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:	**ADDENDUM TO CONSENT ORDER**
MOUNTAIN AMERICA FEDERAL CREDIT UNION d/b/a MOUNTAIN AMERICA CREDIT UNION;	**Docket No. SD-07-0022**
MOUNTAIN AMERICA FINANCIAL SERVICES; and	**Docket No. SD-07-0023**
MOUNTAIN AMERICA INVESTMENT SERVICES	**Docket No. SD-07-0024**
Respondents.	

The Utah Division of Securities ("Division") hereby enters this Addendum to the Stipulation and Consent Order ("Order") entered in this matter on or about March 14, 2007.

1. In the Order, Respondents agreed to undertake certain remedial measures concerning communications with the public related to broker-dealer services provided on the premises of Respondent Mountain America Federal Credit Union ("Mountain America") through a networking agreement.

2. Following entry of the Order, Respondents timely paid their fine and complied with the remedial actions set forth in the Order.

3. In 2015 and 2016 the Division conducted examinations of broker-dealers that have networking agreements with credit unions located in Utah.

4. As a result of those examinations, in 2018 the Division filed administrative actions against three broker-dealers, including LPL Financial LLC ("LPL"), CRD#6413, a broker-dealer with which Mountain America has a current networking agreement.

5. In resolving the LPL matter through a Stipulation and Consent Order ("LPL Order"), the Division required remedial actions that included changes to communications with the public for broker-dealer services offered through networking agreements, including changes to the branding and marketing of such services. Those changes reflect current Division policy.[1]

6. Accordingly, to ensure current Division policy is applied consistently and fairly to all parties to networking agreements in Utah, the Division has determined to modify the limitations of the Order as follows:

   a. Respondents' compliance with the terms of the LPL Order regarding communications with the public pursuant to a networking agreement shall constitute compliance with the 2007 Order. To the degree there is any inconsistency with the Order, or if the 2007 Order places greater obligations on Respondents, the terms of the LPL Order supersede such terms.

[1]See https://securities.utah.gov/dockets/18001321.pdf para. 1.

Dated this 18th day of January, 2019

Thomas A. Brady

Thomas A. Brady
Director, Utah Division of Securities

ORDER

IT IS HEREBY ORDERED THAT:

1. The limitations contained in the March 14, 2007 Order are hereby modified as set forth in paragraph 6 a., above.

BY THE UTAH SECURITIES COMMISSION:

DATED this 24th day of January, 2019

Brent Baker

Brent Cochran

Gary Cornia

Peggy Hunt

Lyle White

CERTIFICATE OF SERVICE

I certify that on the 24th day of January, 2019, I mailed and emailed a true and correct copy of the Addendum to Consent Order to:

Mailed to:

Mountain America Federal Credit Union
Attn: Jonathan H. Rupp, VP General Counsel
9800 South Monroe St.
Sandy, UT 84070

Emailed to:

Bruce Dibb
bdibb@utah.gov

Kenneth Barton
kbarton@utah.gov

Jennifer Korb
jkorb@agutah.gov

Administrative Assistant

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

IN THE MATTER OF: **LPL FINANCIAL LLC, CRD#6413** Respondent.	**STIPULATION AND CONSENT ORDER** Docket No. SD-18-00 41

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

WHEREAS, LPL is a broker-dealer with a principal place of business at 75 State Street, 22nd Floor, Boston, MA 02109, that is licensed in the State of Utah; and

WHEREAS, a coordinated investigation into LPL's failure to establish and maintain reasonable policies and procedures to prevent the sale of unregistered, non-exempt securities by LPL to its customers, including LPL's retention, use, and subsequent cancellation of certain third-party services integral to LPL's compliance with state securities registration requirements (a/k/a "Blue Sky" laws); and certain other deficiencies within LPL's compliance structure related to LPL's controls, monitoring and reporting tools, and escalation protocols in relation to LPL's response to significant compliance issues resulting from such failure during the period of approximately October 1, 2006 through May 1, 2018 (the "Investigation") has been conducted by a multistate task force, coordinated among members of the North American Securities Administrators Association ("NASAA"), with Massachusetts and Alabama serving as the "Lead States"; and

WHEREAS, LPL has agreed to resolve the Investigation, upon the terms specified in the

Settlement Term Sheet executed as of May 1, 2018 between LPL and the Lead States on behalf of participating NASAA jurisdictions, with all participating states and territories identified in Appendix A to the Settlement Term Sheet (each, a "Jurisdiction" and collectively, the "Jurisdictions"); and

WHEREAS, LPL agrees to comply in all material respects with the undertakings specified herein; and

WHEREAS, LPL elects to permanently waive any right to a hearing and appeal under the Utah Administrative Procedures Act ("UAPA"), Title 63G, Chapter 4 of the Utah Code, with respect to this Stipulation and Consent Order ("Order");

NOW, THEREFORE, the Division, as administrator of the Utah Uniform Securities Act ("Act"), hereby enters this Order:

1. LPL admits the jurisdiction of the Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the Division.

I. FINDINGS OF FACT

A. BACKGROUND, CONTRACT WITH BSDC

2. Every broker-dealer is required to have a supervisory system that is reasonably designed to ensure that the broker-dealer complies with all state and federal laws, rules and regulations, including laws that prohibit the offer or sale ofunregistered, non-exempt securities. Securities issued by companies listed on major national exchanges (*e.g.*, NYSE, AMEX, NASDAQ) and securities issued by registered investment companies (*e.g.*, mutual funds) are in most instances exempt from the Blue Sky requirements at issue here.

3. A reasonably designed system at a minimum includes written policies and procedures governing the offer and sale of securities by registered persons, training for all associated persons, and supervisory procedures and designated supervisors responsible for ensuring compliance.

4. In January 2000, LPL entered into an agreement with Blue Sky Data Corporation

("BSDC"), by which BSDC was obligated to supply LPL with data for LPL's use in compliance and supervisory efforts related to Blue Sky laws, rules, and regulations (the "Subscription Agreement"). The Subscription Agreement was amended in 2006.

5. As executed in January 2000 and amended in mid-2006, the Subscription Agreement included data for equity securities, but not for fixed income securities.

6. From at least January 2000 forward, the Subscription Agreement provided for a data feed that, if properly utilized, would allow for the review of trades to ensure that equity securities were properly registered in the customer's state. The subscription also provided online access for authorized personnel to query a specific CUSIP to determine its registration status in each U.S. state and territory. As described in more detail below, although the contract would enable such review, LPL failed to ensure during the relevant period that the data was comprehensively utilized and that its systems were properly configured to effectively make use of the data.

B. BLUE SKY COMPLIANCE EFFORTS

7. LPL has represented that for a number of years, through at least October 2006, LPL's Surveillance Department conducted a manual review of certain solicited equities trades to confirm Blue Sky compliance. This involved the use of various reports and reference to registration and exemption data from BSDC, as a result of the state securities registration subscription described above, and resulted in LPL identifying certain violations and taking certain remedial actions.

8. At some point after October 2006 the manual Blue Sky Review process described above lapsed. Records reflect that LPL thereafter failed to meet Blue Sky compliance obligations and failed to address registration and exemption requirements in the states.

9. Records reflect that in 2006, LPL supplemented its subscription with BSDC to, among other things, include automated checks (a/k/a "edits") to review orders against data from BSDC. Records reflect that the Subscription Agreement was amended based on an assumption by certain LPL personnel that, with this supplemental data feed feature, a front-end order entry block (*i.e.*, an automated mechanism that would prevent the

execution of trades of unregistered, non-exempt securities) could be implemented with a fair degree of ease.

10. Lacking necessary training, supervision and process implementation of various order entry systems, including the role of both proprietary systems and vended, third-party systems, LPL personnel failed to accomplish the additional steps that would be required to implement a front-end order entry hard block. While it appears from LPL records that the implementation difficulties were recognized by certain personnel and some efforts to resolve the technological obstacles were undertaken over a period of time, these efforts were not successful as the efforts were not given the appropriate stature within LPL, necessary training, or appropriate and adequate supervision.

11. As reflected in various records, poor intradepartmental and interdepartmental communications and a lack of integrated supervision and governance over vendor agreements, order entry systems controls, and Blue Sky compliance contributed to the failure of certain personnel in both Trading and Compliance to recognize at various points in time that Blue Sky hard blocks had not been implemented into LPL's order entry systems.

12. Records reflect that, during the relevant period, other personnel appeared to place reliance on other surveillance reviews that were designed for purposes of complying with certain LPL internal policies (for example, surveillance reviews pertaining to compliance with LPL's internal prohibition of solicited trades of low-priced and certain unlisted securities) as a means of capturing Blue Sky violations. LPL failed to ensure there was a review specifically designed to address state securities registration requirements.

13. The groups and functions that are required for ensuring Blue Sky compliance were not integrated and were fragmented across the organization, particularly in a period during which LPL was experiencing significant growth. Moreover, LPL lacked and failed to provide institutional Blue Sky expertise or experience in the form of an individual or individuals with particularized knowledge of industry-wide standards, policies, procedures and processes. This resulted in a failure by LPL to comprehensively address Blue Sky compliance needs and to develop and fund what should have been a centralized

set of Blue Sky compliance controls.

C. CANCELLATION AND REINSTATEMENT OF BSDC DATA FEED

14. In or around January 2014, LPL's Procurement Department ("Procurement") undertook a review of various vendor contracts. Procurement identified the Subscription Agreement, at a cost of $31,200 per year, and inquired whether LPL had a need for the service and who within LPL used the subscription. The purpose of this inquiry was to determine whether Procurement could cancel or not renew the BSDC subscription.

15. Procurement was directed to LPL's Governance, Risk & Compliance Department ("Compliance"), specifically a vice president in Compliance ("VP Compliance").

16. Without adequate controls in place to ensure that the inquiry was conducted properly, VP Compliance and an assistant vice president in Compliance sent a series of separate emails to various personnel within LPL's Registrations, Trading, Compliance, and Operations departments to determine whether LPL had a continued need for the BSDC subscription or whether the contract could be cancelled.

17. None of the personnel consulted indicated that the BSDC subscription was critical to compliance with Blue Sky state registration requirements.

18. Following these inquiries, in February 2014, VP Compliance wrote to Procurement that it was "ok to discontinue" LPL's subscription to the Subscription Agreement.

