Division of Securities
Utah Department of Commerce
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF: TODD E. SEEHOLZER, CRD#2583138 Respondent.	STIPULATION AND CONSENT ORDER Docket No. SD-20-0031

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondent Todd E. Seeholzer ("Respondent") hereby stipulate and agree as follows:

1. Respondent 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, et seq., as amended.
2. On or about June 24, 2020 the Division initiated an administrative action against Respondent by filing an Order to Show Cause.
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 Order to Show Cause.
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 Erik Christiansen of Parsons, Behle and Latimer and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

8. Seeholzer is a Utah resident who was employed in the securities industry in Utah from 1996 to 2017. For the period relevant to this matter, Seeholzer was licensed as a broker-dealer agent from September 2010 to May 2014 with Symetra Investment Services[1] and from May 2014 through December 2017 with Allegis Investment Services, LLC ("AIS"), CRD#168557.

9. Seeholzer has passed the FINRA Series 6 and 63 examinations. He has never been licensed to trade individual securities such as options nor has he personally traded options in his own accounts. He is not currently licensed in the securities industry in any capacity.

10. As discussed further below, Seeholzer was terminated by AIS on December 13, 2017 for "fail[ing] to follow firm policies and procedures. Rep acted outside the scope of his current license. Rep reimbursed a client for a surrender charge."

[1] Following its 2013 acquisition, Symetra is now known as Signator Financial Services, Inc., CRD#19061.

11. Allegis Investment Advisors, LLC ("Allegis"), IARD#157314, is a defunct Idaho-based investment adviser that was founded in March 2011 as Bowen Group Advisors, later changing its name to Allegis in 2013.

12. AIS is a defunct broker-dealer which was formed in 2013 to serve as a limited broker-dealer for Allegis.

13. Allegis and AIS were under common control and ownership with the same individuals serving in management and supervisory capacities in both entities.

14. Allegis and AIS both withdrew their registrations and closed in 2019 following the failure of an Allegis investment strategy that caused catastrophic investor losses of more than $38,000,000.00.

15. Summit Group Wealth Advisors, Inc. ("Summit") is an active Utah limited liability company located in Logan, Utah. Summit is not licensed with the Division but has been registered as a branch office with various broker-dealers and investment advisers since its organization, including both Allegis and AIS while they were operating. Summit has various affiliated individuals who were licensed with AIS and/or Allegis, including Seeholzer.

16. As recently as August 2020, Summit's web site profile of Seeholzer erroneously described him as a "Registered Representative" – a term of art for persons licensed in the securities industry, which he is not – and falsely claimed he held the FINRA Series 65 license, which is the license held by investment adviser representatives of investment adviser firms. In fact, the only license held by Seeholzer is an insurance license. He has never been licensed as an investment adviser representative and failed the Series 65 examination seven times, most recently in June 2014.

17. In September 2015, the Division received complaints from Allegis clients who had lost substantial amounts of money in a failed "net credit spread" options trading strategy offered by Allegis.

18. Among other things, the Division's subsequent examination found that Seeholzer and others offered and sold that strategy as an advisory service – also known as the "RUT strategy" – to numerous Utah investors, and violated the Act by misrepresenting or omitting material facts, and in particular, the significant risk of loss of investor principal.

19. The RUT strategy was a complex and speculative high-risk, low return strategy that was wholly unsuitable for unsophisticated investors, who in many cases were seniors investing their retirement monies in what they were told was a "safe" income-producing investment.

20. In addition, Seeholzer engaged in an act, practice, or course of business operating as a fraud by soliciting his insurance and broker-dealer clients to invest in the RUT strategy, even though he was not qualified, trained, or licensed to give investment advice or recommend the strategy. Seeholzer and Allegis investment adviser representative Brandon C. Stimpson ("Stimpson"), CRD#4299623, agreed to have Stimpson prepare client documents and serve – on paper only – as the representative of record for clients' accounts. Stimpson then collected investment advisory fees for those accounts and shared those fees with Seeholzer.[2]

[2] Stimpson is named as a respondent in a separate action filed contemporaneously with this action. That action remains pending.

Allegis and the RUT Strategy

21. Heath S. Bowen ("Bowen"), CRD#4824684 was the President of Allegis and had primary responsibility for overall firm compliance, training Allegis representatives on the RUT strategy, and explaining the strategy to clients. Following a Colorado regulatory action for securities violations relating to the RUT strategy, in 2018 Bowen was ordered to cease transacting securities business in Colorado and to not apply for licensure in the future.

22. Peter G. Klaass ("Klaass"), CRD#238168, served in various capacities at Allegis, including its Vice President and Chief Compliance Officer. He was also responsible for training Allegis representatives on the RUT strategy, reviewing and approving client documents and suitability for the RUT strategy, and for placing trades to carry out the strategy. Following a Colorado regulatory action, in 2018 Klaass's investment adviser representative license was revoked for violations relating to the RUT strategy and he was barred from acting in the securities industry in any capacity in Colorado.

23. Bowen and Klaass began trading options while working together at LPL Financial in approximately 2010. They began doing net credit spread trades at that time for a limited number of clients. Bowen and Klaass founded Allegis together in 2011 and actively marketed the strategy to many more clients.

Options

24. There are many different securities option trading strategies. In general, options are based on or tied to the value of an underlying security or securities index. Options provide a purchaser or seller the opportunity or obligation to buy or sell a security at a future date. Buying a call option, for example, gives a purchaser the right (but not the

obligation) to buy 100 shares of a security at a set price, known as the strike price, by a set date, known as the expiration date. Buying a put option provides the purchaser the right (but not the obligation) to sell 100 shares of a security at the strike price by the expiration date. Both calls and puts can be also be sold. Selling a call option obligates the seller (or "writer") to sell the security at the strike price if the security value exceeds the strike price. Selling a put option obligates the seller to purchase the security if the price falls below the strike price.

25. Options strategies are used for various reasons, including to protect a gain or limit losses in securities held by the person. In addition, some options strategies are speculative or seek to take advantage of changes in the values of a volatile security or index.

RUT Options

26. The Allegis RUT strategy was based on Russell 2000 Index options[3] which trade under the ticker symbol RUT. Unlike American-style equity options, which may be exercised any time before expiration, RUT options settle European-style and may only be exercised at expiration on the third Friday of the expiration month. In addition, RUT options expire in the morning rather than at the close of the market. RUT options trading ceases at market close on the Thursday before the expiration date, and the final settlement price is calculated after all underlying securities have been priced Friday morning.

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[3] The Russell 2000 Index is a small cap stock market index comprised of the smallest 2000 stocks in the Russell 3000 index, which tracks the largest 3,000 U.S.-traded stocks. The Russell 2000 is capitalization-weighted and includes only common stocks belonging to corporations domiciled in the US and its territories and traded on the NYSE, NASDAQ or the AMEX. http://www.cboe.com/products/stock-index-options-spx-rut-msci-ftse/options-on-ftse-russell-indexes/options-on-russell-2000-index-rut/rut-options-specs The Russell 2000 is often regarded as a bellwether of the American economy because it measures the performance of smaller, domestically focused businesses. https://www.investopedia.com/terms/r/russell2000.asp

27. RUT options are cash-settled, meaning no shares change hands, and have a contract multiplier of $100.00. The Chicago Board Options Exchange ("CBOE") describes the RUT settlement process:

> Settlement Value:
>
> Exercise will result in delivery of cash on the business day following expiration. The exercise settlement value, RLS, is calculated using the opening sales price in the primary market of each component security on the expiration date. The exercise-settlement value is equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100.[4]

28. Accordingly, the RLS exercise-settlement value is only calculated after all of the underlying stocks in the Russell 2000 index have been priced when the market opens on Friday. Because not all 2000 stocks begin trading at the same time, the RLS may not be immediately known. RLS may therefore be higher or lower than the previous night's market close, and may also vary from the value of the index when the market opens on Friday.

Net Credit Spread Strategy

29. Klaass and Bowen began using a net credit spread trading strategy sometime in 2010, and developed the specific RUT strategy used by Allegis. A net credit spread consists of the simultaneous purchase and sale of the same type of option (either a put or a call) with the same expiration date but a different strike price. The trader receives a credit payment for the sale of the option and pays for the purchase of the other option. The "net credit" to

[4] http://www.cboe.com/products/stock-index-options-spx-rut-msci-ftse/options-on-ftse-russell-indexes/options-on-russell-2000-index-rut/rut-options-specs

the trader's account is the "spread" which is the difference between the proceeds received for the sale of the option minus the premium paid for the option purchase.

30. For example, a trader might buy 10 put contracts at a set strike price for .75 and sell 10 put contracts at a different strike price for $1.25. When the transactions are entered, a net credit of .50 is paid to the trader ($1.25 premium received minus .75 premium paid) x 10 contracts with 100 shares per contract = $500.00. Depending on what happens at expiration, the trader may keep the net credit, in part or in whole, or incur losses.[5] The net credit amount, however, represents the maximum gain possible from the transaction.

31. Clients participating in the RUT strategy opened brokerage accounts at T.D. Ameritrade, over which Allegis had discretionary trading authority. After determining how many contracts to purchase, Allegis entered trades on a block trade basis, after which contracts would be allocated automatically to individual client accounts.

32. Investors generally were told Allegis's goal in the RUT strategy was an annual return between 10 and 12%. Allegis typically placed one trade per month, seeking a return of approximately 1% per transaction. Klaass and Bowen chose the Russell 2000 index because of its higher volatility – a necessary and critical factor to earn higher premiums and meet the 1% target.

33. Allegis did not provide clients sales materials, a fact sheet, disclosure documents, or any other written description or illustration of the RUT strategy, how it worked, or various scenarios of how a client could gain or lose money using the strategy. At most, some representatives drew out a one-page chart about the strategy.

