

**Utah Division of Securities
Securities Commission Meeting
August 7, 2019
9:00 a.m. – 10:00 a.m.; 12:02 p.m. – 12:29 p.m.
Room 451**

Division of Securities Staff Present:

Tom Brady, Division Director
Sally A. Stewart, Acting Commission Secretary
Dave Hermansen, Enforcement Director
Kenneth Barton, Compliance Director
Nathan Summers, for the Registration and Licensing Director
Chip Lyons, Securities Analyst
Francswai Davis, Securities Analyst
Dee Johnson, Investigator
Liz Blaylock, Investigator
Sean Fuller, Investigator
Megan Sybor, Investigator
Aaron Jaynes, Investigator
Karen McMullin, Investors Education Coordinator

Department of Commerce:

Bruce Dibb, Administrative Law Judge

Attorney General Staff Present:

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

Commissions Present:

Gary Cornia, Chairperson
Brent A. Cochran
Peggy Hunt
Lyndon Ricks

Public Present:

Brad Bertoch, VentureCapital.org
Brandon Stoddard, VentureCapital.org

Welcome and Call to Order:

Chairperson **Gary Cornia** began the meeting at **9:00 a.m.**

Minutes:

Brent Cochran made a motion to approve the minutes from the May 23rd, 2019 meeting. **Peggy Hunt** seconded the motion. The motion was unanimously approved.

Director's Report:

Director **Tom Brady** reported on personnel changes within the Division. He noted that Sally A. Stewart was still temporarily filling in as the Commission Secretary. He indicated the position of administrative assistant would be filled shortly as an offer had been made to and accepted by Sabrina Afridi. She will begin working as the new administrative assistant and commission secretary on August 21st, 2019. He acknowledged that the three Interns were leaving after a very successful summer. He also noted that a new investigator in the Enforcement Section, Tyler Hardman, will be starting on August 14th, 2019.

He explained that H.B. 387 of the 2019 General Session requires all agencies to submit an annual report regarding their respective boards and commissions. The Division submitted its report which included some of the following:

- Hearings Heard: 9;
- Stipulation and Consent Orders written: 18;
- Various other Orders written: 4; and
- Grant Requests made and approved: 3.

He continued on to explain the results of the 2018 Enforcement Survey:

- Total Number of Complaints: 173 (indicating the Division is on track for over 200 in 2019);
- Total Number of Investigations initiated: 57;
- Administrative Actions opened: 52;
- Civil Cases filed: 1;
- Criminal Filings: 10;
- Total Fines assessed: \$4,971,493;
- Total Restitution Imposed: \$1,157,254; and
- Total Amount Returned: \$36,640 (#.2 %).

The Top Violations according to the Survey were:

- Fraud;
- Unlicensed activity;
- Dishonest and unethical practices; and
- Failure to supervise.

The Top Schemes according to the Survey were:

- Promissory Notes;
- Oil and Gas schemes;
- Ponzi schemes
- Stock schemes; and
- Affinity Fraud schemes.

Enforcement Section Report:

Enforcement Director **Dave Hermansen** reported that the number of Cases under investigation currently is 39 cases; including 4 cases ready for review to determine if they should be referred for criminal prosecution. There are currently 29 cases that have not been assigned to an investigator yet. The Enforcement Section is currently working on 18 Orders to Show Cause (OSC's), 7 OSC's needing to be drafted, and 4 Stipulation and Consent Orders being submitted for approval by the Commission today. There are currently 22 Criminal Cases under prosecution, including 5 cases filed this month.

There are a number of Criminal cases currently filed in several different jurisdictions. These include:

- On July 5th, 2019, Utah County Attorney, Tim Taylor, filed criminal charges against Thomas Sanford (a California resident) and Patrick Hutton (a Florida resident) in Utah's Fourth District Court. The charges

consist of 1 count of securities fraud or in the alternative, communications fraud (a 2nd degree felony), along with the sale of an unregistered security and unlicensed activity (a 3rd degree felony). Arrest warrants have been issued.

