

Utah Securities Commission

Meeting Minutes

March 28, 2013

Division of Securities Staff Present

Keith Woodwell, Division Director
Ken Barton, Licensing and Compliance Director
Dave Hermansen, Enforcement Director
Benjamin Johnson, Corporate Finance Director
Dee Johnson, Investor Education Director
Karen McMullin, Investor Education Coordinator
Maria Skedros, Board Secretary
Chip Lyons, Securities Analyst
Ann Skaggs, Securities Analyst
Richard Jaramillo, Securities Examiner
Brandon Henrie, Securities Examiner
Russ Bulloch, Securities Examiner
Kristi Wilkinson, Securities Investigator
Heidie George, Securities Examiner
Adam Sweet, Securities Investigator
Nadene Adams, Administrative Assistant

Other State of Utah Employees:

Jennie Johnson, Administrative Law Judge, Department of Commerce
Julie Price, Administrative Secretary, Department of Commerce
Ron Ockey, Assistant Attorney General

Commissioners Present

Laura Polacheck, AARP Utah
Tim Bangerter, Bangerter Financial Group
Erik Christiansen, Parsons Behle & Latimer
Brent Baker, Clyde Snow & Sessions
Jane Cameron, Zions Bank

Commissioners Absent

None

Public Present:

There was no one from the public present.

Minutes: At 9:07 am, the meeting was called to order and Commissioner Christiansen made the motion to approve the minutes from the January 24th 2013 Commission meeting. Tim Bangerter seconded the motion; and the motion was approved unanimously.

Director's Report: Director Woodwell reported that The Division of Securities Base Budget for the fiscal year 2014 was approved by the Legislature with minimal changes from fiscal year 2013. There is a 1% cost of living adjustment, but no other changes. The base budget for fiscal year 2014 will be approximately \$1,630,000.

The Securities Investor Education, Training and Enforcement Fund had a balance of \$302,000 as of March 12, 2013. The trend continues to be slightly negative as fine payments outpace expenditures, but the balance is still healthy.

Division staffing: We have a new administrative secretary: Maria Skedros, who previously worked for DOPL, as a Kindergarten teacher, and owned her own business. We also have a new Securities Examiner in the Licensing and Compliance Section: Russ Bulloch, who previously worked in the securities industry with Edward Jones and also a defense contractor.

Meeting Schedules: We may have a full day hearing scheduled in May with the Conestoga case, which is likely to settle. There is also a possible two-day hearing which is tentatively scheduled for July 25th -26th; the timing is open for discussion, due to the State holiday.

Erik Christiansen and **Brent Baker** have a conflict in May with the trial date. They will not be available to meet on May 23rd. They are able to move the date back one week and that would work with the Commission.

Jennie Johnson: the Administrative Law Judge for Securities cases suggested that the hearing scheduled for July should be moved to August, due to the fact that the Respondent is requesting to move the date and also seeking five days for the trial. Director Woodwell suggested that the Division will discuss date options with the Commission for possible trial dates in August. An email will be sent out to the Commission for possible trial dates in August.

Director Keith Woodwell: Would the Commission like to consider moving our start time to 9:00 a.m. with or without a hearing scheduled? All Commissioners agreed that this is a good idea, and future Commission Meetings will be scheduled to begin at 9:00 a.m.

Commissioners Jane Cameron, Erik Christiansen and Laura Polacheck's terms are expiring on May 12th, 2013. Erik Christiansen requested that his name be submitted to the Governor's Office for renewal. Laura Polacheck and Jane Cameron are not seeking re-nomination to the Commission due to their previous service with the Advisory Board and, other commitments. Director Woodwell also pointed out that Commissioners are allowed by statute to continue to serve on the Commission beyond the expiration of their term, until replacements have been appointed to their positions.

Investor Education Update: Karen McMullin reported that the Division attended 13 Investor Education events in February and March. Within the next nine weeks there will be 12 additional investor education events. We have new partners that are booking events in the Fall of 2013. There has been a great interest in Crowd Funding. The Division is receiving a lot of positive feedback on the new expo display. The iPad kiosk is allowing for broker checks at these events. The Division is formulating a survey on Survey Monkey to collect feedback and additional data

from individuals attending investor education events. The Division is focusing its education efforts on women and their lack of exposure to how to invest safely.

Licensing & Compliance Section Report: Ken Barton reported that in February and March 2013, Licensing and Compliance opened 14 new audits. There are six new Investment Adviser Firm Audits, five For-Cause Audits, three routine audits, and the section is following up on several complaints. There are seven administrative actions in progress, with three actions that have settled pending the Commission's approval today. There are four actions in settlement negotiations. There are three cases that have potential criminal violations. The annual amendment process for all state covered investment advisers will begin in earnest starting April 1st. Licensing and Compliance will be dedicating resources for the review of the amendments and looking at any material changes made that are counter to state and federal regulations.