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[5] For examples of net credit spread trade scenario outcomes, see https://www.schwab.com/resource-center/insights/content/reducing-risk-with-credit-spread-options-strategy-0

34. From 2011 through 2015, Allegis and its representatives offered and sold the RUT strategy to Allegis clients as a "safe" way to earn consistent income. Despite his lack of experience, qualifications, and licensure, Seeholzer, with the assistance of Stimpson, offered and sold the strategy to clients. Allegis charged an assets under management ("AUM") fee of 2.5% to all clients investing in the strategy, which was split between Allegis and the client's investment adviser representative. For Seeholzer's clients, Stimpson, as the representative of record, received compensation from Allegis and then wrote a check to Seeholzer for a portion of those fees. When interviewed by the Division, Seeholzer estimated receiving approximately $25,000 in such compensation.

Losing Transaction

35. Volatility and a sell-off in the United States securities markets began on August 18, 2015, and the markets fell over the next few days. From August 18th through the 21st, the Dow Jones Industrial Average fell approximately 6% and the Russell 2000 index fell approximately 5.5%.

36. In the afternoon of Thursday, August 20, 2015, Allegis entered a net credit put spread, with the expectation that the RUT would gain in value, as follows:

a. purchasing 39,200 RUT put contracts with an August 21, 2015 expiration and strike price of 1145 at a cost of $0.4472 per contract.

b. selling 39,200 RUT put contracts with an August 21, 2015 expiration date and strike price of 1155, receiving $0.5272 per contract.

37. The net credit and maximum possible gain for the trade – $313,600 – was received at that time (the difference in premium prices of $0.5272 - $0.4472 = $.08, multiplied by 39,200 contracts x 100 shares per contract = $313,600).

38. In order to receive that credit, Allegis placed at risk approximately 50% of investors' account values. Earlier RUT strategy trades risked even more – up to 100% of investors' monies – in each trade.

39. The settlement value for RLS on Friday, August 21, 2015 was 1145.06. As a result, Allegis sustained the near maximum loss possible: it was required to buy 39,200 RUT contracts at the strike price of 1155 = 39,200 x $1155 x multiplier of 100 = $4,527,600,000. Since the 1155 contracts were not covered,[6] Allegis had to simultaneously sell 39,200 RUT contracts at the market price of 1145.06 = 39,200 x 1145.06 x multiplier of 100 = $4,488,635,200.

40. Allegis investors lost approximately $38,651,200 from the transaction ($4,527,600,000 minus $4,488,635,000 minus net credit received of $313,600).

Seeholzer Clients

41. Seeholzer worked with Stimpson in Summit's Logan, Utah office and was licensed as an AIS broker-dealer agent during the relevant time period. Seeholzer learned about the strategy from Stimpson after Stimpson had been trained on it by Allegis. Seeholzer later attended training sessions presented by Allegis on the strategy both in person and over the phone.

42. Between 2013 and 2015, Seeholzer sold the RUT strategy to 13 clients. All but one client had a moderate risk tolerance. The other client was moderately aggressive and was 77 years old at the time of investment. Stimpson prepared account applications and other

[6] FINRA Rule 2360(a)(10) defines "covered" in connection with put options: "The term 'covered' in respect of a short position in a put option contract means that the writer holds in the same account as the short position, on a unit-for-unit basis, a long position in an option contract of the same class of options having an exercise price equal to or greater than the exercise price of the option contract in such short position." The trade was not covered because rather than buying puts at the same or higher strike price than the puts Allegis sold, Allegis bought puts at a lower strike price.

paperwork and gave those documents to Seeholzer for delivery and execution. Many of the clients told the Division they signed signature lines on blank documents. Stimpson then signed the paperwork as the investment adviser representative of record and submitted the documents to Allegis for approval. Stimpson gave Seeholzer updates after each successful RUT strategy transaction and Seeholzer relayed that information to the clients. Stimpson received the investment advisory fees for each account and shared that compensation with Seeholzer. Of the 2.5% AUM fee, Stimpson typically received 1.35% and Allegis retained the rest. Seeholzer estimated he received $25,000.00 in fees from Stimpson.

43. Most of Seeholzer's clients who invested in the RUT strategy were retired or near retirement and were investing most if not all of their retirement moneys.

44. The Seeholzer clients lost approximately $932,442 in the August 2015 trade.

45. Allegis was unaware of Stimpson and Seeholzer's activities until after the August 2015 trade. During an internal Allegis examination in October 2015, Stimpson and Seeholzer both certified in writing that all securities-related compensation was solely received, shared, and split through Allegis, which was false. Sometime after the losing trade, Stimpson and Seeholzer admitted to Allegis management that Seeholzer had presented the strategy to his clients while unlicensed. They did not, however, disclose sharing compensation until December 2017, when testimony about that conduct came out in a client's arbitration action, at which time Allegis terminated both individuals.

Client T.A.

46. In August 2013, after being solicited by Seeholzer, T.A., then a 68-year-old recently retired man, signed documents to invest in the RUT strategy. Seeholzer told him he

would "make money" for T.A. and his wife, but did not provide any details about the strategy, how it worked, why it was appropriate for T.A., or what the risks were, but instead just gave T.A. documents and showed him where to sign. T.A., an unsophisticated investor, told the Division he trusted Seeholzer because Seeholzer had become a friend, and knew T.A. and his situation, including that the monies ultimately invested were all of his 401(k) monies. Seeholzer did not discuss T.A.'s risk tolerance, although Allegis documents showed him to have a moderate risk tolerance. Seeholzer also knew T.A.'s home was still not paid for. Seeholzer did not discuss how much of T.A.'s monies would be invested in the strategy, which T.A. learned after the losing transaction were all of his retirement monies. T.A. surrendered a variable annuity with a value of approximately $184,000 to invest in the strategy. He lost $99,400 in the losing trade.

Clients G.J. and M.J.

47. G.J. and M.J. are an elderly married couple who moved their entire retirement investments into the RUT strategy based on Seeholzer's recommendation and assurances. They were very risk averse and had little investment experience.

48. Seeholzer told G.J. and M.J.:

a. the strategy was a great investment that would only invest part of their money;

b. they could not lose much;

c. the strategy would double their money;

d. money would only be invested when the market was good and then pulled out; and

e. Seeholzer even had his mother invested in the strategy.

Those representations were false.

49. To meet the $100,000 minimum required by Allegis for the RUT strategy, G.J. and M.J. invested IRA monies totaling $102,986. They lost approximately $50,000 in the August 2015 trade.

Client B.H.

50. At the time B.H. invested in March 2014, he was 60 years old and Allegis documents indicate he had moderate risk tolerance. Seeholzer told B.H.:

a. the strategy would earn 10-12% per year; and

b. the maximum potential loss was limited to 10%.

Those representations were false.

51. B.H. invested approximately $98,390 consisting of retirement monies, and lost $54,000 in the losing trade. B.H.'s investment represented about 70% of his assets, even though Allegis's internal guidelines – of which Seeholzer had been trained on and was aware – prohibited clients from investing more than 25% of their monies into the strategy.

Client J.M.

52. After being solicited by Seeholzer, J.M. signed documents in July 2014 to liquidate two variable annuities in order to invest approximately $100,000 of IRA monies in the RUT strategy. J.M. had little to no investing experience, and had previously invested in moderate risk products through his 401(k). He told the Division Seeholzer knew he was only interested in low risk investments.

53. Seeholzer told J.M.:

a. the investment would earn between 12%-20% annually;

b. the risk was low and potential for return was high;

c. the investment had no more risk than J.M.'s existing annuities which were returning approximately 6%;

d. the strategy was a "great opportunity" and Seeholzer was so confident that he had his family, including his mother, invested in the strategy; and

e. the documents J.M. had to sign were "just a formality".

Those representations were false.

54. Seeholzer explained that the Allegis documents J.M. needed to sign were "just a formality" and directed J.M. where to sign. In addition, Seeholzer told J.M. if he lost any money in the strategy, he would reimburse surrender charges incurred in liquidating J.M.'s annuity.

55. J.M. lost approximately $54,690 as a result of the August 2015 trade. Seeholzer then paid J.M. $3,000 for the surrender charges for closing the annuity. Seeholzer did not disclose that payment to his broker-dealer, AIS.

Client C.B.

56. When he invested in the RUT strategy in August 2014, C.B. was 67 years old and planning to retire. He was a novice investor seeking low risk income for his retirement. Seeholzer convinced him to surrender a variable annuity to invest $85,136 of IRA money in the strategy.

57. Seeholzer told C.B.:

a. the strategy would earn between 6-12%;

b. the strategy would earn returns regardless of whether the stock market went up or down; and

c. the maximum loss for any trade was 10%;

Those representations were false.

58. Due to his age, C.B. was particularly concerned at the prospect of losing 10%, which was "almost a deal breaker for him." However, because he had known Seeholzer for many years C.B. felt secure following Seeholzer's advice.

59. C.B. lost $49,720 in the August 2015 trade.

Client N.R.

60. N.R. is client J.M.'s mother and was 74 years old when she invested $303,337 of rollover IRA monies in the strategy in September 2014. She had little investment experience and had saved those monies for 45 years. Following Seeholzer's recommendations, she surrendered an annuity that was earning approximately 6% annually. Seeholzer gave her documents to sign that had stickers indicating where to sign.

61. Seeholzer told N.R.:

a. the investment would earn between 12%-20% annually;

b. the investment had low risk and high returns;

c. there was little or no more risk than the annuity she held at the time; and

d. the investment was so good that Seeholzer's family and mother invested in it.

Those representations were false.

62. N.R. lost approximately $164,000 in the August 2015 trade.

Client C.W.

63. In June 2014, C.W., who was almost 78 years old, signed documents provided to him by Seeholzer to surrender an annuity in order to invest approximately $296,436 of IRA monies in the strategy. An "Investor Profile" questionnaire C.W. completed at that time indicated the following, among other things:

a. he was willing to accept some risk in his investment portfolio in order to help his money grow, but he was concerned more with security. He was most comfortable knowing that his money was protected from extreme market fluctuations;

b. a market drop of 30% in value would make him very uncomfortable;

c. based on his responses, an Allegis "balanced" investment strategy comprised of 60% in equities, 38% in bonds, and 2% in cash was appropriate.

