

**Utah Division of Securities
Securities Commission Meeting
May 23, 2019
9:00 a.m. – 12:00 p.m.
Room 403**

Division of Securities Staff Present:

Tom Brady, Division Director
Sally A. Stewart, Acting Commission Secretary
Dave Hermansen, Enforcement Director
Kenneth Barton, Compliance Director
Bryan Cowley, Registration and Licensing Director
Chip Lyons, Securities Analyst
Francswai Davis, Securities Analyst
Dee Johnson, Investigator
Liz Blaylock, Investigator
Sean Fuller, Investigator
Megan Sybor, Investigator
Sarah Hatton, Intern
Spencer Price, Intern
Haris Rozajac, Intern

Attorney General Staff Present:

Tom Melton, Assistant Attorney General
Jen Korb, Assistant Attorney General
Paula Faerber, Assistant Attorney General
Robert Wing, Assistant Attorney General

Commissions Present:

Gary Cornia, Acting Chairperson
Lyle White
Brent A. Cochran
Peggy Hunt
Lyndon Ricks, to be sworn in today
Brent Baker, retiring as of today

Public Present:

Gae Baker
Isabelle Baker
Alex Baker
Keith Woodwell, Attorney
Christy Tribe, Junior Achievement of Utah, Inc.
Laura Polacheck, AARP Utah
Susan Speirs, Utah Financial Empowerment Coalition
LuRae Howes
Manly E. Logan, Respondent for #SD-12-0048

Welcome and Call to Order:

Acting Chairperson **Gary Cornia** began the meeting at **9:00 a.m.** by recognizing **Tom Brady** for the presentation of a gift in recognition of service for **Brent Baker**, the retiring Commission. The gift was presented with acknowledgement of eight years of service to the Commission. Mr. Baker noted that his wife Gae, son Alex and daughter-in-law Isabelle were present. He thanked the Division and other Commissioners for the experience and noted his enjoyment in participating over the years.

New Commissioner:

Director **Tom Brady** administered the Oath of Office to the newest member of the Commission, **Lyndon Ricks**. He is affiliated with Michael Best & Friedrich LLP.

Minutes:

Lyle White made a motion to approve the minutes from the March 21, 2019 meeting. **Brent Cochran** seconded the motion. The motion was unanimously approved.

Director's Report:

Director **Tom Brady** reported on personnel changes within the Division. He noted that Vickie Cutler was no longer with the Division and that Sally A. Stewart was temporarily filling in as the Commission Secretary. He indicated the position of Administrative Assistant has been posted and will be filled as soon as possible. He also introduced the three Interns hired for the summer. They are Sarah Hatton, Haris Rozajac and Spencer Price.

He also explained that the Division's Education Fund resources were being used to update equipment and software with increased efficiency and the assistance of the Interns.

Enforcement Section Report:

Enforcement Director **Dave Hermansen** reported that the number of Complaints filed with the Division has increased again. There have been 187 complaints filed since July 2018. The Enforcement Section is currently working on 68 complaints overall. The newest area of complaints at this time is violations by Boards of Directors. This includes a whistleblower complaint on stock sales with commission by the Board of multiple companies.

There are currently 14 outstanding Orders to Show Cause against entities. The backlog includes six Orders to Show Cause being drafted at this time. There are three Stipulations and Consent Orders to be presented to the Commission in this meeting.

The Division has 22 cases being prosecuted criminally with three cases being screened last month. The Rust Rare Coin case has had indictments handed down on three primary individuals in that investigation. That case will be prosecuted in the Federal Courts.

Sentencings have taken place in two cases and are scheduled in three more. The completed ones represent the extremes of sentencing in this type of cases. First was the case of Dean Casutt. He was convicted of one second-degree felony; sentenced to \$300,000 in restitution and 90 days in jail. The second case involved Shannon Fitzgerald. She was convicted of eight counts of fraud involving 1.6 million dollars in losses; resulting in a sentence of three years' probation with restitution of \$198,500 to be paid at \$100 per month. The three upcoming sentencing hearings are for Toby Waggoner scheduled for June 10th, Arenal Energy scheduled in July and Mark Tager, also schedule in July.

There are four cases which are scheduled upcoming trials. The case against Keith Lignel is scheduled for June along with the case against Mojo Fitness. The case against Stove in a Can is scheduled for July along with a case against Daniel Energy.

Compliance Section Report:

Compliance Section Director **Kenneth Barton** reported that thus far in 2019 this Section has initiated 28 compliance examinations; eleven were opened for-cause as a result of an investor complaint or regulatory agency referral with the remaining 17 being routine examinations. The year to date percentage of for-cause exams is 40%. The rolling three-year annual percentage for for-cause exams is 62%. This year so far routine exams comprise a higher than norm percentage which is good news. There have also been seven new Investment Advisor licensing approval exams initiated; bringing the total number of examinations opened since the beginning of the year to 35.