19. In March 2014, Procurement provided written notice to BSDC to terminate the Subscription Agreement and LPL paid the final April 2014 invoice.

20. Email records reflect that on October 23, 2014, a trader on LPL's Equity Trading desk ("Equity Trading") reviewed a screen that contained information showing a particular security to be restricted as a result of not being registered for sale or exempt from registration in the particular jurisdiction (which information appears to have been populated to the system before the BSDC contract was terminated). The trader shared the screen with a Manager in Equity Trading who in turn contacted BSDC in an effort to determine whether the particular restriction was valid. Through this outreach to BSDC,

that Manager learned that LPL's subscription to the state securities registration data had been cancelled months earlier.

21. On October 24, 2014, Equity Trading requested by email that the subscription be immediately reinstated. In that email, Equity Trading explained that it relied on the data to determine if over-the-counter securities are Blue Sky-compliant in the U.S. and territories, stating: "[w]e would like to request to have this subscription renewed as quickly as possible as this is a critical part of our day to day business."

22. In December 2014, LPL and BSDC reinstated the Subscription Agreement and in February 2015, LPL was again receiving up-to-date data into its equity trading system from BSDC.

23. Both before and after the contract cancellation, alerts relating to potential Blue Sky registration violations for equity securities were visible only to the trading desk and not to financial advisors who placed trades directly and, as noted above, notwithstanding that LPL had access to BSDC data for equity securities, LPL's systems did not operate to prevent a trade that was not Blue Sky-compliant (*i.e.*, a front-end block).

24. While the reinstated Subscription Agreement obligated BSDC to provide LPL with data for both equity and fixed income securities, at no point prior to December 2014 did the Subscription Agreement include data for fixed income securities.

D. POST-REINSTATEMENT REVIEW AND REMEDIAL MEASURES

25. Following the reinstatement of the BSDC contract, LPL conducted a review of certain equities and fixed income trades and identified certain Blue Sky violations requiring remediation. LPL attempted repurchase or damages offers to affected investors identified through this limited review. In connection with the making of these offers, LPL contacted securities regulators in certain jurisdictions about the offers.

26. As reflected in various records, poor intradepartmental and interdepartmental communications and a lack of integrated supervision and governance resulted in LPL's failure at that time to conduct a sufficient analysis to determine the root cause of the identified violations and compliance and supervisory shortcomings.

27. LPL has represented that following the reestablishment of the BSDC contract, LPL implemented several Blue Sky controls.

28. LPL has engaged several consultants to conduct a comprehensive review of its current Blue Sky compliance program and to assist LPL with implementation of recommendations, which is ongoing.

29. LPL has represented that it has designed and began implementing Blue Sky training for Compliance, Trading, Operations and Legal personnel and hired a senior-level Blue Sky compliance expert as a full-time employee, who has responsibilities for establishing and implementing the enhanced Blue Sky compliance program as guided by the independent consultants.

II. CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to Section 61-1-6(1) and (2)(a)(ii)(J) of the Act.

2. LPL offered and sold unregistered, non-exempt securities in Utah, in violation of Section 61-1-7 of the Act.

3. LPL failed to invest sufficient and appropriate resources in personnel, expertise, systems, and operations to adequately comply with Blue Sky laws, rules, and regulations, in violation of Section 61-1-6(2)(a)(ii)(J) of the Act.

4. LPL failed to reasonably supervise the flow of information to ensure full and proper compliance with state securities registration requirements, in violation of Section 61-1-6(2)(a)(ii)(J) of the Act.

5. LPL failed to maintain adequate systems to reasonably supervise agents, staff, and employees to prevent the sale of unregistered, non-exempt securities, in violation of Section 61-1-6(2)(a)(ii)(J) of the Act.

6. LPL failed to supervise agents, staff, and employees in the performance of duties with respect to systems operation, process, and checks and balances to ensure compliance with Blue Sky laws, rules, and regulations, in violation of Section 61-1-

6(2)(a)(ii)(J) of the Act.

7. LPL acted negligently in canceling certain third-party services critical for compliance with Blue Sky laws, rules, and regulations, in violation of Section 61-1-6(2)(a)(ii)(J) of the Act.

8. LPL failed to maintain books and records necessary to ensure full and proper compliance with Blue Sky laws, rules, and regulations, in violation of Section 61-1-5(1)(a) of the Act.

9. LPL failed to conduct appropriate and necessary due diligence regarding the retention, use, and subsequent cancellation of certain third-party services critical for compliance with Blue Sky laws, rules, and regulations, in violation of Sections 61-1-5(1)(a) and Section 61-1-6(2)(a)(ii)(J) of the Act, .

10. The following relief is appropriate and in the public interest.

III. ORDER

On the basis of the Findings of Fact, Conclusions of Law, and LPL's consent to the entry of this Order,

IT IS HEREBY ORDERED:

1. This Order concludes the Investigation and any other action that the Division could commence under applicable Utah law on behalf of Utah as it relates to the substance of the Findings of Fact and Conclusions of Law herein, provided however, that excluded from and not covered by this paragraph 1 are any claims by the Division arising from or relating to LPL's failure to comply with the undertakings contained herein.

2. This Order is entered into solely for the purpose of resolving the referenced multistate investigation, and is not intended to be used for any other purpose.

3. LPL shall CEASE AND DESIST from violating Sections 61-1-5(1)(a), 61-1-6(2)(a)(ii)(J), and 61-1-7 of the Act , and will comply with Sections 61-1-5(1)(a), 61-1-6(2)(a)(ii)(J), and 61-1-7 of the Act.

A. PENALTY

4. LPL Financial Holdings Inc., or its direct or indirect subsidiaries, shall, within 30 days of the execution of the Order by the Division, pay the sum of $499,000.00 to the Division for deposit in the Securities Investor Education, Training and Enforcement Fund pursuant to Section 61-1-18.7 of the Act.

B. CUSTOMER REMEDIATION

5. No later than July 2, 2018, LPL shall commence a comprehensive review of all customer transactions effected in Utah to assess compliance with all applicable state securities registration requirements ("Historical Trade Review").

6. The Historical Trade Review shall include all executed, solicited purchase orders of equity and fixed income securities effected in Utah between October 1, 2006 (insofar as LPL and/or any third party, vendor, supplier or service has necessary records) and May 1, 2018 (the "Historical Trade Review Period"), as well as all executed, unsolicited purchase orders of equity and fixed income securities effected in Utah during the portion of the Historical Trade Review Period for which Utah did not have an exemption from registration for unsolicited transactions.

7. For the purposes of the Historical Trade Review, a transaction shall be deemed to have been effected in Utah if the customer's address of record (or the address of record for the beneficial owner of any account, as applicable) at the time of the transaction was within Utah.

8. The Historical Trade Review shall be conducted by an unaffiliated third party that is not unacceptable to the Lead States (the "Independent Reviewer"). The Independent Reviewer shall not be a person or entity who has provided LPL with any products or services related to Blue Sky compliance prior to July 1, 2017.

    a. In conducting the Historical Trade Review, the Independent Reviewer may rely on historical research, data, and other services provided by a third-party service provider other than the Independent Reviewer. The Independent Reviewer may further rely on any determination by such a third-party service provider that a

particular trade complied with state registration requirements.

b. Upon request, LPL shall provide the Division with copies of all final contracts and directives related to the engagement of the Independent Reviewer and any other third-party service provider involved in the Historical Trade Review and the related remediation. LPL shall promptly respond to any additional requests for information by the Division relating to such engagement.

c. LPL shall neither be in nor have an attorney-client relationship with the Independent Reviewer, and shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the Independent Reviewer from transmitting any information, reports, or documents as set forth in this Order to the Division or to LPL's Board of Directors.

d. LPL may request confidential treatment be afforded to any material provided by LPL and/or the Independent Reviewer to the Division, and the Division shall provide such treatment and seek to prevent public disclosure of those materials to the full extent possible under its laws.

e. LPL shall not have the authority to terminate the Independent Reviewer or any third-party service provider engaged in connection with the Historical Trade Review and related remediation, without prior written approval from the Lead States.

9. LPL shall offer to repurchase the securities where the securities are still held in an LPL Account (subject to a standardized repurchase formula) or to pay damages where the position has been sold (subject to a standardized damages formula) for each trade involving an unregistered, non-exempt equity or fixed income security. Each offer shall include interest at a rate of three (3) percent simple interest per annum. Interest shall be calculated from the trade date of the purchase to the earlier of May 1, 2018 or the date on which the customer sold the security, if applicable.

10. For customers with affected securities who have transferred their accounts away from LPL, LPL will attempt to contact the customer to determine whether the customer either

(1) sold the position after transferring it away from LPL or (2) still holds the position at a broker-dealer other than LPL. If the customer still holds the position, LPL will also need to determine whether it is feasible for the securities to be transferred back to LPL for purposes of LPL's offering to repurchase the securities. If the customer fails to timely provide information necessary for LPL to make a repurchase or damages offer using the formula described in Section III(B)(9) above or if it is not feasible to transfer the securities back to LPL for repurchase, then LPL will make a damages offer to the customer based on a revised formula. The damages shall be calculated by deducting the lowest reasonably identifiable value of the security on the date of transfer from the amount paid and applicable interest.

11. LPL shall memorialize each offer in a letter (each, an "Offer Letter"), pursuant to the following terms:

    a. LPL and the Lead States will work to design a template Offer Letter (providing recommended format and the categories of information to be included with every offer). The Lead States will distribute the final template Offer Letter to the Jurisdictions.

    b. If the Division requires modification of the final template Offer Letter, the Division must communicate that requirement, or advise LPL when the Division will communicate the details of that requirement, to counsel for LPL within ten (10) business days of receipt of the final template Offer Letter. LPL shall work in good faith to address any questions or concerns raised by the Division and to comply with any statutory or regulatory requirement in Utah related to the form or content of such Offer Letters. Absent contact from the Division within ten (10) business days, LPL may presume that the Division has approved the template Offer Letter, inclusive of any waiver or release language, for distribution to offerees in Utah.

    c. Each Offer Letter shall be delivered to the offeree's last known mailing address as maintained in LPL's records in a manner that enables confirmation of delivery (*e.g.*, certified U.S. Post Mail or Federal Express). For offerees that have elected,

in writing, to receive correspondence electronically, Offer Letters may be sent electronically, so long as electronic delivery includes a mechanism to confirm that the Offer Letter was delivered (*e.g.*, request for read receipt).

d. Each Offer Letter shall clearly state the terms of the offer, and shall provide in bold underlined font: (1) the steps required to accept the offer, (2) the deadline for acceptance, and (3) the contact information at LPL whereby the offeree can obtain additional information.

e. LPL may include within its Offer Letters a waiver or release relative to the transactions it is offering to remediate. Notwithstanding any such waiver or release, neither the Historical Trade Review nor the Repurchase Program (defined below) shall operate to extinguish or preclude any individual claim or private right of action based on sales practice violations (*e.g.*, material misrepresentation or omission, or suitability) that is otherwise available to any offeree, except to the extent that such claim or right of action is based primarily on the unregistered, non-exempt status of the security or transaction which LPL is offering to remediate. In any event, the form and content of any such waiver or release shall not be unacceptable to the Division.