64. C.W. and his wife M.W. had little investment experience and made it very clear to Seeholzer that they were very low risk investors whose goal was to maintain their capital. Seeholzer also knew that they were supplementing their social security by taking monthly withdrawals from their annuity. Seeholzer gave C.W. blank documents to sign, which he did not explain, telling C.W. and M.W. that the documents were just "legal stuff." Significantly, the Allegis account application – presumably completed after C.W. signed it – contained false information in direct opposition to C.W.'s questionnaire responses described in paragraph 56 and what Seeholzer knew about C.W. and his wife. The "Account Objective" selection was "Growth through capital appreciation (little or no focus on current income, all income/dividends gains are reinvested)". The "Risk Tolerance" was "Moderately aggressive (emphasis on a mix of investments that may fluctuate significantly short-term with other more stable investments)."[7]

65. In describing the strategy, Seeholzer told C.W. and M.W.:

a. the strategy invested in the Russell 2000, a group of well-established, stable companies;

[7] M.W. told the Division the first time she saw this document was when her attorney received it after C.W. filed an arbitration claim against Allegis.

b. a small dividend would be paid for the use of a small percentage of C.W.'s monies each month;

c. the strategy was very safe and met the goal of preserving their capital with little to no risk;

d. the stable history of the companies was the best way for C.W. and M.W. to protect their money from depleting too fast;

e. the risk of a loss was 0 to 1%; and

f. even if there was a disaster for some reason, the loss could never be more than 10% of the invested amount.

Those representations were false.

66. C.W. lost $164,029 in the August 2015 trade. After the loss, Seeholzer tried to make C.W. and M.W. feel better by telling them he, his aunt and another Summit agent had also lost money, which was not true. He explained the loss by saying someone in the office made a mistake and that two employees were fired, which was also not true. C.W. passed away in April 2017, which M.W. attributed to the stress from the loss.

II. CONCLUSIONS OF LAW

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

67. As described above, Seeholzer directly or indirectly misrepresented material facts about the RUT strategy to his clients, including but not limited to the following:

a. the strategy was appropriate for moderate and conservative investors;

b. the strategy was appropriate for retirement monies;

c. the strategy was appropriate for retirees and senior citizens;

d. the risk of loss was low;

e. risks could be mitigated;

f. investor losses could not exceed 10%;

g. he had also invested; and

h. Seeholzer was appropriately licensed to offer the strategy.

68. In connection with the RUT strategy Seeholzer omitted material facts to clients including but not limited to:

a. Seeholzer completed no due diligence on the strategy and had no reasonable basis for the representations described in paragraph 60;

b. the RUT strategy was only for investors with an aggressive or speculative objective;

c. each trade placed by Allegis would risk 50% or 100% of investors' funds;

d. Allegis policy limited investments in the strategy to 25% or 33% of a person's investable assets;

e. he was unlicensed to offer or provide investment advice including recommending the RUT strategy;

f. his lack of experience, qualifications, and training to advise clients about financial planning issues, including options trading, and the RUT strategy;

g. he was personally unsupervised in offering the strategy;

h. he was receiving unlawful compensation for the sale of the strategy;

i. Allegis did not know he was selling the strategy;

j. Stimpson would fraudulently act as investment adviser representative of record on clients' accounts;

k. Stimpson would falsely represent he had met with the investors, collected relevant information and recommended the strategy after an analysis of clients' individual objectives in consideration of their risk tolerance; and

l. the actual amount of client monies invested in the RUT strategy.

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

69. As described above, Seeholzer conspired with Stimpson to sell the RUT strategy to Seeholzer's clients, despite Seeholzer's lack of qualifications and licensure to recommend the strategy. Among other things, Seeholzer:

a. solicited existing clients and provided documents for their signatures which Stimpson then fraudulently submitted to Allegis as the representative of record;

b. acted as the sole contact for clients regarding the RUT strategy;

c. unlawfully shared investment advisory compensation with Stimpson;

d. reimbursed J.M. annuity surrender fees without the approval of AIS.

Seeholzer concealed that conduct from AIS and Allegis and in fact affirmatively certified he was not unlawfully sharing compensation with Stimpson.

70. Seeholzer's conduct constitutes an act, practice or course of business that operated as a fraud on his clients, AIS, and Allegis.

Unlicensed Investment Adviser Representative under Section 61-1-3(3) of the Act

71. Seeholzer was not licensed as an investment adviser representative at any time, but recommended the RUT advisory strategy to clients and received compensation from Stimpson, in violation of Section 61-1-3(3) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

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

73. Respondent 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.

74. Respondent agrees that he will be barred from associating with any broker-dealer or investment adviser licensed in Utah or from acting as an agent for any issuer soliciting funds in Utah.

75. Pursuant to Utah Code Ann. Section 61-1-6 and in consideration of the factors contained in Utah Code Ann. Section 61-1-31, the Division imposes a fine of $110,000.00 against Respondent, with $2,500.00 of the fine due on or by January 1, 2021. Up to $65,000.00[8] of the fine may be offset, dollar for dollar, by proof of restitution paid to non-family member investors within four years of the entry of this Order. If Respondent does not violate the Act and timely pays non-family member investors the full $65,000.00 within the four-year period, the Division, in its discretion, will waive all but $22,500.00 of the remaining fine, which would be due to the Division within one month of the completion of the four-year period.

76. Respondent agrees that if he files bankruptcy, he will not seek a discharge of the monies owed to investors. Respondent understands that if he were to seek a discharge of the monies owed to investors, the Division would not allow him a dollar for dollar credit or waive any portion of the remaining fine, and the remaining amount of the fine would become immediately due and payable to the Division.

[8] Seeholzer agreed to pay restitution in that amount through settlement agreements with several investors.

IV. FINAL RESOLUTION

77. 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.

78. 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 in which:

a. Respondent admits the Division's Findings and Conclusions as set forth in this Order; and

b. Any unpaid portion of the fine becomes immediately due and payable.

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. 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.

79. Respondent shall notify the Division within thirty (30) days of any change of address.

80. 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.

81. 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 24th day of September, 2020

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 21 day of Sept, 2020

Todd E. Secholzer

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for the Division

Approved:

Erik Christiansen
Counsel for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondent neither admits nor denies, 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 is barred from associating with any broker-dealer or investment adviser licensed in Utah or from acting as an agent for any issuer soliciting funds 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, Respondent shall pay a fine of $110,000 to the Division pursuant to the terms set forth in paragraph 75.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7 day of October, 2020

Lyndon Ricks
Lyndon Ricks (Oct 8, 2020 09:07 MDT)
Lyndon L. Ricks

Lyle White
Lyle White (Oct 7, 2020 17:43 MDT)
Lyle White

Peggy Hunt
Peggy Hunt (Oct 7, 2020 16:59 MDT)
Peggy Hunt

Gary Cornia
Gary Cornia (Oct 8, 2020 17:33 MDT)
Gary Cornia

Brent A Cochran
Brent A Cochran (Oct 7, 2020 18:53 MDT)
Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 13th day of October 2020, I provided a true and correct copy of the foregoing Stipulation and Consent Order, to be sent to the parties as follows:

Via email:

Erik Christiansen, Counsel for Respondent (Mr. Seeholzer)
echristiansen@parsonsbehle.com

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

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

Ken Barton, Manager of Compliance
Utah Division of Securities
kbarton@utah.gov

Sabrina Afridi

Sabrina Afridi
Administrative Assistant
Utah Division of Securities
safridi@utah.gov

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**
SHIP GROUP INC,	**Docket No. SD-20-0010**
PATRICK JOHN HUTTON,	Docket No. SD-20-0011
THOMAS ROBERT SANFORD,	**Docket No. SD-20-0012**
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondents Thomas Robert Sanford ("Sanford"), and Ship Group, Inc. ("Ship Group") (collectively referred to as "Respondents") hereby stipulate and agree as follows:

1. Sanford and Ship Group have been the subjects 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), §61-1-3 (unlicensed activity) and §61-1-7 (sale of unregistered security) while engaged in the offer and/or sale of securities in or from Utah.

2. On or about April 27, 2020, the Division initiated an administrative action against Ship Group, Patrick John Hutton ("Hutton"), and Sanford by filing an Order to Show Cause.

3. Sanford and Ship Group 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 Sanford and Ship Group pertaining to the Order to Show Cause.

4. On August 6, 2020, the Utah Securities Commission ("Commission") approved and entered the Division's Stipulation and Consent Order with Hutton.[1]

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

6. Sanford and Ship Group 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. Sanford and Ship Group are represented by attorney H.D. Gailey, from Stevens & Gailey, P.C., and are satisfied with the legal representation they have received.

FINDINGS OF FACTS

THE RESPONDENTS

9. Ship Group is a corporation registered with the California Secretary of State on August 25, 2014.[2] In entity filing documents, Sanford was listed as the CEO, CFO, officer, and

[1] See SD-20-0011, "Stipulation and Consent Order".

[2] Ship Group's entity documents filed with the California Secretary of State lists the entity's contact address as 30100 Town Center Dr., Building O, Suite 122, Laguna Niguel, CA 92677.

director of Ship Group; and Hutton was listed as an officer. Ship Group's entity status with the California Secretary of State is listed as suspended. Ship Group's purported purpose was to purchase investment properties and secure loans from hard money lenders to lend to other businesses. Ship Group has never been licensed with the Division, and has never recorded a securities registration, exemption from registration, or notice filing with the Division.

10. Sanford resided in California during all times relevant to the allegations asserted herein and was once licensed (Series 7, Series 24, and Series 63) in the securities industry.[3] Sanford established a Ship Group bank account at Citi Bank, account ending in 1580, where Sanford was the sole signatory on the account.

