DEPARTMENT OF COMMERCE
Heber M. Wells Bldg., 2nd Floor
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6760

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:

ACCELERATED WEALTH, LLC; **ACCELERATED WEALTH GROUP, LLC;** DALLAS H. TALL; TOBEY R. WAGGONER; RYAN L. FARR; BENJAMIN D. WILLIAMS, Respondents.	**ORDER ON MOTION FOR DEFAULT OF RESPONDENT ENTITIES** **Docket No. SD-17-0021** **Docket No. SD-17-0022** **Docket No. SD-17-0023** **Docket No. SD-17-0024** **Docket No. SD-17-0028**

BY THE UTAH SECURITIES COMMISSION:

The Presiding Officer's Findings of Fact, Conclusions of Law and Recommended Default Order sre hereby approved and entered in this Order by the Utah Securities Commission.

ORDER

The Utah Securities Commission ("Commission") enters the default of Respondents, Accelerated Wealth, LLC and Accelerated Wealth Group, LLC (together, the "Respondent Entities"), accepts the allegations outlined in the Order to Show Cause, and finds that they are true. The Commission hereby orders as follows:

The Respondent Entities are ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 or any other section of the Utah Uniform Securities Act.

The Respondent Entities are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, and from being licensed in any capacity in the securities industry in Utah.

DATED this 19th day of March, 2020.

UTAH SECURITIES COMMISSION:

Lyndon L. Ricks

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Pursuant to U.C.A. §63G-4-209, a defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer. A defaulted party may seek agency review under U.C.A. §63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.

The Respondent Entities are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, and from being licensed in any capacity in the securities industry in Utah.

DATED this ___ day of March, 2020.

UTAH SECURITIES COMMISSION:

Lyndon L. Ricks

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Pursuant to U.C.A. §63G-4-209, a defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer. A defaulted party may seek agency review under U.C.A. §63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.

The Respondent Entities are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, and from being licensed in any capacity in the securities industry in Utah.

DATED this ___ day of March, 2020.

UTAH SECURITIES COMMISSION:

Lyndon L. Ricks

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Pursuant to U.C.A. §63G-4-209, a defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer. A defaulted party may seek agency review under U.C.A. §63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.

The Respondent Entities are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah, and from being licensed in any capacity in the securities industry in Utah.

DATED this ___ day of March, 2020.

UTAH SECURITIES COMMISSION:

_____
Lyndon L. Ricks

_____
Lyle White

_____
Peggy Hunt

_____
Gary Cornia

_____
Brent Cochran

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Pursuant to U.C.A. §63G-4-209, a defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer. A defaulted party may seek agency review under U.C.A. §63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.

CERTIFICATE OF SERVICE

I certify that on the 18th day of May 2020, I caused a true and correct copy of the foregoing **Order on Motion for Default of Respondent Entities** to be sent to the parties as follows:

US and Certified Mail:

Dallas H. Tall, [redacted]
Individually and as the Manager of Accelerated Wealth, LLC and
Accelerated Wealth Group, LLC
[redacted]
Certified Mail Tracking No.: [redacted]

Tobey Waggoner
[redacted]
Certified Mail Tracking No.: [redacted]

Via Email:

Tobey R. Waggoner
[redacted]

Ryan L. Farr
[redacted]

Benjamin D. Williams
[redacted]

Bruce Dibb, Administrative Law Judge
Department of Commerce
bdibb@utah.gov

Jennifer Korb, Assistant Attorney General
Utah Attorney General's Office
jkorb@agutah.gov

Dave R. Hermansen, Manager of Enforcement
Utah Division of Securities
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Sabrina Afridi
Administrative Assistant
Utah Division of Securities
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Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
ARENAL ENERGY CORPORATION;	Docket No. SD-18-0023
RICHARD CLAYTON REINCKE;	Docket No. SD-18-0024
ERIC DUNBAR JOHNSON, CRD#2384891;	**Docket No. SD-18-0025**
LARS DAVID JOHNSON;	Docket No. SD-18-0026
CHRISTOPHER BRADLEY ERWIN;	Docket No. SD-18-0027
MATTHEW HAL MARCHBANKS;	Docket No. SD-18-0028
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Eric Dunbar Johnson ("E. Johnson") hereby stipulate and agree as follows:

1. E. Johnson has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1 (securities fraud) and §61-1-3 (unlicensed activity) while engaged in the offer and/or sale of securities in or from Utah.

2. On or about May 15, 2018, the Division initiated an administrative action against Arenal Energy Corporation ("Arenal"), Richard Clayton Reincke, ('Reincke"), E. Johnson, Lars David Johnson ("L. Johnson), Christopher Bradley Erwin ("Erwin"), and Matthew Hal Marchbanks ("Marchbanks") (collectively referred to herein as "Respondents") by filing an Order to Show Cause.

3. E. Johnson hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against E. Johnson pertaining to the Order to Show Cause.

4. E. Johnson admits that the Division has jurisdiction over him and over the subject matter of this action.

5. E. Johnson hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. E. Johnson has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce E. Johnson to enter into this Order, other than as described in this Order.

7. E. Johnson is represented by attorney Randall Lee Marshall from Marshall Law, PLLC, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENTS

8. Arenal is a purported environmental remediation solutions company operating out of Dallas, Texas, and is registered with the Texas Secretary of State. Johnson is listed as a Director of Arenal.

9. E. Johnson, CRD#2384891, was a resident of Florida during all times relevant to the allegations asserted herein and is the President and CEO of Arenal. Johnson was previously licensed to sell securities from July 26, 1993 through August 28, 1998, but has never been licensed in Utah.[1]

GENERAL ALLEGATIONS

10. The Division's investigation of this matter revealed that from May 2012 to June 2013, in connection with the offer or sale of securities in the state of Utah, Respondents made material misrepresentations and omissions to investors, and collected approximately $202,000 in investor monies in connection therewith.

11. Respondents used investor monies in a manner that was inconsistent with what the investors were told at the time of solicitation of their investments.

12. Respondents solicited investments on behalf of Arenal, a company which purportedly developed products that could be used to clean up toxic spills, and received compensation in connection therewith. During all times relevant to the allegations asserted herein, Respondents were not licensed in the securities industry in Utah.

[1] On January 19, 2018, criminal charges were filed against Respondent Johnson in the Third Judicial District Court, Salt Lake County, Utah. *See* case number 181900697FS.

13. The investment opportunities offered and sold by Respondents are stocks, promissory notes and/or investment contracts.

14. Stocks, promissory notes and investment contracts are securities under §61-1-13 of the Act.

15. In connection with resolution of criminal charges filed against Respondents E. Johnson, L. Johnson, and Richard Reincke in the Third Judicial District Court, the investors have been repaid in full.

Investors S.S. and B.S.

16. In or around May 2012, Investors S.S. and B.S. were approached by L. Johnson, about investing in Arenal, a purported environmental remediation solutions company.

17. During this meeting, L. Johnson stated to Investors S.S. and B.S. that Arenal would go public in 30 days but needed $150,000 in additional capital to do so. To raise the additional capital, Arenal was offering 1,500,000 shares of common stock for $0.10 per share. L. Johnson claimed this stock would increase to $2.00 per share by the end of the public offering.

18. L. Johnson made numerous statements and representations to Investors S.S. and B.S. regarding the investment opportunity in Arenal, including, but not limited to the following:

    a. That Arenal had an impressive patent-pending product that was highly valuable;

    b. That Arenal was being assisted by United States Army Major General James Comstock in promoting Arenal's products overseas;

c. That Arenal had retained Dutko Grayling[2] in order to further pursue government contracts;

d. That Arenal had partnered with small, women-owned and minority-owned government contractors;

e. That Arenal had a working relationship with JETRO[3] to sell products overseas;

f. That Arenal had registered and been qualified to supply major remediation industry contractors;

g. That Arenal had capped share issuance at 10,000,000 shares, therefore any loan secured by Arenal's stock or any direct investment in Arenal stock would not be diluted; and

h. That investment funds would be used for expenses related to making Arenal a publicly traded company, including expenses such as flights and other travel expenses necessary to close agreements, obtain licenses, issue press releases and hire an attorney to take the company public.

19. After meeting with L. Johnson, Investors S.S. and B.S. also discussed the investment opportunity with Reincke and E. Johnson who confirmed all representations made by L. Johnson, except they claimed that the public offering would be within 120 days.

20. In reliance on the statements and representations of L. Johnson, Reincke and E. Johnson, Investors S.S. and B.S. invested $150,000 in Arenal through a series of three payments.

21. On or around July 5, 2012, Investors S.S. and B.S. wired $25,000 from their JP Morgan

[2] Dutko Grayling is a Washington, D.C. based lobbying firm that helps companies obtain government contracts.
[3] JETRO (Japan External Trade Organization) is a non-profit organization that connects businesses with the resources needed to successfully expand to Japan. Arenal paid a $20.00 fee to be a member of their website.

Chase account to Arenal's BBVA bank account.[4]

22. In exchange for their investment, Investors S.S. and B.S. received a promissory note, signed by E. Johnson on behalf of Arenal, and dated July 5, 2012 ("2012 Note"). According to the terms of the 2012 Note, Investor S.S. and B.S. would receive a return of principal by January 5, 2013, with interest payments of 15% per annum paid on the first day of each calendar month. The note was collateralized by 250,000 shares of Arenal common stock payable at $.10 per share at any time. The 2012 Note included a personal guarantee signed by both Reincke and E. Johnson.

23. In reliance on the statements and representations of L. Johnson, Reincke and E. Johnson, on or around August 14, 2012, Investors S.S. and B.S. wired $50,000 from their JP Morgan Chase account to Arenal's BBVA account.

24. Arenal issued an addendum to the 2012 Note on August 14, 2012, under the same terms and conditions as the original promissory note but also reflected the receipt of the additional investment monies. Reincke signed on behalf of Arenal.

25. In reliance on the statements and representations of L. Johnson, Reincke and E. Johnson, on or around October 18, 2012, Investors S.S. and B.S. wired $75,000 from their JP Morgan Chase account to Arenal's BBVA account.

26. On or around January 5, 2013, Investors S.S. and B.S. and Arenal entered into a new promissory note ("2013 Note") that combined the three prior investments and extended the maturity date of the total investment to January 5, 2014. Reincke signed on behalf of Arenal.

[4] Johnson is the sole signatory on the account.

27. An analysis of Arenal's bank account records revealed that Arenal used Investors S.S. and B.S.'s investment funds in a manner that was inconsistent with what L. Johnson, E. Johnson, and Reincke told Investors S.S. and B.S., including large cash withdrawals, payments to prior investors, and for personal use including payments toward E. Johnson's and Reincke's apartment rent.

28. In connection with the offer or sale of securities, L. Johnson, E. Johnson and Reincke made material misrepresentations to Investors S.S. and B.S. including, but not limited to, the following:

a. That Arenal would go public within 120 days, when they had no reasonable basis on which to make this representation, and in fact, the company never went public;

b. That Investors S.S. and B.S. could purchase stock for $0.10 per share and it would be worth $2.00 per share when the company went public, when in fact, they had no reasonable basis on which to make this representation, and in fact, Arenal never went public;

c. That Arenal had proprietary products of high value, when in fact, the name of the product was proprietary, but not the product itself;

d. That Arenal worked with lobbyists to obtain government contracts, when in fact, they had no reasonable basis on which to make this representation;

e. That Arenal contracted with women and minority-owned business in order to obtain government contracts, when in fact, they had no reasonable basis on which to make this representation; and

f. That Arenal had capped share issuance at 10,000,000 shares when in fact, Arenal issued at least 11,148,880 common shares.

29. In connection with the offer or sale of securities, L. Johnson, E. Johnson and Reincke failed to disclose material information to Investors S.S. and B.S. including, but not limited to, the following:

a. That Respondents were not licensed to sell securities in the state of Utah;

b. That the offering was not registered, notice filed, or exempt from registration in the state of Utah;

c. That Arenal, L. Johnson, E. Johnson, and Reincke would keep no accounting of any investment funds; and

d. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents and their business enterprise, Arenal, relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principals involved in the company;

iv. Conflicts of interest;

v. Risk factors; and

vi. Suitability factors for investment.

30. Starting on or around August 20, 2012, Investors S.S. and B.S. received a total of seven interest payments totaling $10,625. Until the criminal restitution order, Investors S.S. and B.S. did not receive any additional payments after April 2013.

31. On or around June 4, 2013, Arenal issued an additional addendum to the 2013 Note, signed by Reincke on behalf of Arenal, that imposed a late fee of $100 if payment was not received each month and requiring Arenal to file a Form S-1 Registration Statement with the Securities and Exchange Commission ("SEC") no later than July 22, 2013.

32. Upon demand, Arenal forfeited 1.5 million shares of common stock to Investors S.S. and B.S. for breach of the 2013 Note, to date the company has never gone public and the stock holds no value.

33. On July 10, 2013 Investors S.S. and B.S. received a certificate indicating their ownership of 1.5 million shares of Arenal stock.

Investor S.L.

34. In or around November 2012, Marchbanks approached Investor S.L., a Utah resident, about an investment opportunity in Arenal. Marchbanks represented that he knew some of the managers at Arenal and that Arenal was offering friends and family stock before the company went public.

35. In or around November 2012, Investor S.L. was invited to participate in a conference call with Marchbanks and E. Johnson. Marchbanks and E. Johnson made various statements and representations to Investor S.L. regarding the investment opportunity in Arenal, including but not limited to, the following:

    a. That Arenal would go public within the next year;

    b. That Investor S.L. could purchase Arenal stock for $0.10 per share;

    c. That the shares of Arenal stock would be worth $1.00 or more when the company went public;

d. That Johnson was experienced at taking companies public;

e. That Arenal had a lot of government contracts and would likely be receiving more;

f. That several other investors were investing large amounts of money into the company; and

g. That Marchbanks had purchased 50,000 shares.

36. In reliance on Marchbanks' and E. Johnsons' statements and representations, Investor S.L. decided to invest in Arenal. On or around November 27, 2012, Investor S.L. mailed a check to Arenal in the amount of $5,000, made payable to Arenal.

37. In exchange for his investment, Investor S.L. received an Arenal stock certificate for 50,000 shares in the company. Investor S.L.'s investment monies were deposited into Arenal's BBVA account.