The Compliance Section is currently working on one administrative action and two criminal actions. The administrative action is currently stayed pending completion of the sentencing phase of a criminal action. One of the criminal actions is awaiting a sentencing hearing which has been rescheduled and the other is scheduled to resume trial in August 2019.

Registration and Licensing Section Report:

Registration and Licensing Section Director **Bryan Cowley** informed the Commission that while the number of filings remains relatively the same from year to year, the type of filings changes. In 2018 there were 6,993 filing with the 77% of them, a definite majority being mutual funds and UITs. He went on to specifically address the 29 Utah Exemptions in 2018 and the 17 in 2019 thus far. He noted that this number does not reflect the total number of transactions in the state because most of the exemptions are self-executing, meaning they do not have to make a filing with the Division.

Most of the telephone inquiries in this section are about the 14(2)(q) Limited Offering Transactional Exemption. The exemption is self-executing but allows 15 purchasers in our state within a 12-month period with an aggregate amount not to exceed one million dollars.

Most of the filings required are 14-2(j) existing shareholders which are Distribution Reinvestments or DRIPS for REITs that exempt the distribution transaction. We have also had three 14-2(p) Merger/Reorganizations which require shareholders approval and five 14-25-(v) accredited investors which exempts the transaction as long as it is filed with the State Division within 15 days of the first sale. He stated he was glad to see so many taking advantage of the ways to legitimately raise money and that the Section also handles non-state exemption filing, but that they will be discussed at a later date.

Investor Education and Training Fund Report:

Investigator **Dee Johnson** presented this report on behalf of Karen McMullin, noting her responsibilities in this area. He stated that since the Commission meeting in March, the Division had participated in seven events including four URS seminars, two large conferences (USOT – “Women in the Money” and the annual statewide “Elder Justice Conference”) and one seminar for the Department of Commerce Employees. The total estimated attendance for the seven events was 1,071 participants.

In the same time period, the Division has had seven requests from the public and other partners to provide investor education materials for a variety of purposes. The estimated number of people from this outreach is approximately 450. These requests have come from industry professionals, the Utah State Board of Education and volunteers teaching self-reliance and investor protection classes for the Church of Jesus Christ of Latter-day Saints.

There are currently 16 events booked in the remaining months of 2019. In the next two years, the Salt Lake Library/Daybreak branch is one of 50 public libraries hosting "Thinking Money for Kids", a traveling exhibition from the American Library Association (ALA) and FINRA Investor Education Foundation. Sites were selected through a peer-reviewed competitive application process and the local library has agreed to host the exhibition for a six-week period in the Spring of 2021. The Division has offered the Daybreak branch assistance in the planning and hosting of this exhibition.

At this point in the meeting, Acting Chairperson **Gary Cornia** asked Assistant Attorney General **Tom Melton** to introduce the new Assistant Attorney General **Robert Wing**. Those introductions were made.

Education and Training Fund Report:

Bryan Cowley presented the Division of Securities Education and Training Fund Report. Commissioner **Lyle White** made a motion to approve the report, seconded by **Brent Cochran**. The motion passed unanimously.

Grant Requests:

A request was presented by Susan Speirs for a grant to the Utah Financial Empowerment Coalition in the amount of \$10,000. This request is for a conference previously held and attended by approximately 550 people, mostly from the Wasatch Front. The conference covered multiple topics covering a wide breadth of subjects and received positive feedback. Questions from the Commission were addressed and a motion for approval requested. The motion was made by Commissioner **Peggy Hunt** and seconded by Commissioner **Lyndon Ricks**. The motion passed unanimously for the requested amount.

A request was presented by Christy Tribe for a grant to Junior Achievement of Utah, Inc. in the amount of \$5,000. This organization has been given previous funding for their programs. This grant would provide funding for a program on financial literacy for high risk high school students at Granger High School. The Commission suggested that they broaden the program to include additional schools at risk. A motion for approval was made by Commissioner **Lyndon Ricks** and seconded by Commissioner **Peggy Hunt**. The motion passed unanimously for the requested amount.

A request was presented by Laura Polacheck for a grant to AARP Utah in the amount of \$20,000. The organization provides free and open education through a program called "Real Possibilities University". This is a national program including fraud watch and various outreach programs. The organization uses mass teleconferences, including ones involving current Director Tom Brady's and previous Director Keith Woodwell's participation. They work with the Division of Securities and the Attorney General's office, as well as the Division of Consumer Protection. The Commission suggested that they include follow-up with the Utah Insurance Department concerning the use of insurance and annuities, as well as reverse mortgages and fraud through other legal product. A motion was made for approval by Commissioner **Brent Cochran** and seconded by Commissioner **Lyndon Ricks**. The motion passed unanimously for the requested amount.