11. Hutton resided in Florida during all times relevant to the allegations asserted herein and has never been licensed in the securities industry. On July 5, 2019, a parallel criminal proceeding was filed against Hutton related to this matter in the Fourth District Court, American Fork, Utah, case number 191100880. On January 14, 2020, Hutton entered a plea in abeyance for securities fraud, sale of an unregistered security, and unregistered securities agent. The court ordered Hutton to pay restitution to investor H.V. of $50,000 (plus interest) in monthly installments beginning February 15, 2020.[4] If Hutton completes the terms of the plea in abeyance by February of 2022, then all charges filed against him will be dismissed.

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[3] On or about August 25, 1999, the state of Wisconsin filed an administrative action against Sanford alleging the offer and sale of an unregistered security and selling securities without a license; *See* case number S-98313. According to the Central Registration Depository ("CRD"), Sandford's CRD record contains numerous complaints and internal reviews related to allegations of churning, breach of fiduciary duty, failure to supervise, sale of unsuitable securities, and misappropriation of customer funds.

[4] *See* case number 191100880 in Fourth District Court, American Fork, Utah.

GENERAL ALLEGATIONS

12. The Division's investigation of this matter revealed that in or about September 2014, while conducting business in or from the state of Utah, Respondents offered and sold an investment opportunity to one Utah investor, and raised approximately $100,000.[5]

13. The investment opportunity offered and sold by Respondents is an investment contract or promissory note, which are defined as securities in §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 regarding Respondents' intended use of the investors' funds.

15. Respondents utilized investor funds in a manner inconsistent with the representations Respondents made to investors. For example, investor money was used to make cash withdrawals of at least $32,300 without providing a legitimate business use for the funds.

16. To date, investor H.V. is owed at least $27,407 in principal alone.

INVESTOR INFORMATION

17. Investor H.V. is a resident of Provo, Utah and owns a company that supports employment services for individuals with disabilities.

18. In or about July 2014, investor H.V. met Hutton after attending a real estate investment seminar hosted by Hutton at the Sheraton Hotel in Salt Lake City.

19. During the seminar, Hutton asked investor H.V. to provide financial documentation to assess whether or not real estate investing would be suitable for investor H.V.

20. Hutton invited investor H.V. to purchase Hutton's real estate coaching program, as Hutton claimed to have over thirty years of experience as a successful real estate investor.

[5] Respondents solicited at least two other investors who are not residents of Utah and are not included in the Division's administrative proceeding.

The cost of Hutton's real estate coaching program was $40,000.

21. Hutton informed investor H.V. that Hutton would personally mentor investor H.V. if he purchased the coaching program, and that investor H.V. would earn the $40,000 cost of the program back within 90 days.

22. Hutton decided not to purchase Hutton's real estate coaching program; but, Hutton remained in contact with investor H.V. to offer other real estate investment ventures.

23. Investor H.V. had no role in Ship Group, other than providing investment funds.

SHIP GROUP INVESTMENT

THE SOLICITATION AND INVESTMENT

24. Investor H.V. made two investments with Ship Group. The first investment was in a property located in California. Hutton repaid investor H.V. for his first investment as agreed upon.

25. Hutton later approached investor H.V. about a larger real estate investment located in Arcadia, California that would require a $100,000 investment, and would produce a 25% return on investment in three or four months.

26. Investor H.V. did not have cash available to invest, but informed Hutton that he had access to a $100,000 business line of credit that investor H.V. could use to invest in the Arcadia property.

27. After investor H.V. became interested in learning more about the Arcadia property, Sanford began contacting investor H.V. with property details and bank wiring instructions for the investment. Hutton also sent investor H.V. a market analysis for the Arcadia property.

28. Hutton did not tell investor H.V. about Sanford's role in Ship Group. Investor H.V.

initially believed that Sanford was a student from Hutton's real estate seminars.

29. During the solicitation, Respondents made numerous statements to investor H.V. regarding the Arcadia investment opportunity with Ship Group, including, but not limited to, the following:

a. That investor H.V.'s investment in the Arcadia property would be secured by the property itself, and investor H.V.'s property interest would be recorded on the deed of trust;

b. Investor H.V.'s investment was needed quickly to purchase the Arcadia property, and that funds should be wired directly to the escrow company immediately;

c. Investor H.V. could expect a 25% return on investment after selling the Arcadia property in three or four months;

d. Investor H.V. would receive a promissory note that would be *"secured and included in the bylaws or operating agreement of Ship Group, Inc. until paid off"*;

e. Respondents would provide home owners association statements, hazard insurance statements, and property tax statements every six months;

f. Hutton had over 30 years of experience in real estate investing, and was very successful;

g. Hutton would manage the purchase, renovation, and resale of the Arcadia project; and

h. The Arcadia property would be purchased for $1,250,000 and sold for $1,600,000, realizing a gross profit of $268,705 after fees and commissions.

30. Based upon Respondents' statements, investor H.V. wired $100,000 to an escrow company by the name of Central Escrow on or about September 25, 2014, as he was

directed to do by Respondents.

THE INVESTMENT AGREEMENT

31. In return for his investment, investor H.V. received a notarized document entitled "Promissory Note" dated September 22, 2014, and signed by Sanford.

32. The agreement identified the Arcadia property securing the "promissory note" and offered investor H.V. a "25% return on investment upon sale of the property" and return of investor H.V.'s $100,000 principal investment.

33. In the agreement, Sanford also promised to provide to investor H.V. *"HOA statements, HO-6 Extended Hazard Insurance statements and Parcel Tax Roll Statements (paid in full receipts) bi-annual and every six (6) months thereafter"*.

34. Hutton also told investor H.V. that investor H.V. would be placed on the Arcadia property deed to secure his property and investment interest. However, Hutton did not initially place investor H.V. on the Arcadia property deed.

FRAUDULENT CONDUCT: USE OF INVESTOR FUNDS

35. Respondents told investor H.V. that his investment would be used to purchase the Arcadia property; and, therefore investor H.V. should wire $100,000 directly to the escrow company to immediately close on the purchase of the Arcadia property.

36. However, because Respondents had already obtained investment funds from several other investors (unbeknownst to investor H.V.), Respondents did not need investor H.V.'s investment to purchase the Arcadia property. As a result, the escrow company sent Respondents a refund of $107,006.75 to Ship Group's bank account ending in 1580 as an overpayment of the purchase price of the Arcadia property.[6]

[6] In addition to the use of investor funds, Respondents also obtained a $900,000 home mortgage on the Arcadia property from Rediger Investment Mortgage to finance the initial purchase of the property. Hutton signed the note

37. Rather than informing investor H.V. that his funds were no longer needed to purchase the Arcadia property, Respondents instead used investor H.V.'s funds in a manner not authorized by the investor.

38. Respondents used investment H.V.'s investment in a manner including, but not limited to the following:

a. Approximately $32,200 in cash withdrawals without providing a legitimate business use for the funds;

b. Approximately $59,500 to Creation Builders, a construction company located in California;

c. Approximately $7,862.47 on building supplies;

d. Approximately $5,543.44 on mortgage interest; and

e. Approximately $925.84 on fast food, gas, groceries, bank fees, and general merchandise.

39. In or about February 2015, Sanford refinanced the Arcadia property (unbeknownst to investor H.V.) granting the new lender, Moreiko Heritage LP, a first lien mortgage on the property, and providing Respondents with $73.613.17 in equity from the Arcadia property. Sanford transferred the cash equity value into Ship Group's entity bank account ending in 1580.

40. The $73,613.17 in equity transferred to Ship Group's account was used in the following manner:

a. Approximately $20,181 transferred to an entity owned by Hutton;

b. Approximately $9,000 transferred to an entity owned by Sanford;

---

and deed of trust for the mortgage from Rediger.

c. Approximately $17,502.35 in cash withdrawals;

d. Approximately $16,861.52 paid to American Express;

e. Approximately $9,634.25 in mortgage payments; and

f. Approximately $434.05 paid for fast food, gas, utilities, parking, bank fees, and tolls.

41. Prior to Respondents refinancing the Arcadia property, Respondents had still not recorded a lien or deed of trust under investor H.V.'s name to secure his ownership interest in the Arcadia property.

42. Respondents did not inform investor H.V. that there were several parties recorded on the deed of the Arcadia property ahead of investor H.V., including other investors like investor H.V.

43. Sanford did not sign and record a deed of trust for the Arcadia property to secure investor H.V.'s interest in the property until February 2016.

44. Investor H.V.'s interest was not recorded until Respondents had already refinanced the Arcadia property and over- encumbered the property to other ownership interests, effectively diluting any potential return investor H.V. could have received upon sale or foreclosure of the property.

MISSTATEMENTS AND OMISSIONS

45. In connection with the offer and/or sale of securities, Respondents made material misstatements to investor H.V. including, but not limited to, the following:

a. That investor H.V.'s funds would be used to purchase the Arcadia property, when in fact, Respondents did not need investor H.V.'s investment to purchase the Arcadia property and instead used his investment for other purposes not related to the purchase of the property;

b. Investor H.V. would receive a return on investment of 25% within three or four months, when in fact, there was no reasonable basis to make this claim;

c. Investor H.V.'s investment would be secured by a trust deed on the Arcadia property, when in fact, this claim was false and Respondents did not record investor H.V.'s interest until over a year later when the property was already over-encumbered; and

d. Hutton would exclusively be responsible for the management, operations, renovations, and resale of the Arcadia property, when in fact, this claim was false, considering Sanford was responsible for a significant portion of the operation of the Arcadia project and had sole ownership of the Ship Group entity bank account where investor H.V.'s funds were eventually deposited.