38. An analysis of the Arenal BBVA account records revealed that Investor S.L.'s funds were used in a manner that is inconsistent with what Investor S.L. was told by Marchbanks and E. Johnson when he decided to invest, including large cash withdrawals, payments to prior investors, and bank fees.

39. In connection with the offer or sale of securities, Marchbanks and E. Johnson made material misrepresentations to Investor S.L. including, but not limited to, the following:

a. That Arenal would soon go public, when in fact, they had no reasonable basis on which to make this representation, and in fact, the company never went public;

b. That stock in Arenal would increase in value after the company went public, when in fact, they had no reasonable basis on which to make this representation; and

c. That Arenal had already been awarded government contracts and would obtain more, when in fact, they had no reasonable basis on which to make this representation, and in fact, Arenal did not have any government contracts.

40. In connection with the offer or sale of securities, Marchbanks and E. Johnson failed to disclose material information to Investor S.L. including, but not limited to, the following:

a. That previous investor's funds were used in a manner that was inconsistent with what they were told at the time of solicitation of their investments; and

b. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents and their business enterprise, Arenal, relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principals involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment;

vii. Whether the securities offered were registered in the state of Utah; and

viii. Whether Marchbanks and E. Johnson were licensed to sell securities in the state of Utah.

CONCLUSIONS OF LAW

Securities Fraud under § 61-1-1(2) of the Act

41. Based upon the Division's investigative findings, the Division concludes that the

investment opportunity offered and sold by E. Johnson is an investment contract and/or a promissory note.

42. Investment contracts and promissory notes are securities under §61-1-13 of the Act.

43. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, E. Johnson, directly or indirectly misrepresented material facts, as described above.

44. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, E. Johnson omitted material facts which were necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading as described above.

Securities Fraud under § 61-1-1(3) of the Act

45. In violation of § 61-1-1(3) of the Act, and in connection with the offer and/or sale of a security, E. Johnson directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on investors when he misused investor funds for purposes not disclosed to or authorized by investors, including E. Johnson's personal use of the investor's funds.

Unlicensed Activity under § 61-1-3(1) of the Act

46. In violation of § 61-1-3(1) of the Act, E. Johnson was not licensed in the securities industry in any capacity when he offered and sold securities on behalf of Arenal, and received compensation in connection therewith.

REMEDIAL ACTIONS/SANCTIONS

47. E. Johnson admits the Division's Findings of Fact and Conclusions of Law, and consents to the below sanctions being imposed by the Division.

48. E. Johnson represents that the information he has provided to the Division as part of its investigation is accurate and complete.

49. E. Johnson agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

50. E. Johnson agrees to be barred 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 Utah.

51. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a total fine amount of $18,000 against E. Johnson. E. Johnson agrees to pay $1,000 to the Division on the first day of each month beginning April 1, 2020 and continuing until all of fine has been paid.

FINAL RESOLUTION

52. E. Johnson acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. E. Johnson acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, E. Johnson expressly

waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

53. If E. Johnson materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, E. Johnson consents to entry of an order in which the total fine amount is increased by 20% and any fine payments owed by E. Johnson become immediately due and payable. Notice of the violation will be provided to E. Johnson at his last known address, and to his counsel if he has one. If E. Johnson fails to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against E. Johnson in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by E. Johnson or to otherwise enforce the terms of this Order. E. Johnson further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

54. E. Johnson acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. E. Johnson also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar this administrative action by the Division against him.

55. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondent E. Johnson are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 13th day of March, 2020

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 13 day of MARCH, 2020

Eric Dunbar Johnson

Approved:

Paula Faerber
Assistant Attorney General
Counsel for Division

Approved:

Randall Marshall
Attorney for Eric Johnson

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which E. Johnson admits, are hereby entered.
2. E. Johnson 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.
3. E. Johnson shall be barred 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 Utah.
4. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, E. Johnson shall pay a fine of $18,000 to the Division pursuant to the terms set forth in paragraph 51.

BY THE UTAH SECURITIES COMMISSION:

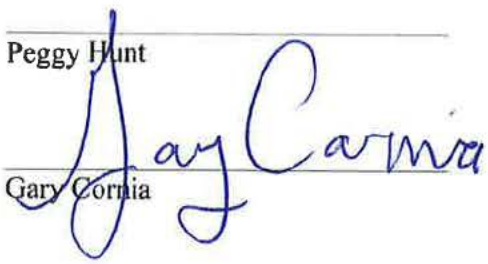
DATED this 7th day of April, 2020

Lyndon Ricks

Lyle White

Peggy Hunt

Gary Cornia



Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____ , 2020

Lyndon Ricks

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____ , 2020

_____
Lyndon Ricks

_____
Lyle White

_____
Peggy Hunt

_____
Gary Cornia

_____
Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020

_____
Lyndon Ricks

_____
Lyle White

_____
Peggy Hunt

_____
Gary Cornia

_____
Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 29th day of April, 2020, I emailed a true & correct copy of the Stipulation and Consent Order to:

Eric Dunbar Johnson (Respondent)
[redacted]

Bruce Dibb, Administrative Law Judge
Department of Commerce
bdibb@utah.gov

Paula Faerber, Assistant Attorney General
Utah Attorney General's Office
pfaerber@agutah.gov

Dave R. Hermansen, Manager of Enforcement
Utah Division of Securities
dhermans@utah.gov

Sabrina Afridi

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Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
ARENAL ENERGY CORPORATION;	Docket No. SD-18-0023
RICHARD CLAYTON REINCKE;	Docket No. SD-18-0024
ERIC DUNBAR JOHNSON, CRD#2384891;	Docket No. SD-18-0025
LARS DAVID JOHNSON;	Docket No. SD-18-0026
CHRISTOPHER BRADLEY ERWIN;	**Docket No. SD-18-0027**
MATTHEW HAL MARCHBANKS;	Docket No. SD-18-0028
Respondent.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Christopher Bradley Erwin ("Erwin"), hereby stipulate and agree as follows:

1. Arenal Energy Corporation ("Arenal"), Richard Clayton Reincke ("Reincke"), Eric Dunbar Johnson ("Johnson"), Lars David Johnson ("L. Johnson"), Matthew Hal Marchbanks ("Marchbanks") and Christopher Bradley Erwin (collectively "Respondents") have been the subject of an investigation by the Division into allegations

that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1(2) (securities fraud), and § 61-1-1(3) (securities fraud), and § 61-1-3 (unlicensed activity) while engaged in the offer or sale of securities in the state of Utah.

2. On or about May 15, 2018, the Division initiated an administrative action against Respondents by filing an Order to Show Cause.

3. Respondent Erwin hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondent Erwin pertaining to the Order to Show Cause.

4. The administrative action against Arenal, Reincke, Johnsonand L. Johnson is still pending.

5. Respondent Erwin admits that the Division has jurisdiction over him and over the subject matter of this action.

6. Respondent Erwin hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

7. Respondent Erwin has read this Order, understand its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent Erwin to enter into this Order, other than as described in this Order.

FINDINGS OF FACT

8. Arenal is a purported environmental remediation solutions company operating out of Dallas, Texas, and is registered with the Texas Secretary of State.

9. Erwin was a resident of Utah during all times relevant to the allegations asserted herein and was an agent of Arenal. Erwin has never been licensed in the securities industry in Utah.

10. The Division's investigation of this matter revealed that from May 2012 to June 2013, in connection with the offer or sale of securities in the state of Utah, Respondents made material misrepresentations and omissions to investors, and collected approximately $202,000 in investor monies in connection therewith.

11. Respondents, other than Erwin, used investor monies in a manner that is inconsistent with what the investors were told at the time of solicitation of their investments.

12. Mr. Erwin invested in Arenal Energy as an investor with no other active role in the company. Arenal offered Mr. Erwin compensation for soliciting others to invest in Arenal. Mr. Erwin, unaware that there are laws regulating solicitation of investments, solicited at least two individuals to invest in Arenal. Mr. Erwin did not receive the promised commissions.

13. During all times relevant to the allegations asserted herein, Respondent Erwin was not licensed in the securities industry in Utah.

14. The investment opportunities offered and sold by Respondents are stocks, promissory notes and/or investment contracts.

15. Stocks, promissory notes and investment contracts are securities under §61-1-13 of the Act.

16. Reincke, Johnson and Lars Johnson have paid full restitution to all of the investors, including the investors solicited by Erwin.

INVESTOR S.P.

OFFER AND SALE OF A SECURITY

17. In or around October 2012, Erwin approached Investor S.P., a Utah resident, in person about investing in Arenal.

18. During this conversation, Erwin made various statements and representations to Investor S.P. regarding the investment opportunity in Arenal, including but not limited to, the following:

a. That Arenal would go public in February 2013;

b. That Investor S.P. could purchase Arenal stock for $0.10 per share;

c. That Arenal stock would be worth up to $2.00 per share when it went public;

d. That the United States government had business interest in the company;

e. That Erwin had invested with Arenal; and

f. That it was very unlikely Arenal would fail, so the stock would be unlikely to lose value.

19. In reliance on Erwin's statements and representations, as set forth in paragraph 17, Investor S.P. decided to invest in Arenal. Erwin assisted Investor S.P. in printing an Accredited Investor Subscription Agreement from the Arenal website and instructed Investor S.P. to send a check to Arenal with the completed paperwork.

20. On or around November 13, 2012, Investor S.P. mailed a cashier's check to Arenal's Dallas, Texas office in the amount of $3,000, made payable to Arenal.

21. In exchange for her investment, Investor S.P. received an Arenal stock certificate for 30,000 shares in Arenal. Investor S.P.'s investment monies were deposited into the Arenal's BBVA account.

22. An analysis of the Arenal BBVA account records revealed that Investor S.P.'s funds were used in a manner inconsistent with what Investor S.P. was told by Erwin when she decided to invest, including large cash withdrawals, payments to prior investors, and payment toward Johnson's and Reincke's apartment rent. The Division has no evidence that Erwin misappropriated any of the investor funds.

23. In connection with the offer or sale of securities, Erwin made the following material misrepresentations to Investor S.P. including, but not limited to, the following:

a. That Arenal would soon go public, when in fact, he had no reasonable basis on which to make this representation, and in fact, Arenal never went public;

b. That stock in Arenal would increase significantly after the company went public, when in fact, he had no reasonable basis on which to make this representation;

c. That Arenal was unlikely to fail, when in fact, he had no reasonable basis on which to make this representation; and

d. That the United States government had a business interest in Arenal, when in fact, he had no reasonable basis on which to make this representation.

24. In connection with the offer or sale of securities, Erwin failed to disclose material information to Investor S.P. including, but not limited to, the following:

a. That Erwin was promised a commission in the form of Arenal stock for referring other investors;

b. That Investors S.S and B.S.'s investment monies were used in a manner that was inconsistent with what Investors S.S and B.S. were told at the time of solicitation of their investments; and

c. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents and their business enterprise, Arenal, relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principals involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment;

vii. Whether the securities offered were registered in the state of Utah; and

viii. Whether Erwin was licensed to sell securities in the state of Utah.

INVESTOR D.M.

OFFER AND SALE OF A SECURITY

25. In or around October 2012, Erwin solicited Investor D.M., a Utah resident, for an investment in Arenal. Erwin was previously introduced to Investor D.M. through Investor S.P.

26. During this solicitation, Erwin made various statements and representations to Investor D.M. regarding the investment opportunity in Arenal, including but not limited to, the following:

a. That Arenal would go public in the next 12-16 months;

b. That Investor D.M. could purchase Arenal stock for $0.10 per share;

c. That Arenal stock would likely increase to a value of $1.00 a share when the company went public with the potential of the stocks being worth even more; and

d. That Arenal had a lot of government contracts and would likely be getting more.

27. In reliance on Erwin's statements and representations, as set forth in paragraph 26, Investor D. M. decided to invest in Arenal. On or around November 15, 2012, Investor D.M. presented a check to Arenal in the amount of $2,000, made payable to Arenal.

28. In exchange for his investment, Investor D.M. received an Arenal stock certificate for 20,000 shares in the company. Investor D.M.'s investment monies were deposited into the Arenal's BBVA account.

29. An analysis of the Arenal BBVA account records revealed that Investor D.M.'s funds were used in a manner inconsistent with what Investor D.M. was told by Erwin when he decided to invest, including large cash withdrawals, payments to prior investors, and payment toward Johnson's and Reincke's apartment rent. The Division has no evidence that Erwin misappropriated any of the investor funds.

30. In connection with the offer or sale of securities, Erwin made material misrepresentations to Investor D.M. including, but not limited to, the following:

a. That Arenal would soon go public, when in fact, he had no reasonable basis on which to make this representation, and in fact, Arenal never went public;

b. That stock in Arenal would increase from $0.10 to $1.00 after the company went public, when in fact, he had no reasonable basis on which to make this representation; and

c. That Arenal had already been awarded government contracts and would obtain more, when in fact, he had no reasonable basis on which to make this representation, and in fact, they did not have any government contracts.

31. In connection with the offer or sale of securities, Erwin failed to disclose material information to Investor D.M. including, but not limited to, the following:

a. That Erwin was promised a commission in the form of Arenal stock for referring other investors;

b. That Investors S.S., B.S. and S.P. investments were used in a manner that was inconsistent with what they were told at the time of solicitation of their investments; and

c. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents and their business enterprise, Arenal, relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principals involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment;

vii. Whether the securities offered were registered in the state of Utah; and

viii. Whether Erwin was licensed to sell securities in the state of Utah.

32. Respondent Erwin did not receive the promised commissions from these sales.

CONCLUSIONS OF LAW

FIRST CAUSE OF ACTION
Securities Fraud under § 61-1-1(2) of the Act

33. As described herein, in connection with the offer or sale of securities to **Investor S.P. and D.M.**, Respondent Erwin directly or indirectly misrepresented material facts or omitted material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of Section 61-1-1(2) of the Act.

SECOND CAUSE OF ACTION
Unlicensed Activity under § 61-1-3(1) of the Act

34. It is unlawful for a person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

35. As described herein, Respondent Erwin was not licensed in the securities industry in any capacity when he offered and sold securities on behalf of Arenal to investors, and expected compensation in connection therewith, in violation of Section 61-1-3(1) of the Act.

