

Utah Division of Securities Commission
Meeting Minutes
January 24, 2019
9:00 a.m.
Room 451

Division of Securities Staff Present

Tom Brady, Division Director
Vickie Cutler, Commission Secretary
Kenneth Barton, Compliance Director
Dave Hermansen, Enforcement Director
Bryan Cowley, Registration and Licensing Director
Chip Lyons, Securities Analyst
Francswai Davis, Securities Analyst

Other State of Utah Employees

Jennifer Korb, Assistant Attorney General
Paula Faerber, Assistant Attorney General
Bruce Dibb, Department of Commerce Administrative Law Judge

Public Present:

Jonathan Rupp, Mountain America Credit Union

Commissioners Present

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

Minutes: At a 9:00 the meeting was called to order by Commissioner **Brent Baker**. Commissioner **Brent Baker** made a motion to approve the minutes from the November 29, 2018 Commission meeting and Commissioner **Peggy Hunt** seconded the motion. The motion was approved unanimously.

Director's Report (1 m, 10 s):

1. Personnel
 - a. Nationwide there is an increase in fraud investigations and complaints and Utah has been no different. Due to the increase in fraud complaints that require investigation two interns for the Enforcement Section have been hired, Shantel Sanders and Halee Rogers. Both are currently students at Brigham Young University pursuing a master's degree in Public Administration. We are happy to have them, have assigned them to certain investigations and working with Investigators.
 - b. In addition, the Division is currently in the process of hiring a contract securities investigator to help with the backlog of cases. We hope to have an update on that for the Commission at the next meeting.

Enforcement Section Report (3 m, 25 s):

1. Currently have approximately 60 cases, half are being investigated and other half are on backlog. The Division is hoping to make headway with the current personnel changes.
2. Case Updates:
 - a. Earlier this month a 3 day criminal trial was held in 3rd District Court in the matter of Shannon Fitzgerald. Shannon is the wife of Michael Fitzgerald, who was also charged in this scheme, which defrauded investors out of \$1.6 million dollars. The five investors were told they were investing in a real estate development in Utah County. Shannon was originally charged with 18 counts of securities fraud and one count of pattern of unlawful activity. The investigation revealed that she made misrepresentations and omitted material information to investors and spent investor's money for purposes other than the real estate investment including personal expenditures for her family. Shannon Fitzgerald received and spent all of the money, she was the sole signature on the bank account. The jury took six hours to deliberate. They ultimately returned a verdict of guilty on 11 counts of securities fraud and one count of pattern of unlawful activity. Shannon was sentenced by Judge Blanch on March 8, 2019. This case was investigated by Dee Johnson and prosecuted by the Utah Attorney General's Office.
 - b. In July of 2018, Clint Nordahl was charged with 12 felonies for his role in a multi-million dollar fraud scheme whereby he told most of the investors their investment funds would be used for his trucking logistics firm, when in fact, their money was used of day trading in the stock futures and options market. Nordahl obtained in excess of \$2.8 million from at least 39 investors over a 5-year period. He lost all their funds in the day trading scheme, Nordahl solicited his friends, family, neighbors and those he met through local religious activities. Some examples include an elderly woman in his ward that he was visiting during a home-teaching visit, the parents of a boy in his son's basketball league, a widow he met on an LDS dating website and promised to propose marriage in the near future, among others. Subsequent to the charges being filed, Nordahl agreed to plead guilty in the case to two counts of second degree securities fraud and one count of pattern of unlawful activity. On January 22nd, Judge Parker ordered Nordahl to pay full restitution to his victims. Judge Parker further sentenced Nordahl to serve an indeterminate term from 3 to 15 years and not less than 1-5 years for each one of the accounts. The sentences are to run consecutively. Nordahl was immediately taken into custody.

Question 1: Lyle White asked how the workload was prioritized. Enforcement Director Hermansen advised Statute of Limitations, ongoing crime, elderly, victims and how much money are basically the criteria. The Division tries to process on a first come first serve basis but there are too many coming in.