12. The Offer Letter shall remain open for a period of sixty (60) days from the date it is sent to the offeree.

a. Within sixty (60) days of the date that Offer Letters are sent, LPL shall provide the Division a list of offerees in Utah for whom Offer Letters were returned as undeliverable so that the Jurisdiction may attempt to locate those offerees.

i. If the Division elects to try to locate current addresses for this population of offerees, then it shall inform LPL or its representative. The Division will then have ninety (90) days to provide LPL with a new address for use in re-sending each Offer Letter previously returned as undeliverable (the "Location Period"). The Division may determine it necessary to extend the Location Period in which case it will notify LPL as to the minimum period of time necessary to complete its search. The

Location Period shall not extend beyond one hundred eighty (180) days.

ii. If the Division locates an individual after the Location Period has elapsed, LPL shall accommodate any reasonable request from the Division to re-send an Offer Letter to a newly-identified mailing address, so long as LPL is still actively engaged in mailing Offer Letters in any Jurisdiction.

iii. Any Offer Letter that is re-sent will carry with it a revised deadline for acceptance that is sixty (60) days from the date the Offer Letter is re-sent.

iv. Separate from the efforts undertaken by the Division to locate a current mailing address for undeliverable Offer Letters, LPL or its representative(s) shall conduct an electronic query (*i.e.*, a public records search via a service such as Thomson Reuters or LexisNexis) for each undeliverable offeree and shall re-send an Offer Letter in a manner not materially different from LPL's initial mailing to offerees for whom it identifies an address that appears to be the offeree's current mailing address. The Division and LPL shall coordinate to resolve any discrepancies between the address identified by the Division and the address identified by LPL.

v. If both the Division and LPL are unable to locate the address for any individual within the population of offerees addressed in this Section III(B)(12)(a), LPL shall re-send an Offer Letter to all such individuals who come forward to either LPL or the Jurisdiction within six (6) months after completion of the Historical Trade Review and Repurchase Program (as described and defined in Section III(B)(13), below).

13. The Historical Trade Review shall be completed, all offers shall be made, and all payments remitted (collectively the "Repurchase Program") in Utah no later than November 1, 2019.

14. No later than December 31, 2019, LPL shall prepare and submit to the Division a report including the following information:

a. For each offer made:

i. The trade date(s) and corresponding product(s) covered by the offer;

ii. The name and address of the offeree(s);

iii. Whether the offer was either accepted, affirmatively rejected, or deemed rejected due to a failure to timely accept;

iv. The date(s) and amount(s) remitted for each offer; and

v. Any special circumstances relevant to that offer (*e.g.*, if the original customer is now deceased and the payment was remitted to the customer's heirs or estate).

b. The total amount paid to all residents of the Jurisdiction in connection with the Repurchase Program; and

c. The number of executed and settled purchase orders reviewed in Utah that were determined by a third-party service provider other than the Independent Reviewer to have complied with state registration requirements, and that were therefore not reviewed by the Independent Reviewer. LPL will identify all such trades upon request by the Division.

15. No later than December 31, 2019, LPL shall require the Independent Reviewer to certify to LPL that the Independent Reviewer's determinations as to which transactions contravened state registration requirements are true, accurate, and based on all available information and a good faith interpretation of applicable law. Prior to the Independent Reviewer's certification, LPL shall direct that any third-party who provided services in furtherance of the Independent Reviewer's determinations provide a written representation to the Independent Reviewer that all services rendered in furtherance of the Historical Trade Review were fully completed in accordance with both the third-party's statement of work and all directives provided to the third-party by the Independent Reviewer.

16. No later than December 31, 2019, LPL or its designee(s) shall certify to the Division that LPL has fully complied in all material respects with the undertakings set forth in Section III(B) of this Order in connection with transactions effected in Utah, including to the best of LPL's knowledge, the truth, accuracy, and good faith basis of all determinations by the Independent Reviewer and any other third-party service provider as to whether any transaction complied with state registration requirements. LPL shall provide as an exhibit to this certification copies of the Independent Reviewer's certification and any other third-party representations that LPL is relying upon in making this certification to the Division. In its certification, LPL shall affirm that if an error is subsequently identified within the Historical Trade Review and Repurchase Program (whether a failure to identify a violative transaction or an error in calculating the value of an offer), LPL will retain responsibility for ensuring the error is remediated so that LPL has made all offers anticipated by this Order. The identification of a good-faith error within the Historical Trade Review and Repurchase Program shall not result in a finding by Utah that LPL is in default of this Order.

17. The costs and expenses of the Historical Trade Review and the related Repurchase Program shall be borne exclusively by LPL Financial Holdings Inc. or its direct or indirect subsidiaries, and shall not reduce or otherwise affect the amount of any penalty or fine imposed in this Order.

18. At LPL's request, the Lead States for all Jurisdictions where necessary and/or the Division for its own part may extend, for good cause shown, any of the procedural dates set forth in this Section III(B). If the Lead States extend a date or deadline, the Lead States shall extend all related subsequent deadlines that are dependent on the extended date or deadline by a corresponding amount of time. Any extension granted by the Lead States shall apply to all dates in Utah pursuant to this Order. If the Division extends a date or deadline (*see, e.g., supra* Section III(B)(12)(a)(i)), then the Division shall extend all related subsequent deadlines applicable to the completion of undertakings in Utah by a corresponding amount of time. Any extension by the Division shall apply only to Utah and shall not have any effect on any dates or deadlines related to the Historical Trade Review and Repurchase Program in any other Jurisdiction.

C. COMPREHENSIVE REVIEW OF BLUE SKY OPERATIONS, POLICIES, PROCEDURES, AND PRACTICES

19. If it has not already done so, no later than July 2, 2018, LPL shall commence a comprehensive review of its operations, policies, procedures, and practices relating to compliance with and supervision of blue sky state securities registration requirements in all Jurisdictions, to assess whether the foregoing (i) are adequate to reasonably ensure compliance with applicable state laws, rules, and regulations, (ii) are consistent with industry practice, and (iii) are being implemented fully, properly, and effectively (the "Operational Review") so as to avoid violative transactions like those identified in the Historical Trade Review.

20. The Operational Review shall include the following areas:

    a. Compliance and supervisory controls and related policies, procedures and process relating to:

        i. Identification and escalation protocols by supervisory and compliance personnel involving significant matters relating to compliance with state securities laws, rules and regulations;

        ii. Communication and information sharing between departments and business units (*e.g.*, procurement, technology, trading, and retail brokerage) relative to state securities registration requirements and operations processes for ensuring intra- and inter-departmental coordination on matters relating to state securities registration requirements; and,

        iii. Training and education of staff, including associated persons of the broker- dealer whether employees or independent contractors, relative to state securities registration requirements;

    b. A complete, top-to-bottom review of the onboarding of new securities products for purposes of assessing LPL's ability to comply with all state securities registration requirements, and all operations and procedures in connection with

state registration requirements, that apply to the offer and sale of that product;

c. A complete top-to-bottom review of vendor service protocols to ensure processes are in place for identification and management of critical services used to ensure compliance with state securities laws. This will include an assessment of the impact of such products and services on LPL's ability to review transactions for Blue Sky compliance; and

d. Personnel and staffing relative to those functions that relate to compliance with and supervision of state securities registration requirements. Insofar as LPL has represented that it has undertaken to assess and upgrade its talent as it impacts compliance with state securities registration requirements, including the recruitment of an experienced blue sky professional and expert on state securities registration compliance matters, the Operational Review shall assess the experience, responsibilities, and resources available to all personnel hired or reassigned within LPL in connection with ensuring compliance with state securities registration requirements.

21. The Operational Review shall be conducted by an unaffiliated third party that is not unacceptable to the Lead States (the "Consultant"). The Consultant shall not be a person or entity who has been engaged or retained by LPL between January 1, 2012 and July 1, 2017 for the purpose of conducting any review of similar scope and substance.

a. Upon request, LPL shall provide the Division with copies of all final contracts related to the engagement of the Consultant and any other third-party service provider involved in the Operational Review and the related remediation. LPL shall promptly respond to any additional requests for information by the Division relating to such engagement.

b. LPL shall neither be in nor have an attorney-client relationship with the Consultant, and shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the Consultant from transmitting any information, reports, or documents as set forth in this Order to the Division or to LPL's Board of Directors.

c. LPL shall not have the authority to terminate the Consultant or any third-party service provider engaged in connection with the Operational Review, without prior written approval from the Lead States.

22. The Operational Review shall be completed no later than May 1,2019.

23. LPL may request confidential treatment be afforded to any material provided by LPL and/or the Consultant to the Division, and the Division shall provide such treatment and seek to prevent public disclosure of those materials to the full extent possible under its laws.

24. No later than July 1, 2019, LPL shall require that the Consultant submit a report to LPL detailing the results and findings of the Operational Review, including a list of all deficiencies identified and recommendations for addressing such deficiencies.

25. LPL shall cure all deficiencies identified in the Consultant's report ("Operational Remediation") no later than June 30, 2020.

a. If LPL declines to adopt or implement any recommendation(s) by the Consultant for addressing deficiencies identified during the Operational Review, LPL shall identify the recommendations not adopted or implemented and explain why they were not adopted or implemented.