REMEDIAL ACTIONS/SANCTIONS

36. Respondent Erwin admits the Division's Findings of Fact and Conclusions of Law, pertaining to unlicensed activity only. Respondent Erwin further neither admits nor denies the Division's Findings of Fact and Conclusions of Law, pertaining to securities fraud and consents to the below sanctions being imposed by the Division.

37. Respondent Erwin represents that the information he has provided to the Division as part of its investigation is accurate and complete.

38. Respondent Erwin agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

39. Respondent Erwin agrees to not apply for securities licensure for a period of one year after entry of this Order. At the end of the one-year period, Respondent Erwin can apply for a securities license in Utah following the standard licensing procedures.

40. Respondent Erwin agrees to cooperate with the Division in the parallel criminal case involving some of the Respondents.

41. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a total fine amount of $2,500 against Respondent Erwin to be paid to the Division within fourteen (14) days after the entry of this Order.

FINAL RESOLUTION

42. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

43. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondent consents to entry of an order in which the fine is increased to $7,500 and

becomes immediately due and payable. Notice of the violation will be provided to Respondent at his last known address, and to his counsel if he has one. If Respondent fails to request a hearing within ten (10) days following the notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

44. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

45. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 18 day of February 2020

Dated this 18 day of February, 2020

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Christopher Bradley Erwin

Approved:

Paula Faerber
Assistant Attorney General
Counsel for Division

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondent admits as set forth in paragraph 37, are hereby entered.
2. Respondent 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.
3. Respondent shall not apply for securities licensure for a period of one year after entry of this Order. At the end of the one-year period, Respondent Erwin can apply for a securities license in Utah following the standard licensing procedures.
4. Respondent Erwin shall cooperate with the Division in the parallel criminal case involving some of the Respondents.
5. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondent shall pay a fine of $2,500 to the Division pursuant to the terms set forth in paragraph 41.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of April, 2020.

Brent Baker

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020.

Brent Baker

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of_____, 2020.

_____
Brent Baker


Lyle White

_____
Peggy Hunt

_____
Gary Cornia

_____
Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of_____, 2020.

_____
Brent Baker

_____
Lyle White

_____
Peggy Hunt

_____
Gary Cornia

_____
Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 29th day of April, 2020, I emailed a true & correct copy of the Stipulation & Consent Order to:

Christopher Bradley Erwin (Respondent)
[redacted]

Bruce Dibb, Administrative Law Judge
Department of Commerce
bdibb@utah.gov

Paula Faerber, Assistant Attorney General
Utah Attorney General's Office
pfaerber@agutah.gov

Dave R. Hermansen, Manager of Enforcement
Utah Division of Securities
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Sabrina Afridi

Sabrina Afridi, Administrative Assistant

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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
EMPIRE ENERGY,	**Docket No. SD-19-0001**
SPENCER KENT BARTON,	**Docket No. SD-19-0002**
LEE CHARLES RASMUSSEN,	Docket No. SD-19-0003
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondents Empire Energy ("Empire"), and Spencer Kent Barton ("Barton") (collectively referred to herein as "Respondents") hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1(2) (securities fraud) and §61-1-3 (unlicensed activity) while engaged in the offer or sale of securities in or from Utah.

2. On or about January 10, 2019, the Division initiated an administrative action against Empire, Barton, and Lee Charles Rasmussen ("Rasmussen") by filing an Order to Show Cause.

3. The matter against Rasmussen has been resolved, so this Stipulation involves only Empire and Barton.

4. Respondents hereby agree to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondents pertaining to the Order to Show Cause.

5. Respondents admit that the Division has jurisdiction over them and over the subject matter of this action.

6. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

7. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.

8. Respondents are aware that they are able to obtain legal counsel to review the terms of the Order, and have elected not to obtain counsel.

FINDINGS OF FACTS

THE RESPONDENTS

9. Empire is a Utah DBA Sole Proprietorship registered with the Utah Division of Corporations and Commercial Code on October 26, 2016. Barton is listed as the sole owner and registered agent of the entity.[1] The purported purpose of Empire is to develop natural gas wells on sites in Emery County, Utah. Empire has never been licensed with

[1]Empire's entity documents list a principal address as 950 S. State St., Ferron, UT 84523. The Utah Division of Corporations and Commercial Code listed the entity's registration as active until November 25, 2019 when it expired.

the Division, and has never recorded a securities registration, exemption from registration, or notice filing with the Division.

10. Barton resided in Utah during all times relevant to the allegations asserted herein and has never been licensed in the securities industry. Barton is the president and registered agent for Empire, and established entity bank accounts with sole signatory authority.

GENERAL ALLEGATIONS

11. The Division's investigation of this matter revealed that from approximately September 2016 to November 2017, while conducting business in or from the state of Utah, Respondents offered and sold several investment opportunities to at least 50 investors, and raised approximately $359,157 in connection therewith.

12. The investment opportunities offered and sold by Respondents were investment contracts and/or interests in an oil or gas well.

13. Investment contracts, and interests in an oil or gas well are securities under §61-1-13 of the Act.

14. In connection with the offer and/or sale of securities, Respondents, either directly or indirectly, made material omissions and/or misrepresentations of material facts.

15. Barton utilized investor funds in a manner inconsistent with the representations Barton made to investors including, but not limited to paying personal expenses, giving a personal loan to Barton's son, and making substantial cash withdrawals totaling approximately $150,655 from ATM withdrawals and checks written to Barton from Empire's bank accounts.

16. To date, investors are owed at least $332,107 in principal alone.

INVESTOR INFORMATION

17. From approximately September 2016 to November 2017, Barton solicited at least 50 investors to invest in Empire.

18. The majority of investors solicited by Barton believed their funds would be used to drill Empire's Academy Well.

19. Some Empire investors were later solicited by Barton and Rasmussen to also invest in Empire's Pan Am Wells ("Pan Am").

20. Barton and Rasmussen solicited investors primarily located in Utah but also solicited investors located in Montana. The solicitations usually occurred in person, and sometimes through email.

21. With the exception of one investor, investors had no role in the investment opportunities, other than providing investment funds.

Academy Well Investment

THE SOLICITATION

22. Barton began soliciting investors by advertising in Emery County, Utah in a local newspaper. The details of the advertisement included that Barton was offering a gas-drilling investment located in Ferron, Utah in a "high production location", with an estimated production of "20,000 to 100,000 MCF" which would provide "$40,000 to $200,000" in proceeds. The advertisement further detailed that investors would pay $6,950 for a 5% interest in the well, and provided a phone number to discuss the investment opportunity.

23. Barton represented to investors that he was experienced in drilling oil wells, could locate the most advantageous area to drill, and was raising capital to fund the cost of the initial

drilling phase and general operations.

24. Barton provided most investors with a business plan detailing Empire's objective to "develop and expand a multitude of natural gas wells [...] within Emery County, Utah USA." The business plan further included statements that "our Principal has decades of executive experience and expertise in [...] Oil Field Technology, Engineering, as well as degrees in Math and Science...."

25. During the solicitation, Barton made numerous statements and representations to investors regarding the investment opportunity in the Empire Academy Well, including, but not limited to, the following:

a. That Barton had over 30 years of previous oil and gas industry experience;

b. That Barton was in possession of technology that had been used successfully on wells in California and could locate formations containing hydro carbons;

c. That Barton would start drilling in January 2017;

d. That the well would help improve the local economy;

e. That based on historical records of other successful wells in the area, production was projected to be 25,000 – 100,000 MCF of natural gas per month;

f. That Barton wanted to raise $134,000 to finance Empire's next phase of drilling;

g. That the investment offering would be limited to a maximum of 20 accredited investors;

h. That investors would break-even on their investment in approximately two and a half months;

i. That investors could expect a rate of return of at least 200% and as much as 300%;

j. That the productive life of an oil well can generate profitable returns for 20 – 30

years; and

k. That tax advantages would allow investors to offset their investment against ordinary income taxes between 65% - 80% within the first year, with remaining values depreciating over a 7-year period.

26. Based on Barton's statements, investors sent funds by checks and wire transfers totaling approximately $332,157 to Empire's bank account, as they were instructed to do by Barton.

THE INVESTMENT AGREEMENT

27. In exchange for their investment in the Empire Academy Well, investors received a "company agreement", signed by Barton, agreeing to provide investors with a 5% working interest in the Academy Well.

28. Although the terms of the agreement provide that modification of the agreement cannot occur without consent of the majority in interest, Barton unilaterally decreased all investor's working interests in the Academy Well to 4.5% later when the offering became over-subscribed beyond the 20 accredited investors Barton initially stated he would seek.

FRAUDULENT CONDUCT: USE OF INVESTOR FUNDS

29. An analysis of Empire's bank records revealed that Barton used investor funds in a manner inconsistent with what Barton represented at the time of solicitation.

30. Barton used investor funds in a manner including, but not limited to the following:

a. To make cash withdrawals totaling approximately $150,655 without producing receipts or other supporting documents to account for a legitimate business purpose for the cash withdrawals;

b. To pay over $28,000 in personal expenses at grocery stores, gas stations, Amazon,

Paypal, and travel expenses; and

c. To provide a personal loan to Barton's son of approximately $36,000.

31. Barton spent investor funds within one year of receipt of funds.

MISSTATEMENTS AND OMISSIONS

32. In connection with the offer or sale of securities, Barton made the following material misstatements to investors including, but not limited to, the following:

a. That all investor funds would be used for costs associated with drilling Empire's Academy Well, when in fact, this representation was false and Barton used a portion of investor money on personal expenses, significant cash withdrawals, and personal loans;

b. That the investment opportunity in the Academy Well would be limited to 20 accredited investors receiving a 5% interest in the well for each investment, when in fact, Barton sold the investment to approximately 50 investors, many of whom were not accredited investors, and decreased previous investors' interest in the well to 4.5% after offering the investment to additional investors; and

c. That investors would reach a break-even point on their investment in two and a half months, when in fact, this claim was false and investors have not realized any break-even point.

33. In connection with the offer or sale of securities, Barton failed to disclose material information to investors including, but not limited to, the following:

a. That Barton would routinely make cash withdrawals totaling approximately $150,655 without keeping accurate accounting records supporting a legitimate business use;

b. That Barton would use investor funds for personal use;

c. That Barton would fail to maintain accurate recordkeeping practices detailing business expenses and how investor funds would be spent;

d. That Barton and Rasmussen were not licensed to sell securities;

e. That Barton filed for bankruptcy in 2003; and

f. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principles involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment; and

vii. Whether the securities offered were registered in the state of Utah.

34. To date, investors are owed at least $307,107 in principal alone on their investments in the Empire Academy Well.

Pan Am Wells Investment

THE SOLICITATION

35. In or about May 2017, Barton and Rasmussen began soliciting existing Empire investors to invest in three new wells, Pan Am, Nelson, and Lemon wells, collectively referred to as the "Pan Am wells".

36. During the solicitation, Barton made numerous statements and representations to investors regarding the investment opportunity in the Pan Am wells, including, but not

limited to, the following:

a. That Empire was "taking over" three wells and expected a quick return;

b. That Empire was offering two investment options: one opportunity to invest $1,500 generally in the Pan Am wells, and another opportunity to invest directly in securing the surety bond required to begin operating the Pan Am wells;

c. That surety bond investors would receive a return of up to ten times their investment per $12,000 or less invested;

d. That the surety bond required to drill the wells costs $120,000;

e. That Barton would receive 10% of the oil well proceeds; and

f. That Barton estimated it would cost $30,000 to put the first well into production in less than a week.

37. Based on Barton's statements, investors sent funds by checks totaling at least $27,000 to Barton, as they were instructed to do by Barton.

THE INVESTMENT AGREEMENT

38. On or about May 6, 2017, Rasmussen sent an email correspondence to investors memorializing the terms of the Pan Am wells investment.

39. In exchange for their investment in the Pan Am wells, general investors would receive 65% of the proceeds of the wells, and surety bond investors would receive 7.5% of the proceeds of the wells with the first $1,250,000 of the well proceeds paid to surety bond investors before general investors.

40. Investors who chose the surety bond investment opportunity would receive up to ten times their investment of $12,000 or less in the Pan Am wells.

41. Although Rasmussen described two separate investment options in the Pan Am wells,

every investor in the Pan Am wells uncovered during the Division's investigation believed their investment was used to obtain a surety bond.

FRAUDULENT CONDUCT: USE OF INVESTOR FUNDS

42. An analysis of Empire's bank records revealed that Barton used some investor funds in a manner inconsistent with what Barton and Rasmussen represented at the time of solicitation.

43. While Barton and Rasmussen represented to at least one investor that Empire was raising additional funds to obtain the Pan Am wells, Barton instead used the investor's funds for the benefit of the Academy Well.

44. Consequently, the Empire investor who believed he was investing in the Pan Am wells, a distinct and separate investment opportunity from the Academy Well, actually invested additional funds in the Academy Well without receiving an additional interest in the Academy Well for his new investment.

MISSTATEMENTS AND OMISSIONS

45. In connection with the offer or sale of securities, Barton made the following material misstatements to investors including, but not limited to, the following:

a. That all investor funds collected for the Pan Am wells would be used to further develop the Pan Am wells and obtain a surety bond, when in fact, this claim was false and some investor funds were used instead for the benefit of the Academy Well; and

b. That the surety bond for the Pan Am wells would be $120,000, when in fact, Barton knew prior to solicitation and based on discussions with the Division of Oil and Gas

that the surety bond for the Pan Am wells would cost more than $120,000.

46. In connection with the offer or sale of securities, Barton and Rasmussen failed to disclose material information to investors including, but not limited to, the following:

a. That prior Empire investor funds were used in a manner inconsistent with what was represented at the time of solicitation to later Empire investors;

b. That Barton used prior Empire investor funds for personal use;

c. That Barton and Rasmussen were not licensed to offer or sell securities;

d. That Barton filed for bankruptcy in 2003; and

e. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principles involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment; and

vii. Whether the securities offered were registered in the state of Utah.