Compliance Section Report (12 m, 29 s) :

1. Exam Statistics Year-End 2018- The Compliance Section has initiated thirty-four (34) compliance examinations, (19) exams were for-cause exams, fifteen (15) were routine examinations. In 2018, 55% of exams were for-cause exams triggered by investor complaints or regulatory agency referrals. As a benchmark the Division's five year average of complaint driven exams is 49%. The Section initiated twenty (20) new Investment Adviser license approval exams and three exams reviewing registration and licensing issues discovered during Rule 506 private offering filing inspections. The Compliance Section originated a total of fifty-seven (57) exams in 2018.
2. Action Updates: The Compliance Section is currently working on six (6) administrative orders and (2) criminal actions:
 - a. Three administrative orders are on today's agenda to seek approval from the Commission.
 - b. Two administrative actions have a proposed negotiated settlement agreement, prepared, which will be presented in the March Securities Commission Meeting.
 - c. One administrative action is currently stayed pending the completion of the sentencing phase of a criminal action.
 - d. Regarding the two referred criminal actions: The case involving Eric Sampson is awaiting a sentencing hearing which has been rescheduled for May 2019 to allow the Sampson to raise funds for victim restitution. The second case Scott Stewart's securities fraud trial is scheduled to resume in May 2019 in Utah's Third District Court.

Registration and Licensing (15 m, 31 s):

Bryan Cowley discussed The Regulator Renewal Summary Report. This is a report pulled from the Central Registration Depository (CRD), which is operated by FINRA, and pulled at the end of 2018.

2018 Totals:

1. **Broker Dealer**
 - a. 1,482 Broker Dealer Firms which paid \$296,400.00 in fees. That's \$200 per Firm [1496 in 2017]
 - b. 124,464 Broker Dealer Agents which paid \$7,467,840.00 in fees. [120,202 agents in 2017]
2. **Investment Advisor**
 - a. 1,402 Investment Adviser Firms which paid \$128,100 in Fees [1,349 in 2017].
 - b. 1,163 Federal Covered Investment Adviser Firms & 236 State Covered Investment Adviser Firms.[1,108 federal covered advisors, 238 state covered advisors in 2017].
 - c. 5,499 Investment Adviser Representatives which paid \$274,950 in fees. [5318 in 2017].
3. Total of all fees collected in 2018 was **\$8,167,290** which was up \$267,370 from 2017 and \$613,050 from 2016.

Question 1: Gary Cornia asked compared to other states, ratio of staff, are we in the ballpark. Bryan Cowley and Tom Brady summarized that we were staffed average and other states may conduct operations differently. That we have resources, are trying to be efficient and make the most of our time and acquired some technological advances that will help our Investigators work with better efficiency. Ken Barton offered information about the rate of change and Investment Adviser model and statistics.

Question 2: Peggy Hunt asked with the Legislature in session, do we have a funding budget. Tom Brady advised we do not have any building block requests this year.

Education and Training Fund Report (30 m, 33 s):

Bryan Cowley 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 **Gary Cornia** made the motion to approve the funding request to the Education and Training Fund. Commissioner **Lyle White** seconded the motion. The motion was approved unanimously.

Consideration and Approval of Proposed Orders:

- a. **Mountain America Federal Credit Union DBA Mountain America Credit Union; Mountain America Financial Services Mountain America Investment Services: SD-07-0022, SD-07-0023 and SD-07-0024: Addendum to Consent Order. (32 m, 28 s)**

Jennifer Korb presented this Addendum to the Consent Order entered in March 2007. The 2007 order is the first time the Division addressed communication with the public related to Broker Dealers offering their services on the premises of a credit union. Mountain America Credit Union (MACU) agreed to undertake certain remedial measures to address the Divisions' concerns. The addendum modifies this Respondents' compliance in line with the terms of the LPL Orders, and recent settlements, to ensure MACU is treated in compliance with the Divisions' current policies.

