



**STATE OF UTAH**

**DEPARTMENT OF COMMERCE | DIVISION OF SECURITIES**

**SECURITIES COMMISSION | ELECTRONIC MEETING**

**PENDING MEETING MINUTES | JANUARY 13, 2022 | 9:00 AM - 10:00 AM**

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**PARTIES**

**SECURITIES COMMISSION**

Lyle White

Brent A. Cochran

Mark Zimbelman

Lyndon Ricks

Peggy Hunt

Acting Chair

Commissioner (Absent)

Commissioner

Commissioner

Commissioner (Absent)

**DIVISION OF SECURITIES**

Jason Sterzer

Zoe Gomez

Ken Barton

Dave Hermansen

Bryan Cowley

Karen McMullin

Francswai Grayson

Charles Lyons

Division Director

Administrative Assistant

Manager of Compliance

Manager of Enforcement

Manager of Licensing and Registration

Investor Education Coordinator

Securities Analyst

Securities Analyst

**ASSISTANT ATTORNEY GENERALS**

Jennifer Korb

Stephen Gillies

Counsel for Division

Counsel for Division

**DEPARTMENT OF COMMERCE**

Bruce Dibb

Administrative Law Judge



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### WELCOME AND CALL TO ORDER

9:01 AM

Acting Chair White commenced the Securities Commission meeting.

- Chairman White presented newly appointed Commissioner Mark Zimbelman and subsequently Administrative Law Judge Bruce Dibb administered the Oath of Office.

### 1. APPROVAL OF OCTOBER 14, 2021 MINUTES

Commissioner Ricks made a motion to approve the Minutes and Commissioner White seconded the motion.

- ✓ The motion was approved unanimously.

### DIRECTOR'S REPORT | JASON E. STERZER

9:05 AM

Director Jason Sterzer welcomed Mark Zimbelman to the Commission and provided a report on the following:

- The Division's efforts in response to Executive Order 1 and Executive Order 12 and Mr. Sterzer acknowledged the significant and ongoing work being done by Chip Lyons, Francswai Grayson and Bryan Cowley.
- The Division's implementation of a Securities Examiner training and promotional plan.
- The Division hired Trista Lopez as an Office Specialist.

### SECTION REPORTS

9:07 AM

#### Licensing and Registration | Bryan Cowley

- Mr. Cowley commenced his report with an introduction of his team and explaining that they are dedicated state employees and he appreciates their contributions to the overall mission of the Division of Securities and Department of Commerce by highlighting the amount of transactional work that the team does on a monthly basis.
- Licensing received and examined approximately 5 Broker Dealer Applications, 378 Broker Dealer Agent applications and 60 Investment Adviser Representative applications. Prior to licensure, approximately 29 Firm, Agent and/or Investment Representative applications were elevated for additional examination. Furthermore, Licensing received 3 Registered Investment Adviser Firm applications, completed 2 applications and has 7 applications pending.
- Registration also known as Corporate Finance received and examined approximately 653 filings which included, 4 Registrations by Coordination, 2 Utah Exemptions, 406 Mutual Fund/UITs, 240 Form D Rule 506 and 1 Regulation A Tier 2 filings. Furthermore, 9 Rule 12805 Arbitration reviews were completed and 0 applications to the FINTECH Regulatory Sandbox were received.



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### Compliance | Ken Barton

Mr. Barton welcomed Commissioner Zimbelman and reported the following:

- Mr. Barton reported that for the 2021 calendar year-ending December 31, 2021, the Compliance Section opened fifty-one examinations and closed forty-five exams. Of the 51 exams opened 24 were "cause exams" initiated by an investor complaint or regulatory referral, 16 were routine exams, 9 were investment adviser licensing application examinations, and 2 were Vulnerable Adult firm reports warranting further Utah Division of Securities ("Division") investigation. Of the 45 examinations closed during the period 35 were closed by exit/deficiency letter with no additional agency action, 10 were closed by referral for agency action.
- The performance standard for overall Compliance Section goal achievement is 10 exams opened and 10 exams closed per full-time equivalent Examiner, to account for periods when the Section is not operating with a full exam staff. The annualized calendar-year goal achievement given staffing for 2021 would be 46 exams opened and 46 exams closed. The Section exceeded the number of exams opened by five exams and fell one exam shy of its closing exam goal for the period.
- The annualized percentage of cause exams for 2021 was 62%, a 14% increase over the 2020 cause percentage, and the highest cause exam percentage since calendar year 2016 (71%). Trading and fee disputes were the primary drivers for the above average number of cause exams. The Compliance Section seeks to have a 50-50 cause to routine exam mix. Routine exams are critical to the Division's mission of delivering ongoing compliance education to licensed securities firms and agents.
- Mr. Barton concluded by reporting 2021 year-ending staffing numbers, the Compliance Section had an annualized Examiner turnover rate of 40% for the year. The full-time equivalent staffing number for 2021 was 4.6 FTE. The Compliance Section has one open Securities Examiner position yet to fill to be at full staff.

