Utah Division of Securities Commission
Meeting Minutes
November 29, 2018
9:00 a.m.
Room 451

Division of Securities Staff Present

1. Tom Brady, Division Director
2. Vickie Cutler, Commission Secretary
3. Kenneth Barton, Compliance Director
4. Dee Johnson, Investor Education Director
5. Karen McMullin, Investor Education Coordinator
6. Chareles Lyons, Securities Analyst
7. Liz Blaylock, Enforcement Investigator
8. Russ Bulloch, Securities Examiner
9. Nathan Summers, Securities Examiner
10. Elizabeth Blaylock, Investigator

Other State of Utah Employees

1. Tom Melton, Assistant Attorney General
2. Jennifer Korb, Assistant Attorney General
3. Paula Faerber, Assistant Attorney General
4. Bruce Dibb, Department of Commerce Administrative Law Judge

Commissioners Present

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

Public Present:

1. Anthony Kaye, Cuso Financial Services

Minutes: At a 9:02 the meeting was called to order by Commissioner **Brent Baker.** Commissioner **Brent Cochran** made a motion to approve the minutes from the October 4, 2018 Commission meeting and Commissioner **Lyle White** seconded the motion. The motion was approved unanimously.

Director's Report:

- **Personnel**: Bryan Cowley is away at a NASAA Corporate Finance Training and Dave Hermansen is out this week are excused from meeting. Their reports will be provided by members of their respective sections. Aaron Jaynes was hired as a new Investigator in the Enforcement Section. Aaron comes to the Division with his Series 7 and Series 63 license. He brings industry experience coming from Fidelity and prior to his employment there he was on officer with the University of Utah police, which brings an enforcement background as well. His first day will be December 3, 2018.
- **Heber Wells Update**: You may have noticed that the elevators were not working in the lobby. The week before last the building had multiple joints and valves burst as a result of a chemical solution that was run through the boiler lines of the building. The intent was to clear out any buildup or residue, which it did, but in the process it removed rust particles that were holding together faulty joints. This resulted in serious flooding throughout several parts of the building, including the elevator shaft. As the elevators are being cleaned, inspected, and repaired it may take up to four months to repair, according to the latest reports. In the meantime the 2nd and 4th floor are not accessible to the public except by appointment until the remediation project is complete.

Compliance Section Report:

- **Exam Statistics YTD 2018:** The Compliance Section has initiated twenty (24) compliance examinations, eighteen (18) exams were for-cause exams triggered by investor complaints or regulatory agency referrals, six (6) are routine examinations. The Section has also opened 19 new Investment Adviser license approval exams and three exams reviewing registration and licensing issues discovered during Rule 506 private offering filing inspections. In a total the Section has originated forty-six (46) exams this year.
- **Action Updates**: The Compliance Section has six (6) administrative actions and (2) criminal actions in progress. Two of the administrative actions are on today's agenda to seek approval of negotiated Stipulation and Consent Orders. Two administrative actions are stayed pending the conclusion of criminal court cases. One of those stayed actions has an update. On October 29, 2018 the Utah Court of Appeals affirmed the trial court's action making way for the stay to be lifted. At issue in the appeals case was a District Court ruling to increase the restitution to be paid by the Defendant, Dean Hamilton, above the restitution amount negotiated, as part of a plea agreement with the Utah Attorney General's Office. Mr. Hamilton pled guilty to one count of attempted securities fraud and is now responsible to pay approximately $382,000.00 in investor restitution. One administrative action is still in progress with the Division seeking a negotiated settlement or disposition via a hearing. One administrative action is Utah portion of a NASAA (North America Securities Administrators Association) multi-state settlement involving Blue Sky Law violations by a broker-dealer firm across the country. Regarding the two

referred criminal actions, the case involving Eric Sampson is awaiting a sentencing hearing which has been scheduled for early 2019 to allow the Sampson to raise funds for victim restitution. The second case is back with the trial court following an unsuccessful appeal to the Utah Supreme Court. Scott Stewart's securities fraud trial is scheduled to resume in May 2019.