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

a. That Respondents did not need investor H.V.'s funds to purchase the Arcadia property;

b. That Respondents would use investor H.V.'s funds for purposes unauthorized by the investor;

c. That Sanford would refinance the Arcadia property and remove the equity from the property to pay himself and Hutton;

d. That Respondents would fail to file and record investor H.V. on the trust deed of the Arcadia property to secure investor H.V.'s investment;

e. That Respondents would over-encumber the Arcadia property by refinancing the property and promising other investors a high return on investment ahead of investor

H.V.;

f. That Sanford, and not Hutton primarily would be managing the Arcadia project because Sanford was the CEO of Ship Group;

g. That Hutton was sued in 2008 for selling and marketing investment properties in Cape Coral, FL using real estate investment seminars;

h. That Hutton previously filed for bankruptcy;

i. That Sanford was barred from the securities industry for misappropriating client funds, and was also the subject of a Wisconsin state administrative action for the unlicensed sale of an unregistered security;

j. That Respondents were not licensed to sell securities; and

k. 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 principals 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.

SANFORD'S PARALLEL CRIMINAL PROCEEDING

47. On July 5, 2019, Sanford was charged in a parallel criminal action in Utah's Fourth District Court, Utah County, Utah, Case Number 191100881 (the "Criminal Action").

48. On July 21, 2020, Sanford entered into a plea agreement with the state, and pleaded no

contest to Sale of Unregistered Securities Agent, a 3rd degree felony. Sanford's plea will be held in abeyance for six months; and Sanford was ordered by the court to pay $50,000 in restitution to investor H.V. on or before January 14, 2021.

49. As of the signing of this Order, Sanford has paid restitution in full to Investor H.V., and has no remaining balance to pay.

CONCLUSIONS OF LAW

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

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

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

52. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Sanford and Ship Group 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

53. In violation of § 61-1-1(3) of the Act, Sanford and Ship Group directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on Investor H.V. That conduct includes but is not limited to Sanford and Ship Group's conversion and misuse of investor funds for purposes not disclosed to or authorized by Investor H.V., including, but not limited to, personal use of funds.

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

54. In violation of §61-1-3(2)(a) of the Act, Ship Group acted as an issuer at the time of the offering, and employed Sanford, an unlicensed agent of Ship Group.

55. 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

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

57. In addition, Sanford had been previously barred from ever being licensed to sell securities.

Sale of Unregistered Securities under § 61-1-7 of the Act

58. In violation of § 61-1-7 of the Act, the Ship Group investment was not registered with the Division, did not qualify for an exemption from registration, and was not a federal-covered security for which any notice filing was made before Sanford offered and sold the security in the state of Utah.

REMEDIAL ACTIONS/SANCTIONS

59. Sanford and Ship Group 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.

60. Sanford and Ship Group represent that the information they have provided to the Division as part of its investigation is accurate and complete.

61. Sanford and Ship Group 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.

62. Sanford and Ship Group 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.

63. Sanford agrees to pay restitution in the amount of $50,000 to investor H.V. pursuant to the Criminal Action.

64. 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 $80,000 against Sanford and Ship Group, to be paid jointly and severally within 6 months of the Commission's approval of the Order. Within the 6-month period, the Division will offset the fine amount dollar-for-dollar up to $50,000 by any restitution timely paid to investor H.V. If Sanford timely pays full restitution of $50,000 within the 6-month period, the Division will waive all but $17,000 of the remaining fine.

FINAL RESOLUTION

65. Sanford and Ship Group acknowledge that this Order, upon approval by the Commission, shall be the final compromise and settlement of this matter. Sanford and Ship Group 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, Sanford and Ship Group expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

66. If Sanford and Ship Group 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, Sanford and Ship Group consent to entry of an order in which the total fine amount of $80,000, less any payments already made, becomes immediately due and payable. Notice of the violation will be provided to Sanford and Ship Group at their last known address, and to their counsel if they have one. If Sanford and Ship Group 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.

67. In addition, the Division may institute judicial proceedings against Sanford and Ship Group 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 Sanford and Ship Group or to otherwise enforce the terms of this Order. Sanford and Ship Group 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.

68. Sanford and Ship Group 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. Sanford and Ship Group 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.

69. 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 Sanford and Ship Group are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 4th day of October, 2020

Dave Hermansen (Oct 4, 2020 19:43 MDT)

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Dated this 29 day of September, 2020

Thomas Robert Sanford

Thomas Robert Sanford

Ship Group, Inc.

By: Thomas Robert Sanford
Thomas Robert Sanford

Its: CEO, CFO, Director

Approved:

H.D. Gailey
Counsel for Respondents Sanford and Ship Group

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Sanford and Ship Group neither admit nor deny, are hereby entered.
2. Sanford and Ship Group 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. Sanford and Ship Group 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. Sanford shall pay restitution in the amount of $50,000, pursuant to 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, Sanford and Ship Group shall pay a fine, jointly and severally, of $80,000 to the Division pursuant to the terms set forth in paragraph 64.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of October, 2020

Lyndon Ricks
Lyndon Ricks (Oct 8, 2020 09:07 MDT)
Lyndon L. Ricks

Lyle White
Lyle White (Oct 7, 2020 17:43 MDT)
Lyle White

Peggy Hunt
Peggy Hunt (Oct 7, 2020 16:59 MDT)
Peggy Hunt

Gary Cornia
Gary Cornia (Oct 8, 2020 17:33 MDT)
Gary Cornia

Brent A Cochran
Brent A Cochran (Oct 7, 2020 18:53 MDT)
Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 13th day of October 2020, I caused a true and correct copy of the foregoing Stipulation and Consent Order, to be sent to the parties as follows:

Via standard and certified mail:

H.D. Gailey, Counsel for Respondents (Ship Group and Mr. Sanford)
76 North Merchant Street
American Fork, Utah 84003
Certified mail tracking no.: 7018 3090 0001 1102 6823

Via email:

H.D. Gailey, Counsel for Respondents (Ship Group and Mr. Sanford)
HD@stevensgailey.com

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
dhermans@utah.gov

Sabrina Afridi

Sabrina Afridi
Administrative Assistant
Utah Division of Securities
safridi@utah.gov

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**
BLAKE DOUGLAS YOUNG,	**Docket No. SD-20-0009**
Respondent.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Blake Douglas Young ("Young" or "Respondent") hereby stipulate and agree as follows:

1. Young 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), §61-1-3 (unlicensed activity) and §61-1-7 (sale of unregistered security) while engaged in the offer and/or sale of securities in or from Utah.
2. On or about February 27, 2020, the Division initiated an administrative action against Young by filing an Order to Show Cause.
3. Young 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 Young pertaining to the Order to Show Cause.

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

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

6. Young 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 Young to enter into this Order, other than as described in this Order.

7. Young is represented by attorney Ryan Frazier, from Kirton McConkie, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENT

8. Young resided in Weber County, Utah during all times relevant to the allegations asserted herein, and is currently licensed as an insurance agent in the state of Utah.[1] Young does not currently hold an active securities license, and was last licensed (examination Series 6 and Series 63) in the securities industry in 2010.[2]

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[1] Young holds active insurance licenses as a resident producer for accident and health or sickness issued on August 9, 2018, and life insurance issued on May 16, 2002. Young's Utah insurance license number is 90631.

[2] According to Young's Central Registration Depository ("CRD") record and U4 filing, Young was employed by Northwestern Mutual Investment Services, LLC in or about 1998 to 2009, and was "permitted to resign" while the firm was "[…] conducting an internal review to determine whether the representative had complied with firm policy not to sell or market equity indexed annuities."

RELATED ENTITY INFORMATION

9. Future Income Payments, LLC ("FIP") is a Nevada limited liability company registered with the Nevada Secretary of State on December 23, 2015.[3] The purported purpose of FIP was to provide loans to pensioners who would later repay the loans after receiving their monthly pension distributions. FIP did not comply with consumer lending regulations because FIP classified its activity as a temporary purchase of the right to receive pension income, rather than a loan.

10. FIP is currently the subject of several pending legal actions and bankruptcies, including an action initiated by the Consumer Financial Protection Bureau ("CFPB") and several state regulatory agencies, for the unlicensed sale of a security, consumer lending violations and/or operating an unlawful business model.[4] FIP has never been licensed with the Division and has never recorded a securities registration, exemption from registration, or notice filing with the Division.

11. Scott Kohn ("Kohn") is listed as the manager of FIP and is a convicted felon. On December 11, 2006, Kohn pled guilty in the United States District Court for the District of Columbia, to conspiracy, trafficking in counterfeit goods, and aiding and abetting trafficking, all federal felonies. On December 11, 2006, Kohn was sentenced to 15 months in federal prison.[5] Kohn is also currently the subject of a federal, criminal indictment in the District Court of the United States for the District of South Carolina

[3]FIP's current entity status is listed as "default" with the Nevada Secretary of State. FIP's business license expired on December 31, 2018. FIP's registered agent is Conservitas Company Services, LLC, and lists a contact address as 2505 Anthem Village Dr., Ste. E-599, Henderson, NV 89052.

[4]The State of Alabama Securities Commission issued a Cease and Desist order against FIP and Scott Kohn (FIP's Manager) on May 25, 2018, No. CD-2018-0011. The Alabama Securities Commission determined that FIP's structured pension cash flows are securities as defined under Alabama law.

[5] *See* case number 8:03-cr-00330.

Greenville for attempt and conspiracy to commit mail fraud (case number 6:19-cf-00239). Kohn has never been licensed with the Division.

GENERAL ALLEGATIONS

12. The Division's investigation of this matter revealed that from approximately July 2016 to February 2018, while conducting business in or from the state of Utah, Young offered and sold several FIP investment opportunities to at least 13 investors and raised approximately $2,099,544 in connection therewith.

13. The investment opportunities offered and sold by Young were investment contracts and/or promissory notes, which are defined as securities under §61-1-13 of the Act.

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

15. To date, investors are owed approximately $1,559,668 in principal alone.

INVESTOR INFORMATION

16. From approximately July 2016 to February 2018, Young solicited at least 13 Utah investors to invest in FIP.

17. Young solicited investors located in Utah; and the solicitations occurred in person at Young's office or the investor's home.

