

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

DIRK L. EWING, and

MELANIE JO SCHULZE-MILLER,

Respondents.

**STIPULATION AND CONSENT
ORDER OF DIRK L. EWING**

Docket No. SD-21-0021

Docket No. SD-21-0022

The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave Hermansen, and Respondent Dirk L. Ewing (“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 (securities fraud), § 61-1-3(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 December 8, 2021, 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 over 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 has obtained legal counsel in this matter and is represented by attorney E. Kent Winward. Respondent is satisfied with the legal representation he has received.

FINDINGS OF FACT

THE RESPONDENT

8. Respondent resided in Morgan County, Utah during all times relevant to the allegations asserted herein. Respondent is currently licensed as an insurance agent with the Utah Department of Insurance under license number 88356. Respondent holds an active insurance license as a resident producer in accident, health or sickness, and life.

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 and established by Scott A. Kohn ("Kohn"). The purported purpose of FIP was to provide loans to government pensioners who would later repay the loans after receiving their monthly pension distributions. The funds FIP loaned to pensioners were derived from pooled income streams from investors. 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. In April 2018, FIP operations collapsed under regulatory pressure and cash flow shortages. FIP is currently under court appointed receivership. 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. In March 2019, Kohn and FIP were criminally indicted in the District Court of the United States for the District of South Carolina Greenville (case number 6:19-cf-00239) for “...*knowingly and willfully combin[ing], [and] conspire[ing], [...] to devise and execute a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises...*” in connection with the solicitation and sale of the FIP investment to investors. In August 2022, Kohn pleaded guilty to conspiracy to commit wire fraud, a violation under 18 U.S.C. § 1349, and was sentenced to 10 years in prison. Kohn has never been licensed with the Division.

GENERAL ALLEGATIONS

12. The Division’s investigation of this matter revealed that from approximately August 2016 through July 2017, while conducting business in or from the state of Utah, Respondent offered and sold several FIP investment opportunities to at least seven (7) Utah investors and raised approximately \$1,771,392 in connection therewith.

13. The investment opportunities offered and sold by Respondents are investment contracts or promissory notes, which are securities under § 61-1-13 of the Act.
14. In connection with the offer and/or sale of the FIP securities, Respondent, either directly or indirectly, made material omissions and/or misrepresentations of material facts.
15. In connection with the offer and/or sale of securities, Respondent acted as unlicensed agent when he sold FIP securities to investors.
16. In connection with the offer and/or sale of securities Respondent acted as an unlicensed investment advisor representative when he advised investors to remove their retirement funds from investment in the stock market, to invest instead in FIP, and received compensation in connection therewith.
17. Respondents offered and/or sold securities that were not registered with the Division, did not qualify for an exemption from registration, and were not federal-covered securities for which any notice filing was made.
18. To date, investors are still owed approximately \$1,771,392 in principal alone.

FIP Investment

THE SOLICITATIONS

19. From approximately August 2016 through July 2017, Respondent, directly and/or indirectly, solicited at least 7 Utah investors to invest in FIP.
20. Respondent solicited investors located in Utah; and the solicitations occurred in person at Respondent's office or the investor's home and/or place of employment.
21. Investors had no role in the investment opportunities, other than providing investment funds.
22. Respondent had been acquainted with those he solicited to invest in FIP for many years.

Many of the investors were already Respondent's insurance clients.

23. Every investor Respondent 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"). Respondent was aware of the source of funds when he solicited investors, and assisted investors with their IRA transfer applications to invest in FIP.
24. Respondent presented the investment opportunity in FIP to investors as an investment in "Gold Star" and a way to gain higher interest rates in their retirement accounts without accepting additional risk of investing in the stock market.
25. Respondent never told investors that their retirement funds would ultimately be invested in FIP and that Gold Star was simply a third-party custodian that administered the account.
26. Respondent told investors that in order to afford the exorbitant annual insurance premiums from the purchase of life insurance products Ewing sold investors, investors could invest in "Gold Star", receive low risk annual returns between 3% - 10%, and use the proceeds of the "Gold Star" investment to pay the high annual insurance premiums.
27. As a result, Respondent sold an insurance policy to every investor he solicited to invest in "Gold Star".
28. Respondent did not understand how the FIP investment in Gold Star would produce a return, yet he recommended that his insurance clients purchase the investment using their retirement assets that were invested in the stock market.
29. Respondent did not inform investors of the risk involved with investing in FIP. Respondent 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.