47. To date, investors are owed $25,000 in principal alone on their investments in the Pan Am wells investment.

BARTON'S PARALLEL CRIMINAL PROCEEDING

48. On December 14, 2018, Barton was charged in a parallel criminal action in Utah's Third District Court, Salt Lake County, Case Number 181700103 (the "Criminal Action").

49. On August 6, 2019, Barton entered into a plea agreement with the state, and pleaded

guilty to Pattern of Unlawful Activity, a 2nd degree felony.

50. On October 10, 2019, Barton was sentenced to an indeterminate term not less than one year or more than fifteen (15) years in Utah State Prison, but the prison term was suspended. Barton was ordered to spend 10 days in Emery County Jail beginning November 17, 2019, and placed on probation for 36 months. Barton was also ordered to pay restitution plus interest to the following investors: $13,900 to S.A., $15,500 to L.B., $250.14 to G.C., $12,150 to W.B., $3,100 to C.H. or K.H., $3000.04 to L.H., $25,500 to R.J., $15,850 to M.M, $3,100.03 to M.R., $13,950 to C.S., $27,900 to K.S., $11,450 to T.S. or M.S., $1,350 to S.S., $300 to M.L.S., $3,200 to S.T., $160 to T.T., $1,600.47 to J.V. or C.V., and $3,350 to V.B. Barton's restitution payments are to be made in consecutive monthly payments of $1000, and conclude in July 2039.

CONCLUSIONS OF LAW

Securities Fraud under § 61-1-1(2) of the Act

51. Based upon the Division's investigative findings, the Division concludes that the investment opportunities offered and sold by Respondents are investment contracts and/or interests in an oil or gas well.

52. Investment contracts and interests in an oil or gas well are securities under §61-1-13 of the Act.

53. In violation of under §61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Respondents, directly or indirectly misrepresented material facts, as described above.

54. In violation of §61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Respondents omitted material facts which were necessary in order to make the

statement made, in light of the circumstances under which they were made, not misleading as described above.

Securities Fraud under § 61-1-1(3) of the Act

55. In violation of §61-1-1(3) of the Act, and in connection with the offer and/or sale of a security, Respondents directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on the investor. That act, practice, or course of business includes but is not limited to Barton's conversion and misuse of investor funds for purposes not disclosed to or authorized by investors, including, but not limited to, personal use of funds.

Unlicensed Activity under § 61-1-3(2)(a) of the Act

56. In violation of §61-1-3(2)(a) of the Act, Empire acted as an issuer at the time of the offerings, and employed Barton and Rasmussen as unlicensed agents of Empire to offer and sell securities on behalf of Empire.

Unlicensed Activity under § 61-1-3(1) of the Act

57. In violation of §61-1-3(1) of the Act, Barton was not licensed in the securities industry in any capacity when he offered and sold securities on behalf of Empire, and received compensation in connection therewith.

REMEDIAL ACTIONS/SANCTIONS

58. Respondents admit the Division's Findings of Fact and Conclusions of Law, and consent to the below sanctions being imposed by the Division.

59. Respondents represent that the information they have provided to the Division as part of its investigation is accurate and complete.

60. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

61. Respondents agree to be barred 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 Utah.

62. Respondents agree to pay restitution in the amount of $155,610.68 (plus interest), pursuant to the Criminal Action

63. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a total fine amount of $175,000 against Respondents to be paid jointly and severally to the Division. The Division's fine of $175,000 may be offset by the restitution paid in the amount of $155,610.68 ordered in the Criminal Action. If Respondents timely pay restitution as ordered in the Criminal Action, Respondents agree to pay a fine in the amount of $19,389.32 to the Division within 30 days following the final restitution payment. If Respondents fail to timely pay restitution pursuant to the Criminal Action, the fine of $175,000 will become immediately due and payable to the Division.

FINAL RESOLUTION

64. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondents acknowledge that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondents expressly

waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

65. If Respondents materially violate any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which the total fine amount is increased by 20% and any fine payments owed by Respondents become immediately due and payable. Notice of the violation will be provided to Respondents at their last known address, and to their counsel if they have one. If Respondents fail to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.

66. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

67. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar this administrative action by the Division against them.

68. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondents are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 21 day of DEC., 2019

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 21 day of DEC., 2019

Spencer Kent Barton

Dated this 21 day of DEC., 2019

Empire Energy

By: _____
Spencer Kent Barton

Its: Founder

Approved:

Paula Faerber
Assistant Attorney General
Counsel for Division

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondents admit, are hereby entered.
2. 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.
3. Respondents shall be barred 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 Utah.
4. Respondents shall pay restitution in the amount of $155,610.68 (plus interest) as ordered in the Criminal Action.
5. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondents shall pay a fine of $175,000 to the Division pursuant to the terms set forth in paragraph 63.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of April, 2020

Brent Cochran

Gary Cornia

Peggy Hunt

Lyndon Ricks

Lyle White

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020

_____
Brent Cochran

_____
Gary Cornia

_____
Peggy Hunt

_____
Lyndon Ricks

_____
Lyle White

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020

_____
Brent Cochran

_____
Gary Cornia

_____
Peggy Hunt

_____
Lyndon Ricks

_____
Lyle White

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____ , 2020

_____
Brent Cochran

_____
Gary Cornia

_____
Peggy Hunt

_____
Lyndon Ricks

_____
Lyle White

CERTIFICATE OF SERVICE

I certify that on the 29th day of April, 2020, I emailed a true & correct copy of the Stipulation and Consent Order to:

Empire Energy and Spencer Kent Barton
[redacted]

Bruce Dibb, Administrative Law Judge
Department of Commerce
bdibb@utah.gov

Paula Faerber, Assistant Attorney General
Utah Attorney General's Office
pfaerber@agutah.gov

Dave R. Hermansen, Manager of Enforcement
Utah Division of Securities
dhermans@utah.gov

Sabrina Afridi

Sabrina Afridi, Administrative Assistant

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
DIVVEE SOCIAL INC,	**Docket No. SD-19-0029**
DARREN OLAYAN,	**Docket No. SD-19-0030**
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondents Divvee Social, Inc. ("Divvee") and Darren Olayan ("Olayan") hereby stipulate and agree as follows:

1. Olayan and Divvee have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1 (securities fraud) and §61-1-3 (unlicensed activity) while engaged in the offer and/or sale of securities in or from Utah.
2. On or about July 18, 2019, the Division initiated an administrative action against Olayan and Divvee (also referred to herein as "Respondents") by filing an Order to Show Cause.
3. Respondents hereby agree to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondents pertaining to the Order to Show Cause.

4. Respondents neither admit nor deny that the Division has jurisdiction over them and over the subject matter of this action, but submit to and consent to the entry of the instant settlement and sanction against them by the Division.

5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

6. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.

7. Respondents are represented by attorney Hutch Fale, from Pacific Legal Group and are satisfied with the legal representation they have received.

FINDINGS OF FACTS

THE RESPONDENTS

8. Divvee is a Utah corporation registered with the Utah Division of Corporations and Commercial Code on December 23, 2016. Olayan is listed as the officer, director, and incorporator of the entity.[1] TJWJ Holdings, LLC, which is owned by Troy Muhlestein ("Muhlestein"), is the current owner of Divvee. Divvee is a purported social networking company that offers a software application allowing subscribers to earn compensation for online reviews using a multi-level marketing ("MLM") platform. Divvee has never been licensed with the Division, and has never recorded a securities registration, exemption from registration, or notice filing with the Division.

[1]Divvee's entity documents list a principal address as 3521 N. University Avenue, Suite 225, Provo, UT 84604. The Utah Division of Corporations and Commercial Code lists the entity's registration as expired as of March 8, 2018.

9. Olayan resided in Utah County, Utah during all times relevant to the allegations asserted herein and has never been licensed in the securities industry. Olayan is an officer, director, and registered agent for Divvee, and established an entity bank account for Divvee with signatory authority. Derrick Schutz, the former CFO of Divvee, and Muhlestein were also signatories on the Divvee bank account at the time of the allegations asserted herein.

GENERAL ALLEGATIONS

10. The Division's investigation of this matter revealed that on or about February 10, 2017, while conducting business in or from the state of Utah, Respondents offered and sold an investment opportunity to at least one investor, and raised approximately $750,000 in connection therewith.[2]

11. The investment opportunity offered and sold by Respondents is an investment contract, which is a security under §61-1-13 of the Act.

12. In connection with the offer and/or sale of securities, Respondents, either directly or indirectly, made material omissions and/or misrepresentations of material facts regarding Respondents' intended use of the investor's funds and Divvee's financial condition.

13. Olayan utilized investor funds in a manner inconsistent with the representations Olayan made to the investor. For example, investor funds were used to repay Olayan's personal loan debt, and to pay Divvee's operational expenses, unauthorized by the investor.

14. To date, the investor is owed at least $660,000 in principal alone.

[2] Another investor was uncovered during the Division's investigation; however, the investor was paid back for his investment in Divvee and was not included in the Division's administrative proceedings.

INVESTOR INFORMATION

15. On or about February 10, 2017, Olayan solicited at least one investor to invest in Divvee.

16. The investor was told his funds would be used to pay affiliate commissions only, not other operational expenses of Divvee.

17. The investor solicited by Olayan is located in California. The solicitation occurred over the telephone.

18. The investor had no role in the business, other than providing investment funds.

DIVVEE INVESTMENT

THE SOLICITATION

19. In or about February 2017, Olayan contacted B.M., a potential investor Olayan met through B.M.'s friends, Lance Conrad ("Conrad") and Rob Sperry ("Sperry"), and solicited B.M. to invest in Divvee.[3] Investor B.M. had previously heard about Olayan from B.M.'s association with top MLM affiliates.

20. In or about February 2017, Olayan hired Conrad and his company Make a Difference, LLC to communicate corporate messages to Divvee's network marketing affiliates.

21. In exchange for securing a new investor, Olayan promised Conrad and Sperry commissions and management roles in Divvee.[4]

22. At the time of solicitation, B.M. was not aware that Conrad had been hired by Divvee, or

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[3] Investor B.M. was contacted by Conrad and Sperry after Olayan informed Conrad and Sperry that Divvee required immediate funds to pay commissions to distributors and affiliates or the distributors and affiliates would no longer work with Divvee. Conrad and Sperry were good friends with both Olayan and B.M. prior to Conrad and Sperry speaking to B.M.

[4] On or about February 18, 2017, Olayan wrote a letter to Conrad and Sperry promising to memorialize an agreement that offered "[…] 9% equity in Divvee for the $750,000 investment that Divvee already received"; the position of "Master Distributor" for Sperry; the position of "President of the Affiliates" with compensation of $12,500 each month and tier 1 status in Divvee's profit shares for Conrad; and a minimum guaranteed monthly compensation package for Conrad and Sperry of $25,000.

that Conrad and Sperry were promised commissions and management roles in Divvee for securing B.M.'s investment.[5]

23. Olayan told B.M. that Divvee needed immediate funds to pay commissions to distributors and affiliates of Divvee, because all the funds collected from subscribers on the Divvee platform were temporarily frozen.

24. Olayan further informed B.M. that if Divvee did not pay the distributors and affiliates soon, they would leave Divvee.

25. Olayan promised B.M. that he would receive a portion of Divvee's profits and a top-level distributorship in the MLM without having to develop a down-line stream of new application sales.

26. Being familiar with how MLMs operate, B.M. knew that it was common for account holds to be placed on companies that had experienced recent and rapid growth like Divvee.

27. During the solicitation, Olayan made numerous statements to B.M. regarding the investment opportunity in Divvee, including, but not limited to, the following:

    a. That Divvee's merchant account was temporarily frozen;

    b. That Divvee had signed on many affiliates and distributors who were owed commissions;

    c. That Divvee needed immediate, short-term assistance to pay affiliates and distributors who would leave if Divvee did not pay their commissions; and

    d. That Olayan would give B.M. a share of Divvee's profits in exchange for B.M.'s

[5] During the Division's investigation, the Division obtained an unexecuted contract memorializing the terms of an agreement between Conrad, Sperry, and Divvee that were stated in Olayan's February 18, 2017 letter to Conrad and Sperry.

investment in Divvee.

28. Based upon Olayan's statements, B.M. invested approximately $750,000 in Divvee using 11 separate checks from B.M.'s various entities. The checks were made payable to Divvee on or about February 10, 2017, and were deposited into Divvee's Zions Bank account ending in -6902, located in Utah County, Utah.

THE INVESTMENT AGREEMENT

29. In exchange for B.M.'s investment in Divvee, B.M. received a "profit sharing agreement" signed by Olayan, B.M., and Richard Smith ("Smith")[6] on or about February 10, 2017, agreeing to provide B.M. with a maximum return of $500,000 each month based upon, "a top position in the Affiliate structure with a minimum of One Hundred Thousand Affiliates below him [...]," and/or "a two percent (2%) override on each MAPS ("mobile application, product or service") transaction and any other income generated activity, ranked, shared or reviewed by Affiliates or Members worldwide."

30. The agreement was to begin immediately upon execution on or about February 10, 2017.

31. The terms of the agreement also provided that, "If Divvee is transferred or sold, Divvee will continue to honor this agreement unless otherwise agreed by [investor B.M]."

FRAUDULENT CONDUCT: USE OF INVESTOR FUNDS

32. An analysis of Divvee's bank records revealed that Olayan used investor funds in a manner inconsistent with what Olayan represented at the time of solicitation.

33. Olayan told B.M. that his investment would be used only to pay commissions to affiliates and distributors, or the affiliates and distributors would no longer work with Divvee.

34. Olayan did not inform B.M. that his investment would be used to support the general

[6] Smith was employed by Divvee in a consulting role to create compensation plans for Divvee's MLM distributors.

business operations of Divvee or to repay Olayan's personal loan from Schutz and his wife Shawna Schutz.

35. Olayan used investor funds in a manner including, but not limited to the following:

a. Approximately $37,500 to repay Olayan's personal loan to the Schutzes;[7]

b. Approximately $14,311.42 in compensation to Olayan;

c. Approximately $132,384.18 towards a certificate of deposit ("CD") to secure a letter of credit for Divvee's lease agreement;

d. Approximately $26,402.66 for federal taxes;

e. Approximately $10,000 for legal fees;

f. Approximately $41,500 paid to Make a Difference, LLC (Conrad's entity); and

g. Approximately $372,901.74 in payments for compensation to Divvee executives Muhlestein and Curtis Olayan; compensation to employees or consultants Smith, J. Jesse Cothran, and Michael Muaina; other miscellaneous payments to companies such as Robinsage and Fibernet; and various other business expenses.