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

- b. **LPL Financial LLC; SD-18-0041: Stipulation and Consent Order. (52 m, 48 s)**

Ken Barton reported this Stipulation and Consent Order is the result of a North American Securities Administrators Association (NASAA) multistate investigation and negotiated settlement. The Utah Division of Securities is a NASAA member. Multistate actions are used as a means to resolve compliance violations that impact multiple states rather than conducting separate investigations. NASAA established a multistate Taskforce lead by state Regulators from Massachusetts and Alabama. Coordinated investigation found LPL failed to establish and maintain policies and procedures to prevent the sale of unregistered, non-exempt, securities. The period for the exam was 10/2006 to 05/2018. Every Broker Dealer is required to have a supervisory system in place to meet all state, federal and self-regulatory organization laws and rules. Including a process to comply with state requirements; also known as Blue Sky laws. During 01/2000 LPL entered into a service agreement with Blue Sky Data Corporations to provide Blue Sky data feeds on a subscription basis. When properly used Broker

Dealer firms have the information needed to confirm and offer or sale of a security in a given state. From 01/2000 to 10/2006 LPL had a manual process in place to apply the data supplied by Blue Sky data corporation for equity securities but did not have that same process in place for non-exempt fixed income securities. During 2006 LPL revised its data subscription feed with Blue Sky Data Corp. to include automated checks to support Blue Sky law compliance. After 10/2006, LPL stopped using its manual process under the assumption that the addition subscription features would systematically block non-compliant transactions from being entered. However, because of a lack of training, supervision and order system implementation LPL failed to take all the necessary steps to ensure its order entry system would block non-compliant trades. LPL failed to implement system upgrades when they were found to be inadequate. In 2014, LPL was mistakenly allowed to cancel its Blue Sky Corp. data feed subscriptions for approximately 8 months. After years of non-compliance LPL is now taking the actions necessary to change their compliance scheme of Blue Sky compliance laws. A summary of LPL's violations were listed, no further actions on a state level may be pursued relevant to this matter and resolves the multistate investigation. LPL has been ordered to cease and desist from violating subsections from 61-1-5, 61-1-6 and 61-1-7; pay a fine of \$499,000.00 within 30 days of the order being entered; agrees to hire an independent and unaffiliated third party, aka an independent reviewer, to complete a historical review of all executed, solicited, purchase orders of equity and fixed-income securities effected by Utah customers during the relevant period; As a result of the reviewers findings, LPL shall complete: 1. Current LPL customers will be offered to repurchase the securities when possible or be paid damages (standard formula), 2. Transfer customers will be contacted by LPL and will make the same repurchase of a security or calculation of customer damages and 3. LPL shall memorialize each offer in writing according to the terms described in section iii (1)(12). LPL, and the independent review, shall be completed by 11/1/2019. Ken Barton provided a summary of terms and the associated due dates.

Question 1: Brent Baker asked about a monetary component and that the operational review will be done by a Compliance Consultant. Ken Barton clarified the fine due to Utah from LPL is \$499,000.00 and Compliance/IT Consultants to ensure LPL does not run into the same problems. It was also clarified that this was its own matter and not tied to a former LPL case.

Question 2: Lyle White asked if we knew of the damages which took place. This information was not available.

Question 3: Brent Baker asked if Utah would be able to have any input on the wording to the investors. Ken Barton offered to work with the lead states, that the home state is best equipped to do that, but we can do checks and balances. Charles Lyons offered information that the order clarifies that a template will be distributed to states and our right to object if we have problems with the language included so we will have input.

Question 4: Lyle White asked if there was anything customized to Utah in this order or if it was standard across all states. Ken Barton advised the order is standard.

