

Utah Securities Commission

Meeting Minutes

August 14, 2013

Division of Securities Staff Present

Keith Woodwell, Division Director
Ken Barton, Licensing and Compliance Director
Dave Hermansen, Enforcement Director
Benjamin Johnson, Corporate Finance Director
Dee Johnson, Investor Education Director
Maria Skedros, Commission Secretary
Chip Lyons, Securities Analyst
Ann Skaggs, Securities Analyst
Brandon Henrie, Lead Examiner
Richard Jaramillo, Securities Examiner
Nadene Adams, Administrative Assistant

Other State of Utah Employees:

Jennie Jonsson, Administrative Law Judge, Department of Commerce
Paul Amann, Assistant Attorney General

Commissioners Present

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

Commissioners Absent

None

Public Present:

Anna Tibbitts, Utah JumpStart Coalition
Brad Bertoch, Wayne Brown Institute

Minutes: At 9:05 am, the meeting was called to order and Commissioner Christiansen made the motion to approve the minutes from the May 30th, 2013 Commission meeting.

Commissioner Gary Cornia seconded the motion; and the motion was approved unanimously.

Director's Report: Director Woodwell: the most recent balance for the Education Fund is \$293,520.77, which is about an average balance over the last few months.

In the last fiscal year the Division collected \$218,000 in fines, which are deposited into the education fund. That is lower comparatively for the last few years. In fiscal year 2012, the Division brought in over \$550,000.00 in fines. In 2011, fines reached up to 1.2 million and in 2010 it was 2.6 million. These higher fines were a result of large settlements in the auction rate securities cases.

In 2009, the fine amounts were only \$56,000.00 and in 2008: \$210,000.00, which reflect the amounts we are seeing currently. We do not see any larger than normal settlements for the next fiscal year, they should follow the same amounts that we currently have.

Investor education has participated in 74 presentations which have reached over 10,000 people in the past year.

The trend continues to go up in the number of licenses issued, both in the broker dealer and investment advisor sectors. That is about a 2-3 % growth over the last few years, which were similar to what we saw before the recession.

Audits have also increased over the last year with 82 new audits opened, which is the highest the Division has ever had. In 2012 there were 62 audits and in 2011 there were 45.

Enforcement and criminal case numbers are the same as years prior.

Personnel: Investigator Nadia Bowman and Examiner Darren Miller have left the Division to pursue other career opportunities. We have hired Crosby Styles to fill the Examiner's position. He has an Economics degree from University of Utah and was previously working at E Trade. He will be an asset to our auditing team.

We are looking into changing the language in our Stipulation and Consent Orders in an effort to increase payment rates on our fines. The Division frequently does not get paid on fines that are set up with a payment plan over time, partially due to the terms that are currently in place. We don't have the "teeth" to collect these fines, and when we turn these over to state collections, the recovery rate is extremely low.

The Division is working with the Attorney General's Office to craft language in the stipulation and consent orders that will accelerate all remaining fine payments in the case of default by a Respondent. The Division is also working to require a larger good faith payment to be paid, usually within 30 days of the date the Order was signed. If Respondents default, they should lose the benefit of neither admitting nor denying the Division's findings of fact and conclusions of law. This will help the victims who are usually in a companion criminal case or civil trial.

Future meetings: We will begin to schedule hearing dates for early 2014. The next meetings are scheduled for December 5th and the 4th Thursday of January, March and May of 2014.

Licensing & Compliance Section Report: Ken Barton reported that during the months of June, July and August, Licensing and Compliance initiated eighteen new audits, eight new investment adviser firm audits, seven for cause audits, complaint follow ups, and three routine compliance field audits. Year to date, Licensing and Compliance has initiated a total of sixty-five new audits. There are three administrative actions in progress, and one action we have a settlement agreement pending the Commission's approval today. One action is in settlement negotiations, and one action is stayed pending a criminal referral. There are several other cases under investigation that appear to include violations warranting action by the Division, including as many as ten more agents in the Dee Randall Horizon Notes case. There are five criminal actions in progress; three cases where criminal charges have been already filed, two cases that have been screened with the Attorney General's office and are pending their decision to file charges. Licensing and Compliance completed an analysis of variable contracts insurance licensees to determine if they have the required broker-dealer affiliation to conduct variable contract business. The analysis discovered that 1592 of the 4584 (approximately 35%) variable contract producers and consultants did not have the required broker-dealer affiliation. The Division's findings were provided to the Utah Department of Insurance for follow-up with their licensees. This work completed one of the action items from the Securities/Insurance Fraud Task Force meetings.