Corporate Finance Section Report: Benjamin Johnson reported on a proposed rule change, which is essentially only a name change. "Standard & Poor's Corporation Records" is changing to "S&P Capital IQ Standard Corporation Descriptions". **Tim Bangerter** made the motion to approve the proposed rule amendment and **Laura Polacheck** seconded the motion. The motion was passed unanimously.

Enforcement Section Report: Dave Hermansen reported that next quarter, two of the Division's investigators will receive the John Reed Training, which is a highly sought after interview and interrogation training program. Enforcement currently has 12 unassigned cases. There are 34 cases which are active and 25 cases that have been referred to a criminal prosecutor. The section has had two recent criminal filings:

- 1) David Butters and Mark LaCount were charged with securities fraud. They claimed to develop a thumb drive device to be taken to the shopping mall where an individual could download 20-30 movies. Mr. Butters and Mr. LaCount collected approximately \$70,000 of investor funds, which were misused by the defendants. The Defendants made various misrepresentations and omissions in connection with the sale of security.
- 2) Salt Lake County Maverick Mining v Mark Bowman and Manly Logan: The Defendants collected \$75,000 in investment funds. Investors were told they would be paid back within six months and would receive stock. One investor was promised a 0.5% interest in the mines owned by Mr. Bowman. The respondents misrepresented material facts and made material omissions to the investors. Mr. Bowman had a Chapter 7 bankruptcy that was not disclosed, nine judgments against him and was previously convicted of securities fraud. Investors were told their investment would triple, and the stock price would reach \$50 per share. The Defendants were charged with three 2nd degree counts of securities fraud and two counts of theft.

Education and Training Fund Expenditure Report: Benjamin Johnson reported that no single expense stands out. **Director Woodwell** mentioned that expenses have gone up due to the use of expert witnesses in criminal cases, which were \$13,600.00 last quarter.

Director Woodwell reported that there is a grant request of \$2,500 from the Mountain West Capital Network for the Mountain West Capital Network Deal Flow Event which will be held on May 16, 2013. As a sponsor, the Division will be included in the Deal Flow Report with a full page ad and sponsor recognition at the event. The benefit to the Division is not substantial; however, Mountain West Capital Network's mission is to educate the public on investment opportunities within Utah, which is also the Division's goal.

Commissioner **Erik Christiansen** commented that he is familiar with Mountain West Capital Network and thinks it is a good and valuable organization for the public, which educates in an area where not a lot of help for people is available.

Commissioner **Jane Cameron** recused herself from the vote since Zion's Bank is a sponsor of this event.

Commissioner **Brent Baker** made the motion and **Tim Bangerter** seconded the motion to approve the grant funding. The motion passed unanimously, with Commissioner Cameron abstaining.

Education and Training Fund continued: **Benjamin Johnson** referred to Tab 3, the Request for Commission Authorization for 3/28/13, with expense request of \$37,887.82, which does not include the \$2,500.00 for Mountain West Capital. Commissioner **Brent Baker** made a motion to approve the Division's expense request and Commissioner **Jane Cameron** second the motion. The motion passed unanimously.

Consideration and Approval of Proposed Orders:

Bryce Lee Karl dba Karl Hospitality, Inc. (Tab 5) Dave Hermansen reported that Bryce Lee Karl, also operating as Karl Hospitality, has never been a broker-dealer agent, issuer agent or investment advisor in Utah. From October to March 2009, Mr. Karl offered and sold securities to at least two investors, in or from Utah, and collected a total of \$50,000.00. Mr. Karl made material misstatements and omissions in connection with the offer and sale of a security to the investors. The investors lost all of their investment funds, totaling \$50,000. The Division is seeking a cease and desist order and a securities bar against Mr. Karl.

Mr. Karl agrees to pay a fine of \$52,500.00 to the Division. The fine will be offset by restitution paid to the investor. Mr. Karl has already paid \$50,000 in restitution, leaving a \$2,500.00 fine payable to the Division. This amount shall be paid within thirty days of the entry of the Order. Commissioner **Laura Polacheck** made a motion to approve the proposed order and Commissioner **Tim Bangerter** seconded the motion. The motion passed unanimously.

