

Utah Securities Commission

Meeting Minutes

May 30, 2013

Division of Securities Staff Present

Keith Woodwell, Division Director
Ken Barton, Licensing and Compliance Director
Dave Hermansen, Enforcement Director
Benjamin Johnson, Corporate Finance Director
Karen McMullin, Investor Education Coordinator
Maria Skedros, Commission Secretary
Chip Lyons, Securities Analyst
Ann Skaggs, Securities Analyst
Brandon Henrie, Securities Examiner
Tara Pincock, Law Clerk
Kristi Wilkinson, Securities Investigator
Heidie George, Securities Examiner
Adam Sweet, Securities Investigator
Nadene Adams, Administrative Assistant
Sheila Thomas, Securities Examiner

Other State of Utah Employees:

Francine Giani, Executive Director, Department of Commerce
Jennie Jonsson, Administrative Law Judge, Department of Commerce
Paul Amann, Assistant Attorney General
Tom Brady, Deputy Director, Department of Commerce
Jennifer Bolton, Public Information Officer, Department of Commerce
Laura Polacheck, AARP Utah

Commissioners Present

David Russon, Investment Management Consultants
Gary Cornia, Brigham Young University
Tim Bangerter, Bangerter Financial Group
Erik Christiansen, Parsons Behle & Latimer
Brent Baker, Clyde Snow & Sessions

Commissioners Absent

None

Public Present:

Sam Bell, attorney for Jared Brent Muir
Jalyn Peterson, attorney for Jared Brent Muir

Oath of Office: Administrative Law Judge Jennie Jonsson administered the Oath of Office to Commissioners David Russon and Gary Cornia.

Minutes: At 9:05 am, the meeting was called to order and Commissioner Christiansen made the motion to approve the minutes from the March 28th, 2013 Commission meeting. Commissioner Tim Bangerter seconded the motion; and the motion was approved unanimously.

Oral Argument for the Division's Motion for Default Judgment Against Jared Brent Muir: Administrative Law Judge Jennie Jonsson, Division's Counsel Paul Amann, Opposing Counsel Jalyn Peterson & Sam Bell.

Action: The Commission heard oral arguments from counsel for the Division and counsel for Mr. Muir on both the Division's motion to strike the affidavit of Jared Brent Muir and the Division's motion for Default Order against Jared Brent Muir. Judge Jonsson also addressed the Commission regarding the status of the case and the pending motions. The Commission decided to take the motions under advisement and issue a written decision at a later date.

Joshua Dyches & Dymond Capital- Recommended Order on Default-Conference Call: Mr. Dyches represented himself and participated in oral arguments on the Division Motion for Entry of Default Judgment via telephone. This case has previously been heard by the Commission when a Proposed Stipulation and Consent Order was presented to Commission at the May 2012 Securities Commission Meeting. The Proposed Stipulation and Consent Order was rejected by the Commission in May 2012 due to an inadequate fine amount. Following that meeting, the Division filed an Order to Show Cause in December 2012. Ms. Skaggs explained that Mr. Dyches has had three opportunities to respond to the allegations against him in the Order to Show Cause, and with repeated warnings of the potential consequences, Mr. Dyches has failed to respond. Mr. Dyches addressed the Commission regarding the reasons he had not filed any response to the Order to Show Cause. Commissioner Christiansen questioned Mr. Dyches regarding his efforts to hire an attorney to represent him in this matter. Commissioner Christiansen asked the other Commissioners if they were prepared to rule on the Motion for Default.

Action: Commissioner Baker made a motion to approve the proposed default order and Commissioner Cornia seconded the motion. The motion passed unanimously.

Director's Report: Director Woodwell thanked Commissioner Polacheck for her nine years of service on the Commission and its predecessor, the Securities Advisory Board. Director Woodwell reported that the Securities Investor Education, Training and Enforcement Fund had a balance of \$294,000 as of May 4th, 2013. The trend continues to be slightly negative but it appears to have leveled. **Division staffing:** The Division has a new law clerk: Tara Pincock, who previously worked as a clerk in the local SEC office, she recently graduated from the U of U law school. Mr. Paul Amann is the Division's new Assistant Attorney General. Securities Investigator Nadia Bowman will be leaving the Division in July to pursue a Ph. D. in economics. The Division will be hiring a new investigator in the upcoming weeks. **Meeting Schedules:** The Securities Commission Meeting scheduled for July 25th will be postponed to August 14th & 15th, due to holidays and conflicting schedules. Future Commission Meetings are scheduled for September

26th 2013, and December 5th, 2013. General Financial Literacy Task Force: A bill that passed during the last Legislative Session created the General Financial Literacy Task Force. The purpose of this task force is to look at the requirements we currently have in the Utah high school curriculum for a one semester financial literacy course and make recommendation on any necessary changes. The Division has supported other programs within the school system and with other nonprofit organizations to provide support to the schools financial literacy efforts. Director Woodwell will be participating on the task force and will keep the Commission informed of its progress.

