and desist order is appropriate in this proceeding.

D. The Commission has the authority to permanently bar persons from the securities industry in Utah. In evaluating whether to bar someone from being a licensed representative, federal law provides a template. The Commission should look to "[t]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction . . . the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations." *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

E. Respondents' actions were egregious. They committed securities fraud in connection with the offer and sale of securities to two investors, which resulted in losses of at least $317,000 in principal alone. A permanent bar from engaging in the securities industry in the state of Utah is appropriate.

F. The Commission has the authority to impose a fine. When the Order to Show Cause 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.

G. The Division has recommended a fine of $417,000 and that such amount may be reduced on a dollar-for-dollar basis for restitution paid by Andam in the parallel criminal proceeding,[1] up to the amount of $317,000 (Motion at p. 18).

[1] The presiding officer has been notified that Andam has recently paid restitution of $317,000 to the victims in his criminal case. The presiding officer anticipates that a factual presentation regarding such payment will be made at the time of the March 21, 2019 hearing as to the amount of the fine to be assessed against Andam in the administrative proceeding. In the event that this restitution amount has been paid, the actual amount of the fine against Globa would be $100,000.

H. The administrative fine to be assessed is to be proportional to the gravity of the Respondents' offenses, as guided by the principles set forth in the United States Supreme Court decision of the *United States v. Hoep Krikor Bajakajian,* 524 U.S. 321, 1998 U.S. LEXIS 4172 (1998).

I. The analysis of the amount of the fine is further aided by the principles set forth in the Utah Court of Appeals case of *Brent Brown Dealerships v. Tax Commission,* 139 P.3d 296, 2006 Utah App. LEXIS 275 (2006).

J. The *Brent Brown* court gleaned from the *Bajakajian* decision the following principles to be followed in considering the issue of proportionality in assessing a fine. At page 301 of the reported decision, the *Brent Brown* court stated:

> "The touchstone of the constitutional inquiry under the *Excessive Fines Clause* is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Id. at 334.* Recognizing that proportionality is a relative concept, the Supreme Court relied on two considerations in deriving a constitutional excessiveness standard. The first of these is that "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Id. at 336* (citing *Solem v. Helm, 463 U.S. 277, 290, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983)).* The second consideration is that "any judicial determination regarding the gravity of a particular criminal offense will be inherently imprecise." *Id.* The *Bajakajian* Court concluded that recognition of these principles supports a standard that a "punitive forfeiture clause" violates the *Excessive Fines Clause* only if it is "grossly disproportional to the gravity of a defendant's offense. *Id. at 334"* (emphasis added).

K. As quoted above, the first of two considerations in determining "proportionality" is the judgment and direction of the legislature adopting the statutes in question. Here, the legislature has given rather broad discretion to the Commission in determining the amount of the fine. A judicial overlay to this legislative authority has been provided in the case of *Phillips v. Department of Commerce, Division of Securities*, 397 P.3d 863; 2017 Utah App. LEXIS 84. No precise calculation is mandated and the ultimate amount of the fine "will be

inherently imprecise" (*Brent Brown* at 301).

L. In the *Brent Brown* case, the Utah Court cited favorably the Eight Circuit Court case of the *United Sates v. Lippert*, 148 F.3d 974, 978 (8th Cir. 1998), holding that a penalty equal to two times the amount the appellant received in violation of the applicable federal statute was not grossly disproportional. In this matter, the Respondents received $317,000 from investors. Twice this amount is more than $630,000. The Division is only seeking a fine of $417,000.

M. The investors/victims in this case lost their entire investment. The fine proposed by the Division is proportional, in light of the total investment amount and losses of the investors.

RECOMMENDED ORDER

The presiding officer recommends that the Utah Securities Commission make findings and an order as follows:

1. Judgment should be entered against Globa and a fine imposed of $417,000.00, reduced on a dollar for dollar basis by any amount paid in restitution to the investor/victims in this matter (up to the maximum amount of setoff of $317,000.00, whether such restitution is paid before or after the Order of the Commission on the Motion against Globa).
2. That Globa cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 et *seq*.
3. That Globa 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.

DATED November 23rd, 2018.

UTAH DEPARTMENT OF COMMERCE

Bruce L. Dibb, Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of November, 2018, the undersigned served a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER ON MOTION FOR SUMMARY JUDGMENT AS TO GLOBA, INC. 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@schhlaw.com

Thomas M. Melton, AAG
Jennifer Korb, AAG
tmelton@agutah.gov
jkorb@agutah.gov
Counsel for the Division

Vickie L. Cutler
vlcutler@utah.gov

/s/ Bruce L. Dibb