36. Only $115,000 of B.M.'s investment was used to pay affiliate and distributor commissions.

37. Olayan spent all investor funds within three months of receipt of funds.

38. During the Division's interview, Olayan was asked, "Was there a reason for a payment of [$37,500] to Shawna Schutz?" Olayan replied, *"Man, I just found out about that... I don't know... I will not... that one... yeah, that... that one bugs me."*[8]

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[7] During the Division's interview with Schutz, Schutz stated that Olayan and his wife came to the Schutzes' home and asked Schutz and his wife, Shawna, for a loan to pay Olayan's child support payments and car payments to prevent repossession. In response to Olayan's request for a personal loan, Shawna Schutz wrote two checks, one check for $18,500 written to Olayan, and one check for $19,000 written to Automaxx for Olayan's car payments.

[8] Schutz stated that Olayan, Muhlestein, and Smith agreed to repay Olayan's $37,500 personal loan from the Schutzes from funds in Divvee's bank account (Muhlestein endorsed and signed the check from Divvee to Shawna Schutz). Schutz also stated that Olayan attempted to justify the $37,500 personal loan repayment from Divvee's

MISSTATEMENT AND OMISSIONS

39. In connection with the offer and/or sale of securities, Olayan made the following material misstatement to B.M. including, but not limited to, the following:

a. That all B.M.'s investment funds would be used to pay commissions to affiliates and distributors of Divvee, when in fact, this representation was false and Olayan used a majority of B.M.'s investment to pay expenses unrelated to affiliate/distributor commissions and to repay Olayan's personal loan and salary.

40. In connection with the offer and/or sale of securities, Olayan failed to disclose material information to B.M. including, but not limited to, the following:

a. That Olayan would use investor funds to repay his personal loan;

b. That Olayan would use investor funds to pay business expenses unrelated to paying Divvee affiliate and distributor commissions;

c. That Conrad and Sperry expected to be compensated by Divvee specifically for securing B.M.'s investment;

d. That less than one month prior to B.M.'s investment, ABBA Holdings LLC filed a lawsuit against Divvee's owners, Muhlestein and TJWJ Holdings, LLC, for failing to make payments for the purchase of Divvee from ABBA;

e. That the financial condition of Divvee was more dire than simply requiring short-term funds to pay affiliate and distributor commissions while Divvee's merchant account was frozen;

f. That Olayan filed for bankruptcy in 2011;

g. That Olayan was not licensed to sell securities;

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bank account as Olayan's "brokerage fee" for securing B.M.'s investment; and therefore, Olayan was entitled to receive income from Divvee.

h. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principles involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment; and

vii. Whether the securities offered were registered in the state of Utah.

41. To date, the investor is owed at least $660,000 in principal alone on his investment in Divvee.

CONCLUSIONS OF LAW

Securities Fraud under § 61-1-1(2) of the Act

42. Based upon the Division's investigative findings, the Division concludes that the investment opportunity offered and sold by Respondents is an investment contract and/or a promissory note, which are securities under §61-1-13 of the Act.

43. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Respondents, directly or indirectly misrepresented material facts, as described above.

44. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Respondents omitted material facts which were necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading as described above.

Securities Fraud under § 61-1-1(3) of the Act

45. In violation of § 61-1-3(1) of the Act, Respondents were not licensed in the securities industry in any capacity when they engaged in an act, practice, or course of business which operated as a fraud or deceit on the investor. That conduct includes but is not limited to Olayan's conversion and misuse of investor funds for purposes not disclosed to or authorized by the investor, including, but not limited to, personal use of funds.

Unlicensed Activity under § 61-1-3(2)(a) of the Act

46. In violation of §61-1-3(2)(a) of the Act, Divvee acted as an issuer at the time of the offering, and employed Olayan, an unlicensed agent of Divvee.

47. It is unlawful for an issuer to employ or engage an agent, unless the agent is licensed in accordance with the Act.

Unlicensed Activity under § 61-1-3(1) of the Act

48. In violation of § 61-1-3(1) of the Act, Olayan was not licensed in the securities industry in any capacity when he offered and sold securities on behalf of Divvee, and received compensation in connection therewith.

False Statements to the Division under § 61-1-16 of the Act

49. In violation of § 61-1-16 of the Act, Olayan provided false statements in response to the Division's question of whether or not Olayan knew why Shawna Schutz received a check for $37,500 from Divee. Olayan knew the check to Shawna Schutz from Divvee was to repay Olayan's personal loan from the Schutzes; and that Olayan, Muhlestein, and Smith authorized the payment to be made from Divvee's bank account.

REMEDIAL ACTIONS/SANCTIONS

50. Respondents neither admit nor deny the Division's Findings of Fact and Conclusions of Law, but consent to the below sanctions being imposed by the Division.

51. Respondents represent that the information they have provided to the Division as part of its investigation is accurate and complete.

52. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

53. Respondents agree to be barred 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 Utah.

54. Respondents agree to pay, jointly and severally, restitution of $545,000 to the investor. Respondents agree to pay $50,000 of the restitution to the investor within 30 days following entry of this order, with credit given for the approximately $20,000 that has been repaid to the investor since January 1, 2020. Respondents agree to pay the remaining restitution of $495,000 to the investor in equal monthly payments over a period of 42 months. The first monthly payment will be due June 1, 2020.

55. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a total fine amount of $50,000 against Respondents to be paid jointly and severally. Respondents agree to pay the fine within 30 days following the investor's receipt of the last monthly restitution payment. If the Respondents timely pay all restitution , the Division agrees to waive $25,000 of the fine.

FINAL RESOLUTION

56. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondents acknowledge that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondents expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

57. If Respondents materially violate any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which the total fine amount is increased by 20% and any fine payments owed by Respondents become immediately due and payable. Notice of the violation will be provided to Respondents at their last known address, and to their counsel if they have one. If Respondents fail to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.

58. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

59. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar this administrative action by the Division against them.

60. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondents are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 10 day of MARCH, 2020

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 9 day of MARCH, 2020

Darren Olayan

Officer for Divvee Social, Inc.

Approved:

Paula Faerber
Assistant Attorney General
Counsel for Division

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondents neither admit nor deny, are hereby entered.
2. 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.
3. Respondents shall be barred 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 Utah.
4. Respondents shall pay restitution of $545,000 to the investor pursuant to the terms set forth in paragraph 54.
5. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondents shall pay a fine of $50,000 to the Division pursuant to the terms set forth in paragraph 55.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th **day of** April **, 2020**

_____
Lyndon L. Ricks

_____
Lyle White

_____
Peggy Hunt

_____
Gary Comia

_____
Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020

Lyndon L. Ricks

Lyle White

Peggy Hunt

Gary Cornia

Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020

_____
Lyndon L. Ricks


Lyle White

_____
Peggy Hunt

_____
Gary Cornia

_____
Brent Cochran

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020

_____
Lyndon L. Ricks

_____
Lyle White

_____
Peggy Hunt

_____
Gary Cornia

_____
Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 29th day of April, 2020, I emailed a true & correct copy of the Stipulation and Consent Order to:

Respondents, Divvee Social, Inc. and Darren Olayan, through counsel Hutch Fale
huf@abflegal.com

Bruce Dibb, Administrative Law Judge
Department of Commerce
bdibb@utah.gov

Paula Faerber, Assistant Attorney General
Utah Attorney General's Office
pfaerber@agutah.gov

Dave R. Hermansen, Manager of Enforcement
Utah Division of Securities
dhermans@utah.gov

Sabrina Afridi

Sabrina Afridi, Administrative Assistant

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
STANLEY B. SECOR, CRD#1982414 **Respondent.**	**Docket No. SD-19-0036**

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondent Stanley B. Secor ("Secor" or "Respondent") hereby stipulate and agree as follows:

1. Respondent has been the subject of an examination by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.

2. On or about October 31, 2019 the Division initiated an administrative action against Respondent by filing a Petition to Revoke and Bar Licensee and Impose a Fine.

3. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the Petition.

4. Respondent admits that the Division has jurisdiction over him and the subject

matter of this action.

5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.

7. Respondent is represented by attorney Mark W. Pugsley and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

8. Secor is a Utah resident who has been employed in the securities industry in Utah since 1989. Since November 2017, he has been licensed as a broker-dealer agent and investment adviser representative of Cetera Advisors Network, LLC ("Cetera"), CRD#13572. From August 2008 through November 2017, Secor was licensed with Girard Securities, Inc. ("Girard"), CRD#18697.[1] Prior to Girard, Secor was licensed with Securian Financial Group, Inc. ("Securian"), CRD#15296, from May 2004 through August 2008.

9. Secor has passed the FINRA Series 6, 22, 26, 63 and 65 Examinations. He is also licensed in Utah as an insurance agent and as a real estate agent.

10. Premier Advisors, LLC ("Premier") is a Utah limited liability company organized in 2005. Secor conducts his investment advisory and insurance businesses through Premier,

[1] Girard was purchased by Cetera in March 2015 and operated thereafter as a subsidiary independent broker-dealer and investment adviser. Cetera closed Girard in November 2017 and migrated representatives such as Secor to Cetera.

which is registered as a branch office of Cetera. Secor is Premier's sole owner.

11. Secor's wife, Lisa Ujifusa-Secor ("Lisa") is identified on Premier's web site as a "Transition Specialist" with Premier. Sarah Ujifusa ("Sarah") is Secor's daughter who currently works as Premier's receptionist. Neither Lisa nor Sarah is securities licensed.

Division Examination

12. In July 2018, the Division conducted an on-site examination of Secor's branch office located in Salt Lake City, UT.

13. The Division's examination found that Secor engaged in dishonest or unethical practices in violation of the policies of his employing firms and securities industry regulations. Those violations include multiple instances of impropriety regarding an elderly client's estate plan, trust, and personal finances, including Secor's failure to disclose to or seek approval from his employing firms for activities such as Secor's appointment as personal representative, power of attorney agent, and designation as the sole trust beneficiary, Secor's signatory authority over the trust's bank accounts, misrepresentations made in the purchase of the trust's investments, and Secor's wife's appointment as successor trustee, power of attorney agent, and designation as an alternate beneficiary. Secor engaged in similar unreported and unapproved activities pertaining to at least three other clients. Secor's Form U4 also failed to disclose any of those activities as required.[2] Finally, Secor made false statements to the Division about those activities during the examination.

Background and Client J.C.

[2] FINRA Form U4, Uniform Application for Securities Registration or Transfer, is filed with FINRA and the Division in order for an individual to become licensed as a broker-dealer agent or investment adviser representative in Utah. Form U4 requires the disclosure of all business activities conducted by licensed individuals. It is the agent's responsibility to ensure the form is accurate and updated as necessary.

14. J.C. is a single woman who has never married and does not have siblings or other family. She is legally blind, partially deaf, and is 94 years old. She has been a broker-dealer client of Secor's for many years. During that relationship, Secor has sold her mutual fund products and variable annuities. Secor also owns a home located next door to J.C.'s home in Salt Lake City. Sarah currently lives in the Secor home.

15. Secor described J.C. to the Division as a lifelong friend whom he has known for more than sixty years, and stated he considers her part of his family and that "we are the only family she has." He detailed to the Division many actions he has taken on her behalf "as a friend and family member" and without "any ulterior motive," such as snow removal, yard work, repair and servicing of her sprinkler system, house painting and repairs, main water line repair, and coordinating replacement of her roof using a city program that she qualified for through Secor's efforts.

J.C. Mutual Fund - Transfer on Death to Secor

16. In March 2006, pursuant to a request by Alliance Bernstein, J.C. signed a typewritten letter to mutual fund company Alliance Bernstein requesting that the registration of her mutual fund account, then valued at $29,275, be changed from an individual account to a transfer on death ("TOD") account naming Secor as her TOD beneficiary.[3] The letter, written by Secor or at his direction, identified Secor by his social security number and was accompanied by an account application that contained Secor's date of birth and social security number and identified him as J.C.'s broker-dealer agent at Securian.

[3] Upon an account owner's death, TOD accounts automatically transfer to the named beneficiary and supersede the terms of a will.

17. Secor did not disclose to or seek Securian's approval for his being named beneficiary of J.C.'s mutual fund account – sharing in client accounts was in fact prohibited by Securian[4] as well as FINRA and Utah securities regulations – and the application was sent directly to Alliance Bernstein and not submitted to Securian.

18. In his August 30, 2006 Securian annual compliance questionnaire, Secor affirmatively misrepresented that he submitted all mutual fund applications and forms to Securian and falsely denied accepting a financial interest in any client's accounts.

J.C. 2006 Estate Plan

19. According to Secor, in 2006 J.C. began to lose her sight and asked Secor to help her find an attorney to put an estate plan together. Secor introduced her to an estate planning attorney to whom he had referred other clients.

20. Secor told the Division at that same time as part of the estate planning process J.C. asked him if he, upon her death, "would receive her house because of [their] life-long relationship" and that she had no other family or person to leave it to. Secor said that he was surprised but flattered by the idea and accepted. Accordingly, the estate plan prepared for J.C. gifted her home to Secor and also appointed him as her personal representative, in which capacity Secor was permitted to receive "reasonable compensation commensurate with services actually performed and reimbursement for expenses properly incurred." The estate documents further gave Secor power of attorney with the right to access and control J.C.'s bank accounts, manage her investments, prepare and file her taxes, and make discretionary gifts.

[4] Securian Registered Representative Compliance Guide, Section 9.02, stated: "You may not share directly or indirectly in the profits or losses in any client account, or have a beneficial interest in any client account."