Corporate Finance Section Report: Benjamin Johnson reported that the SEC has released the final rules governing private placement offerings under Regulation D Rule 506. The structure of the old 506 offerings remains but they added new provision to allow for issuers to use general advertising, provided that the issuer takes reasonable steps to verify that the purchaser is an accredited investor. The SEC has not mandated any specific procedure that issuers must follow in order to verify the accreditation. Another concern for the Division is the nature and content of the advertising that might be utilized; standards have not been established. The Division is concerned with the impact that general solicitation may have on fraudulent offerings.

Enforcement Section Report: Dave Hermansen reported that Enforcement Section staff recently attended training conducted by the FBI on interviewing techniques. This training was very beneficial. Enforcement currently has 33 cases that are open, and 33 cases that are in the hands of prosecutors waiting to be screened or prosecuted. There are 10 cases that are unassigned. We have 50 outstanding administrative enforcement actions. We are currently working to clear out the backlog of administrative cases that were opened in 2009 and the beginning of 2010. During the last two months we have screened four cases with prosecutors; two cases with the Attorney General's office, one case in Wasatch County, one case in Utah County. **Investor Education Report:** Dee Johnson reported for Karen McMullin. In June, the Division attended eight investor education events, including two conferences involving the Elementary and Secondary School Principals in the State. These events resulted in invitations to attend and present seminars at the Principals' Winter Conferences in 2014. The Division will also partner with the JumpStart Coalition at the SUECON (Southern Utah Educator's Conference) in November, 2013. A new partnership with the Utah Retirement System was created, and the Division will present a portion of the Pre-Retirement Seminars and Personal Planning Seminars throughout the year. These seminars, organized by the URS, attract public employees throughout the state. The message delivered in these seminars includes wise

investing, investment fraud tactics, and an explanation of the Division's mission and resources. During the first week of August, the Division sponsored a booth at the Bear Lake Raspberry Days Fair. During the three day event, the Division distributed over 1,000 free financial education kits which target families with young children, high school and college age youth, women and seniors. Approximately 100 investor education surveys were completed during the Fair. We are currently sponsoring a booth at the Native American Summit on the UVU Campus at which over 400 people are expected to attend.

Education and Training Fund Report: Benjamin Johnson reported that the balances shown on the statement reflect the end of the fiscal year 2013. The Division shows a credit under the column "amounts spent by the Division" there is a credit of \$1,134.00, which is due to an accounting adjustment. Investigation and litigation spending amounts were as expected and within the normal range.

Grant Requests:

Wayne Brown Institute- Brad Bertoch from the Wayne Brown Institute made a presentation to the Commission concerning the Grant request from the Wayne Brown Institute. The grant amount is \$20,000.00. Commissioner Tim Bangerter made a motion to approve the grant request; Commissioner David Russon seconded the motion. The motion was passed unanimously.

Director Woodwell: reported that Working in Support of Education (WISE), Ever Fi and JumpStart Coalition all deal with the K-12 education financial literacy requirements in the State of Utah. Director Woodwell addressed all three programs jointly. Director Woodwell inquired with the State Office of Education as to which of the three (WISE, EverFi, and Jumpstart) are the most beneficial to both the students and the teachers to increase financial literacy. The State Office of Education ranked the Stock Market Game run through the Jumpstart Coalition as the most beneficial followed by the Jumpstart Teacher Training Conference and the WISE Financial Literacy Certification Program. Director Woodwell also explained that given the current balance in the Education Fund it would probably not be possible to fund all of the programs aimed at K-12 education financial literacy.

Working in Support of Education, Inc.- The Division has granted funds in the past to this foundation. WISE is a national nonprofit organization based out of New York. They provide an assessment tool where at the end of the high school financial literacy course an exam is provided to see what progress has been made. This is a certification test, which can measure and compare schools and states with each other and is based on the standards set by the State Board of Education. The program current reaches about 7,000 students in the State of Utah. WISE is asking for \$20,000.00 this year. Commissioner Gary Cornia made a motion to grant WISE \$20,000 and Commissioner David Russon seconded the motion. The motion was passed unanimously.