18. Young primarily solicited investors who were his childhood friends, neighbors, and members of the same Church of Jesus Christ Latter-day Saints ("LDS") congregation.

19. Investors had no role in the investment opportunities, other than providing investment funds.

FIP Investment

The Solicitations

20. Young has been acquainted with those he solicited to invest in FIP for many years. Many of the investors were already Young's insurance clients.

21. Young presented the investment opportunity in FIP to investors as a way to pay the high annual insurance premiums on insurance policies Young sold to investors.

22. Young told investors that in order to afford annual insurance premiums in excess of $25,000, investors could invest in FIP, receive double-digit returns, and use the proceeds of the FIP investment to pay the annual insurance premiums.

23. Consequently, Young sold an insurance policy to almost every investor he solicited to invest in FIP. Investors who did not purchase an insurance policy, invested directly with FIP without an insurance policy.

24. With the exception of one investor, every investor Young solicited withdrew funds from their retirement accounts to invest in FIP through a self-directed IRA account held at Gold Star Trust Company ("Gold Star"). Young was aware of the source of funds when he solicited investors, and even pre-filled investor IRA applications to transfer funds to invest in FIP.

25. Young did not inform investors of the risk involved with investing in FIP. Young did not tell investors that Gold Star was merely the custodian administering the FIP investment, not the investment itself. As a result, many investors did not understand the differences between Gold Star and FIP.

26. Young convinced investors to purchase a life insurance policy with exorbitant annual premiums, and to purchase the FIP investment to afford the policy premiums. Young did

not explain what FIP was, how FIP would generate a return, and the risks associated with investing in FIP.

27. During the solicitations, Young made numerous statements to investors regarding the investment opportunity in FIP, including, but not limited to, the following:

a. That investor funds would be placed in a well-established company that provided loans to pensioners;

b. That investors could move retirement funds into a "holding company";

c. That funds in the "holding company" would generate an 8% annual return and in some cases double digit, fixed annual returns;

d. That funds in the "holding company" would generate a reliable income stream; and

e. That the "income stream" generated from the "holding company" could be used to pay the annual insurance premiums for the investor's insurance policy.

28. Although Young did not explain the details of the FIP investment to investors, Young recommended that investors liquidate their retirement accounts and transfer the funds into a self-directed IRA account held at Gold Star or another non-qualified account to invest in FIP. Based upon Young's recommendation, investors transferred approximately $2,099,544 to Gold Star or directly to FIP to invest in FIP.

29. In addition to the FIP investment, Young sold insurance policies to FIP investors with premiums totaling approximately $671,007. Investors annual insurance premiums were paid from the "returns" generated by the FIP investment.[6]

[6] If investors purchased their life insurance policies through Minnesota Life, Minnesota Life rescinded many of those investor policies that used the FIP investment to fund their annual premiums, and returned to the investors the premiums paid for those policies.

THE INVESTMENT AGREEMENT

30. To invest in FIP, Young gave most investors a pre-filled Gold Star IRA Transfer Request packet to transfer their funds to FIP. Young pre-filled sections on the form that related to: where investor funds were currently held, how the funds were currently invested,[7] and how the rollover request would be processed (i.e. direct rollover by check to Gold Star).

31. Some investors, but not all, were given an attached "exhibit" document called "Future Income Payment Purchase Agreement" that required investors to sign and attest to certain statements regarding FIP. Young instructed investors to sign certain parts of the form without explaining what the statements meant.

FRAUDULENT CONDUCT: FIP'S USE OF INVESTOR FUNDS

32. FIP hired Faw Casson ("FC"), an escrow-agent service provider, to receive and retain investor funds before FIP distributed the funds to other sources.

33. If investors used qualified retirement assets to invest in FIP, Gold Star disbursed funds to FC. If investors used non-qualified assets to invest in FIP, the funds were sent directly from the investor to FIP or FC.

34. A review of FC's general ledger record revealed that FIP used investor funds in a manner inconsistent with what Young represented to investors at the time of solicitation.

35. FIP instructed FC to distribute investor funds in a manner including, but not limited to the following:

    a. To loan approximately $222,149.00 to pensioners;

    b. To pay approximately $150,629.88 in commissions, undisclosed to investors, $89,697.49 of which was paid to Young;[8]

[7] Most investor funds were previously invested in mutual funds before being transferred to the FIP investment.
[8] Young received approximately $150,000 to $200,000 in commissions from sales of life insurance policies to FIP

c. To pay approximately $10,084 to a company called Top Direction LLC;[9] and

d. To send approximately $1,456,757.46 to FIP, which was used to pay returns to earlier investors from new investor funds. These payments were not authorized by investors.

MISSTATEMENTS AND OMISSIONS

36. In connection with the offer and/or sale of securities, Young made material misstatements to investors including, but not limited to, the following:

a. That investor funds would be used to provide loans to pensioners, when in fact, only 12% of investor funds were used to provide loans to pensioners;

b. That investor funds would generate an 8% annual return and, in some cases, double digit, fixed annual returns, when in fact, this claim was false;

c. That investor funds would generate a reliable income stream to pay investors' high insurance premiums, when in fact, this claim was false; and

d. That FIP was a reputable company, when in fact, FIP was owned by a convicted felon who previously operated FIP under the name Pensions Annuities and Settlements, LLC ("PAS").

37. In connection with the offer and/or sale of securities, Young omitted material information to investors including, but not limited to, the following:

a. That Young would receive approximately $89,697.49 in commissions from investors' FIP investments and an additional $150,000 to $200,000 in commissions from their life insurance policies;

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investors, as well as commissions from the sale of the FIP investment.

[9] Top Direction LLC is believed to be an organization hired to market FIP loans to pensioners.

b. That Young had not conducted reasonable due diligence on FIP's investment offering, but instead relied solely on documents provided by Melanie Schulze-Miller ("Miller"), the national life insurance sales director for Shurwest;[10]

c. That at the time of Young's solicitations to invest in FIP, FIP (and its predecessor, PAS) was/or had been the subject of numerous regulatory actions and/or investigations for its business practices, including but not limited to, the following:

   i. Washington Department of Financial Institutions on May 7, 2014 entered a Statement of Charges and Notice of Intention to Enter An Order to Cease and Desist, Prohibit From Industry, Impose Fine, and Refund Fees and Interest dated May 7, 2014, and followed by a Consent Order entered on December 2, 2016;

   ii. The Administrator of the Colorado Uniform Consumer Credit Code entered an Assurance of Discontinuance and Final Agency Order dated January 21, 2015;

   iii. California Department of Business Oversight entered a Desist and Refrain Order dated March 3, 2015, and followed by a Stipulation Order entered on September 15, 2015;

   iv. Massachusetts Attorney General entered an Assurance of Discontinuance dated March 24, 2016;

   v. North Carolina Consumer Protection Division entered into a settlement dated June 14, 2016;

   vi. New York State Department of Financial Services entered a Consent Order

[10] Miller and Young had several conversations and email communications regarding the FIP investment. She was Young's point of contact for information regarding FIP, and provided the sales literature and brochures to sale FIP. At the time, Miller was the national life insurance sales director for Shurwest. Shurwest is an Arizona entity and independent insurance distribution company.

dated October 18, 2016;

vii. Iowa Attorney General entered an Assurance of Voluntary Compliance dated December 22, 2016;

viii. Consumer Financial Protection Bureau entered a petition to enforce a civil investigative demand filed in federal court on February 21, 2017; and

ix. Minnesota Attorney General filed a complaint in state court on August 16, 2017.

d. That Scott Kohn, FIP's owner, had been convicted of multiple federal felonies, including aiding and abetting trafficking, conspiracy, and trafficking in counterfeit goods;

e. That Young had not reviewed FIP's audited financial statements, and did not know FIP's financial condition;

f. That only 12% of investor funds would actually be used to provide loans to pensioners, and the remaining investments would be used to pay commissions or retained by FIP for other purposes unrelated to what was represented to investors at the time of the solicitation;

g. That Young was not licensed to sell securities, provide investment advice, or qualified to make a recommendation to liquidate securities to purchase alternative investment products; and

h. Some or all of the information typically provided in an offering circular or prospectus concerning Young and FIP 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.

38. To date, investors are owed at least $1,559,668 in principal alone on their investments in FIP.

CONCLUSIONS OF LAW

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

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

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

41. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Young 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.

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

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

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

43. Based upon the Division's investigative findings, the Division concludes that Young acted as an investment adviser representative when he recommended that investors liquidate their retirement accounts from investment in the market, pre-filled documentation to initiate a rollover into a new Gold Star IRA account to purchase an insurance policy and the FIP investment, and received compensation in connection therewith, in violation of §61-1-3(3) of the Act.

Sale of Unregistered Securities under § 61-1-7 of the Act

44. In violation of § 61-1-7 of the Act, the FIP investment was not registered with the Division, did not qualify for an exemption from registration, and was not a federal-covered security for which any notice filing was made before Young offered and sold the security in the state of Utah. It is unlawful for any person to offer or sell any security in this state unless it is registered, an exempted security or transaction, or is a federal-covered security for which notice filing has been made.

REMEDIAL ACTIONS/SANCTIONS

45. Young neither admits nor denies the Division's Findings of Fact and Conclusions of Law, but consents to the below sanctions being imposed by the Division.

46. Young represents that the information he has provided to the Division as part of its investigation is accurate and complete.

47. Young 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.

48. Young 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.

49. 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 $105,000 against Young. The U.S. Attorney's Office has filed criminal charges in *United States v. Kohn, et al,* CR No. 6:19-239, in the United States District Court for the District of South Carolina. Respondent has been apprised of this case. The Court in *United State v. Kohn* appointed Beattie B. Ashmore as the Receiver over the receivership estate. The Receiver will coordinate disgorgement of commissions received either directly or indirectly from FIP. The Division agrees to offset Respondent's fine, on a dollar-for-dollar basis up to $89,697.49 by any disgorgement Young pays to the receivership estate within one year of the approval of this Order by the Utah Securities Commission (the "Commission"). If all disgorgement Young owes is paid to the receivership estate within one year, the Division will waive $5,000 of the remaining fine. Young agrees to pay any remaining fine amount to the Division within 6 months (months 13-18) after Young makes payments to the receivership estate.