Licensing & Compliance Section Report: Ken Barton reported that in April and May the Licensing & Compliance Section initiated eighteen new audits. There were seven new investment Adviser Firm Audits, five For Cause Audits, follow-up on complaints and six routine Compliance Field Audits. Year to date, this section has originated forty-seven new audits and there are six administrative actions in progress. Four actions have settlement agreements pending before the Commission, one action is in settlement negotiations, and one action is Stayed pending a criminal referral. There are five criminal actions in progress, three cases where criminal charges have been filed, one case pending the Attorney Generals office's decision to file charges, and one case is scheduled to be screened criminally with Weber County District Attorney. April 1st was the deadline for all state covered investment advisers operating on a December 31st fiscal year end to file their required annual amendments. The new rules and state covered advisers are due to the Dodd-Frank regulations that became effective in July 2012. Because of this, many advisers needed the Division's assistance to comply with the changes. The Division sent a total of 111 letters to Investment Adviser firms doing business in Utah that either failed to timely file or filed incomplete annual amendments. Thirteen firms filing annual amendments had material changes to their operations requiring the Division's review.

Corporate Finance Section Report: Benjamin Johnson reported that filing totals for this year compared to last year are fairly flat. There has been a reduction of 1% of total filings. Rule 506 offerings and mutual funds are essentially flat. During the recent NASAA Spring Conference, which Director Woodwell attended, NASAA has retained a firm to assist them to create the new electronic Rule 506 Notice Filings systems. Utah has informed this firm that we want to be a part of the beta testing process so we can familiarize ourselves with the changes.

Enforcement Section Report: Dave Hermansen reported that there are thirty-three active investigations that include other State and Federal agencies. There are twenty-three criminal cases that are in various stages with various prosecutors throughout the State, most of those have charges already filed. There are 12 unassigned cases. In the last two months, enforcement section cases have resulted in two criminal filings. The first is Maverick Mining/ Mark Bowman/Manley Logan. The second is CEMA Group/Michael Hansen/Kenneth Day. In the last two months the section has referred cases for screening on five other cases in Wasatch County and Salt Lake County.

Investor Education Report: Karen McMullin reported that the Division participated in eighteen Investor Education events in April and May of 2013. This was an all-time high number of events in a two-month period. The audiences were diverse, ranging from university students, Rotary

and Kiwanis Club members, AARP members, caregivers of the elderly, insurance and financial professionals, seniors in downtown Salt Lake City and Southern Utah, high school students and expo attendees.

For June, July and August there are presently twelve events scheduled including events with new partners such as the Utah Elementary and Secondary School Principals Associations and Bear Lake Raspberry days' festival. The Division has scheduled events with continuing partners such as AARP, Division of Aging and Adult Services and Division of Indian Affairs. Events for the Fall of 2013 are being scheduled including six large expos and two conferences in 2014.

There has been a lot of discussion about annuities, a regulatory responsibility the Division shares with the Department of Insurance. This has resulted in creating a brochure for use at events explaining how an annuity works and the Division's role in the regulation of such products.

The response to the new expo display continues to be extremely positive. It stands out as a place to stop and learn. The display helps to define the Division as a State agency and generally, people are willing to stop and ask questions, take the survey and learn more about the Division.

The Investor Education Survey, found on the Division's website, has been an incredible addition to our ability to educate the public in a short period of time at events. Currently, the Division is in the process of analyzing the results of approximately 409 surveys. The Division has collected 142 email addresses and is currently compiling the first edition of the Investor Education newsletter titled "Investor News".

Education and Training Fund Report: Benjamin Johnson reported that the investor education section has requested additional resources for upcoming presentations. Mr. Johnson and Director Woodwell reviewed the line items in the report with the Commission.