Breakthrough Technologies, Charles Ross Chatwin, and Mark Andrew Jackson: (Tab 6) Dave Hermansen reported that a prehearing conference was held on February 6, 2013, where the Respondents failed to appear. The Respondents have not filed a response to the Division's Order to Show Cause or made any effort to participate in the proceeding. Because of this, a Default Order against the Respondents has been recommended by the ALJ. The proposed default order requires

the Respondents to pay a fine of \$348,750.00 to the Division with any restitution paid to investors serving to offset the administrative fine on a dollar to dollar basis. Commissioner **Jane Cameron** made a motion to approve the order and Commissioner **Tim Bangerter** seconded the motion. The motion passed unanimously.

Trump Alliance, LLC, Stephen Ronald Trump: (Tab 7) Dave Hermansen reported that an adjudicative proceeding was initiated pursuant to a September 30, 2010 Notice of Agency Action. A response to the accompanying Order to Show Cause was due within 30 days of September 30, 2010. The Respondents have not filed a response to the Division's Order to Show Cause or made any effort to participate in the proceedings. The proposed default order requires Respondents to pay a fine of \$29,687.50 to the Division. Commissioner **Laura Polacheck** made a motion to approve the proposed order and Commissioner **Jane Cameron** seconded the motion. The motion passed unanimously.

Rayda Roundy: (Tab 8) Dave Hermansen reported that Ms. Rayda Roundy failed to participate in her scheduling hearing and failed to respond to correspondence which was delivered to her correct and active address. This resulted in the Division filing for a Recommended Order on Motion for Default. Ms. Roundy made false statements to more than one investor. Ms. Roundy failed to disclose material information that was necessary in order to make the representations made not misleading. She offered or sold securities in Utah without holding a valid license. The proposed order requires Ms. Roundy to pay a fine of \$81,250.00 to the Division with any restitution paid to the investors serving to offset the administrative fine on a dollar-to-dollar basis. Commissioner **Brent Baker** made a motion to approve the proposed order and Commissioner **Tim Bangerter** seconded the motion. The motion passed unanimously.

James Lee Anderson: (Tab 9) Dave Hermansen reported that Mr. James Lee Anderson failed to respond to the Scheduling Order entered on November 7, 2012. Having failed to respond to the Division's Agency Action, an Order of Default has been recommended by the ALJ. Mr. Anderson made false statements in connection with the offer and sale of securities to investors. The proposed order requires Mr. Anderson to pay a fine in the amount of \$187,405.00. Commissioner **Jane Cameron** made a motion to approve the proposed order and Commissioner **Laura Polacheck** seconded the motion. The motion passed unanimously.

Craig Eldon Taylor d.b.a The Mall Hop & Smoothie Beach: (Tab 10) Dave Hermansen reported that between April 2009 and December 2011, the Respondent offered and sold securities to an investor in or from Utah, and collected a total of \$5,800.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investor. The Respondent agreed to a cease and desist order, and to not seek licensure or engage in the offer or sale of securities in the state of Utah. Under the proposed Stipulation and Consent Order the Respondent is to pay a fine of \$500 to the Division, which is to be paid within six months. Commissioner **Jane Cameron** asked why the fine was so small. **Dave Hermansen** responded that the Respondent had already paid back the investor in full and with the resources used for this case, it seemed reasonable to settle for this amount. Commissioner **Laura Polacheck** made a motion to approve the proposed order and Commissioner **Brent Baker** seconded the motion. The motion passed unanimously.

Sonocine, Inc: (Tab 11) Benjamin Johnson reported that Sonocine engaged in the offer and sale of securities within the state of Utah. The Respondent is not currently and has never been registered with the Utah Division of Corporations. The Respondent offered and sold securities to investors, and collected a total of \$9,000.00. The Respondent made material omissions in

connection with the offer and sale of securities to investors, by failing to disclose a bankruptcy filing by the CFO. Sonocine agrees to pay a fine of \$1,000.00 to the Division, which should be paid within 30 days. Commissioner **Jane Cameron** made a motion to approve the proposed order and Commissioner **Tim Bangerter** seconded the motion. The motion was approved unanimously.

Morgan Asset Management/Morgan Keegan SCO (Tab 12): Ken Barton reported that this case is a Multi-State investigation by the SEC, FINRA and state securities regulators. Utah joined in the Global Settlement.

Morgan Keegan is a Regional Broker-Dealer based out of Tennessee and operating primarily in the Southeast. At issue were investments in seven bond mutual funds operated by Morgan Keegan. The violations included: failure to disclose investment risks, exaggerating claims in sales materials, making misrepresentations in regulatory filings, and various supervisory systems failures. There are 30,000 investors that were impacted. Utah's share of the Global Settlement fine was commensurate with the relatively small impact to Utah investors. The fine allocation to the Division is \$6,043.00. Commissioner **Tim Bangerter** made a motion to approve the proposed order and Commissioner **Jane Cameron** seconded the motion. The motion passed unanimously.