FINAL RESOLUTION

50. Young acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Young 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, Young expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

51. If Young 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, Young consents to entry of an order in which the total fine amount of $105,000, less any payments already made, becomes immediately due and payable. Notice of the violation will be provided to Young at his last known address, and to his counsel if he has one. If Young 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.

52. In addition, the Division may institute judicial proceedings against Young 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 Young or to otherwise enforce the terms of this Order. Young 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.

53. Young 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. Young 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.

54. 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 Young are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 4th day of October, 2020

Dave Hermansen (Oct 4, 2020 19:43 MDT)

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 21 day of Sep., 2020

Blake D. Young

Blake Douglas Young

Approved:

Jen Korb

Jennifer Korb
Assistant Attorney General
Counsel for Division

Approved:

Ryan Frazier
Counsel for Respondent Young

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Young neither admits nor denies, are hereby entered.
2. Young 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. Young 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, Young shall pay a fine of $105,000 to the Division pursuant to the terms set forth in paragraph 49.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of October, 2020

Lyndon Ricks
Lyndon Ricks (Oct 6, 2020 09:07 MDT)
Lyndon L. Ricks

Lyle White
Lyle White (Oct 7, 2020 17:43 MDT)
Lyle White

Peggy Hunt
Peggy Hunt (Oct 7, 2020 16:59 MDT)
Peggy Hunt

Gary Cornia
Gary Cornia (Oct 8, 2020 17:33 MDT)
Gary Cornia

Brent A Cochran
Brent A Cochran (Oct 7, 2020 18:53 MDT)
Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 13th day of October 2020, I provided a true and correct copy of the foregoing Stipulation and Consent Order, to be sent to the parties as follows:

Via standard and certified mail:

Ryan Frazier, Attorney for Paul Jensen
50 East South Temple
Suite 400
Salt Lake City, UT 84111
Certified mail no.: 7018 3090 0001 1102 6809

Blake Young

Via email:

Ryan Frazier, Attorney for Paul Jensen
rfrazier@kmclaw.com

Blake Young

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
dhermans@utah.gov

Sabrina Afridi
Administrative Assistant
Utah Division of Securities
safridi@utah.gov

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: **PAUL N. JENSEN,** **Respondent.**	**STIPULATION AND CONSENT ORDER** **Docket No. SD-20-0008**

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Paul N. Jensen ("Jensen" or "Respondent") hereby stipulate and agree as follows:

1. Jensen 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), §61-1-3 (unlicensed activity) and §61-1-7 (sale of unregistered security) while engaged in the offer and/or sale of securities in or from Utah.
2. On or about February 27, 2020, the Division initiated an administrative action against Jensen by filing an Order to Show Cause.
3. Jensen 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 Jensen pertaining to the Order to Show Cause.

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

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

6. Jensen 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 Jensen to enter into this Order, other than as described in this Order.

7. Jensen is represented by attorney Ryan Frazier, from Kirton McConkie, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENT

8. Jensen resided in Salt Lake County, Utah during all times relevant to the allegations asserted herein, and is currently licensed as an insurance agent in the state of Utah.[1] Jensen does not currently hold an active securities license, and was last licensed (examination Series 6, Series 63, and Series 65) in the securities industry in 2009.[2]

RELATED ENTITY INFORMATION

9. Future Income Payments, LLC ("FIP") is a Nevada limited liability company registered with the Nevada Secretary of State on December 23, 2015.[3] The purported purpose of

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[1] Jensen holds active insurance licenses as a resident producer for accident and health or sickness issued on August 9, 2018, and life insurance issued on May 16, 2002. Jensen's Utah insurance license number is 80939.

[2] Jensen's Central Registration Depository ("CRD") number is 2488216.

[3] FIP's current entity status is listed as "default" with the Nevada Secretary of State. FIP's business license expired on December 31, 2018. FIP's registered agent is Conservitas Company Services, LLC, and lists a contact address as 2505 Anthem Village Dr., Ste. E-599, Henderson, NV 89052.

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FIP was to provide loans to pensioners who would later repay the loans after receiving their monthly pension distributions. FIP did not comply with consumer lending regulations because FIP classified its activity as a temporary purchase of the right to receive pension income, rather than a loan.

10. FIP is currently the subject of several pending legal actions and bankruptcies, including an action initiated by the Consumer Financial Protection Bureau ("CFPB") and several state regulatory agencies, for the unlicensed sale of a security, consumer lending violations and/or operating an unlawful business model.[4] FIP has never been licensed with the Division and has never recorded a securities registration, exemption from registration, or notice filing with the Division.

11. Scott Kohn ("Kohn") is listed as the manager of FIP and is a convicted felon. On December 11, 2006, Kohn pled guilty in the United States District Court for the District of Columbia, to conspiracy, trafficking in counterfeit goods, and aiding and abetting trafficking, all federal felonies. On December 11, 2006, Kohn was sentenced to 15 months in federal prison.[5] Kohn is also currently the subject of a federal, criminal indictment in the District Court of the United States for the District of South Carolina Greenville for attempt and conspiracy to commit mail fraud (case number 6:19-cf-00239). Kohn has never been licensed with the Division.

GENERAL ALLEGATIONS

12. The Division's investigation of this matter revealed that in or about February 2018, while

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[4]The State of Alabama Securities Commission issued a Cease and Desist order against FIP and Scott Kohn (FIP's Manager) on May 25, 2018, No. CD-2018-0011. The Alabama Securities Commission determined that FIP's structured pension cash flows are securities as defined under Alabama law.

[5] *See* case number 8:03-cr-00330.

conducting business in or from the state of Utah, Jensen offered and sold one FIP investment opportunity to an investor (R.J.) and raised approximately $287,000 in connection therewith.

13. The investment opportunity offered and sold by Jensen was an investment contract and/or promissory note, which are defined as securities under §61-1-13 of the Act.

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

15. To date, investor R.J. is owed approximately $287,000 in principal alone.

FIP Investment

THE SOLICITATION

16. Jensen has been acquainted with investor R.J. for many years, as investor R.J. is also Jensen's insurance client.

17. After investor R.J. retired in 2016, Jensen repeatedly contacted investor R.J. about placing investor R.J.'s 401k retirement account into a product that would protect investor R.J. from the volatility of the stock market and provide a fixed return.

18. After retirement, Investor R.J. was on a fixed income, and cares for his wife and adult child with Down syndrome. His 401k savings was the bulk of his savings after 38 years of employment.

19. Jensen presented the investment opportunity in FIP to investor R.J. as a short-term investment that would allow for an 8% fixed, annual return. Jensen presented investor R.J. with a plan to move his 401k funds into a life insurance policy over a five-year period rather than a ten-year period as was required for an annuity option.

20. Jensen told investor R.J. that in order to afford his annual life insurance premium of

approximately $58,140, investor R.J. could invest in FIP, receive a fixed return, and use the proceeds of the FIP investment to pay the annual insurance premiums.

21. Consequently, Jensen sold investor R.J. a life insurance policy as well as the FIP investment to use the proceeds of FIP to pay his life insurance premiums.

22. Jensen could not explain to investor R.J. how FIP provided a return to investors and the risks of investing in FIP. Jensen contacted Michael Seabolt ("Seabolt")[6], Jensen's source of information regarding the FIP investment, to help Jensen explain the FIP investment to investor R.J.

23. After several conversations with Jensen, Jensen recommended investor R.J. withdraw funds from his 401k retirement account to invest in FIP through a self-directed IRA account held at Provident Trust Group ("Provident").[7] Jensen was aware of the source of funds when he solicited investor R.J., and was aware of investor R.J.'s inability to pay the high annual insurance premiums with investor R.J.'s current income.

24. Jensen did not explain to investor R.J. the risks involved with investing in FIP, that investor R.J.'s entire 401k retirement account was moved into the FIP investment, or that investor R.J. lost his entire investment in FIP. Investor R.J. was not aware that he lost his investment until speaking with the Division during the course of the investigation.

25. Investor R.J.s primary goal was to gradually move his retirement account into a product that would provide a fixed return over a shorter period of time than would be allowed if his funds were placed into an annuity. Based upon this goal, Jensen recommended the

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[6] Seabolt worked for Shurwest and is an associate of Melanie Schulze-Miller, the former national life insurance sales director for Shurwest. Seabolt initially told Jensen about the FIP investment and was a point of contact for Jensen.

[7] At the time of investor R.J.'s investment into FIP, Gold Star Trust Company ("Gold Star") refused to service any new accounts with FIP investments after learning of several ongoing investigations and discrepancies with the company. Gold Star was used as the IRA self-directed custodian company for the bulk of FIP investors who transferred their retirement accounts to invest in FIP.

FIP investment to investor R.J.

26. During the solicitation, Jensen made numerous statements to investor R.J. regarding the investment opportunity in FIP, including, but not limited to, the following:

a. That investor R.J.'s funds would be placed in a well-established company that provided loans to pensioners;

b. That investor R.J. could escape some of the volatility of investing in the stock market by moving his retirement funds into FIP;

c. That funds in FIP would generate an 8%, fixed return over five years;

d. That FIP would generate a reliable income stream;

e. That the "income stream" generated from FIP could be used to pay the approximately $58,140 annual insurance premiums for investor R.J.'s life insurance policy; and

f. That investor R.J.'s 401k funds would automatically be transferred from Provident to investor R.J.'s Minnesota Life insurance policy.