21. With the exception of immediate family members, the written supervisory procedures of Securian, Secor's employing broker-dealer at the time, prohibited its representatives from such practices:

> **8.15 Assuming Fiduciary Responsibilities**
>
> Securian RRs [registered representatives] are occasionally asked to assume fiduciary responsibilities for some of their clients. Such responsibilities include:
>
> • Exercising power of attorney over the client's account;
>
> • Obtaining discretionary authority to manage a client's account; and
>
> • Being appointed trustee of a client's trust.
>
> Each of these actions places the RR in a position where he or she must act entirely in the client's best interests and must consciously avoid utilizing, or even appearing to utilize, the assets under his or her control for his or her own benefit. Other common terms for roles with discretion are custodian, conservator, guardian, attorney-in-fact, and personal representative.
>
> Accordingly, a representative in one of these positions is **effectively precluded from receiving commission on the transaction**. If you have a situation where you are requested to act as a power of attorney, trustee, or similar role, you must choose between that role and the role of RR; you cannot be both. Securian does not allow discretionary accounts under any circumstances.
>
> Exceptions to acting as power of attorney, trustee, or similar role and RR will be made only for immediate family (spouse and minor children). For other family members of the RR (parents, adult children, and siblings) you need to contact the Compliance Department before opening the account or processing new business in order to discuss your specific situation.
>
> *Securian Registered Representative Compliance Guide, Section 8.15*
>
> (bold print in original, underline added).

22. Secor did not disclose to or seek approval from Securian for the appointments, designations, or status as a beneficiary in J.C.'s will, and his acceptance of those roles directly

contradict the above Securian policy.[5] Instead, Secor both undertook the fiduciary appointments and continued to receive commissions and fees from J.C.'s investments.

23. In August 2008, Secor left Securian and associated with Girard as a broker-dealer agent and investment adviser representative. Despite Girard's requirement of advanced written notice prior to engaging in any outside activities,[6] Secor did not disclose to or seek approval from Girard for his appointments, designations and status as a beneficiary in J.C.'s will or as TOD beneficiary on her mutual fund account.

24. Because of the loss of her sight, by 2009 J.C. was declared legally blind. Secor, on her behalf, began to apply annually for property tax abatement and helped secure a grant through a charity to repair the roof of her home. As part of that process, J.C. had to submit her tax returns, which showed that she was primarily living on her social security and supplementing that income with funds from her investments.

25. In May 2010, J.C. changed the beneficiaries for her whole life insurance policy and an annuity from two friends and a cousin – none of whom were Secor – to her estate. With no named beneficiaries, upon J.C.'s death those proceeds would effectively be distributed to Secor pursuant to the 2006 estate plan. Secor did not disclose his financial interests in J.C.'s accounts to Girard in his annual attestations or otherwise.

Insurance Liquidation and 2013 Reverse Mortgage

26. Secor told the Division that in late 2012 J.C. approached him to see "how she could better manage and control her desires for her house and any money that was left."

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[5] See also n.4. Securian likewise prohibited representatives from receiving client gifts valued at more than $100 per year, which of course would disallow Secor receiving J.C.'s gift of her home.

[6] *Compliance and Supervisory Procedures for Girard Securities, Inc., Section 2.01, Outside Business Activities.*

Documents and information gathered by the Division show that in January 2013 Secor then helped J.C. liquidate the whole life policy, and used the proceeds of $55,162 to purchase additional shares of the Alliance Bernstein mutual fund – for which Secor was the TOD beneficiary – for which Secor received a commission of at least $507. The surrender request documents required the signature of a witness who must be "a disinterested party." Secor, however, signed the document as the witness, despite his being an interested party.

27. In early 2013 Secor also assisted J.C. in obtaining a reverse mortgage on her home, which he claimed to the Division was her idea. Secor referred J.C. to a mortgage broker to whom he had also referred other clients, and acted as J.C.'s liaison with the mortgage broker throughout the process. The closing of the transaction took place at Secor's office, and documents named Secor as J.C.'s agent to receive her check. The proceeds from the reverse mortgage totaled $168,291.

28. The Borrower Declarations section of the paperwork for the reverse mortgage asked:

> Do you intend to use the reverse mortgage to purchase or invest in financial products such as insurance, mutual funds, or annuities? If yes, provide name of financial product and cost to purchase or invest below…

The Declaration checked "No" in response to this question, which was not accurate because the proceeds in fact were used to purchase a Pacific Life variable annuity recommended by Secor ($153,000) and additional shares of the Alliance Bernstein mutual fund ($13,291).[7] Secor received commissions for both transactions.

[7] The remaining $2,000 from the reverse mortgage was deposited in J.C.'s U.S. Bank account.

29. Secor did not seek approval from or disclose his involvement in these activities to his broker-dealer, Girard. Girard's written supervisory procedures ("WSPs") in effect at the time specifically prohibited its representatives from recommending or facilitating reverse mortgages, as well as from using proceeds from a home refinance to purchase securities:

> **Use of Proceeds from Home Refinance to Purchase Securities**
>
> Girard Securities, Inc. does not allow associated persons to invest client proceeds from home refinance in securities.
>
> **Reverse Mortgages**
>
> Girard Securities, Inc. does not allow associated persons to recommend or facilitate reverse mortgages.
>
> *Compliance and Supervisory Procedures for Girard Securities, Inc. 2012, Standards of Conduct, Section 2.00 at 15-16*
>
> (emphasis in original).

2013 Estate Plan

30. In 2013, J.C.'s investments as well as her bank accounts were transferred by Secor into a newly created trust that appointed Secor and his wife Lisa to various estate roles and designated Secor as the trust's beneficiary.

31. On April 12, 2013, J.C. executed a new will and living trust ("JCLT") drafted by an attorney recommended by Secor. The will conveyed all of J.C.'s property and assets to the trust, and trust documents named Secor as the trust's beneficiary. The estate documents again designated Secor as J.C.'s personal representative and made him medical directive and general power of attorney agent. The general power of attorney granted to Secor was effective

immediately upon execution and granted him broad powers over all of J.C.'s financial affairs, including the power to sell property, open and close accounts, and liquidate investments.

32. In addition, Secor's wife Lisa was appointed alternate or successor personal representative, trustee, beneficiary, power of attorney, and medical directive agent. The drafting attorney was named the successor trustee of last resort.

33. Secor claimed to the Division that he obtained Girard's verbal approval for the above appointments through several phone conversations with Girard's then-Chief Compliance Officer.[8] However, Girard had no records regarding the appointments and designations or any record of the alleged conversations. Likewise, Division examiners found no evidence of such communications in Secor's books and records. Moreover, the Division's request for all email correspondence between Secor and Girard regarding J.C. failed to produce any communications about the estate plan appointments or designations or other evidence of Girard's review or approval of the same. Girard's WSPs at the time required that the firm "keep a record of its compliance with [outside business activity review and approval requirements] with respect to each written notice received and must preserve this record…"[9]

34. Contrary to Secor's assertions, Girard's WSPs – as with Securian – in fact prohibited Secor's activities regarding J.C.:

> Girard does not allow its registered representatives or registered principals to act as **both** trustee and representative to client trust accounts, unless the trust is for the benefit of immediate family members.
>
> **Investment Adviser Representatives may not act as trustee to any Girard client account, either fee-based or commission based.**

[8] Girard's then-Chief Compliance Officer has not been employed in the securities industry since 2016.
[9] *Compliance and Supervisory Procedures for Girard Securities, Inc. 2012, Standards of Conduct, Section 2.01 Outside Business Activities* at 1.

Compliance and Supervisory Procedures for Girard Securities, Inc. 2012, Customer Accounts and Transactions, Section 8.00 at 3

(emphasis in original).

35. Girard's WSPs Section 2.03 further required that outside accounts in which "an associated person maintains a personal or financial interest" with "possession and/or control over the account" were subject to oversight by Girard's compliance department. Further, "[a]ll associated persons are prohibited from sharing in the profits and/or losses of a transaction relating to a customer's account."

36. In addition, in 2013, Secor failed to disclose the appointments and designations in his annual attestation, which he submitted three days prior to the execution of the new estate plan. He also failed to disclose the then-current appointments and designations during an on-site April 2013 examination conducted by Girard just two days before the estate plan execution. Moreover, Secor made no attempt to update or correct the attestations after J.C.'s estate plan was finalized.

37. One of the issues raised in the April 2013 examination by Girard was Secor's previous failure to disclose to Girard and FINRA that he was a notary public. That activity was apparently only discovered in the prior Girard exam because Secor's name was found on a client's notarized withdrawal form. In April 2013, the Girard examiner found that although the issue was raised by the internal examiner in the prior exam, "it had yet to be satisfactorily addressed" and "There is no evidence that RR Stan Secor has disclosed this activity to the B/D. There is no evidence that RR Stan Secor's activity as a Notary has been disclosed on FINRA Brokercheck." The deficiency was remedied at that time.

38. Despite the notary public issue – which should have prompted Secor to make corrections to his prior attestations and the other necessary disclosures on his Form U4 and to Girard – the fiduciary appointments and beneficiary designations were *not* disclosed by Secor during the Girard exam, nor were they disclosed in Secor's attestations or internal examinations at any time in the years that followed.[10]

39. Following execution of the 2013 estate plan, Secor filed documents to transfer the ownership of J.C.'s bank accounts to JCLT and Secor was added as a signatory. Because J.C. could not see well, she would often have others fill out her checks and she would sign them. Three individuals, J.C.'s neighbor, a housekeeper and Secor each filled out checks for her regularly to pay expenses.

40. In late April 2013, Secor opened a new Girard brokerage account for JCLT. Although as described below, the account would be funded with proceeds from the reverse mortgage, the new account application represented the account funding source to be "savings from earnings." While the application did not have an option for reverse mortgage proceeds, it did have an "other" option with space for an explanation of the source.

41. Because Girard's WSPs did not require the submission of a full copy of the trust documents with the application, Secor only provided the required pages, none of which disclosed him as the trust's beneficiary or disclosed his various appointments.

42. On April 26, 2013, Secor submitted an application signed by J.C. to open a new Alliance Bernstein account for JCLT. As a result, J.C.'s TOD account was closed and its mutual fund holdings, totaling approximately $75,800, were transferred to the new JCLT account.

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[10] In contrast, for many years Secor's Form U4 has disclosed that he is a real estate broker and the name of his real estate business entity – but he told the Division he does not do any real estate business.

43. On May 3, 2013, Secor sold JCLT a Pacific Life variable annuity using the reverse mortgage proceeds of $153,000. The annuity did not have a surrender period, surrender fee, or front-end sales charge. However, Secor received a sales commission of $459 and continues to receive a 1% trailing commission ("trail") on the growing value of the policy, which totals approximately $1,920 annually. As of August 2018, trails paid to Secor totaled approximately $9,000. Secor was therefore receiving ongoing commissions on an investment that he stood to ultimately inherit.

44. Secor did not disclose to Girard his beneficial interest in the variable annuity. In addition, for both the Girard application and disclosure for variable annuity forms, Secor falsely represented the source of purchase funds as being "savings from earnings" and "savings/earnings" respectively. Both forms had an "other" option with space for the correct explanation – that the funds came from a reverse mortgage.

45. The variable annuity application documents reported J.C.'s net worth as $615,000. As of October 2018, the value of the Pacific Life annuity had increased to $192,000.

46. In late 2017, J.C. appeared to have overdrawn her U.S. Bank checking account on several occasions. As a result, Secor told the Division he decided to take over the payment of her bills. In December 2017, Secor opened a new bank account for JCLT at Utah Federal Credit Union ("UFCU"), where Secor and Premier both have bank accounts, and began making transfers from the JCLT U.S. Bank account to the new UFCU account.

47. Prior to the UFCU account being opened, one of J.C.'s neighbors had helped her pay bills for a number of years. Secor told the Division that the overdraws and other account withdrawals caused him to suspect J.C. was being financially abused by the neighbor, and that

the potential abuse was his motivation in opening the UFCU account. The Division referred that information to the State of Utah Department of Aging and Adult Services ("DAAS"), which investigated the neighbor's involvement with J.C. and found no evidence of wrongdoing by the neighbor.

48. During his July 31, 2018 interview, Secor told the Division that J.C. was "just diagnosed with dementia within the last month or so" and that he was working through J.C.'s doctor to schedule a cognitive test in August, and "then we need another one too because there is a possibility that a guardianship will be needed."

49. After meeting with J.C., however, DAAS found that while she had some memory issues, she was still capable of managing her own affairs. J.C. further declined to attend the appointments set up by Secor as she was not comfortable doing so.

Missing Client File

50. During the field examination of Premier and Secor conducted on July 30, 2018, Division examiners requested J.C.'s file for review. Secor did not have the client file because he had apparently given it to the attorney who prepared the 2013 estate plan. Secor said he brought J.C.'s file at the attorney's request when Secor had met with the attorney several weeks prior to the Division's exam. Examiners instructed Secor to immediately retrieve the file and informed him of his duty to safeguard and maintain client files. Secor retrieved the file the next day and made it available for the Division's review.

Secor's Undisclosed Activities with Other Client Accounts

Client J.K.

51. In addition to J.C., Secor acted as personal representative and trustee on client J.K.'s account. In September 2009, J.K. executed an estate plan drafted by the attorney who prepared J.C.'s 2013 estate plan. The resulting will named Secor as personal representative and J.K.'s living trust named Secor as trustee upon J.K.'s incapacity or death.

52. After J.K.'s death in August 2015, Secor fulfilled his duties as trustee by taking control of J.K.'s bank account and other assets, selling J.K.'s home, and making distributions to J.K.'s designated trust beneficiaries. After the final trust distribution in April 2017, Secor withdrew the bank account funds of $5,000 and closed the trust's bank account.

53. When asked by the Division in July 2018 as to whether he had ever been appointed a personal representative, trustee, beneficiary, power of attorney or medical directive agent of any client, Secor denied any such appointments with the exception of J.C.

54. Neither Cetera, which has access to Girard books and records, nor Girard has any record of Secor seeking approval for or disclosing his appointments with respect to J.K., nor of Secor reporting $5,000 in compensation from the same.[11]

Clients C.B. and L.B.

55. C.B. and L.B., a married couple, are clients of Secor with a variety of investments including third-party asset management accounts, annuities, life insurance, REITs, alternative investments and mutual funds totaling several million dollars.

[11] As described in Girard's WSPs, *Standards of Conduct Section 2.01,* Girard's Outside Business Activities Form required disclosure of any compensation received from a source other than Girard, as well as details for any outside activities where no compensation was received. Secor reported neither.