- On July 9th, 2019, the Utah Attorney General's Office filed criminal charges in the matter of Richard Rex Baldwin consisting of 1 count of securities fraud (a 2nd degree felony), 1 count of unlicensed sale of a security and 1 count of communications fraud. Baldwin has been arrested and has made his first appearance in Third District Court.
- On July 26th, 2019, criminal charges filed against Jay Dick Frandsen by Cache County Attorney, Tony Baird. The Division's investigation alleges Frandsen misused some of the investor's \$338,000 for his personal use.
- On July 26th, 2019, the Davis County Attorney filed criminal charges against William Ray Clemons in Utah's Second District Court. The Division alleges that Clemons misused approximately 64% of the investor funds which includes expenditures for his personal expenses.
- On July 31st, 2019, criminal charges were filed against Fred Samuel Keele by the Utah Attorney General's Office in Utah's Fourth District Court. The Division alleges that Keele used approximately \$35,875 of investor funds for his personal expenses and an additional \$8,967 to make Ponzi payments.

The Division has 22 cases being prosecuted criminally with five new cases filed 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 and is proceeding.

Compliance Section Report:

Compliance Section Director **Kenneth Barton** reported that thus far in 2019 this Section has initiated thirty-one (31) compliance examinations; thirteen (13) exams were opened as a result of an investor complaint or regulatory agency referral with the remaining eighteen (18) being routine examinations. The year to date percentage of for-cause exams is 42%. The Compliance Section's rolling three-year annual percentage for for-cause exams is 62%. This year so far routine exams comprise a higher than norm percentage which continues to be good news. There have also been fifteen (15) new Investment Advisor licensing approval exams initiated. The Compliance Section has originated a total of forty-six (46) examinations opened since the beginning of the year compared with the total of fifty-eight (58) exams in 2018. At the current rate we are on track to increase Compliance examination in 2019 by approximately 35%. This increase is a result of being fully staffed for 2019.

Another factor in a reduced number of Compliance Section complaints is that annuities are referred to the Insurance Department. An explanation of annuities versus securities and their respective jurisdictions was given. Utah views variable annuity products and indexed annuities differently from some other states.

The Compliance Section is currently working on one (1) administrative action and two (2) criminal actions:

- The administrative action on Eric Sampson is currently stayed pending completion of the sentencing phase of a criminal action. The sentencing is scheduled for September 2019 with the granting of additional time to raise funds for victim restitution. Jacob Strain is the Assistant U. S. Attorney prosecuting the case with Francswai Davis as the current case examiner for the Division.
- On August 5th, 2019, Scott Stewart pled guilty to one count of Unlicensed Investment Adviser Activity and one count of Attempted Pattern of Unlawful Activity, both 3rd degree felonies. As part of the plea agreement Stewart agreed to pay full investor restitution of \$206,000, agreed to not seek a securities license and not to act in a fiduciary capacity involving the handling of a person's funds. Sentencing in the case is scheduled for February 2020. Jessica Smith was the Utah Assistant Attorney General prosecuting the case with Ken Barton as the case examiner.

Registration and Licensing Section Report:

The Registration and Licensing Section report was provided by **Nathan Summers**, at the request of Bryan Cowley. He informed the Commission that while the number of filings remains relatively the same from year to year, there have been statistical changes between the year ending June 2018 and June 2019 regarding individual license review. For the fiscal year ending in June 2018 there were 505 applicants escalated for further review while for the fiscal year ending June 2019, the total number of applicants escalated for further review was 503.

The goal for the Division is for licensing cases to be closed within 30 days of application being made. This includes licensing application that were escalated for further review due to prior disclosure history. For the fiscal year ending June 2018, the number approved or otherwise concluded within 30 days was 89.61% of cases. For the fiscal year ending June 2019 the number approved or otherwise concluded within 30 days improved to 93.46%. This improvement of 3.85% year over year is tracked to measure how well the Division is balancing the protection of Utah investors while allowing the industry professionals to receive their licenses in a timely manner.