26. No later than August 31, 2020, LPL or its designee(s) shall certify to the Lead States that LPL has fully complied in all material respects with the undertakings set forth in Section III(C) of this Order.

27. The costs and expenses of the Operational Review and Operational Remediation shall be borne exclusively by LPL Financial Holdings Inc. or its direct or indirect subsidiaries, and shall not reduce or otherwise affect the amount of any penalty or fine imposed as part of the Settlement.

28. At LPL's request, the Lead States may extend, for good cause shown, any of the procedural dates set forth in this Section III(C). If the Lead States extend a date or deadline, the Lead States shall extend all related subsequent deadlines that are dependent

on the extended date or deadline by a corresponding amount of time. Each Jurisdiction shall reflect in their Order that any extension granted by the Lead States shall apply in the Jurisdiction. Any extension granted by the Lead States shall apply to all dates in Utah pursuant to this Order.

D. AUDITS AND INSPECTIONS

29. The Division shall have the right to conduct on-site audits, inspections, or examinations of LPL to ensure full compliance with the undertakings herein. The cost of any such audit, inspection, or examination shall be borne exclusively by LPL Financial Holdings Inc. or its direct or indirect subsidiaries. The Division will not initiate any such audit, inspection or examination to assess LPL's compliance with the undertakings herein until after LPL has provided the certifications described in Sections III(B)(15), III(B)(16), and III(C)(26) above.

E. CONSTRUCTION AND DEFAULT

30. This Order is not intended to form the basis for any disqualification from registration as a broker-dealer, investment adviser, or issuer under the laws, rules, and regulations of Utah, and waives any disqualification from relying upon the securities registration exemptions or safe harbor provisions to which LPL or any of its affiliates may be subject under the laws, rules, and regulations of Utah.

31. Nothing in this Order 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 under the Securities Act of 1933. Furthermore, nothing in this Order is intended to form the basis for disqualification under the FINRA rules prohibiting continuance in membership or disqualification under other SRO rules prohibiting continuance in membership. This Order is not intended to be a final order based upon violations of any Utah statute, rule, or regulation that prohibits fraudulent, manipulative or deceptive conduct.

32. Except in an action by the Division to enforce the obligations in this Order, this Order is not intended to be deemed or used as (a) an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of any wrongdoing or liability; or (b) an admission of, or evidence of, any such alleged fault or omission of LPL in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or other tribunal.

33. If payment is not made by LPL or if LPL defaults in any of its obligations set forth in this Order, the Division may institute an action to have this agreement declared null and void. Upon issuance of an appropriate order, after a fair hearing, the Division may reinstitute the action or investigation related to the substance of the Findings of Fact and Conclusions of Law herein.

34. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of Utah without regard to any choice of law principles.

35. This Order is not intended to state or imply willful, reckless, or fraudulent conduct by LPL, or its affiliates, directors, officers, employees, associated persons, or agents.

36. LPL, through its execution of this Order, voluntarily waives the right to a hearing on this matter and to judicial review of this Order under UAPA.

37. LPL enters into this Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Division or any member, officer, employee, agent, or representative of the Division to induce LPL to enter into this Order.

38. This Order shall be binding upon LPL and its successors and assigns, as well as to successors and assigns of relevant affiliates, with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

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

Order in any way.

Utah Division of Securities
Dated this 3rd day of December, 2018

By: K Barton

Kenneth O. Barton

Director of Compliance

CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY LPL

LPL hereby acknowledges that it has been served with a copy of this Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

LPL admits the jurisdiction of the Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the Division as settlement of the issues contained in this Order.

LPL agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any administrative monetary penalty that LPL shall pay pursuant to this Order. LPL understands and acknowledges that these provisions are not intended to imply that the Division would agree that any other amounts LPL shall pay pursuant to this Order may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

LPL states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.

Olivia Mario represents that [he/she] is SVP, Assoc General Counsel of LPL and that, as such, has been authorized by LPL to enter into this Order for and on behalf of LPL.

Dated this 21 day of November, 2018.

LPL

By: Olivia B Mario
Title: SVP, Associate General Counsel
Head of Regulatory Inquiries & Strategy

BY THE UTAH SECURITIES COMMISSION:

DATED this 24th day of January, 2019

Brent Baker

Gary Cornia

Brent Cochran

Peggy Hunt

Lyle White

CERTIFICATE OF SERVICE

I certify that on the 24th day of January, 2019, I mailed and emailed a true and correct copy of the Stipulation and Consent Order to:

Mailed to:

Neal E. Sullivan
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
Counsel for Respondent

Emailed to:

Bruce Dibb
bdibb@utah.gov

Kenneth Barton
kbarton@utah.gov

Administrative Assistant

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**
STEPHEN BRANDLEY,	**Docket No. SD-16-0039**
JAMES CAMERON LEE, and	Docket No. SD-16-0040
CLEARWATER FUNDING, LLC.	**Docket No. SD-16-0041**
Respondent.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondents Stephen Brandley ("Brandley") and Clearwater Funding, LLC ("Clearwater" and collectively "Respondents"), hereby stipulate and agree as follows:

1. Clearwater, Brandley, and James Cameron Lee ("Lee") have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1(2) (securities fraud), and § 61-1-1(3) (securities fraud), and § 61-1-3(1) (unlicensed activity) while engaged in the offer or sale of securities in the state of Utah.

2. On or about September 7, 2016, the Division initiated an administrative action against Clearwater and its agents by filing an Order to Show Cause.

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 Order to Show Cause.

4. The administrative action against Lee is still pending.

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

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

7. 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.

FINDINGS OF FACT

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

9. Clearwater is a Utah business entity that registered with the Utah Division of Corporations ("Corporations") on or about October 2, 2003. Its status with Corporations was expired as of January 27, 2015. Brandley is listed as the sole member, manager, and registered agent of Clearwater. No other persons are listed as having an interest in, or having control of Clearwater. Clearwater has never been licensed with the Division in

any capacity.

10. In or about August 2011, while conducting business in or from Utah, Lee and Brandley offered and sold securities to R.V., a resident of New Mexico, collected approximately $675,000 in connection therewith, and deposited the funds into Clearwater's bank accounts in the state of Utah. The funds were subsequently used in a manner inconsistent with what R.V. was told at the time of solicitation.

11. The investment opportunities offered and sold by Respondents are promissory notes and/or investment contracts.

12. Promissory notes and investment contracts are defined as securities under §61-1-13 of the Act.

13. During all times relevant to this action, Respondents were not licensed to offer or sell securities in the state of Utah.

14. In connection with the offer and/or sale of securities, Respondents, either directly or indirectly, made untrue statements of material facts and/or omitted to state material facts that a reasonable investor would have relied upon when deciding whether to invest.

15. Brandley and Lee used investor funds in a manner inconsistent with what they told the investor at the time of solicitation.

16. Investor R.V. is still owed at least $520,000 in principal alone.[1]

[1] Brandley was referred for criminal prosecution in August 2016, where he entered a plea of guilty and paid restitution to investor R.V. in the amount of $50,000. *See* case number 161100747, filed in Utah's First District Court, Cache County. Restitution payments in the amount of $520,000 are still outstanding. Lee was also referred for criminal prosecution in August 2016, where he entered a plea of guilty and paid restitution in the amount of $105,000. *See* case number 161100748, filed in Utah's First District Court, Cache County.

INVESTOR R.V.

OFFER AND SALE OF A SECURITY

17. R.V. was 79 years old and a retiree when she invested with Respondents in 2011. R.V. immigrated to the United States from France in 1964. At all times relevant to the transactions relating to this investigation, R.V. resided in New Mexico. R.V. passed away in 2017.

Offer 1

18. In or about August 2011, Lee, who worked as a maintenance person in R.V.'s neighborhood, learned that R.V. had $675,000 from the sale of property she owned in France. R.V. told Lee she wanted to invest the money for one year and earn interest on the money. Lee told R.V. that he knew someone, later identified as Brandley, who could invest her money and that R.V. would receive a return of at least 100% on her investment.

19. Shortly after his conversation with R.V., Lee contacted Brandley to inform him of R.V.'s interest in investing with him.

20. On or about August 17, 2011, Brandley traveled from Utah to New Mexico to meet with Lee and R.V.[2] According to Brandley, he did not meet in person with R.V. until September of 2012, when he met her in person to inform her that the investment had not gone as planned.

[2] At some point in time prior to his trip to New Mexico, Brandley spoke to an acquaintance, Virgil Smock ("Smock"), a Nevada Resident, regarding a potential investment opportunity. Smock purportedly told Brandley about potential profits with guaranteed returns of up to 100% made from purchases and sales of Standby Letters of Credit ("SBLC"). These conversations purportedly led Brandley to invest a large portion of R.V.'s monies with Smock.

21. During this meeting, Brandley and Lee made the following representations to R.V. about the offering ("Offer 1"):

a. Lee explained to R.V. that by transferring R.V's investment of $675,000 over the period of a "few years" the investment could grow to $21,000,000; an increase in excess of 3,000%;

b. Brandley told R.V. that her entire investment of $675,000 would be used to purchase and sell Standby Letters of Credit ("SBLCs") through Investor Alliance Association, Inc.;[3] and

c. Brandley told R.V. that the investment would bring a return of 100% within one year.

22. In reliance on Brandley and Lee's representations about the offering, on or about August 17, 2011, R.V. signed a promissory note and wired $675,000 to Clearwater's Wells Fargo account ending in 8155.

23. Brandley and Lee used R.V.'s investment monies in a manner inconsistent with what they told R.V. at the time of solicitation, including, but not limited to, the following:[4]

Transfer to Angel Alliance Funding Association, Inc.	$470,000.00
Payments to Earlier Investors	$82,854.56
Commission paid to Lee	$55,000.00 ($70,000.00 according to

[3] Smock states that he is the owner of Investors Alliance Association, Inc. Documents from the Nevada Secretary of State's office reveal that Smock has never been affiliated with Investor's Alliance Association, Inc. However, Smock is listed as the President of Investor's Alliance Association, LLC, a business entity registered in the state of Utah. Both entities use the same P.O. Box for their mailing address. Smock owns and controls Angel Alliance Funding Association, Inc.

[4] Additionally, Clearwater's bank records reveal that approximately $28,750 was used to pay R.V. These funds were used to pay R.V. for a prior personal loan to Brandley.