Action: Commissioner Bangerter made a motion to approve the proposed expenditures and Commissioner Russon seconded the motion. The motion passed unanimously.

Consideration and Approval of Proposed Orders:

Conestoga Settlement Trust, Conestoga Settlement Services, LLC, Michael C. McDermott, Walter C. Young, Creative Wealth Designs, LLC, Dayspring Financial, LLC, and Michael Woods: Ken Barton reported that Conestoga Settlement Trust was an issuer of life settlement private placement offerings. There had been sales of Conestoga's offering in Utah in August 2010. Three Conestoga Settlement Trust sales in Utah totaled \$255,000.00. A 20% commission, totaling \$51,000.00 was paid on the transaction. The commissions were not fully disclosed in the offering documents at the time of the solicitation and sale. **Walter Young**, the agent selling the Conestoga offering was not securities licensed in Utah or any other state. Other issuer agents, **Michael McDermott** and **Michael Woods**, received a portion of the commissions however were not aware the entities and agents were not properly licensed at the time of the solicitation and sale. The violations include: 1) Omissions of material facts with the offer and sale by the Issuer (Conestoga Settlement Trust), Issuer Manager (Conestoga

Settlement Services), Mr. McDermott, the issuer agent, Mr. Young, the issuer's sales agent and Creative Wealth Designs, Young's firm. 2) Issuer Agents McDermott, Young, Woods and acting broker-dealers firms Creative Wealth Design and Dayspring Financial engaged in unlicensed activities. 3) The issuer Conestoga Settlement Trust and the issuer's manager Conestoga Settlement Services also engaged in unlicensed activities.

The Stipulation & Consent order includes that the Utah investors will be given the right to rescind all transactions; the \$51,000.00 in commissions will be disgorged back to the issuing trust, Conestoga Settlement Trust, Conestoga Settlement Services, and Mr. McDermott will jointly and severally pay a \$20,000.00 fine to the Division, and Mr. Young and Creative Wealth will jointly and severally pay a \$5,000.00 fine to the Division.

Commissioner Christiansen recused himself for reasons of familiarity with the case. Commissioner Brent Baker made a motion to approve the proposed order and Commissioner David Russon seconded the motion. The motion passed unanimously.

Markham L. Caldwell: Ken Barton reported that **Mr. Markham L. Caldwell** is a licensed Insurance Agent in the State of Utah. From 1997 to 2002, Mr. Caldwell was licensed in securities with a broker-dealer firm. In 2002, Mr. Caldwell's employer, a broker-dealer firm, terminated him for engaging in private securities transactions without the firm's approval. Mr. Caldwell was charged with a third degree felony for the sale of unregistered securities. The criminal charges were dismissed as part of a Plea in Abeyance agreement. Administratively, Mr. Caldwell was fined and suspended by the Utah Securities Division.

The Division found that Mr. Caldwell was also an insurance agent with Horizon Financial Insurance Group, Inc., an entity owned by Mr. Dee Randall. Mr. Randall and other entities at Horizon Financial have Stayed Administrative Action for securities fraud with the Division pending a criminal action.

Mr. Caldwell referred one insurance client and his beneficiaries to Mr. Randall for the purchase of private placement securities in the form of "Horizon Notes". Mr. Caldwell received compensation for the "notes" sale.

The Division concludes Mr. Caldwell was not licensed to sell securities such as the "Horizon Notes", and Mr. Caldwell is in violation for operating as an unlicensed agent.

The Division asks for the Securities Commission to approve the following sanctions: 1) Mr. Caldwell disgorges \$7,000.00 in commissions received to the Randall/Horizon bankruptcy trustee to repay investors; 2) Mr. Caldwell pays a \$5,000.00 fine to the Division of Securities and 3) Mr. Caldwell agrees to not seek a securities license in the State of Utah in the future.

Commissioner Christiansen recused himself from consideration of this case due to his law firm being involved and his personal knowledge of the details in this case. Commissioner Brent Baker made the motion to approve the proposed order and Commissioner David Russon seconded the motion. The motion passed unanimously.

Scott Steinmetz: Ken Barton reported that **Mr. Scott Steinmetz** is a licensed insurance agent in Utah, and has never been licensed in securities.

The Division found that Mr. Steinmetz was an insurance agent with Horizon Financial Insurance Group, Inc., an entity owned by Mr. Dee Randall. Mr. Randall and other entities at Horizon Financial have Stayed Administrative Action for securities fraud with the Division pending a criminal action.