A notable change for the Registration and Licensing section is that all files for individual licensing cases have been switched from physical files to electronic files. These electronic files include the Division's correspondence with the applicant's firm, the applicant's disclosure history, the applicant's response and notes regarding the application. All of this information had previously been in physical files in the office. This change has benefited the Division in that we have cut down the amount of paper used in the office, which reduces expenses. Also, we are able to save space that had previously been used to store the physical files. Finally, it is easier to search electronic files if we need the information at a later date.

Investor Education and Training Fund Report:

Investor Education Coordinator **Karen McMullin** presented this report, stating that since the Commission meeting in May, the Division had participated in sixteen (16) events. The estimated number of people from this outreach is approximately 1,550. We partnered with AARP, Utah Retirement System, the Utah JumpStart Coalition, the Utah Bar Securities Section and in a recent addition, with Public Employees Health Plan, known as PEHP.

PEHP is a non-profit trust and a division of Utah Retirement Systems. PEHP provides health benefits to Utah's public employees and their families. PEHP serves only the public sector; the employees and former employees of the State of Utah, its counties, cities, school districts and other public agencies. The PEHP Medicare Supplement provides additional coverage to help with costs that Medicare doesn't cover.

In an effort to share both the Investor Protection and Consumer Protection messages to the senior population, the Department of Commerce has accepted the invitation to participate in 27 of the scheduled PEHP Medicare seminars offered August through November 2019. The first PEHP seminar was held in Farmington on July 9th, 2019 and about 100 people attended. At the August 6th, 2019, PEHP seminar in Murray, there were approximately 120 seniors in attendance.

Having the opportunity to distribute brochures and present a short outreach message at the PEHP Medicare seminars throughout the State over the next four months is of great value for both the citizens of Utah and the Division of Securities and the Division of Consumer Protection.

The Division of Securities has 14 events scheduled throughout the remainder of 2019, including the PEHP seminars, URS seminars and an opportunity to speak at the monthly meeting of the Southern Utah Estate Planning Council in St. George in September.

Education and Training Fund Report:

Nathan Summers presented the Division of Securities Education and Training Fund Report. Commissioner **Brent Cochran** made a motion to approve the report, seconded by **Peggy Hunt**. The motion passed unanimously.

Grant Requests:

A request was presented by Bradley B. Bertoch for a grant to VentureCapital.org in the amount of \$20,000. This request is for continued educational events, seminars and forums providing mentoring assistance to companies on a voluntary basis. Mr. Bertoch indicated that in 2018 the attendance at the various events was over 1,400 in Utah and 350 in Idaho. Approximately 14,000 mentoring hours were provided to approximately 100 businesses. The goal of the organization is to teach proper investment fundraising to new business entrepreneurs. Questions from the Commission were addressed and a motion for approval requested. The motion was made by Commissioner **Peggy Hunt** and seconded by Commissioner **Brent Cochran**. The motion passed unanimously for the requested amount.

The Commission meeting was temporarily halted for the Hearing scheduled at 10:00 a.m.

Hearing:

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

Jennifer Korb had arranged a telephonic hearing with Clint Nordahl at the Purgatory Correctional Facility in Hurricane, Utah. Mr. Nordahl phoned at the pre-determined time of 10:00 a.m. Administrative Law Judge **Bruce Dibb** explained the differences between Criminal Action and Administrative Action. He stated that the purpose of the Hearing was to determine the amount of the fine only.

The hearing continued until 12:02 p.m. including witnesses, documents and testimony from both sides. At the conclusion of the Hearing, Chairperson Commissioner **Gary Cornia** stated that the meeting would resume and consideration of the Hearing matter would be delayed until after conclusion of the meeting.

Back on the Meeting Record at 12:02 p.m.

Consideration and Approval of Proposed Orders:

1. Claudia Leticia Gonzalez, SD-19-0011: 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 Gonzalez and her attorney, Thomas Daynes Weber, neither of whom were present. Under this Order, Gonzalez neither admits or 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 to a bar from associating with any broker-dealer or investment adviser licensed in Utah; 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 the state of Utah. Gonzalez agrees she shall cooperate with the Division's investigation of MTC and provide testimony in this proceeding or others if requested. Gonzalez agrees she shall pay a total fine of \$6,000.00 and restitution in the amount of \$12,000.00; paying \$4,000.00 in restitution to the two investors within 10 days of the entry of the final Order and paying the remaining \$8,000.00 to the two investors in equal monthly payments over a period of thirty-six (36) months. Gonzalez shall pay the fine to the Division within thirty-six (36) months following this Order.