	Brandley)
R.V. (payoff for previous money provided to Brandley)	$28,750.00
Bills and Expenses	$27,388.27
Unidentified Account	$10,000.00
Travel	$624.02
Cash/ATM	$300.00
Bank Service Charge	$60.00
Dining Out	$23.15
Total	**$675,000.00**

Offer 2

24. After failing to pay R.V. in accordance with the terms of the promissory note, on or about September 10, 2012, Brandley mailed a contract to R.V. offering to make a payment of $350,000 by October 7, 2012 ("Offer 2"). In the same document, Brandley offered R.V. $1,000,000 on or before August 17, 2013, which includes interest in the amount of 20%. R.V. rejected the offer.

Offer 3

25. In or about October 2012, Brandley again contacted R.V. to solicit a new investment to replace her initial investment which was in default ("Offer 3"). On or about October 11, 2012, Brandley mailed a document to R.V. titled "Equity Agreement between Clearwater Funding LLC and R.V." Under the agreement, Brandley would repay R.V. her principal, including 100% interest, by assigning to R.V. Clearwater's interest in Delta 2 Oil ("Delta

2").

26. Delta 2 is an entity owned and controlled by Lee. Delta 2 purportedly developed an additive that significantly decreased diesel fuel emissions.

27. The contract states that Delta 2 is projected to receive financial returns of at least $36,000,000 within two years. Brandley proposed to pay R.V. $1,350,000 from his portion of the profits. Brandley offered to pay R.V. an additional 20% interest annually, beginning on August 17, 2012. R.V. again rejected the offer.

28. R.V. invested a total of $675,000 with Brandley. To date, R.V. is still owed $520,000 in principal alone.

CONCLUSIONS OF LAW

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

29. The Division incorporates paragraphs 1 through 28.

30. In violation of §61-1-1(2) of the Act, in connection with Offer 1, Brandley made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading by, among other things, offering securities to R.V., making false statements, omitting material information, and using her funds in a manner inconsistent with what was promised during the solicitation of the investment.

31. The promissory notes and/or investment contracts offered and sold by Respondents are securities under § 61-1-13 of the Act.

32. In connection with the offer or sale of securities to investor R.V., Brandley, directly or

indirectly, made false statements including, but not limited to, the following:

a. Brandley told R.V. that her entire investment of $675,000 would be used to purchase and sell SBLCs through Investor's Alliance Association, Inc. when, in fact, he used approximately $200,000 for other purposes, including personal expenses, travel, and a commission payment to Lee, among other things; and

b. Brandley told R.V. that the investment would bring a return of 100% within one year, when Brandley had no reasonable basis to make such a statement.

33. In connection with the offer and sale of a security to investor R.V., Brandley, directly or indirectly, failed to disclose material information which was necessary in order to make statements made not misleading including, but not limited to, the following:

a. $470,000 of R.V.'s investment funds would be paid to Angel Alliance Funding, LLC rather than Investors Alliance Funding, Inc.;

b. A portion of R.V.'s investment monies would be utilized for personal and/or business expenses unrelated to SBLCs;

c. Approximately $55,000 of R.V.'s investment monies would be paid to Lee as a commission and/or finder's fee;

d. $82,854.56 of R.V.'s investment monies would be used to make payments to earlier investors;

e. $28,750 of R.V.'s investment monies would be used to repay R.V. for a previous loan she made to Brandley; and

f. With respect to the entities Clearwater, Angel Alliance Funding Association, LLC, and Investor Alliance Funding, Inc., Brandley failed to provide disclosure documents such as an offering circular, prospectus, etc., disclosing the following:

i. Business and operating history;

ii. Financial statements;

iii. Use of proceeds;

iv. Risk factors;

v. Conflicts of interest;

vi. Licensing of sales agents and commissions to be paid;

vii. Suitability factors for the investment;

viii. Whether the offering was registered, federally covered, or exempt from registration in the State of Utah;

ix. Background of management; and

x. Information with respect to Smock, including;

(1) Bankruptcy in 2000;

(2) Civil judgment in 2002;

(3) Civil judgment in 2008.

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

34. The Division incorporates paragraphs 1 through 33.

35. In violation of §61-1-1(2) of the Act, in connection with Offer 2, Brandley made untrue statements of material fact and omitted to state material facts necessary in order to make

the statements made, in the light of the circumstances under which they are made, not misleading by, among other things, offering securities to R.V., making false statements, and omitting material information regarding the offering.

36. The promissory notes and/or investment contracts offered and sold by Brandley are securities under § 61-1-13 of the Act.

37. In or about September 2012, Brandley contacted R.V. to solicit a new investment to replace her initial investment which was in default.

38. On or about September 10, 2012, Brandley mailed a document to R.V. titled "New Note to replace Note Dated August 17, 2011." According to the Note, Brandley offered to make a payment of $350,000 by October 7, 2012.

39. Also according to the Note, if Brandley failed to pay $350,000 by October 17, 2012, Clearwater would pay R.V. $1,000,000 on or before August 17, 2013, with interest, accrued annually in the amount of 20%, starting August 17, 2012.

40. The two payments Brandley offers in this document would repay R.V.'s investment with the promised 100% return.

41. In connection with the offer or sale of securities to investor R.V., Brandley, directly or indirectly, made false statements and omissions including, but not limited to, the following:

a. How R.V.'s initial investment of $675,000 was used;

b. Disclosures, such as an offering circular, prospectus, etc. disclosing the following:

i. Business and operating history;

ii. Financial Statements;

iii. Use of Proceeds;

iv. Risk Factors;

v. Conflicts of Interest;

vi. Suitability factors for the investment;

vii. Whether the offering was registered, federally covered, or exempt from registration in the State of Utah; and

viii. Management.

42. R.V. did not accept Bradley's offer and is still owed $520,000 in principal alone.

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

43. The Division incorporates paragraphs 1 through 42.

44. In violation of §61-1-1(2) of the Act, in connection with Offer 3, Brandley made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading by, among other things, offering securities to R.V., making false statements, and omitting material information regarding the offering.

45. The promissory notes and/or investment contracts offered and sold by Brandley are securities under § 61-1-13 of the Act.

46. In or about October 2012, Brandley again contacted R.V. to solicit a new investment to replace her initial investment which was in default. On or about October 11, 2012, Brandley mailed a document to R.V. titled "Equity Agreement between Clearwater Funding LLC and R.V." Under the agreement, Brandley would repay R.V. her principal,

including 100% interest, by assigning to R.V. Clearwater's interest in Delta 2.

47. Delta 2 is an entity owned and controlled by Lee. Delta 2 purportedly developed an additive that significantly decreased diesel fuel emissions.

48. The contract states that Delta 2 is projected to receive financial returns of at least $36,000,000 within two years. Brandley proposed to pay R.V. $1,350,000 from his portion of the profits. Brandley offered to pay R.V. and additional 20% interest annually, beginning on August 17, 2012. R.V. again refused to sign the contract and rejected the offer.

49. In connection with the offer or sale of securities to investor R.V., Brandley, directly or indirectly, made false statements including, but not limited to, the following:

a. Brandley's company, Clearwater, owned 20% of Delta 2, when Brandley had no reasonable basis to make such a statement;

b. How R.V.'s initial $675,000 investment was utilized;

c. Disclosures, such as an offering circular, prospectus, etc. disclosing the following:

i. Business and operating history;

ii. Financial Statements;

iii. Use of Proceeds;

iv. Risk Factors;

v. Conflicts of Interest;

vi. Suitability factors for the investment;

vii. Whether the offering was registered, federally covered, or exempt from registration in the State of Utah; and

viii. Management.

50. R.V. did not accept Bradley's offer and is still owed $520,000 in principal alone.

FOURTH CAUSE OF ACTION
Securities Fraud under §61-1-1(3) of the Act
(Brandley and Clearwater)

51. The Division incorporates paragraphs 1 through 50.

52. In violation of §61-1-1(3) of the Act, Brandley, Lee, and Clearwater engaged in an act, practice, or course of business which operated as a fraud by making misrepresentations and omitting material information from R.V., and converting R.V.'s investment funds for personal use while causing R.V. to believe it would be properly invested and earn the interest promised.

53. A review of Clearwater, Brandley and Lee's bank records reveals that they failed to use monies in accordance with representations made to R.V.

54. In or about August 2011, Brandley and Clearwater paid $55,000 of R.V.'s investment funds to Lee, instead of using the funds in accordance with representations made to R.V. that these funds would be used to purchase and sell SLBC's through Investor Alliance Association, Inc.

55. Brandley, Lee, and Clearwater failed to use R.V.'s investment funds in accordance with the Representations made to R.V. upon solicitation of her $675,000 investment, including the following:

Transfer to Angel Alliance Funding Association, Inc.	$470,000.00
Payments to Earlier Investors	$82,854.56
Commission paid to Lee	$55,000.00 ($70,000.00

	according to Brandley)
R.V. (payoff for previous money provided to Brandley)	$28,750.00
Bills and Expenses	$27,388.27
Unidentified Account	$10,000.00
Travel	$624.02
Cash/ATM	$300.00
Bank Service Charge	$60.00
Dining Out	$23.15
Total	**$675,000.00**

FIFTH CAUSE OF ACTION
Unlicensed Activity under §61-1-3(2) of the Act
(Clearwater)

56. The Division incorporates paragraphs 1 through 55.

57. In violation of §61-1-3(2) of the Act, Brandley and Lee were not licensed issuer agents at the time of their involvement in this offering.

58. Brandley and Lee acted as agents of Clearwater in the offer and/or sale of securities in or from Utah.

59. It is unlawful for an issuer to employ or engage an agent unless the agent is appropriately licensed in accordance with the Act.

60. Accordingly, each offer and/or sale of securities by Respondents violated §61-1-3(2) of the Act.

SIXTH CAUSE OF ACTION

Unlicensed Activity under §61-1-3(1) of the Act
(Brandley)

61. The Division incorporates paragraphs 1 through 60.

62. In violation of §61-1-3(1) of the Act, Brandley was not a licensed issuer agent at the time of his involvement in this offering.

63. Brandley acted as an agent of Clearwater in the offer and/or sale of securities in or from Utah.

64. It is unlawful for persons to transact business in this state as agents unless appropriately licensed in accordance with the Act.