From 2005 to 2009 Mr. Steinmetz referred eleven (11) insurance clients to Mr. Randall for the purchase of private placement securities in the form of "Horizon Notes" totaling \$517,000.00. Mr. Steinmetz received approximately \$6,600.00 in compensation for sale of the "notes".

The Division concludes Mr. Steinmetz was not licensed to sell securities such as the "Horizon Notes", and Mr. Steinmetz is in violation for operating as an unlicensed agent.

The Division asks for the Securities Commission to approve the following sanctions: 1) Mr. Steinmetz disgorges \$6,600.00 in commissions received to the Randall/Horizon bankruptcy trustee to repay investors and 2) Mr. Steinmetz pays a \$3,000.00 fine to the Division. A proposed payment plan for Mr. Steinmetz will be a \$5,000.00 fine to be paid within 30 days of the Order's approval then the remaining \$1,600.00 in disgorged commissions and \$3,000.00 fine can be paid out over 24 payments ($\$191.66/\text{month}=\$4,599.84$).

Commissioner Christiansen recused himself from consideration of this case due to his law firm being involved and his personal knowledge of the details in this case. Commissioner David Russon made the motion to approve the proposed order and Commissioner Brent Baker seconded the motion. The motion passed unanimously.

Jeffrey Kahn: Ken Barton reported that in 2008 **Mr. Jeffery Kahn** was an investment adviser representative for RJR Investment Services, as a federally covered investment adviser. As a result of the new Dodd-Frank regulations, RJR was switched from a federally covered adviser to a state covered adviser in August of 2012.

During the Divisions review of RJR's investment adviser application, it was discovered that Mr. Kahn had never been licensed as an investment adviser representative. In addition, the audit uncovered that Mr. Kahn had attempted to negotiate a referral fee agreement, compensating himself as an individual, without the approval of RJR's other principals. Mr. Kahn acted as an unlicensed advisor, and engaged in an act, practice or course of business which operates or would operate fraudulently.

The Division submits the following sanctions for the Securities Commission to approve 1) Kahn admits to the unlicensed activity, neither admits or denies the Division's other conclusions and 2) Mr. Kahn pay a \$7,000.00 fine to the Division.

Commissioner Tim Bangerter made the motion to approve the proposed order and Commissioner David Russon seconded the motion. The motion passed unanimously.

Profitable Solution, Executive Capital Funding, LLC, PS1 Group, LLC, Timothy V.

Provost, LH Solutions: Dave Hermansen reported in December of 2011 a Notice Of Agency Action was sent to the Respondent and his attorney Mr. Bautista. The Respondent did respond and participated in a scheduling conference. However, nothing came of the conference. At that time a hearing date was established. On March 19, 2013, counsel for the Division of Securities filed a motion requesting a new date for a scheduling conference. On March 22, 2013, the matter was reassigned to the current presiding officer. On March 26th, the presiding officer sent an email to Mr. Bautista asking if he would be available to participate in an April 9, 2013 initial hearing. Mr. Bautista did not respond. On March 29th, 2013 a scheduling order was placed setting an initial hearing for April 9th, 2013 and stating that failure to attend would constitute grounds for entry of a Default Order against the Respondent. The scheduling order was sent to the Respondent and his lawyer, and neither responded or made an appearance.

On April 9th, 2013 the presiding officer conducted the hearing; neither Mr. Provost nor his counsel appeared. The presiding officer called Mr. Bautista and left a voice message and invited him to call by the end of the day to inform the presiding officer of any circumstances relative to his client's inability to participate in these proceedings. No response was returned. Therefore, the Division is asking for a Default Order is granted in this case.

In connection with the offer and sale of securities, the Respondent directly or indirectly made false statements, and failed to disclose material information. The Respondent employed and compensated agents who were not properly licensed at the time they sold securities and were not registered in the state of Utah.

The Division submits the following sanctions for the Securities Commission to approve: 1) the Respondent is to cease and desist from engaging in any further conduct in violation of the Utah Code. 2) Pay a fine of \$2,472,923.00 to the Utah Division of Securities with any restitution paid to investors serving to offset the administrative fine on a dollar to dollar basis.

Commissioner David Russon made the motion to approve the proposed order and Commissioner Tim Bangert seconded the motion. The motion passed unanimously.