56. In April 2016, C.B. and L.B. each executed restatements of their trusts drafted by the same attorney who created J.C.'s and J.K.'s estate plans. Both trusts name Secor as successor trustee.

57. As noted above, Secor denied to the Division having any appointments other than those pertaining to J.C., and Girard had no record of Secor seeking approval for or otherwise disclosing those appointments. In addition, both C.B. and L.B. are investment advisory clients of Secor. Girard's written supervisory procedures in effect at the time explicitly prohibited such appointments:

> Investment Adviser Representatives may not act as trustee for any Girard client account, either fee-based or commission based.

Compliance and Supervisory Procedures for Girard Securities, Inc., Section 8.01 at 3

Client R.D.

58. At an unknown date, Secor opened checking and savings accounts at UFCU for the R.D. Family Trust. Secor was signatory of the account, and presumably was acting as a trustee. At present it is unknown what purpose the accounts served. The accounts were closed in May 2013 when Secor made a cash withdrawal of all account funds which totaled $109.50. Again, Girard had no record of Secor seeking approval for or disclosing his activities with respect to that individual's trust.

Logging into Client's Account as the Client

59. In 2013, another client, J.N., asked Secor to review securities holdings in her 401(k) account that were custodied elsewhere. On September 13, 2013, Secor received an email from J.N. providing the client's username for the account, indicating that the client was not comfortable providing her password in the email but would call Secor with that information. In

J.N.'s client file, a handwritten post-it note on a printout of the September 13, 2013 email contained the password for the account. The client file also contained a printout of the various investments in the 401(k) account, printed in October 2013, presumably by Secor while logged into J.N.'s account after receiving her password.

Girard 2016 Internal OSJ Examination

60. In September 2016, Girard conducted an announced examination of Secor in his capacity as a Girard OSJ. One of the specific questions asked in the examiner's background interview form was:

> Are any reps acting as Trustee, custodian, Executor, Power of Attorney, etc. or any other fiduciary or control position for any entities or persons, other than immediate family?

That question was incorrectly answered "No." Secor was in fact still the trustee of the J.K. estate at that time and was making distributions to the trust beneficiaries. Secor was also J.C.'s power of attorney agent and had accepted other roles concerning her estate as described above. He failed to disclose those facts to Girard.

Transition to Cetera

61. In August 2017, following the announced closure of Girard, Secor completed documents to license with Cetera, which was completed through a mass transfer of Girard representatives.

62. Secor did not disclose his appointments with respect to J.C. although such disclosures were required by Cetera's WSPs:

> **4.2 Outside Business Activities**
>
> Outside business activity includes any business activity that is outside the scope of the Firm. Such business activity includes acting as a sole proprietor, partner,

officer, director, trustee, consultant, employee, independent contractor, agent or having any financial interest, or reasonable expectation of having a financial interest, in another business, or organization, or the use of a DBA. Outside business activity also includes non-compensated positions for which you have a fiduciary duty (e.g., president, treasurer, trustee, power of attorney, charitable or other officer position for a non-profit board of trustees).

...

Registered Representatives are required to file requests to participate in outside business activities by submitting an Outside Business Activity Disclosure Form to their Designated Supervisor. The Designated Supervisor will review the request and then forward to the Compliance Department for consideration. Registered Representatives are prohibited from engaging or participating in any outside business activity until they have been notified in writing that the Compliance Department has acknowledged the activity and has no objections.

63. In October 2018, after Cetera learned of the J.C. estate appointments as a result of the Division's examination, Cetera required Secor and his wife to remove themselves from all of the J.C. appointments. Cetera indicated to the Division that, consistent with the WSPs described above, it is Cetera's practice to deny approval for such activities.

False Statements to the Division

64. During the course of the Division's examination, Secor repeatedly failed to disclose his client estate roles to the Division and made numerous false or evasive statements including but not limited to:

a. Secor denied having power of attorney on any client account;

b. Secor denied paying bills for any client or assisting any client in bill payment; and

c. Secor denied being a trustee for any client.

65. When asked if he maintained client trust paperwork or wills, Secor said:

A: If they've given me something that we've processed, it's very possible we could have that.

Q: Ok.

A: But it would only… only be a document… a copy of it through the attorney that we might have used.

Q: Ok. So you might have those, but … can you think of any clients that you have that for right off the top of your head?

A: Not a client. No.

66. When asked whether he was an executor, or whether he would have that responsibility for any client upon a client's death, he responded:

A: Oh, a couple of them, sure.

Q: Ok. Like who?

A: Hum, let's see. Boy, I'd have to go through and figure out who has asked me to help with that. Let me spend some time on that so I can give you leads.

67. Although J.C. was an obvious client for whom he held significant estate roles, whose file in fact Secor told the Division he did not have because he had taken it to the estate planning attorney several weeks before due to concerns about possible elder abuse, Secor made no effort to disclose his roles with J.C.'s estate.

68. When questioned further about the elder abuse concerns, Secor acknowledged he had not reported those concerns to his firm, nor that he had removed the client file from his office.

69. In an interview with Secor the following day, after J.C.'s file was retrieved from the attorney's office, Secor acknowledged he had power of attorney on J.C.'s account, and claimed to have not understood the Division's question the prior day. He was also evasive when

questioned about being the ultimate beneficiary of J.C.'s trust, only reluctantly admitting he would receive her assets upon her death.

70. On the second day of the exam, Secor also told the Division he had reviewed his files and had no personal representative appointments besides J.C. As described above, however, Division examiners later discovered that Secor had been named the successor trustee for both L.B. and C.B.

71. In addition, on August 16, 2018 the Division made a written request for a list of all clients for whom Secor had "obtained a power of attorney or similar authority or became the nominated or alternative trustee, a designated or alternate personal representative or executor, or a named beneficiary or alternate beneficiary." The only client Secor identified was J.C., despite the fact that he had in fact previously acted in such capacities with regard to clients J.K. and R.D. and was at that time alternate trustee for L.B. and C.B.

72. Finally, on November 1, 2018 Division made a written request for "all past clients" for whom Secor had "obtained power of attorney or similar authority, or became the nominated or alternative trustee, a designated or alternate personal representative or executor, or a named beneficiary or alternate beneficiary." Secor's written response said "None" despite having acted as J.K.'s trustee and personal representative and involvement with the R.D. Family Trust over which he was signatory of a bank account.

II. CONCLUSIONS OF LAW

Dishonest or Unethical Practices under § 61-1-6(2)(a)(ii)(G) of the Act

Sharing in Client Accounts

73. As a general rule in the securities industry, broker-dealer agents and investment adviser representatives are prohibited from sharing in the gains or losses of client accounts. Among other reasons, significant conflicts of interest are presented in such situations which can affect the representative's judgment in making investment recommendations for accounts in which they have a financial interest.

74. Absent prior written authorization from an individual's employing firm, FINRA Rule 2150, *Improper Use of Customers' Securities or Funds; Prohibition against Guarantees and Sharing in Accounts,* prohibits sharing directly or indirectly in the profits or losses of any client account. Further, in the limited circumstance whereby an employing firm provides such authorization, Rule 2150(c)(A)(iii) provides that the individual may share "only in direct proportion to the financial contributions made to such account by either the member or person associated with a member."

75. As described herein, over extended periods of time, Secor shared in J.C.'s accounts by the following actions:

a. From 2006 through 2010, accepting the designation of TOD beneficiary in J.C.'s mutual fund account;

b. From 2010 through 2013, after J.C. named her estate as beneficiary, acting as personal representative and power of attorney agent whereby Secor had authority to distribute J.C.'s estate at his discretion;

c. From 2013 through 2018, accepting the designation of trust beneficiary to JCLT;

d. From 2013 through 2018 Secor permitted his wife's appointment as alternate beneficiary to JCLT.

76. At no time did Secor disclose to or receive prior written authorization from Securian, Girard, or Cetera for sharing in J.C.'s accounts. Moreover, Secor made no financial contributions to any of J.C.'s accounts, but instead benefited from receiving immediate and trailing commissions for his sale of investments to J.C. during that time period.

77. Further, and consistent with FINRA Rule 2150, the written supervisory procedures of Secor's employing firms, Securian, Girard, and Cetera in fact prohibited sharing in the accounts of any non-familial clients.

78. Secor's conduct constitutes dishonest or unethical practices under Utah Administrative Code ("UAC") Rule R164-6-1g(D)(4) by "sharing directly or indirectly in profits or losses in the account of any customer without the prior written authorization of the customer and the broker-dealer which the agent represents," warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

79. Secor's conduct also violates FINRA Rule 2150, the violation of which constitutes a dishonest or unethical practice under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7).

Undisclosed and Unapproved Estate Roles and Trustee Appointments

Client J.C.

80. As described above, over the course of twelve years, Secor failed to disclose to or seek approval from his employing firms for his appointments pertaining to J.C.'s estate. Nor did

Secor disclose to or seek approval from his employing firms for his wife, a fingerprinted clerical employee of Premier whom he supervised, for her estate appointments.[12]

81. During that period, Secor was licensed with three separate firms: Securian, Girard, and Cetera. He had multiple instances and opportunities to disclose the activities when switching firms, completing annual questionnaires, being examined by the firms, as well as each time J.C. made changes to her estate plans. He chose not to do so.

82. In October 2018, after Cetera became aware of the appointments – as a result of the Division's 2018 exam and requests for information – it required Secor and his wife to resign from those positions.

Client J.K.

83. On or about September 17, 2009, Secor was appointed personal representative and successor trustee of J.K.'s estate. Upon J.K.'s death in August 2015, Secor assumed those responsibilities. Among other activities, Secor opened a bank account in the trust's name and redeemed J.K.'s annuity directly with Pacific Life. Secor also sold J.K.'s home and made distributions from J.K.'s estate through 2017 to trust beneficiaries, and closed the bank account in April 2017 after withdrawing the remaining balance of $5,000.00.

84. Girard had no record of Secor disclosing or seeking approval for those activities. In fact, Girard affirmatively represented to the Division that it did not grant any Utah agents authorization for any estate appointments from 2008 through 2017.

[12] CRD records indicate Lisa was employed with Girard from August 2013 through August 2017. She is currently employed by Premier.

85. As with J.C.'s estate, Secor had multiple opportunities over the course of eight years to disclose the appointments to his employing firm and request approval, but chose not to do so.

R.D. Family Trust

86. At an unknown date, Secor opened savings and checking accounts for the R.D. Family Trust at UFCU and he was signatory of those accounts. In May 2013, Secor withdrew funds of $109.50 and closed the accounts in August 2013. It is unknown what happened with the withdrawn money. Once again, Secor's activities with regard to R.D. Family Trust were not reported to or approved by his employing firm at the time, Girard.

C.B. and L.B. Living Trust Appointments

87. As described herein, in April 2016 Secor accepted estate appointments as alternate successor trustee for each of the trusts of husband and wife C.B. and L.B. Secor did not disclose those appointments to Girard or seek approval for accepting them. Further, as described in paragraph 50, because C.B. and L.B. are investment advisory clients, Secor was explicitly prohibited from acting as trustee pursuant to Girard's WSPs.

Violation of FINRA Rule 2010

88. FINRA Rule 2010, *Standards of Commercial Honor and Principles of Trade,* states:

> A member, in the conduct of its business, shall observe high standards of honor and just and equitable principles of trade.
>
> FINRA Rule 0140(a), *Applicability*, states that FINRA Rules apply to all persons associated with a member, such as Secor, and that such persons "shall have the same duties and obligations as a member under the Rules."

89. Secor violated FINRA Rule 2010 with regard to J.C., J.K., R.D., C.B. and L.B. by accepting appointments for himself (and his wife as to J.C.) as a client's personal representative, power of attorney, or trustee without the express consent of his employing firms. The violation of Rule 2010 constitutes a dishonest or unethical practice under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7), and warrants sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Designation as Client's Beneficiary without Firm Approval

90. When a registered representative takes a beneficial interest in a client's account, serious conflicts of interest arise, as the representative has a strong financial incentive to recommend investments or other actions that are in the representative's own interest but that may not be suitable for the client. This risk is exacerbated in situations involving elderly clients.

91. Secor accepted being beneficiary of J.C.'s TOD mutual fund account and accepted appointments pertaining to J.C.'s estate plans, which effectively gave him control of her assets upon her death, as well as being beneficiary of JCLT, of which his wife was also named alternate beneficiary. Secor further accepted the unreported bequest of J.C.'s home upon her death and facilitated the reverse mortgage -- which monies were later used to purchase an annuity he received both commission and ongoing trails for (at least $10,000) and stood to inherit upon J.C.'s death. Assuming J.C.'s net worth as reported on the Pacific Life annuity application described in paragraph 38 was correct – $615,000 in 2013 – Secor stood to inherit significant funds upon J.C.'s death. As of December 2018, the Pacific Life annuity had increased in value $39,000 from the date of purchase.

92. Secor's undisclosed, unapproved activities violated FINRA Rule 2010 as well as the written supervisory procedures of Girard and Cetera. The violations of Rule 2010 constitute dishonest or unethical practices under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7) and warrant sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

93. Secor being the beneficiary of a client account further violates FINRA Rule 2150, the violation of which is a dishonest or unethical practice under UAC Rule R164-6-1g(C)(28), made applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Violations of Girard's WSPs and Misrepresentations as to Source of Funds

94. Despite Girard's explicit prohibition of the activity, Secor facilitated the reverse mortgage for at least one known client, J.C., and even held the closing in his office. The proceeds were then used to purchase securities – a mutual fund and a variable annuity – transactions that were also expressly proscribed by Girard.

95. In addition, Secor misrepresented the source of J.C.'s funds twice – once in the new account application for the JCLT brokerage account, and once in the disclosure for variable annuities form, submitted to Girard in connection with the JCLT annuity purchase. Despite knowing the source of funds was a reverse mortgage, Secor checked the box for the source of purchase funds as being "savings from earnings" and "savings/earnings" respectively.

96. Secor's misrepresentation of the source of J.C.'s investment funds prevented Girard from properly reviewing the suitability of those transactions and caused Girard to keep inaccurate books and records regarding J.C.'s investments.