Enforcement Section Report:

- **Case Updates**: Enforcement currently has 70 cases under investigation. This is an increase of 12 cases since the last Commission meeting. The case load has not slowed as far as incoming complaints and cases and the pre-dominate areas of investigation have been: crypto scams, promissory notes, real estate, precious metals and more recently medical and recreational marijuana type business ventures. It is expected there will be an increase in the marijuana type offerings in the upcoming months given the newest changes laws.
- **Filed OSCs**: Enforcement currently has 13 filed Order to Show Cause actions in various stages, and 7 OSCs in the queue waiting to be filed/drafted.
- **Rare Rust Coin Review: U**nder investigation and active litigation, updates limited. On 11/15/2018 the Division obtained and executed a temporary restraining order against Gaylen Rust and his business, Rust Rare Coin. The Division utilized Enforcement, Compliance and Licensing staff to fulfill this operation as well as additional agents from other divisions within the Department of Commerce. We also utilized NASAA partners and local law enforcement. Approximately 10 local, state and federal agencies participated as well as roughly sixty agents took part in coordination in part of facilitating simultaneous service throughout the country. The Division is pursing anything and everything to protect Utah and nationwide investors affected in this case.

Registration and Licensing:

- **Individual Licensing Process:** When a firm applies for an individual to be licensed in the state of Utah, it is done electronically through the CRD system maintained by FINRA. Broker-dealer agents and investment adviser representatives who have no examination issues, dual-license applications, or a disclosure history are immediately approved in Utah. Those attempting to be dual licensed or have examination issues are sent letters to tell the firms how to resolve the issues. Those with a disclosure history are elevated to Nathan Summers for review. After reviewing an individual's disclosure history, the license may be approved or additional information requested from the firm. Once sufficient information has been received the license is approved through the CRD system and the firm is notified of the approval. Occasionally there are circumstances where a firm will be allowed to withdraw the license request to avoid a denial on the firm's record or, they may be approved, if in agreement with terms of heightened supervision for the individual.
- **Goals:** The Division of Securities goal is resolve all licensing applications within 30 days of application. This year 90.95% of all individual applications within 30 days of application being made. The average time it has taken for applications to be process is 11.6 days.
- **Year to Year Comparisons:** Last year, 88.13% of applications were processed within 30 days of application. The average days to process an application was 20.12 days. The Division of Securities attribute the increase in statistical performance due to the fact that all letters are sent by certified mail and email this year whereas in past years they have only been sent via certified mail and are continuing to look for ways to more efficiently process applications while still protecting the investing public in Utah.

Investor Education:

- **Event Update:** Since the last Commission meeting in October, the Division has participated in 4 events with an estimated audience of 344. The events included 3 URS Educational Seminars, and the Financial Fraud Institute sponsored by the SEC. In 2018, the Division has participated in 61 events with an estimated audience total of 19,452.
- **Stock Market Game Update:** The Utah State Treasurer's Office took over the administration of the Stock Market Game on November 1, 2018. The remaining Stock Market Game items were delivered to the Capitol on Monday, November 26.
- **Future Events:** We are currently scheduling Investor Education events for 2019. Due to the increased case load, prior to accepting education opportunities, the Division is evaluating each invitation for staff availability and looking into maximizing outreach potential.
- **Success Stories:** Because of past invitations we had to decline, we introduced the Division of Consumer Protection to one of our partners, PEHP, who had invited us to participate in their many Medicare Open Enrollment seminars during October, November and December. Consumer Protection accepted and through participating in these seminars, the consumer protection message to the senior citizens in the PEHP system has reached hundreds of individuals.
- **New Brochure:** In connection with the Rust Rare Coin case, on November 19, 2018 contacts at the CFTF agreed to send 1,000 copies of their brochure alert titled 'Precious Metals'. The CFTC has a new Whistleblower brochure which we will try to obtain and distribute at events.
- **Question 1:** What does CFTC stand for? Commodity Futures Trading Commission.

Education and Training Fund Report:

Nathan Summers presented the Division of Securities Education and Training Fund Report. Following the presentation of the Education and Training fund Commissioner **Brent Baker** called for a motion to approve. Commissioner **Brent Cochran** made the motion to approve the funding request, in the amount of $20,000.00, to the Education and Training Fund. Commissioner **Lyle White** seconded the motion. The motion was approved unanimously.

Recess – off record 9:21, on record 9:26.