Daniel G. Maynard: Dave Hermansen reported that **Mr. Maynard** was the subject of an investigation conducted by the Utah County Attorney's Office into allegations that he violated certain provisions of the Utah Uniform Securities Act. The Division issued an Order to Show Cause against Mr. Maynard on December 12, 2012. Criminal charges were also filed against Mr. Maynard. The Respondent has entered in a Stipulation and Consent Order with the Division. The Respondent admits the Division's findings and conclusions and consent to the sanctions being imposed by the Division. The Respondent agrees to the imposition of a cease and desist order, agrees to be barred from the securities industry, to cooperate with the Division in any future investigations, and agrees to pay restitution as ordered in the criminal case, which is \$30,000.00.

Commissioner Brent Baker made the motion to approve the proposed order and Commissioner Gary Cornia seconded the motion. The motion passed unanimously.

Intelicloud Holdings Inc., Intelicloud Holdings Inc., Jeffrey Friederichs: Recommended Default Order: Ann Skaggs reported that the Respondents failed to provide the Division with a complete and accurate notice filing regarding their offer and sale of a federal covered security. The Respondents actions are grounds for sanction under the Utah Code. The Respondents have failed to respond, participate, to make appearances and have not filed responses to the Division's petition and Order to Show Cause. Therefore, the Division recommends that the Commission enter a Default Order against the Respondents.

The Division submits the following sanctions for the Securities Commission to approve: 1) Suspend the offer and sale of a federal covered security. 2) The Respondents should cease and desist from engaging in any further conduct in violation of the code 3) requiring Intelicloud Holdings, Inc. to pay a fine of \$1,000.00 to the Division and 4) requiring Respondent Friederichs to pay a fine of \$1,000.00 to the Division. Upon entering the default order, the Utah Securities' Commission will dismiss any further proceedings in this case.

Commissioner David Russon made the motion to approve the proposed order and Commissioner Gary Cornia seconded the motion. The motion passed unanimously.

Greenfolders/ Michael Shaun Kirby: Dave Hermansen reported that the Respondents were the subject of an investigation conducted by the Division of Securities for allegations that they violated certain provisions of the Utah Uniform Securities Act. The Division issued an Order to Show Cause against the Respondents on January 3, 2013. The Division filed an Amended Order to Show Cause on March 27th, 2013, which supersedes the Order to Show Cause that was filed in January. The Respondents agree to settle this matter with the Division by way of a Stipulation and Consent Order. The Order will fully resolve all claims the Division has against the Respondents.

The Respondents offered and sold stock, which is a security, to an investor and collected a total of \$375,000.00. The Respondents made material omissions in connection with the offer and sale of securities to the investor.

The Division submits the following sanctions for the Securities Commission to approve: 1) The Respondent agrees to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act. 2) The Respondents agree not to seek licensure, or engage in any activities that would require licensure, in the securities industry, in the state of Utah. 3) The Division imposes a fine of \$17,500.00, with at least \$8,750.00 due and payable within 10 days of entry of this order. The remaining balance will be paid in equal monthly payments over a two-year period. There is an ongoing civil suit where the investor is seeking restitution. The investor does currently hold stock within the company.

Commissioner Gary Cornia made the motion to approve the proposed order and Commissioner Brent Baker seconded the motion. The motion passed unanimously.

Closure of Meeting to Deliberate: The Commission temporarily closed the meeting to deliberate the Division's Motion for Default-Jared Brent Muir. There was a motion by

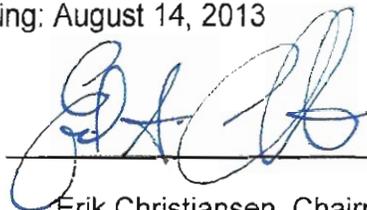
Commissioner Russon to close the meeting in order to discuss the character of the Respondent, Commissioner Cornia seconded the motion. It was unanimously approved by the Commission.

The meeting was reopened by Commissioner Christiansen after deliberations were made.

Commissioner Baker made a motion to adjourn the meeting and Commissioner Bangerter seconded the motion. The motion was unanimously approved by the Commission.

Next Meeting: August 14, 2013

Approved: _____

A handwritten signature in blue ink, appearing to be 'Erik Christiansen', written over a horizontal line.

Erik Christiansen, Chairman

Date: _____

8/14/13