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

2. Leticia Miranda, SD-19-0012: 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 Miranda and her attorney, Rod Avery, neither of whom were present. Under this Order, Miranda neither admits or 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 to a bar from associating with any broker-dealer or investment adviser licensed in Utah; 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 the state of Utah. Miranda agrees she shall cooperate with the Division's investigation of MTC and provide testimony in this proceeding or others if requested. Miranda agrees she shall pay a total fine of \$6,000.00 and restitution in the amount of \$5,944; paying \$1,500.00 in restitution to the two investors within 5 days of the entry of the final Order and paying an additional \$1,500.00 to the two investors in \$300.00 monthly payments over a period of five (5) months. Miranda agrees to pay the remaining restitution amount of \$2,944.00 to the two investors in equal monthly payments over a period of thirty-one (31) months. Gonzalez shall pay the fine to the Division within thirty-seven (37) months following this Order.

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

3. Israel Pineda, SD-19-0010: Motion for Entry of Default Order

Paula Faerber presented this Order. Under this Order, Pineda is ordered 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; is permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and is ordered to pay restitution in the amount of \$5,000.00 within thirty (30) days of the Order; and to pay a fine to the Division in the amount of \$9,000.00 within thirty (30) days of the Order.

Commissioner **Peggy Hunt** made the motion to approve the Order of Default Order against Respondent Israel Pineda and fine amount. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

4. Robert James Long, SD-14-0024: Stipulation and Consent Order

Francswai Davis presented this Order with the assistance of Dee Johnson, the investigator in this case. The Order has been agreed to by Long and his attorney, Matthew Lewis, neither of whom were present. Under this Order, Long neither admits or 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 to a bar from associating with any broker-dealer or investment adviser licensed in Utah; 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 the state of Utah. Long agrees he shall pay a total fine of \$164,500.00; paying \$12,500.00 within 5 days of the entry of the final Order and paying an additional \$152,000.00 to the Division within a period of twelve (12) months. Up to \$127,000.00 in restitution timely paid pursuant to the terms ordered in Long's parallel criminal matter may offset dollar for dollar towards the fine. If Long timely pays restitution ordered in the parallel criminal matter (on or before February 1, 2020), the Division will waive the remaining \$25,000.00 of the fine.

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

5. Flannel Damage Holdings, LLC, SD-19-0004: Motion for Entry of Default Order

Jen Korb presented this Order. Under this Order, Flannel Damage Holdings, LLC, is ordered 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. Flannel Damage Holdings, LLC, is permanently barred from associating with any broker-dealer or investment adviser licensed in Utah.

Commissioner **Peggy Hunt** made the motion to approve the Order of Default of Flannel Damage Holdings, LLC. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

6. Brent Allen Morgan, SD-14-0039; Summit Development & Lending Group Inc., SD-14-0040: Stipulation and Consent Order

Francswai Davis presented this Order with the assistance of Dee Johnson, the investigator in this case. The Order has been agreed to by Morgan, Summit Development & Lending Group (Respondents) and their attorney, Stephen K. Christiansen, neither of whom were present. Under this Order, the Commission's sanctions from September 2015 Order is vacated and the Findings and Conclusions remain in effect. 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; agree to a bar from associating with any broker-dealer or investment adviser licensed in Utah; 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 the state of Utah. Respondents shall pay a total fine of \$14,316.00 (of which \$4,306.00 has already been paid with a remaining balance of \$10,000.00) and restitution in the amount of \$53,850.00 within five (5) days following entry of the final Order.

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

Motion to adjourn:

Chairperson Commissioner **Gary Cornia** called for the meeting to adjourn so the Commission could deliberate on the Nordahl Hearing. The Meeting was adjourned at 12:29 p.m. The next scheduled meeting or hearing date is November 7th, 2019.

Date: _____

Approved: _____
Gary Cornia, Chairperson