Ever Fi- This is an online program with learning modules that are used as a supplement in high school financial literacy programs. The students log on to the program and go through several interactive modules that teach them about saving, investing, banking and insurance. There is a test that the student takes at the end of the program. The feedback from the state office ranked Ever Fi as less beneficial than some of the other programs aimed at supporting the high school financial literacy course. Director Woodwell expressed his concern that Ever Fi is a for-profit organization and explained that Executive Director Francine Giani felt that at this time it would be most beneficial to direct the education funds to the JumpStart Coalition and Wise. Commissioner Brent Baker made a motion to decline the Ever Fi grant and Commissioner Gary Cornia seconded the motion. The motion was passed unanimously.

JumpStart Coalition- Encompasses three separate programs. The first is the Stock Market Game (\$15,000), the second is a teacher training program (\$5,000.), and the third is a general outreach program where a pool of financial professionals would be available to teachers so they can use them as a resource in the classroom (\$10,000). Anna Tibbits from the JumpStart Coalition made a presentation to the Commission concerning the grant request from the JumpStart Coalition. Commissioner Tim Bangerter made a motion to grant \$20,000.00 to JumpStart and Commissioner Brent Baker seconded the motion. The motion was passed unanimously.

Consideration and Approval of Proposed Orders:

Benjamin D. Larsen : Stipulation and Consent Order: Ken Barton reported that the Respondent was the subject of an investigation by the Division. Mr. Larsen violated the Utah Uniform Securities Act. An Order to Show Cause was filed in February of 2013. The Respondent agreed to settle this matter by way of the Stipulation and Consent Order. Mr. Larsen was an insurance agent, and was licensed in Utah. From June 2010 through August 2012, Mr. Larsen was licensed in Utah as a broker-dealer agent, and has not been licensed in the securities industry in any capacity since that time. Mr. Larsen sold private placement securities investments in "Horizon Notes". Mr. Larsen solicited other insurance clients to purchase these notes, which are securities, and he was compensated for those sales. Mr. Larsen misrepresented or omitted material facts to investors. Mr. Larsen is ordered to cease and desist from further violations of the Act. The Respondent is to cooperate in any additional investigations concerning Dee Randall/Horizon Notes, disgorge \$7,000 in commissions received to the trustee to repay investors, paid in twelve monthly installments. Mr. Larsen is to pay a fine to the Division in the sum of \$15,000.00, with monthly payments of \$187.50 to begin after he has satisfied his payment to the trustee. At the end of a four-year period, the Division has the sole discretion to waive the remaining \$6,000 of the \$15,000 fine. Mr. Larsen is not to seek a securities license in the state of Utah. Commissioner Brent Baker made a motion to approve the proposed order and Commissioner Gary Cornia seconded the motion. The motion passed unanimously.

Fourth Dimension Financial Group, Richard Clark Johnson III: Stipulation and Consent Order: Dave Hermansen reported Mr. Johnson and 4DFG violated certain provisions of the Utah Uniform Securities Act. The Division initially issued an Order to Show Cause against the

Respondents in July of 2008. Criminal charges were also filed against Johnson in June of 2008 in connection with the investigation. The Respondents were involved in a hard-money lending deal, raising investment funds to make a loan to a client who was remodeling a home. The Respondent, directly or indirectly, failed to disclose material information, including a bankruptcy filing, and several unpaid civil judgments against him. The Respondent is ordered to cease and desist from violating the Utah Uniform Securities Act, and is barred from associating with any broker-dealer or investment adviser. Mr. Johnson is ordered to pay restitution as ordered in the criminal case against him. Commissioner David Russon made the motion to approve the proposed order and Commissioner Tim Bangerter seconded the motion. The motion passed unanimously.

Bradley Garth Green: Stipulation and Consent Order Regarding Bradley Garth Green:

Dave Hermansen reported that Mr. Green violated certain provisions of the Utah Uniform Securities Act. Initially, the Division issued an Order to Show Cause against the Respondent in 2008, alleging securities fraud. In May of 2008, criminal charges against Mr. Green were filed in connection with the investigation. Mr. Green, acting on behalf of Blue Sovereign, raised approximately \$633,275 in investment funds from investors. The investors were offered the opportunity to invest their money in "equity milling" programs, an emerald mine, or promissory notes. The Respondent made false and misleading statements to the investors. Mr. Green failed to disclose material information. The Respondent is ordered to cease and desist from violating the Utah Uniform Securities Act. Mr. Green is barred from associated with any broker-dealer or investment adviser licensed in the state of Utah. Mr. Green shall cooperate with the Division, the state of Utah, and the federal government in any future investigations relevant to this matter. Mr. Green is ordered to pay restitution as ordered in the criminal case against him. Commissioner Gary Cornia made the motion to approve the proposed order and Commissioner David Russon seconded the motion. The motion passed unanimously.