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

- c. **Stephen Brandley; Clearwater Funding, LLC: SD-16-0039 and SD-16-0041: Stipulation and Consent Order. (1 hr, 11 m)**
Jennifer Korb reported this matters comes before the commission to correct an unfortunately error. The Stipulation and Consent Order (SCO) signed during the August 2, 2018 meeting was the incorrect version. During that meeting the Investigator presented the correct SCO version and included the correct terms however what was provided to the commission for signature was the incorrect version. The incorrect version included a fine of \$60,000.00 however the correct version includes a statement that the find will be determined by the commission after a hearing. A hearing was conducted during the August 2, 2018 meeting; Mr. Brandley was present and argued his case. At the following commission meeting on October 4, 2018 an order with the fine determination was entered. Mr. Brandley was been contacted regarding the error and we were going to seek to substitute the incorrect version of the order with the correct one. The SCO before the commission is the correct version, it includes language that the fine will be determined by the commission and it supersedes the terms of the August 2, 2018 order; all other terms remain the same.

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

- d. **Dean A Hamilton; SD-12-0078: Stipulation and Consent Order. (1 hr, 15 m)**
Ken Barton reported this matter is the last order that the Division will be bringing with regard to D. Randal case. This administrative action is a companion to a criminal referral to the Utah Attorney General's Office (AGO) in September 2015. Dean Hamilton was a securities license registered representative from 10/2009 to 12/2009. Mr. Hamilton was licensed for the sale of mutual funds and insurance variable contracts only. Hamilton was also licensed as an Insurance Representative from 2009 and 2011. Hamilton was affiliated with D. Randal and his Horizon companies, Randal and his agents raised over \$70 million dollars among other investments, unregistered promissory notes. In June 2016 Mr. Randal plead guilty to multiple securities fraud counts and sentenced to serve 9-30 years in the Utah State Prison and ordered to pay \$108 million dollars in fines and restitution. Mr. Hamilton was an Agent under Mr. Randal's scheme and raise \$890,000.00 in Horizon note sales to 15 Investors and received at least \$33,000.00 in direct compensation. Most of Hamilton's Investors met only with him prior to investing and some sales occurred after Mr. Randal filed for bankruptcy. In November 2016 Mr. Hamilton resolved the criminal action and agreed to pay \$38,000.00 in restitution. At sentencing, Hamilton was ordered to pay a higher restitution amount of \$382,085 and serve 250 days in the Weber County Jail with work release. Hamilton appealed the higher restitution but it was denied. The Division concludes, based on the Findings of Fact, that Hamilton violated the Utah Uniform Securities Act. Division recommends the following sanctions: 1. Hamilton neither admits the Divisions' Findings of Fact and Conclusion of Law and agrees to a cease desist from future violating the act, 2. barred from the Securities industry, 3. Agrees to pay a \$38,000.00 fine eligible to be offset by restitution paid to the Criminal Court. As of January 24, 2018 Hamilton has paid \$18,000.00 which has been verified with the AGO.

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 Baker** seconded the motion. The motion was approved unanimously.

Future Meeting/Hearing Schedule:

January 25, 2019 (regular meeting) – room 451 at 9:00 (cancelled)

March 21, 2019 (regular meeting) - room 451 at 9:00 am.

April 9 & 10, 2019 (hearing) – room 451 at 9:00 am

a. *date 4/8/19, verbalized at the meeting, was incorrect.

b. Hearing will only be held if the commission rejects the proposed order at the 3/21/19 commission meeting.

May 23, 2019 (regular meeting) - room 451 at 9:00 am

Question 1 (1 hr, 22 m): Gary Cornia asked what was happening with the Rare Rust Coin (RRC) Cases. Director Brady advised we can only discuss what has been made public, which is:

a. Case was filed in Federal Court to freeze assets and appointed a Receiver in that case, Jonathan Hafen, who is now working on running the business with the expectation to pay back as many Investors as possible. He is in the process of liquidating assets and make Investors whole.

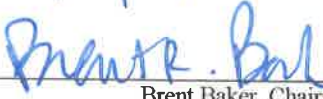
b. As our case progresses we are happy to update the commission.

Commissioner **Brent Baker** called for a motion to adjourn the January 24, 2019 Division of Securities Commission Meeting. Commissioner **Gary Cornia** made a motion adjourn the Commission meeting and Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously. Meeting adjourned at 10:23 am.

Date:

3/21/19

Approved:



Brent Baker, Chairman