65. Accordingly, each offer and/or sale of securities violated §61-1-3(1) of the Act.

REMEDIAL ACTIONS/SANCTIONS

66. Respondents admit the Division's Findings of Fact and Conclusions of Law, and consent to the below sanctions being imposed by the Division.

67. Respondents represent that the information they have provided to the Division as part of its investigation is accurate and complete.

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

69. Respondents agree to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in the state of Utah.

70. . Respondents agree that pursuant to Utah Code Ann. Section 61-1-20 and in consideration of the factors contained in Utah Code Ann. Section 61-1-31, they will be

ordered to pay a fine to the Division in an amount that shall be determined by the Utah Securities Commission after a hearing held to determine the appropriate fine amount.

FINAL RESOLUTION

71. 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.

72. If Respondents fail to timely pay the fine as ordered by the Utah Securities Commission, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which any remaining unpaid fine becomes immediately due and payable. If Respondents materially violate any other term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which any remaining and unpaid fine amount is increased by $50,000 and becomes immediately due and payable. Notice of the violation will be provided to Respondents at their last known address, and to their counsel if they have one. If Respondents fail to request a hearing within ten (10) days following the notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against 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.

73. 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.

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

Dated this ____ day of _____, 2018

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Dated this 7 day of June, 2018

Stephen Brandley

Dated this 12 day of June, 2018

Clearwater Funding LLC

By: _____
Stephen Brandley, Manager

Dated this ____ day of _____, 2018

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Dated this 27 day of July, 2018

Stephen Brandley

Dated this 27 day of July, 2018

Clearwater Funding LLC

By: _____
Stephen Brandley, Manager

Dated this ____ day of _____, 2018

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Dated this ____ day of _____, 2018

Stephen Brandley

Dated this ___ day of _____, 2018

Clearwater Funding LLC

By: _____
Stephen Brandley, Manager

ORDER

IT IS HEREBY ORDERED THAT:

1. This Order shall supersede the Order entered by the Utah Securities Commission in this matter on August 2, 2018, as the August 2, 2018 Order was based on an incorrect version of the Stipulation and Consent Order between the Respondents and the Division.
2. The Division's Findings and Conclusions, which Respondents admit are hereby entered.
3. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
4. Respondents are barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in the state of Utah.
5. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondents Brandley and Clearwater shall pay a fine, jointly and severally, to the Division, in an amount to be determined and ordered by the Utah Securities Commission after a hearing held to determine the appropriate fine amount.

BY THE UTAH SECURITIES COMMISSION:

DATED this 24th day of January, 2019

Brent R. Baker
Brent Baker

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 24th day of January, 2019, I mailed and emailed a true and correct copy of the Stipulation and Consent Order to:

Mailed to:

Stephen Brandley:
[redacted]

Clearwater Funding:
2546 S 5900 W
Mendon, UT 84325

Emailed to:

Jennifer Korb
jkorb@agutah.gov

Bruce Dibb
bdibb@utah.gov

Kenneth Barton
kbarton@utah.gov

Administrative Assistant

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: **DEAN A. HAMILTON, CRD#5089531** **Respondent.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-12-0078**

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

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.

2. On or about December 18, 2012, the Division initiated an administrative action against Respondent by filing an Order to Show Cause. The case was later stayed pending resolution of a parallel criminal proceeding discussed further herein.

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 Order to Show Cause.

4. Respondent admits that the Division has jurisdiction over him 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 his 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 understands he may be represented by counsel in this matter, understands the role that counsel would have in defending and representing his interests in the case, and hereby knowingly, freely and voluntarily waives the right to have counsel represent him in this proceeding.

I. FINDINGS OF FACT

8. From October 16, 2009 to December 31, 2009, Hamilton was licensed in Utah as a broker-dealer agent of Brokers International Financial Services, LLC ("BIFS"), CRD#139627. He has not been licensed in the securities industry in any capacity since December 31, 2009.

9. Hamilton has taken and passed the FINRA Series 6, Investment Company/Variable Contracts Limited Representative Examination, and Series 63, Uniform Securities Agent State Law Examination.

10. Between April 2009 and January 2011, Hamilton was affiliated with Galileo Financial, LLC ("Galileo"), a Utah limited liability company with its place of business in South

Jordan, Utah. Hamilton was a licensed insurance agent during that period, and as an independent contractor of Galileo, Hamilton sold insurance and annuity products. BIFS was the broker-dealer through which Galileo conducted its securities business.

11. Through Galileo, Hamilton conducted business on the premises of several Utah credit unions, including Box Elder County Credit Union ("BECU") in Brigham City, Utah, Weber Credit Union ("Weber Credit Union") in South Ogden, Utah, and Summit One Credit Union ("Summit One") in Ogden, Utah.

12. With the exception of the period between October 16, 2009 and December 31, 2009, Hamilton was not licensed to offer or sell any securities products. The Series 6 license held by Hamilton during that period limited his securities activities to mutual funds and variable annuities. In addition, Hamilton's authorized credit union activities were restricted to products reviewed and approved by Galileo, his broker-dealer, BIFS, and the credit unions.

Dee Randall and the Horizon Companies

13. Hamilton and others sold private placement securities investments in "Horizon Notes" which as used herein collectively refers to promissory notes issued by various companies owned and controlled by Dee Allen Randall ("Randall"). Those companies include, but are not limited to, Horizon Auto Funding, LLC, Horizon Financial Center I, LLC, and Horizon Mortgage and Investment, Inc. (collectively referred to at times as "the Horizon entities").

14. During the period relevant to this action, one of Randall's companies, Horizon Financial and Insurance Group, Inc.[1] ("insurance agency") was a general insurance agent for Union Central Life Insurance Company. Most of the individuals who sold Horizon Notes were insurance agents who conducted insurance business through the insurance agency.

15. In addition to selling insurance, Randall, through the Horizon entities and Horizon Notes, purported to offer private placement securities investments[2] in commercial and residential property development and rentals, as well as an automobile loan business for individuals with poor credit.

16. The Horizon entities operated as a Ponzi scheme run by Randall in which investor monies were routinely and freely commingled and transferred among the various Horizon entities. New investor monies were used to pay interest to prior investors, or for personal use, including the payment of sales compensation to agents, including Hamilton.

17. On numerous occasions, Horizon payment obligations owed to investors outpaced available funds, causing interest payments to investors to be missed, late, or otherwise in default.

---

[1]This entity was also known as or affiliated with other entities controlled by Randall, Horizon Financial & Insurance Agency, LLC, and Utah Horizon Financial & Insurance Agency, LLC.

[2]The Horizon Notes were purportedly sold in reliance on Rule 506 of Regulation D of the 1933 Securities Act.

18. Randall declared a personal Chapter 11 bankruptcy on December 20, 2010.[3] However, he continued to raise capital for Horizon after that date through agents such as Hamilton, and failed to disclose the bankruptcy to potential investors.

19. According to the Trustee appointed in the bankruptcy proceeding, Randall raised more than $72 million from approximately 700 investors.

20. On July 11, 2016, Randall pled guilty to four second degree felony counts of securities fraud and one second degree felony count of pattern of unlawful activity. He was sentenced on February 6, 2017 to serve three consecutive terms of 3 to 15 years, one concurrent term of 3 to 15 years, and one concurrent term of 1 to 15 years in the Utah State Prison.

Solicitations and Sales by Hamilton

21. Between 2009 and 2011, Hamilton solicited investors in Utah to purchase Horizon Notes.

22. Hamilton's Horizon investors all met him through their credit unions where he had offices. Hamilton's investors believed the Horizon Notes were products that had been reviewed and approved for sale by the credit unions as appropriate investment options for credit union members.

[3] Following a September 2011 hearing in which Randall admitted commingling monies among the Horizon entities, a Trustee was appointed. The Trustee subsequently filed a Chapter 11 bankruptcy for each of the Horizon entities, all of which were consolidated with the Randall bankruptcy proceeding to be administered by the Trustee as a single bankruptcy estate.

23. Despite his extremely limited background in the securities industry, Hamilton represented himself to investors as a "financial advisor" and made recommendations to investors as to how to invest their monies, including retirement funds.

24. The Horizon Notes offered and sold by Hamilton are securities under the Act.

25. Hamilton sold Horizon Notes to fifteen investors, raising at least $890,000, from which he received at least $33,000 in direct compensation. Hamilton and other agents who sold Horizon Notes also received indirect compensation through rent-free use of office space in buildings owned by Randall.

26. At no time was Hamilton authorized by BIFS, Galileo or the credit unions to sell Horizon Notes.

27. None of the notes were sold through a licensed broker-dealer. Hamilton met with potential investors to offer and sell the Horizon Notes and thereafter assisted with the paperwork required to transfer their monies from existing accounts into the Horizon investments. A majority of the monies raised by Hamilton came from retirement accounts.

28. Prior to investing, Hamilton's investors did not receive audited company financial statements or a private placement memorandum ("PPM") describing the details of the investment.

29. Most of Hamilton's investors only met with Hamilton and never met with Randall prior to investing. In several cases, Hamilton arranged and attended meetings between potential investors and Randall.

30. Hamilton and other agents selling the Horizon Notes were compensated for those sales through the insurance agency. Agent compensation generally was calculated as a percentage of the amount of money invested. Payments were made by cash or check, or by other means, including credits applied to monies owed by agents to Randall.[4] Some of the payments were documented in the insurance agency records as "commission bonus" or "marketing bonus" or otherwise.

31. Despite soliciting investors and selling Horizon Notes during the period in which he was a licensed broker-dealer agent of BIFS, Hamilton's Form U4[5] failed to disclose his business activities with Horizon.

32. Hamilton sold Horizon Notes through 2010, and even into 2011, months after Randall filed for bankruptcy. When Galileo learned that Hamilton was selling the Horizon Notes in January 2011, it terminated his employment.

[4] Such credits were applied against rent owed, office expenses, or monies owing as a result of "chargebacks" for insurance commissions previously received by agents when policies were later rescinded or canceled.

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

33. In a letter accepting his termination, Hamilton acknowledged selling Horizon Notes despite knowing they were outside the Galileo and credit union approved-products platform, and that he used the credit union platform to gain the trust and confidence of credit union members to sell the Horizon Notes in order to make a commission.