### Enforcement | Dave Hermansen

- Mr. Hermansen reported on the staffing level of his section which includes two open positions. He further reported that the main type of complaint received in the Enforcement Section deals with Cryptocurrency and Bitcoin. The SEC/CFTC have provided limited guidance on the regulation of cryptocurrency.
- Enforcement currently has 43 open investigations of which 24 are unassigned due to shortage of investigators. 6 cases are civil, 18 filed/outstanding administrative cases with 4 in the queue and 25 criminal cases.
- Mr. Hermansen announced the pending sentencing of Gaylen Rust which has been scheduled for March 8, 2022. Mr. Hermansen concluded his report noting that 6 enforcement cases have upcoming criminal trials through the month of July.



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### Investor Education | Karen McMullin

- Ms. McMullin reported the 2021-year end statistics for Investor Education. Working within the limitations due to current COVID-19 conditions, the Division participated in 6 events with an estimated audience of 758. However, Division partners are optimistically planning 2022 events, both in-person and virtual, and definitely want to include the Division of Securities and our investor protection message. Since the last Commission meeting, the Division participated in one event which was held both in person and virtually.
- Ms. McMullin shared feedback regarding the Division's newly redesigned website and concluded with the Outlook for 2022 with 13 events on our calendar and plans to present to audiences throughout the State, either in person or virtually, with additional opportunities expected.

## 2. EDUCATION FUND EXPENDITURE REQUEST

10:03 AM

### Aaron Burgoyne

Mr. Burgoyne presented the Education Fund Report and Expenditure request for the period covering October 1, 2021 through December 31, 2021.

Commissioner Ricks made a motion to approve the request and Commissioner White seconded the motion.

✓ The Commission unanimously approved the Education Fund Expenditure Request.

## CONSIDERATION AND APPROVAL OF PROPOSED ORDER(S)

9:40 AM

### 3. In the matter of STIS Holdings LLC SD-19-0037, Novare LLC SD-19-0038, St Roch LLC SD-19-0039 and Lance M. King SD-19-0040.

#### Stipulation and Consent Order Presented by Francswai Grayson.

The Division and Mr. King mutually agreed to enter into a Stipulation and Consent Agreement to settle the Division's causes of action against Mr. King and the entities. The terms of the Stipulation and Consent Agreement provide that Mr. King admits the Division's Findings of Fact and Conclusions of Law, Mr. King agreed to cease and desist from violating the Utah Uniform Securities Act further, Mr. King agreed to be barred from the securities industry in the state of Utah, Mr. King agreed to pay a fine of \$25,000 to the Division, \$7,000 of which will be paid to the Division within 15 days of the entry of the order, Mr. King agrees to pay the remaining fine of \$18,000 to the Division in monthly payments of \$3,000 each month for six consecutive months.

Commissioner Ricks made a motion to approve the Stipulation and Consent Order and Commissioner White seconded the motion.



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✓ The Commission unanimously approved the Stipulation and Consent Order.

**4. In the matter of Thomas M. Swensen SD-19-0041.**

**Stipulation and Consent Order Presented by Francswai Grayson**

The Division and Mr. Swensen mutually agreed to enter into a Stipulation and Consent Agreement to settle the Division's causes of action against Mr. Swensen. The terms of the Stipulation and Consent Agreement provide that Mr. Swensen admits to some of the Division's Findings of Fact and Conclusions of Law, and neither admits nor denies to some parts, Mr. Swensen agreed to cease and desist from violating the Utah Uniform Securities Act further, Mr. Swensen agreed to be barred from the securities industry in the state of Utah, Mr. Swensen agreed to pay a fine of \$15,000 to the Division, \$10,000 of which will be paid to the Division within 30 days of the entry of the order, Mr. Swensen agreed to pay the remaining fine of \$5K to the Division in equal monthly payments of \$277.78 for 18 months.

Commissioner Ricks made a motion to approve the Stipulation and Consent Order and Commissioner White seconded the motion.

✓ The Commission unanimously approved the Stipulation and Consent Order.

**5. In the matter of Clark Campbell**

**Addendum to Consent Order. Presented by Jennifer Korb**

On 2021 Mr. Campbell stopped making the ordered fine and disgorgement payments to the Division for financial reasons related to the pandemic. Campbell reached out to the Division after a Material Violation letter was sent to work out a payment plan. Rather than increase Campbells fine amount by 20% and require immediate payment of the remaining fine amount, the Division and Campbell have agreed to amend the Consent Order, whereby Campbell agrees to pay the remaining fine and disgorgement amount of \$18,409 to the Division in equal quarterly payments of \$4,602.25. Campbell agreed to follow all other terms of the Consent Order.

Commissioner Ricks made a motion to approve the Stipulation and Consent Order and Commissioner White seconded the motion.

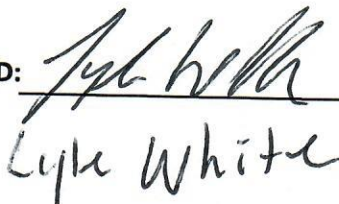
✓ The Commission unanimously approved the Amended Stipulation and Consent Order.

**MEETING ADJOURNED**

9:52 AM

*The next scheduled Securities Commission meeting is April 28, 2022.*

APPROVED:

  
Lyle White