97. Secor's conduct constitutes dishonest or unethical practices under UAC Rule R164-6-1g of the Act, and also violates FINRA Rule 2010, the violation of which is a dishonest or unethical practice under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Unlawful Acts of Investment Adviser under § 61-1-2(3) of the Act and Dishonest or Unethical Practices under § 61-1-6(2)(a)(ii)(G) of the Act

Control and Custody of Client Funds

98. Custody of client funds includes having direct or indirect control over a client's funds, or having the authority to obtain the client's funds. Accordingly, strict rules exist regarding safekeeping, auditing, bonding, and reporting in order to protect investors from malfeasance by those with custody.

99. Secor had custody of client funds by his actions including but not limited to:

a. Acting as a signatory on J.C.'s bank account;

b. Acting as trustee over J.K.'s funds upon his death;

c. Obtaining J.N.'s login information for her retirement account;

d. Acting as trustee over R.D.'s trust and signatory on the trust bank account; and

e. Opening a bank account for JCLT using his power of attorney appointment and becoming a signatory on that account.

100. Girard failed to uncover the violations during its 2016 examination of Secor and Premier. The Branch Personnel section of the examination report asked specific questions about whether any representatives "have access to client bank accounts", "provide bill pay services for clients" or are "acting as Trustee, Custodian, Executor, Power of Attorney, etc., or any other

fiduciary or control position for any entities or persons, other than immediate family", all of which were answered by the examiner with "No."

101. As an investment adviser representative, Secor's custody of and activities with clients' funds without complying with UAC Rule R164-2-2(B) – which requires compliance with Rule 206(4)-2[13] of the Investment Advisers Act of 1940 – constitutes unlawful conduct deemed to be fraudulent, manipulative, or deceptive acts, practices, or a course of business in violation of Section 61-1-2(3) of the Act. Secor's actions did not comply with Rule 206(4)-2 and also constitute dishonest or unethical practices under UAC Rule R164-6-1g(E)(15).

102. As a broker-dealer agent, Secor's failure to disclose to or obtain prior approval from his employing firms before taking custody of client funds, opening and transacting business in client bank accounts is a dishonest or unethical practice under UAC Rule R164-6-1g(C)(24), applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G). In addition, Secor's acting as a custodian for client monies or securities is a dishonest or unethical practice under UAC Rule R164-6-1g(D)(1), warranting sanctions under Section 61-1-6(2)(a)(ii)(G).

False Statements to Division under 61-1-16 of the Act and Dishonest or Unethical Practices under Section 61-1-6(2)(a)(ii)(G) of the Act

103. Secor is a seasoned licensed principal who has worked in the securities industry for 30 years. He is presumed to understand the importance of following firm policies and procedures with respect to any outside business activities and potential conflicts of interest, and to make full disclosure to his firm and securities regulators.

[13] Rule 206(4)-2 imposes specific safekeeping requirements upon advisers with custody, none of which were complied with by Secor.

104. Secor's Form U4, a document filed with the Division through CRD, was false and misleading at numerous times it was filed because it failed to disclose Secor's estate, power of attorney, fiduciary and other related outside business activities regarding J.C., J.K., R.D., C.B. and L.B. Section 61-1-5(4) of the Act requires that "[i]f the information contained in any document filed with the division is or becomes inaccurate or incomplete in any material respect the licensee…promptly file a correcting amendment…" Despite multiple opportunities to amend Form U4 over the many years in which he engaged in the outside business activities, he failed to do so.

105. Secor's failure to disclose outside business activities in writing to his employing firms also violated FINRA Rule 3270,[14] the violation of which constitutes dishonest or unethical practices under R164-6-1g(C)(28), applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G).

106. Finally, as described above in paras. 64-72, Secor made numerous false and misleading statements to the Division during the examination, in violation of Section 61-1-16 of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

107. Secor neither admits nor denies the Division's Findings and Conclusions but consents to the sanctions below being imposed by the Division.

108. Secor agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.

[14] Rule 3270 requires prior written approval from broker-dealers for an agent's outside business activities.

109 Secor agrees to revocation of his securities licenses (Series 6, 63, 65, 22 and 26) and being barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent of any issuer soliciting investor monies in Utah.

110. Pursuant to Section 61-1-6 and in consideration of the factors set forth in Section 61-1-31, the Division imposes a fine of $25,000. Counsel for Respondent represents the monies for full payment of the fine are in the client trust account of Ray Quinney and Nebeker. The fine shall be paid within ten (10) days following entry of the Order.

IV. FINAL RESOLUTION

111. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

112. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative law judge solely as to the issue of a material violation, Respondent consents to entry of an order admitting the Division's Findings and Conclusions. Notice of the violation will be provided to Respondent's counsel and sent to Respondent's last known address. If Respondent fails to request a hearing within ten (10) days following notice there will be no hearing and the order granting relief will be entered.

113. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his

actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

114. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 10th day of March, 2020

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 6th day of MARCH, 2020

Stanley B. Secor

Approved:

Paula W. Faerber
Assistant Attorney General
Counsel for Division

Approved:

Mark W. Pugsley
Counsel for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondent's securities licenses are revoked and he is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor monies in Utah.
4. Pursuant to Section 61-1-6 of the Act, in consideration of the factors set forth in Section 61-1-31, Respondent shall pay a fine of $25,000, which shall be paid as described in paragraph 110 above.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of April, 2020

Brent Cochran

Gary Cornia

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondent's securities licenses are revoked and he is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor monies in Utah.
4. Pursuant to Section 61-1-6 of the Act, in consideration of the factors set forth in Section 61-1-31, Respondent shall pay a fine of $25,000, which shall be paid as described in paragraph 110 above.

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020

_____
Brent Cochran

_____
Gary Cornia

Peggy Hunt

Lyndon Ricks

Lyle White

Peggy Hunt

Lyndon Ricks

Lyle White

CERTIFICATE OF MAILING

I certify that on the 29th day of April, 2020, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Mark W. Pugsley
RAY QUINNEY & NEBEKER
36 S. State Street, Suite 1400
Salt Lake City, UT 84111
Counsel for Respondent

Sabrina Grimshi

Executive Secretary

Division o f Securities
Utah Department o f Commerce
1ro East 300 South
Box 146760
Salt Lake City, Ur 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DMSION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
SOLIUM FINANCIAL SERVICES LLC, CRD#147933	**Docket No. SD-20-0020**
Respondent.	

The Utah Division o f Securities ("Division"), and through its Director o f Compliance, Kenneth 0. Barton, and Respondent Solium Financial Services LLC ("SFS" or "Respondent") hereby stipulate and agree as follows:

WHEREAS, SFS is a broker-dealer with a principal place o f business at j) Tice Boulevard, Suite A-18 Woodcliff Lake, New Jersey 07677, and is licensed as a broker-dealer with the Division;

WHEREAS, on May L 2019, Morgan Stanley acquired Solium Capital Inc., which included its subsidiaries Solium Holdings USA LLC and SFS (hereinafter collectively with SFS and its affiliates, "Solium");

WHEREAS, after the acquisition, SFS self-reported to state securities regulators that it hoo transmitted certain securities orders in certainjurisdictions at a time when SFS was not registered as a broker-dealer in suchjurisdictions;

WHEREAS, certain members of the North American Securities Administrators Association, with Alabama serving as the lead state (collectively, the "State Regulators") conducted a coordinated investigation of SFS to determine whether SFS's activity was in violation of the relevant jurisdictions' broker-dealer registration[1] requirements;

WHEREAS, SFS has cooperated during the course of the investigation and has agreed to resolve the investigation with the State Regulators;

WHEREAS, SFS, without admitting or denying the Findings of Fact and Conclusions of Law contained herein, voluntarily consents to the entry of this Consent Order (the "Order") pursuant to the Utah Uniform Securities Act ("Act") with respect to this Order;

NOW, THEREFORE, the Utah Securities Commission ("Commission") finds this Order is in the public interest and hereby enters the following:

FINDINGS OF FACT

1. SFS, CRD No. 147933, is a subsidiary of Solium Holdings USA LLC. SFS licensed as a broker-dealer with the Division on May 9, 2019.

2. Solium provides equity plan administration software to employers. Employee-participants of employer-sponsored equity plans that utilize Solium's software can view and track the options and shares issued to them by their employers.

3. If an employee-participant residing in Utah requests an exercise or liquidation through Solium's software, SFS transmits an order in the relevant account at a clearing broker-dealer registered in Utah and then routes the proceeds to the employee-participant's account. SFS receives a share of the commissions earned on these transactions.

[1] With respect to securities professionals and the firms with which they are associated, the Utah Uniform Securities Act uses the term "licensing" in the same manner other jurisdictions may use the term "registration." For purposes of this Order the two terms should be considered synonymous.

4. SFS does not provide advice to employee-participants or solicit transactions in any manner.

5. From at least January 2009 to May 9, 2019, SFS transmitted orders for employee-participants residing in Utah when SFS was not licensed as a broker-dealer with the Division.

6. SFS has provided substantial and timely cooperation to the State Regulators during the course of the referenced investigation.

CONCLUSIONS OF LAW

1. During the period from at least January 2009 to May 9, 2019, SFS acted as a broker-dealer in Utah as the term "broker-dealer" is defined by Section 61-1-13(1)(c) of the Act.

2. Section 61-1-3(1) states that it is unlawful for a person to transact business in Utah as a broker-dealer or agent unless such person is licensed under the Act.

3. By engaging in the conduct set forth above, SFS acted as an unlicensed broker-dealer in Utah in violation of 61-1-3(1) of the Act.

4. As a result of the stated violation, SFS is subject to the assessment of a fine pursuant to Sections 61-1-6 and -31 of the Act.

5. This Order is appropriate and in the public interest.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and SFS's consent to the entry of this Order, **IT IS HEREBY ORDERED:**

1. This Order concludes the investigation by the Division and any other action

that the Division could commence under applicable Utah law as it relates to the substance of the Findings of Fact and Conclusions of Law herein, provided however, that the Division may pursue claims arising from SFS's failure to comply with the terms of this Order.

2. This Order is entered into solely for the purpose of resolving the investigation and is not intended to be used for any other purpose.

3. SFS shall cease and desist from violating Section 61-1-3(1) of the Act.

4. (a) SFS shall pay a fine in the amount of $15,300.16 to the Division within ten (10) business days of the entry of this Order.

(b) SFS shall pay back licensing fees in the amount of $1,000.00 for the period May 1, 2014 through May 9, 2019 to the Division within ten (10) business days of the entry of this Order.

5. This Order is not intended to form the basis for any disqualification from registration as a broker-dealer, investment adviser, or issuer under the laws, rules, and regulations of Utah and waives any disqualification from relying upon the securities registration exemptions or safe harbor provisions to which SFS or any of its affiliates may be subject under the laws, rules and regulations of Utah.

6. Nothing in this Order is intended to form the basis for any disqualification under the laws of Utah, any other state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands; under the rules or regulations of any securities or commodities regulator or self-regulatory organizations (SROs); or under the federal securities laws, including but not limited to, Section 3(a)(39) of the Securities Exchange Act of 1934, Regulation A, Rules 504 and 506 of Regulation D under the Securities Act of 1933, and Rule 503 of Regulation CF.

Further, nothing in this Order is intended to form the basis for disqualification under the FINRA rules prohibiting continuance in membership or disqualification under other SRO rules prohibiting continuance in membership. This Order is not intended to be a final order based upon any violation of any Utah statute, rule, or regulation that prohibits fraudulent, manipulative, or deceptive conduct.

7. Except in an action by the Division to enforce the obligations in this Order, this Order is not intended to be deemed or used as (a) an admission of, or evidence of, the validity of any alleged wrongdoing or liability; or (b) an admission of, or evidence of, any such alleged fault or omission of SFS in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or other tribunal.

8. This Order is not intended to state or imply willful, reckless, or fraudulent conduct by SFS, or its affiliates, directors, officers, employees, associated persons, or agents.

9. SFS, through execution of this Order, voluntarily waives the right to a hearing and to judicial review of this Order under the Utah Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code.

10. SFS enters into this Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Division or any member, officer, employee, agent, or representative of the Division to induce it to enter into this Order.

11. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret,

construe, or otherwise affect this Order in any way.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of April, 2020

Brent Cochran

Gary Cornia

Peggy Hunt

Lyndon Ricks

Lyle White

Consent to Entry of Order by Respondent SFS:

I hereby agree to the entry of this Consent Order; consent to all terms, conditions and orders contained therein; and waive any right to appeal from this Order.

Michael Hennessy, Managing Director
Solium Financial Services LLC

March 9, 2020
Date

construe, or otherwise affect this Order in any way.

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of_____, 2020

Brent Cochran

Gary Cornia

Peggy Hunt

Lyndon Ricks

Lyle White

Consent to Entry of Order by Respondent SFS:

I hereby agree to the entry of this Consent Order; consent to all terms, conditions and orders contained therein; and waive any right to appeal from this Order.

Michael Hennessy, Managing Director
Solium Financial Services LLC

March 9, 2020
Date

construe, or otherwise affect this Order in any way.

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____, 2020

_____
Brent Cochran

_____
Gary Cornia

_____
Peggy Hunt

_____
Lyndon Ricks

_____
Lyle White

Consent to Entry of Order by Respondent SFS:

I hereby agree to the entry of this Consent Order; consent to all terms, conditions and orders contained therein; and waive any right to appeal from this Order.

_____
Michael Hennessy, Managing Director
Solium Financial Services LLC

March 9, 2020
Date

construe, or otherwise affect this Order in any way.

BY THE UTAH SECURITIES COMMISSION:

DATED this_____day of _____ , 2020

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Brent Cochran

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Gary Cornia

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Peggy Hunt

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Lyndon Ricks

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Lyle White

Consent to Entry of Order by Respondent SFS:

I hereby agree to the entry of this Consent Order; consent to all terms, conditions and orders contained therein; and waive any right to appeal from this Order.

_____
Michael Hennessy, Managing Director
Solium Financial Services LLC

March 9, 2020
Date

Utah Division of Securities:

K Barton 3/11/2020

Kenneth O. Barton
Director of Compliance

CERTIFICATE OF MAILING

I certify that on the 29th day of April, 2020, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Tony Taggart, Managing Director
[redacted]

Via email: [redacted]

Sabrina Gfrichi
Executive Secretary