34. Hamilton continued to sell Horizon Notes through June 2011.

Investors Who Only Met with Hamilton Prior to Investing

Investor P.T.

35. P.T. met Hamilton through her credit union, Summit One, where Hamilton had an office, in 2009. Hamilton called her and told her he was working with Summit One as a "financial advisor" and invited her to meet to discuss financial planning issues.

36. P.T. was in the process of retiring and Hamilton asked her to bring all of her financial records to the meeting. Hamilton then recommended she invest some of the monies from her 401(k) in Horizon Auto Funding.

37. In connection with the offer and sale of the Horizon Note to P.T., Hamilton misrepresented material facts including but not limited to the following:

a. Hamilton was a "financial advisor" selling a product he was properly trained, licensed and authorized to sell;

b. Hamilton had "checked out" Randall and researched Horizon Auto Funding, and it was a "safe" investment; and

c. if she invested in the company for three years, she would receive a 10.5% annual return on her investment.

These representations were false.

38. P.T. went to Hamilton's office where he assisted her in completing the paperwork necessary to transfer $38,533 in retirement funds from a T. Rowe Price mutual fund account to invest in Horizon Auto Funding. She received a promissory note issued by Horizon Auto Funding dated February 24, 2010 which was supposed to pay interest at 10.5% per annum for a three-year period. P.T. did not receive interest as promised and is still owed at least $38,533 in principal alone.

Investor T.H.

39. T.H. met Hamilton in 2009 through her credit union, BECU. Hamilton represented himself to be a "financial advisor" and recommended she invest retirement monies in Horizon Auto Funding.

40. In connection with the offer and sale of the Horizon Note to T.H., Hamilton misrepresented material facts including but not limited to the following:

a. Hamilton was a "financial advisor" selling a product he was properly trained, licensed and authorized to sell;

b. the company was in business for over 10 years;

c. her money would be used for loans on the sale of European cars;

d. her monies would earn 9% interest per year; and

e. the Horizon Note was not a risky investment;

These representations were false.

41. In May 2010, T.H. invested $16,520 in Horizon Auto Funding. She received a promissory note issued by Horizon Auto Funding dated May 25, 2010, which was supposed to pay 9% per annum interest for a three-year period. She did not receive interest as promised and is still owed at least $16,520 in principal alone.

Investors M.C. and T.C.

42. Investors M.C. and T.C., a married couple, met Hamilton in 2010 through their credit union, Weber Credit Union. M.C. had just retired and was looking for someone to help manage his retirement account. Hamilton represented himself as a "financial advisor". After meeting with Hamilton, he recommended they both invest in Horizon Auto Funding and provided them with all the documents necessary to make an investment.

43. In connection with the offer and sale of Horizon Notes to M.C. and T.C., Hamilton misrepresented material facts including but not limited to the following:

a. Hamilton was a "financial advisor" selling a product he was properly trained, licensed and authorized to sell;

b. the company was very successful and had been in business for the past 15 years;

c. an investment with Horizon carried "next to no risk";

d. an investment would pay at least the minimum annual interest of 10.5% and possibly more;

e. their principal was secure and "guaranteed" due to Randall's ownership of cars, car lots, real property and buildings; and

f. the amount of the interest earned was the only part of the investment subject to any risk.

These representations were false.

44. In May 2010, M.C. invested $24,832 of his retirement monies into Horizon Auto Funding. In July 2010, T.C. invested $ 40,000 in Horizon Auto Funding. The Horizon Notes purchased were to pay 10.5% interest annually over a three-year period.

45. Several weeks after T.C.'s investment, Hamilton received a "commission bonus" in the amount of $4,000, or 10% of T.C.'s investment,[6] from the insurance agency, as compensation for T.C.'s investment.

46. Hamilton later provided additional information to M.C. and T.C. which further portrayed the Horizon companies as a sound investment due to expanding business operations. In the meantime, M.C. and T.C.'s account statements showed that interest was accruing.

[6] At that time, Randall was paying 10% commissions to agents raising up to $50,000 for Horizon Notes.

47. In May 2011, M.C. invested an additional $6,754 of retirement funds in Horizon Auto Funding, and in June 2011, more than six months after Randall had declared bankruptcy, T.C. invested approximately an additional $52,351 in Horizon Auto Funding.

48. M.C. and T.C. did not receive interest as promised. M.C. is owed at least $31,586 in principal alone, and T.C. is owed at least $92,351 in principal alone.

Investor C.W.

49. C.W. met Hamilton through her credit union, BECU. At the time, she had some monies invested at the credit union in CDs and was interested in learning about other options that might pay a higher interest rate. As a "financial advisor" officed in her credit union, Hamilton met with her several times, reviewed her financial situation and documents, and recommended she invest in Horizon Auto Funding.

50. In connection with the offer and sale of the Horizon Note to C.W., Hamilton misrepresented material facts including but not limited to the following:

a. Hamilton was a "financial advisor" selling a product he was properly trained, licensed and authorized to sell;

b. Hamilton had researched Horizon Auto Funding, and found it to be a "solid" company and a "safe" investment;

c. if she invested in the company for three years, she would receive a 12% annual return on her investment; and

d. her money would be used to fund the company's operations financing the sale of repossessed high-end automobiles.

These representations were false.

51. Thereafter, at Hamilton's recommendation, C.W. refinanced two homes and withdrew $55,000 of home equity to invest, a majority of which came from her primary residence. Hamilton told her investing was a better use of her home equity than simply letting those values sit. She also cashed in a $15,000 certificate of deposit to bring the total investment amount up to $70,000.

52. In October 2010, she gave Hamilton a $70,000 check. In return, she received a $70,000 promissory note for a three-year term issued by Horizon Auto Funding, LLC with an interest rate of 12% per annum.

53. Several months later, Hamilton contacted C.W. to tell her he had left the credit union. At that time, he asked her to sign a document holding BECU harmless for any previous investments she made through Hamilton. She signed the document.

54. After her investment, C.W. heard nothing further and received no statements. In May 2011 she called Hamilton to inquire. He gave her a phone number for Horizon, after which she called and requested an investment statement from Horizon, and received a document showing her investment was valued at $75,156.67. She has not received any payments under the note and is still owed at least $70,000 in principal alone.

55. Hamilton called C.W. on September 23, 2011 to advise her that Randall was filing a personal bankruptcy, even though Randall had in fact filed personal bankruptcy ten months earlier.

Investor B.M.

56. B.M. met Hamilton through her credit union, BECU. In June 2010, after being solicited by Hamilton she invested approximately $25,000 in Horizon Auto Funding. B.M.'s investment consisted of $12,964 of nonretirement monies and $11,893 in retirement monies. Hamilton helped fill out the paperwork.

57. In connection with the offer and sale of the Horizon Note to B.M., Hamilton misrepresented material facts, including but not limited to:

a. Hamilton was a "financial advisor" selling a product he was properly trained, licensed and authorized to sell;

b. Hamilton had also invested his own monies; and

c. the investment would give her enough money to "make ends meet".

These statements were false.

58. B.M. did not receive interest as promised and is still owed at least $24,857 in principal alone.

Investor B.M.S.

59. Investor B.M.S. met Hamilton through her credit union, BECU. In February 2010, after being solicited by Hamilton, she invested approximately $2,000 of retirement funds in Horizon Auto Funding.

60. In connection with the offer and sale of the Horizon Note to B.M.S, Hamilton misrepresented material facts including but not limited to the following:

a. Hamilton was a "financial advisor" selling a product he was properly licensed, trained and authorized to sell;

b. the company had been in business for 25 years; and

c. the investment was risk-free, required no maintenance, and was a good place to put her money in and "forget about it".

These representations were false.

61. B.M.S. did not receive interest as promised and is still owed at least $2,000 in principal alone.

Investor G.H.

62. G.H. met Hamilton in 2009 after Hamilton cold-called her. He told her he was working with her credit union, Summit One, where he also had an office. In early 2010 after several telephone calls, G.H. met with Hamilton to discuss her plans to retire. G.H. was

looking to safely supplement her retirement funds and make a higher return than she would with conventional products such as savings and CD accounts.

63. After reviewing her assets and retirement plans, Hamilton told G.H. about an investment opportunity with Randall, and recommended she invest in Horizon Auto Funding. Hamilton misrepresented material facts in connection with the offer and sale of the Horizon Note, including but not limited to:

a. Hamilton was selling a product he was properly trained, licensed and authorized to sell;

b. that her monies would be used to finance car loans;

c. that the investment would generate an annual interest return of 12%; and

d. that in the event of default the company would repossess and sell the cars.

These statements were false.

64. In January 2010, G.H. invested $65,325 of retirement monies in Horizon Auto Funding, for which she received a promissory note with an annual interest rate of 12% per annum and a term of three years.

65. A year later, after receiving a statement reflecting gains in her account, G.H. believed the first investment had been very successful. After further discussions with Hamilton, she transferred monies from her T. Rowe Price mutual fund account in order to invest in another Randall company.

66. On January 21, 2011 G.H. made her second investment, also consisting of retirement monies, in the amount of $252,980. While G.H. understood her monies were to be invested in real property, the monies actually went to Horizon Auto Funding instead. That investment was made approximately one month after Randall filed for personal bankruptcy.

67. G.H. received a promissory note with an annual interest rate of 14% and a term of three years.

68. Hamilton misrepresented material facts in connection with G.H.'s second investment, including but not limited to:

a. Hamilton was selling a product he was properly trained, licensed and authorized to sell;

b. her monies would be invested in income-producing real property rather than Horizon Auto Funding;

c. that as G.H. came closer to retiring, the Horizon investment was a safer place than the T.Rowe Price mutual fund account where the monies had been;

d. that the investment would be secured by real property;

e. that G.H. would receive a trust deed as evidence of the secured investment;

f. that by having the trust deed, there was no risk in the investment;

g. the investment would pay 14% interest annually over a three-year period; and

h. G.H. would be able to live off of the interest she was being paid instead of her principal.

These representations were false.

69. Several weeks after G.H's second investment, Hamilton received a "marketing bonus" in the amount of $17,708.60 or 7% of G.H.'s investment,[7] from the insurance agency, as compensation.