Consideration and Approval of Proposed Orders:

1. **Cuso Financial Services, L.P.; SD-18-0017: Stipulation and Consent Order.**
   Tom Melton reported that Cuso Financial Services conducts business in Utah through networking agreements with America First Credit Union (AFCU) which is not a licensed broker-dealer. The networking agreement allows licensed broker-dealers to offer onsite broker services at AFCU. In 2015 & 2016 the division conducted examinations on a number of broker-dealers transacting business in Utah on the premises of Utah credit unions. On or about April 5, 2018, the Division initiated an administrative action against Respondents by filing a petition. As a result of that investigation, and Cuso failing to comply with regulatory guidance and requirements governing network agreements, a petition was filed in April 2018. The petition alleged various violations of provisions, but only the terms of the Stipulation

and Consent Order (SCO) were reviewed. Cuso was allowed neither to admit nor deny that the division's findings and conclusions in the paragraphs of the SCO which included specifically a failure to supervise and includes: misleading advertising, misleading public communications and a failure to follow their networking agreement disclosure requirements. Cuso and the division have discussed SCO terms over several months and the remedial measures to satisfy the division's concerns. Cuso will pay a fine of $100,000.00 within 10 days of the entry of the order.

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

2. **Aspen Capital Management; SD-18-0003: Stipulation and Consent Order.**
Ken Barton reported on March 27, 2018 the Division filed a Petition to Censure and Fine Aspen Capital Management, LLC. In November 2016 the Division conducted an examination of the Respondents St. George office location. The exam was triggered by an investor complaints and the Respondent's prior affiliation with Registered Investment Adviser, MyIA and its principal Eric Sampson. Aspen is a small Registered Investment Advisor firm established in 2015 and uses referrals to 3rd party professional money managers to implement its money management advice offering. The division concludes the Respondents engaged in a Dishonest and Unethical Business Practice as identified in the Conclusions of Law Section of the Stipulation and Consent Order and found Aspen had several books and record deficiencies. Additionally, Aspen and their principals were found not to have supervisory controls in place to meet regulatory requirements. Aspen was ordered to pay a $25,000.00 find which the division will offset up to $5,000 for documented compliance consultant expenses. Investment Advisor Representative Matheson was ordered to pay a $4,000 fine.

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

3. **Texas Energy Mutual, LLC; SD-18-0018 : Default Order**
Jennifer Korb reported this case was filed in May 2018 and the Division successfully served all of the respondents. Respondents failed to response to the Order to Show Cause (OSC), failed to appear at the initial hearing held in July 2018. The Division moved for default in November 2018 and the Respondents failed to response to that motion. This case involved one Utah investor who invested and lost $50,000 in 2014. Respondents made misrepresentations and omissions of material facts of oil well drilling operations. Most notably, they failed to disclose numerous outstanding judgments, significant criminal histories, misuse of investor funds and securities were sold without the proper licenses. Additionally, all Respondents were charged in parallel action in a Federal Court in Texas and our single Utah investor is included in that case. All Respondents pled guilty and were sentenced to prison. The recommended Default Order includes the allegations contained in the OSC are true and include a cease and desist, permanent bar and fines in the amount of $10,000 against the entity and $15,000 each against other Respondents.

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

4. **Globa, Inc.; Kenneth Ekow Andam; SD-16-0033, SD-16-0034: Order on Motion for Summary Judgment as to Globa, Inc.**
Jennifer Korb reports that a pending Motion for Summary Judgment as filed in August 2018 with respect to Globa, Inc. alone. At the October 4, 2018 Commission meeting the Commission order granting a Motion for Summary Judgment with respect to Respondent Andam. There was a question as to whether proper notice was provided to the entity and that matter has been cleared up. After receiving some additional time to review and respond to the Motion for Summary Judgment Globa, Inc. did not file a response to that Motion. As a result, Judge Dibb issued the Findings of Fact, Conclusion of Law and Recommended Order (FOF/COL). The Order includes the FOF/COL as to Globa, Inc. are approved and entered. Additionally it includes a cease and desist order, permanent bar and a fine of $417,000.00 against Globa, Inc. reduced dollar for dollar with any restitution paid to the Investors up to $317,000.00; restitution has been paid in full.

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

Hearing scheduled for November 30, 2018 is cancelled.

Future Meeting Schedule:
January 10 & 11, 2019; room and time TBD
January 24, 2019; room and time TBD
March 21, 2019; room and time TBD
May 23, 2019; room and time TBD

Commissioner **Brent Baker** called for a motion to adjourn the November 29, 2018 Division of Securities Commission Meeting. Commissioner **Peggy Hunt** made a motion adjourn the Commission meeting and Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously. Meeting adjourned at 10:44 am.

Date: 1/24/19

Approved: Brent Baker, Chairman