27. Although Jensen did not understand or explain the details of the FIP investment to investor R.J., Jensen recommended that investor R.J. liquidate his 401k retirement account and transfer the funds into a self-directed IRA account held at Provident to invest in FIP. Based upon Jensen's recommendation, investor R.J. transferred approximately $287,000 to Provident to invest in FIP.[8]

28. In addition to the FIP investment, Jensen sold investor R.J. a life insurance policy with an initial premium of $35,000. Investor R.J. future annual insurance premiums were to be paid from the "returns" generated by the FIP investment.

[8] Investor R.J. invested his retirement funds in FIP in February 2018. FIP collapsed and stopped making payments to investors in April 2018. Investor R.J. never received any payments from FIP before its collapse.

29. Investor R.J. had no role in the FIP investment opportunity, other than providing investment funds.

THE INVESTMENT AGREEMENT

30. To invest in FIP, Jensen helped investor R.J. complete a document entitled "Provident Trust Group Incoming Transfer Request" to transfer his funds to Provident to invest in FIP. The responses on the document were typed and pre-filled, with signatures from investor R.J.

31. Jensen also gave investor R.J. a document entitled, "FIP, LLC Qualified Purchase Agreement" that required investor R.J. to initial and attest to certain statements regarding FIP. Investor R.J. did not fully understand the contents of the document and Jensen did not fully clarify the disclosures of the document.

FRAUDULENT CONDUCT: FIP'S USE OF INVESTOR FUNDS

32. FIP hired Faw Casson ("FC"), an escrow-agent service provider, to receive and retain investor funds before FIP distributed the funds to other sources.

33. Once investor R.J.'s retirement funds were sent to Provident, Provident disbursed the funds to FC.

34. A review of FC's general ledger record revealed that FIP used investor funds in a manner inconsistent with what Jensen represented to investor R.J. at the time of solicitation.

35. FIP instructed FC to distribute investor R.J.'s funds in a manner including, but not limited to the following:

    a. To loan approximately $35,696 to pensioners;

    b. To pay approximately $24,395 in commissions, undisclosed to investors, $11,480 of

which was paid to Jensen;[9] and

c. To send approximately $226,909.05 to FIP, which was used to pay returns to earlier investors from new investor funds. These payments were not authorized by investors.

MISSTATEMENTS AND OMISSIONS

36. In connection with the offer and/or sale of securities, Jensen made material misstatements to investor R.J. including, but not limited to, the following:

a. That all investor funds would be used to provide loans to pensioners, when in fact, only 12% of investor funds were used to provide loans to pensioners;

b. That investor funds would generate an annual 8% return, when in fact, this claim was false; and

c. That investor funds would generate a reliable income stream to pay investor's high insurance premiums, when in fact, this claim was false; and,

d. That investor R.J. could escape some of the volatility of investing in the stock market by moving his retirement funds into FIP, when in fact, there was no reasonable basis to make this claim.

37. In connection with the offer and/or sale of securities, Jensen omitted material information to investor R.J. including, but not limited to, the following:

a. That Jensen would receive approximately $11,480 in commissions from investor R.J.'s FIP investment and an additional $30,000 in commissions from the sale of investor R.J.'s life insurance policy;

b. That Jensen had not conducted reasonable due diligence on FIP's investment

[9] Jensen received approximately $30,000 in commissions from the sale of a life insurance policy to investor R.J, as well as commissions from the sale of the FIP investment.

offering, but instead relied solely on information provided by Melanie Schulze-Miller ("Miller"), the national life insurance sales director for Shurwest,[10] and Seabolt;

c. That at the time of Jensen's solicitation to invest in FIP, FIP (and its predecessor, PAS) was/or had been the subject of numerous regulatory actions and/or investigations for its business practices, including but not limited to, the following:

   i. Washington Department of Financial Institutions on May 7, 2014 entered a Statement of Charges and Notice of Intention to Enter An Order to Cease and Desist, Prohibit From Industry, Impose Fine, and Refund Fees and Interest dated May 7, 2014, and followed by a Consent Order entered on December 2, 2016;

   ii. The Administrator of the Colorado Uniform Consumer Credit Code entered an Assurance of Discontinuance and Final Agency Order dated January 21, 2015;

   iii. California Department of Business Oversight entered a Desist and Refrain Order dated March 3, 2015, and followed by a Stipulation Order entered on September 15, 2015;

   iv. Massachusetts Attorney General entered an Assurance of Discontinuance dated March 24, 2016;

   v. North Carolina Consumer Protection Division entered into a settlement dated June 14, 2016;

   vi. New York State Department of Financial Services entered a Consent Order

[10] Miller and Jensen had several conversations and email communications regarding the FIP investment. She was Jensen's point of contact for information regarding FIP, and provided the sales literature and brochures to sale FIP. At the time, Miller was the national life insurance sales director for Shurwest. Shurwest is an Arizona entity and independent insurance distribution company.

dated October 18, 2016;

vii. Iowa Attorney General entered an Assurance of Voluntary Compliance dated December 22, 2016;

viii. Consumer Financial Protection Bureau entered a petition to enforce a civil investigative demand filed in federal court on February 21, 2017; and

ix. Minnesota Attorney General filed a complaint in state court on August 16, 2017.

d. That Scott Kohn, FIP's owner, had been convicted of multiple federal felonies, including aiding and abetting trafficking, conspiracy, and trafficking in counterfeit goods;

e. That Jensen had not reviewed FIP's audited financial statements, and did not know FIP's financial condition;

f. That only 12% of investor R.J.'s funds would actually be used to provide loans to pensioners, and the remaining investment would be used to pay commissions or retained by FIP for other purposes unrelated to what was represented to investor R.J. at the time of the solicitation;

g. That Jensen was not licensed to sell securities, provide investment advice, or qualified to make a recommendation to liquidate securities to purchase alternative investment products; and

h. Some or all of the information typically provided in an offering circular or prospectus concerning Jensen and FIP 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.

38. To date, investor R.J. is owed at least $287,000 in principal alone on his investment in FIP.

CONCLUSIONS OF LAW

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

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

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

41. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Jensen 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.

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

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

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

43. Based upon the Division's investigative findings, the Division concludes that Jensen acted as an investment adviser representative when he recommended that investor R.J. liquidate his 401k retirement account from investment in the market, pre-filled documentation to initiate a rollover into a new Provident IRA account to purchase an insurance policy and the FIP investment, and received compensation in connection therewith, in violation of Section 61-1-3(3) of the Act.

Sale of Unregistered Securities under § 61-1-7 of the Act

44. In violation of § 61-1-7 of the Act, the FIP investment was not registered with the Division, did not qualify for an exemption from registration, and was not a federal-covered security for which any notice filing was made before Jensen offered and sold the security in the state of Utah. It is unlawful for any person to offer or sell any security in this state unless it is registered, an exempted security or transaction, or is a federal-covered security for which notice filing has been made.

REMEDIAL ACTIONS/SANCTIONS

45. Jensen neither admits nor denies the Division's Findings of Fact and Conclusions of Law, but consents to the below sanctions being imposed by the Division.

46. Jensen represents that the information he has provided to the Division as part of its investigation is accurate and complete.

47. Jensen 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.

48. Jensen 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.

49. 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 $26,500 against Jensen. The U.S. Attorney's Office has filed criminal charges in *United States v. Kohn, et al,* CR No. 6:19-239, in the United States District Court for the District of South Carolina. Respondent has been apprised of this case. The Court in *United States v. Kohn* appointed Beattie B. Ashmore as the Receiver over the receivership estate. The Receiver will coordinate disgorgement of commissions received either directly or indirectly from FIP. The Division agrees to offset Respondent's fine, on a dollar-for-dollar basis up to $11,480 by any disgorgement Jensen pays to the receivership estate within one year of the approval of this Order by the Utah Securities Commission (the "Commission"). If all disgorgement Jensen owes is paid to the receivership estate within one year, the Division will waive $5,000 of the remaining fine. Jensen agrees to pay any remaining fine amount to the Division within 12 months (months 13 – 24) after Jensen makes payments to the receivership estate.

FINAL RESOLUTION

50. Jensen acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Jensen 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, Jensen expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

51. If Jensen 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, Jensen consents to entry of an order in which the total fine amount of $26,500, less any

payments already made, becomes immediately due and payable. Notice of the violation will be provided to Jensen at his last known address, and to his counsel if he has one. If Jensen 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.

52. In addition, the Division may institute judicial proceedings against Jensen 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 Jensen or to otherwise enforce the terms of this Order. Jensen 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.

53. Jensen 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. Jensen 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.

54. 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 Jensen are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 24 day of September, 2020

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 23 day of September, 2020

Paul N. Jensen

Approved:

Paula Faerber
Assistant Attorney General
Counsel for Division

Approved:

Ryan Frazier
Counsel for Respondent Jensen

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Jensen neither admits nor denies, are hereby entered.
2. Jensen 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. Jensen 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, Jensen shall pay a fine of $26,500 to the Division pursuant to the terms set forth in paragraph 49.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of October, 2020

Lyndon Ricks
Lyndon Ricks (Oct 8, 2020 09:07 MDT)
Lyndon L. Ricks

Lyle White
Lyle White (Oct 7, 2020 17:43 MDT)
Lyle White

Peggy Hunt
Peggy Hunt (Oct 7, 2020 16:59 MDT)
Peggy Hunt

Gary Cornia
Gary Cornia (Oct 8, 2020 17:33 MDT)
Gary Cornia

Brent A Cochran
Brent A Cochran (Oct 7, 2020 18:53 MDT)
Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 13th day of October 2020, I provided a true and correct copy of the foregoing Stipulation and Consent Order, to be sent to the parties as follows:

Via standard and certified mail:

Ryan Frazier, Attorney for Paul Jensen
50 East South Temple
Suite 400
Salt Lake City, UT 84111
Certified mail no.: 7018 3090 0001 1102 6779

Via email:

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rfrazier@kmclaw.com

Bruce Dibb, Administrative Law Judge
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Paula Faerber, Assistant Attorney General
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Sabrina Afridi

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