Commissioner **Jane Cameron** asked what would happen if the Commission had rejected the proposed order against Morgan Keegan since it is part of a multi-state settlement. **Director Woodwell** responded that in a NASAA Global Settlement. If Utah elects not to participate, Utah would have to bring its own action against Morgan Keegan. Commissioner **Erik Christiansen** reconfirmed that the Commission can always reject any proposed order even if it is part of multi-state settlement.

Respondent Taylor Capital Group/ Mark Stephan Taylor SCO (Tab 13): Ken Barton reported is a Utah Licensed Investment Advisor which was first licensed in October 2012. Mark Taylor is the owner and designated official for Taylor Capital Group and licensed as an Investment Advisor Representative. Mountain West Debt Fund, LP was formed in March 2011. Taylor Capital Group is the General Partner for Mountain West Debt Fund. There is a Limited Partnership interest which was offered for sale by PPM, which began in May of 2011.

The Division's findings are that Taylor Capital transacted business for compensation in Utah as an Unlicensed Investment Advisor from May 2011 to October 2012. The Division also determined Taylor Capital received performance based fees which they were not entitled to collect.

In the proposed Stipulation and Consent Order, Respondents agree to disgorge \$18,830.51 in performance based compensation to investors and pay a \$1,170.00 fine to the Division. Commissioner **Erik Christiansen** recused himself from consideration of this case due to his law firm being involved and his personal knowledge of the details in this case. Commissioner **Brent Baker** made the motion to approve the proposed order and Commissioner **Jane Cameron** seconded the motion. The motion passed unanimously.

Markham L Caldwell SCO (Tab 14): Ken Barton reported is a licensed Insurance Agent in Utah. From 1997 to 2002 Caldwell was also a licensed securities agent with a broker-dealer firm.

In 2002, Caldwell's broker-dealer firm terminated him for engaging in private securities transactions without the firm's approval. In connection with these transactions, Mr. Caldwell was charged with a third degree felony for the sale of unregistered securities. The criminal charges were dismissed as part of a plea in abeyance agreement. Administratively, Mr. Caldwell was fined and suspended by the Division. In this action, the Division discovered Mr. Caldwell was an insurance agent with Horizon Financial Insurance Group, Inc. which is an entity owned and controlled by Dee Randall. Mr. Caldwell referred an insurance client and subsequently the client's beneficiaries to Mr. Randall for the purchase of private placement securities in the form of "Horizon Notes". Mr. Caldwell received compensation for the Horizon Note sale.

The Division concludes that Mr. Caldwell was not licensed to sell securities such as the Horizon notes, and Mr. Caldwell acted as an unlicensed agent. The Division recommends that Mr. Caldwell disgorges \$7,000.00 in commissions received and pay a \$5,000.00 fine to the Division.

Commissioner **Erick Christiansen** questioned why there was not a life time bar since Mr. Caldwell has a prior history with securities violation. **Commissioner Christiansen** asked whether Mr. Caldwell has cooperated in the Division's investigation.

Securities Analyst **Chip Lyons** answered that the Division's found that the Respondent only acted as an unlicensed agent, he did not actively participate in the solicitation efforts in the sale of the security. Mr. Caldwell's counsel has confirmed that he is out of the securities industry, and does not have any plans to return to the industry. If he were to ever file an application to be licensed he would probably be denied. Commissioner **Laura Polacheck** expressed her belief that the Respondent should be barred from industry.

Director Keith Woodwell added that this is the first of many Dee Randall Insurance Agency cases that the Commission is going to see. The Division has drawn a distinction between the agents. Some agents made the sales pitch themselves and other simply referred clients to Dee Randall. Mr. Caldwell fell into the second category, where he was just making the referral. He did not participate in actual fraud or misrepresentation. However, Mr. Caldwell should have known better, due to his background experience. Mr. Christiansen expressed his concern and asked why Mr. Caldwell wasn't asked to sign a document stating he would no longer engage in securities transactions. The Commission declined to take any action on the proposed order.

Director Keith Woodwell asked if the Commission felt that the amount of the proposed fine was acceptable and if it was just the issue of a permanent bar from the securities industry that the Division should renegotiate with the Respondent. The Commission agreed that the proposed fines were acceptable.

Commissioner **Erik Christiansen** made a motion to adjourn the meeting and Commissioner **Brent Baker** seconded the motion and it was unanimously approved by the Commission.