70. In March 2011, the interest payments on G.H.'s second investment started becoming delinquent and she has not received interest as promised. G.H. never received the trust deed she was promised, and later learned from the county recorder's office that no legal interest in her name was recorded. She is still owed at least $318,305 in principal alone.

Investors Who Met with Hamilton and Randall Prior to Investing

Investor D.M.

71. D.M. met Hamilton through her credit union, Summit One, where Hamilton had an office, in 2009. Hamilton called her and told her he was working with Summit One as a "financial advisor" and invited her to meet to discuss financial planning issues.

[7] At that time, Randall was paying 7% commissions to agents raising amounts greater than $50,000 for Horizon Notes.

72. D.M. had been in an automobile accident that forced her to quit her job and was seeking extra income and also was looking for somewhere to invest monies from her employer-sponsored retirement plan.

73. In February 2009 D.M. met with Hamilton at the credit union. Hamilton told D.M. about an investment opportunity with Randall, whom Hamilton described as a local businessman with whom Hamilton had worked in the past. Hamilton indicated he had previously referred other clients to Randall.

74. Following those discussions, Hamilton set up a meeting with Randall in June 2009. Hamilton attended the meeting with D.M. and Randall.

75. Randall presented various investment opportunities to D.M. In December 2009,[8] based on Hamilton's endorsement and Randall's representations, D.M. invested $62,000 of retirement monies in Horizon Notes which were to pay 14% annual interest.

76. In February 2011, after several months where interest did not appear in her account statements, she contacted Hamilton and met with him. Hamilton insisted there were no problems with the company. After Horizon employee Keith Arnell ("Arnell") reassured her likewise, a new note was issued by Horizon Auto Funding for $2,750.81, the amount of the "missing" interest, also to pay 14% annual interest.

[8] Although Hamilton was a licensed broker-dealer agent of BIFS at that time, Hamilton had not reported his Horizon activities to BIFS and BIFS did not review or approve the sales.

77. In connection with the offer and sale of the Horizon Notes to D.M., Hamilton misrepresented material facts, including but not limited to:

a. Hamilton was a "financial advisor" selling a product he was properly trained, licensed and authorized to sell;

b. the investments offered by Randall were "secure" and legit";

c. an investment with Horizon Auto Funding was low-risk if any risk at all;

d. the investment would be safe because cars could simply be repossessed in the event of nonpayment; and

e. denying that Horizon Auto was in any financial trouble in 2011.

These representations were false.

78. D.M. did not receive interest as promised and is still owed at least $62,039 in principal alone.

Investors R.R. and D.R.

79. In April 2010, a married couple, R.R. and D.R., met Hamilton through their credit union, BECU, where Hamilton had an office. Hamilton represented himself as a "financial advisor" of the credit union. At the time, R.R. and D.R. were interested in investment options for about $20,000 then invested in CDs.

80. Hamilton recommended an investment with Randall, telling them he had worked with Randall in the past, and that they could earn 12-15% annual interest. Hamilton told them an investment with Randall would be safe, and that it was appropriate for their retirement monies. Based upon Hamilton's recommendations, R.R. and D.R. liquidated mutual funds they held at Fidelity Investments in retirement accounts in order to invest.

81. In connection with the offer and sale of the Horizon Notes to D.M., Hamilton misrepresented material facts, including but not limited to:

a. Hamilton was a "financial advisor" selling a product he was properly trained, licensed and authorized to sell;

b. an investment with Randall would be safe and sound;

c. the investment would earn 12-15% interest;

d. their investment principal would be fully secured by a mortgage on a fourplex.

These representations were false.

82. In August 2010, after meeting with Hamilton and Randall, R.R. invested $146,288 and D.R. invested $34,354 in Horizon Mortgage and Investment, Inc., for which they received promissory notes paying 12% interest per annum, as well as a Trust Deed purportedly securing the principal amount of the investment.[9]

[9] R.R. later found out he had no legally enforceable claim to the property due to another investor having a first lien position.

83. In 2011, interest payments stopped and R.R. and D.R. requested the return of their monies. They are still owed at least $180,642 in principal alone.

Omissions of Material Facts by Hamilton - All Investors

84. In connection with the offer and sale of Horizon Notes, Hamilton failed to disclose material facts to all investors described above, including but not limited to:

a. that he was not licensed to offer or sell securities such as the Horizon Notes;

b. that he was not licensed or qualified to give investment advice;

c. his lack of experience, qualifications, and training to advise investors about financial planning issues, including retirement planning;

d. that neither the credit union, BIFS, nor Galileo had reviewed, approved, or authorized his offer and sale of Horizon Notes;

e. that Hamilton would be compensated through the insurance agency, which was not a broker-dealer, in violation of securities laws and industry rules;

f. relevant disclosures about the Horizon entity issuing the notes, including its financial condition and liabilities;

g. that as nonaccredited investors, they were entitled to review audited financial statements for the company prior to investing;

h. that the subscription agreements the investor signed falsely indicated she/he had received and reviewed a Private Placement Memorandum prior to investing;

i. that Randall's entities had a history of missing or late interest payments; and

j. that the investor's money would be moved into Randall's other companies, used to pay other investors' interest, or for other personal use.

Offer and Sale of Unregistered Securities

85. Hamilton's investors were unsophisticated, nonaccredited[10] investors. Sales of the Horizon Notes purported to comply with Rule 506 of Regulation D. To qualify for an exemption from registration under Regulation D, nonaccredited investors must be provided audited financial statements for the entities in which they invest, prior to investing. Audited financial statements were not provided to investors prior to investing.

86. Audited financial statements for the Horizon entities were material because they would have shown that contrary to representations made to investors, the entities were operating at a loss rather than a profit.

87. As a result, the securities sold by Hamilton fail to qualify for the exemption from registration provided by Regulation D, rendering the securities unregistered, in violation of Section 61-1-7 of the Act.

Criminal Charges against Hamilton

88. On September 21, 2015 Hamilton was charged in a parallel criminal action in Utah's Second District Court, Weber County, Ogden Dept., Case No. 151902046 ("criminal action"). On November 16, 2016 Hamilton resolved the criminal action by pleading guilty to one Class A misdemeanor for attempted securities fraud. As part of the plea agreement, he agreed to pay $38,000 in restitution. At sentencing, however, Hamilton was ordered to pay restitution totaling $382,085 and sentenced to 250 days in the Weber

[10] Accredited investors are defined in Rule 501 of Regulation D. See http://www.sec.gov/answers/accred.htm

County Jail with work release. Hamilton appealed the restitution figure to the Utah Court of Appeals which affirmed the sentencing court's decision regarding that amount.

II. CONCLUSIONS OF LAW

Misrepresentations and Omissions of Material Facts under § 61-1-1(2) of the Act

89. Hamilton violated Section 61-1-1(2) of the Act by misrepresenting and omitting material facts as described herein in connection with the offer and sale of the Horizon Notes.

Selling Away - Act, Practice, Course of Business Operating as a Fraud under § 61-1-1(3) of the Act

90. By holding himself out as a "financial advisor" and selling Horizon Notes to credit union customers who understood the Horizon Notes to be legitimate investments approved by and sold through the credit unions, Hamilton engaged in an act, practice, or course of business which operated as a fraud upon the investors, the credit unions, Galileo, and his employing broker-dealer BIFS, and in so doing exposed the credit unions, Galileo, and BIFS to civil liability.

Unlicensed Agent Under § 61-1-3 of the Act

91. The only entity through which Hamilton was ever licensed to sell securities was BIFS.

92. As described herein, Hamilton conducted securities transactions through and was paid compensation by the insurance agency, which was not licensed as a broker-dealer.

93. Moreover, during the brief time he was licensed, Hamilton's Series 6 license limited his securities activities to selling mutual funds and variable insurance products through BIFS.

94. Accordingly, the offer or sale of the Horizon Notes by Hamilton violated Section 61-1-

3(1) of the Act.

95. In addition, Hamilton recommended that certain investors, T.C., R.R., D.R., P.T., and G.H. liquidate securities held in their existing accounts in order to purchase the Horizon Notes, which constitutes further unlicensed activity in violation of Section 61-1-3(1) of the Act.

False Statements to Division Under § 61-1-16 of the Act

96. Hamilton's Form U4, a document filed with the Division through CRD, was false and misleading at the time it was filed because it failed to disclose Hamilton's business activities with Horizon, and significantly, did not disclose that Hamilton was receiving securities compensation from Randall's agency, rather than the broker-dealer with which he was licensed.

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

97. As set forth herein, Hamilton sold unregistered securities to investors in violation of Section 61-1-7 of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

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

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

100. Respondent 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.

101. Respondent agrees to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor monies in Utah.

102. Pursuant to Utah Code Ann. Section 61-1-20 and in consideration of the factors set forth in Section 61-1-31 and Respondent's financial situation and ability to pay, the Division imposes a fine of $38,000.00. The fine shall be offset by restitution paid by Hamilton as ordered in the Second District Court criminal action. Any payments for which Hamilton seeks an offset must be made no later than January 31, 2020. As of the date of this Order, Hamilton has paid a total of $18,000.00 in restitution.

IV. FINAL RESOLUTION

103. 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.

104. 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 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.

105. Respondent shall notify the Division within thirty (30) days of any change of address.

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

107. 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 18 day of January, 2019

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 17 day of January, 2019

Dean A. Hamilton

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither are admitted nor denied by Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondent is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor monies in Utah.
4. Pursuant to Utah Code Ann. Section 61-1-20 and in consideration of the factors set forth in Section 61-1-31, and Respondent's financial situation and ability to pay, Respondent shall pay a fine of $38,000.00. The fine shall be offset by any restitution paid by Hamilton as ordered in the Second District Court criminal action. Any payments for which Hamilton seeks an offset must be made no later than January 31, 2020.

BY THE UTAH SECURITIES COMMISSION:

DATED this 24th day of January, 2019

Brent Baker

Brent Cochran

Gary Cornia

Peggy Hunt

Lyle White

CERTIFICATE OF SERVICE

I certify that on the 24th day of January, 2019, I mailed and emailed a true and correct copy of the Stipulation and Consent Order to:

Mailed to:

Dean A. Hamilton
[redacted]

Emailed to:

Bruce Dibb
bdibb@utah.gov

Kenneth Barton
kbarton@utah.gov

Jennifer Korb
jkorb@agutah.gov

Administrative Assistant