Consideration and Approval of Proposed Orders:

1. Austin Cole Raught, SD-19-0013: Stipulation and Consent Order

Francswai Davis presented this Order with the assistance of Megan Sybor, the investigator in this case. The Order has been agreed to by Raught and his attorney, Keith Woodwell. Under this Order, Raught agrees and admits to the Division's Findings of Facts and Conclusions of Law; agrees to cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah; agrees to a bar 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. Raught agrees he shall pay a total fine and restitution amount of \$15,000.00; paying \$7,000.00 within 5 business days of

the entry of the final Order and paying the remaining \$8,000.00 to the Division in equal monthly payments over a period of two years. The first monthly payment will be due August 1, 2019.

Commissioner **Peggy Hunt** made the motion to approve the Stipulation and Consent Order and fine amount. Commissioner **Lyndon Ricks** seconded the motion. The motion was approved unanimously.

2. Carlos Humberto Rodriguez, SD-19-0008: Stipulation and Consent Order

Francswai Davis presented this Order with the assistance of Sean Fuller, the investigator in this case. The Order has been agreed to by Rodriguez. Under this Order, Rodriguez admits to the Division's Findings of Facts and Conclusions of Law; agrees to cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah; agrees to a bar 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; and from being licensed in any capacity in the securities industry in Utah. Rodriguez shall cooperate with the Division and testify, if necessary, in any administrative proceeding against MTC and/or Maynes. Rodriguez agrees he shall pay a total fine amount of \$11,000.00; paying \$1,500.00 within 5 business days of the entry of the final Order, pay \$1,000.00 to the Division within 60 days of the entry of the final Order; and pay the remaining \$8,500.00 to the Division in equal quarterly payments within 36 months of the entry of the final Order.

Commissioner **Brent Cochran** made the motion to approve the Stipulation and Consent Order and fine amount. Commissioner **Peggy Hunt** seconded the motion. The motion was approved unanimously.

3. Richard Justin Pupunu, SD-19-0006: Stipulation and Consent Order

Francswai Davis presented this Order with the assistance of Liz Blaylock, the investigator in this case. The Order has been agreed to by Pupunu. Under this Order, Pupunu neither admits nor denies the Division's Findings of Facts and Conclusions of Law; agrees to cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah; agrees he shall not seek licensure in the securities industry in Utah for a period of no less than two years from the date of entry of this Order. Pupunu agrees he shall pay a fine of \$3,000.00; paying \$1,000.00 within 10 business days of the entry of the final Order; and pay the remaining \$2,000.00 to the Division within 18 months of the entry of the final Order.

Commissioner **Brent Cochran** made the motion to approve the Stipulation and Consent Order and fine amount. Commissioner **Peggy Hunt** seconded the motion. The motion was approved unanimously.

4. Manly E. Logan, SD-12-0048: Order on Motion for Summary Judgment as to Manly E. Logan

Paula Faerber presented this Order. Manly E. Logan was present in the meeting but did not address the Commission. Under this Order, Logan is ordered to cease and desist from engaging in any further conduct in violation of the Act; is permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and is ordered to pay a fine of \$25,000.00.

Commissioner **Brent Cochran** made the motion to approve the Order and fine amount. Commissioner **Peggy Hunt** seconded the motion. The motion was approved unanimously.

Back on the Record at 10:30

Hearing:

In the matter of Clint Nordahl, SD-18-0042: Fine Determination

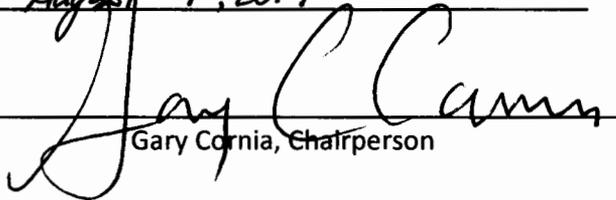
Jennifer Korb had arranged a telephonic hearing with Clint Nordahl through Ryan Garlock at the Utah State Prison in Draper, Utah. Mr. Garlock phoned at the pre-determined time to inform the Commission that Nordahl was no longer housed at the Utah State Prison in Draper but had been moved prior to initiation of the telephonic hearing. Jennifer Korb requested that Mr. Garlock attempt to locate where Nordahl could be contacted at a future date. She then requested that the Commission consider postponing the Hearing until the next Commission Meeting.

Acting Chairperson Commissioner **Gary Cornia** called for a motion to postpone the Hearing. Commissioner **Brent Cochran** made a motion to postpone, seconded by Commissioner **Lyle White**. The motion was approved unanimously.

Motion to adjourn:

Acting Chairperson Commissioner **Gary Cornia** called for a motion to adjourn the May 23rd, 2019 Division of Securities Commission Meeting. Commissioner **Brent Cochran** made the motion to adjourn. Commissioner **Lyle White** seconded the motion. The motion was approved unanimously. The Meeting was adjourned at 10:40 a.m.

Date: August 7, 2019

Approved: 
Gary Cornia, Chairperson