Blue Sovereign, LLC, Cartlan, LLC, Brett Jason Cobb: Order on Motion For Default:

Dave Hermansen reported a Notice of Agency Action was initiated in August of 2008. In September of 2008, the cases were stayed pending the outcome of a parallel criminal case filed against Mr. Cobb. On June 3, 2013, the criminal case was resolved through a conviction, and the stay was lifted. The order specified that a failure to comply with the deadline would result in a default order against the Respondents. At this time, the Respondents have not filed a response to the Division's order to show cause or made any effort to participate in the proceedings. Therefore, the Respondents are ordered to cease and desist from engaging in any further conduct in violation of the Utah Uniform Securities Act and to pay a fine of \$791,593.75 to the Division. Commissioner David Russon made the motion to approve the proposed order and Commissioner Brent Baker seconded the motion. The motion passed unanimously.

Jeffrey Steven Hall, J & K Lending: Stipulation and Consent Order: Dave Hermansen reported that Mr. Hall is a resident of the state of Utah and has never been licensed in the securities industry in any capacity. J & K Lending was registered as a corporation in Utah, but the registration expired in March of 2013 and was not renewed. Mr. Hall offered and sold stock

in a company that was developing a video game based on the television show "Stargate". The Respondent failed to disclose material information which was necessary in order to make the sale not misleading. The Respondent is ordered to cease and desist from violating the Utah Uniform Securities Act. The Division imposes a fine of \$16,200 against the Respondent, offset by restitution payments to the investor. The fine shall be paid in equal monthly payments of \$150 for a period of eighteen months, after which time the payments increase to \$500 per month. If Mr. Hall violates any terms of this Order, the unpaid balance of the fine amount shall be imposed and become due immediately. Commissioner Brent Baker made the motion to approve the proposed order and Commissioner David Russon seconded the motion. The motion passed unanimously.

Colt Technologies, LLC, Tali James Haleua: Stipulation and Consent Order: Dave Hermansen reported that from approximately March 2005 through June 2006, Mr. Haleua raised \$431,000 for Colt Technologies from eight Utah investors. Mr. Haleua told investors that Colt Technologies was developing a wireless radio frequency device, a sensor tag attached to the animal, which would monitor the core temperature of cattle. Mr. Haleua told investors that there was a huge market for this device and that feed lots in Argentina and Kansas were ready to purchase these sensors. The Respondent failed to inform his investors that he had a criminal history, filed for bankruptcy in 1994, and had an extensive history of civil litigation which resulted in judgments against him. Mr. Haleua is ordered to cease and desist from violating the Utah Uniform Securities Act. Mr. Haleua is barred from the securities industry in Utah, is ordered to cooperate with the Division in any future investigations, and agrees to pay restitution as ordered in the criminal case against him. Commissioner David Russon made a motion to approve the proposed order and Commissioner Tim Bangerter seconded the motion. The motion was passed unanimously.

David Rodney Crosby: Stipulation and Consent Order: Dave Hermansen reported that from May 2007 to August 2007, Mr. Crosby offered and sold investment contracts to investors, and collected a total of at least \$145,150, of which \$96,500 was specifically used for investing. Mr. Crosby made omissions in connection with the offer and sale of securities to the investors. Mr. Crosby is ordered to cease and desist from violating the Utah Uniform Securities Act. He is barred from associating with any broker-dealer or investment adviser licensed in Utah. The Division imposed a fine of \$30,000.00 against Mr. Crosby, offset by restitution payments to the investors. The fine shall be paid in equal monthly payments of \$500 over a five-year period. Commissioner David Russon made a motion to approve the proposed order and Commissioner Gary Cornia seconded the motion. The motion passed unanimously.

Commissioner Brent Baker made a motion to adjourn the meeting and Commissioner David Russon seconded the motion and it was unanimously approved by the Commission. The meeting concluded at 11:25 am.

Next meeting: December 5th, 2013.

Approved: 
Acting
Erik Christiansen, Chairman

Date: 9/26/13