30. Prior to investing in FIP, Respondent's clients had several questions regarding the FIP investment that Respondent was unable to answer. As a result, in or around the summer of 2016 Respondent scheduled an in-person group meeting with all of the investors at his offices and conferenced respondent Melanie Schulze-Miller ("Schulze-Miller") by phone to discuss the details of the FIP investment.
31. During the group meeting, Respondent and Schulze-Miller made numerous statements to investors regarding the investment opportunity in FIP, including, but not limited to, the following:
 - a. That investors would earn a better return by moving their retirement funds to Gold Star;
 - b. That investment options offered through Gold Star would earn annual return of 3% to 10% depending upon the profitability of the investment;
 - c. That investor's principal investment would always earn at least a 3% return and was guaranteed with very little risk to the principal;
 - d. That investors should purchase an insurance policy through Minnesota Life Insurance Co. ("Minnesota Life") using their retirement funds and pay the life insurance premiums in installments using the proceeds of the investments in Gold Star;
 - e. That the returns generated from the investments in Gold Star would be high enough to pay the taxes incurred from the withdrawal of investor's retirement funds; and,
 - f. That Respondent invested in the same product and would not sell a product that

he did not believe in.

32. Although Respondent did not fully explain the details of the FIP investment to investors, he recommended that investors liquidate their retirement accounts and transfer the funds into a self-directed IRA account held at Gold Star to invest in FIP. Based upon Respondent's recommendation, investors transferred approximately \$1,771,392 to Gold Star to invest in FIP.
33. Respondent convinced investors to purchase a life insurance policy with exorbitant annual premiums, and to purchase the FIP investment to afford the policy premiums. Respondent did not fully explain what FIP was, how FIP would generate a return, and the risks associated with investing in FIP. In fact, when the Division spoke to investors during the course of the investigation, investors stated that they had never heard of FIP and thought that their investment was in Gold Star.

THE INVESTMENT AGREEMENT

34. To invest in FIP, Ewing and Schulze-Miller assisted investors with the Gold Star IRA transfer request forms. Ewing also assisted investors in completing the life insurance policy paperwork, and additional paperwork for their FIP investment.
35. During the Division's investigation, investors and Ewing were unable to provide copies of the FIP investment paperwork. Ewing told the Division that he did not keep a copy of the FIP investment paperwork for his records and did not provide a copy of the paperwork to investors. Ewing stated that he would simply request a copy of the FIP paperwork from Schulze-Miller if he needed copies.

FRAUDULENT CONDUCT: FIP'S USE OF INVESTOR FUNDS

36. FIP hired Faw Casson ("FC"), an escrow-agent service provider, to receive and retain

investor funds before FIP distributed the funds to other sources.

37. When investors used qualified retirement assets to invest in FIP, Gold Star disbursed funds to FC.
38. Respondent told investors that their investment funds would be used to provide loans to pensioners.
39. A review of FC's general ledger record revealed that FIP used investor funds in a manner inconsistent with what Respondent represented to investors at the time of solicitation.
40. FIP instructed FC to distribute investor funds in a manner including, but not limited to the following:
 - a. To pay approximately \$207,846 in returns to previous investors in FIP;
 - b. To pay approximately \$95,722 in undisclosed commissions, \$68,756.63 of which was paid to Respondent;¹ and,
 - c. To send approximately \$964,636 to FIP, some of which was presumably used to provide loans to pensioners.

RESPONDENT'S INTERVIEW WITH THE DIVISION

41. On May 21, 2019, the Division interviewed Respondent in the course of the investigation. Respondent was present during the interview without legal counsel.
42. During the interview, Respondent stated that he first heard about the Gold Star investment opportunity (FIP) in December 2015 from Schulze-Miller. Schulze-Miller flew Ewing to Arizona in February 2016 to have a meeting with Ron Shurts² and discuss selling the "Gold Star investment" as a way of funding high premium insurance policies

¹ Respondent also received a separate commission from the sale of each life insurance policy sold to FIP investors.

² Ron Shurts is the co-founder and president of the insurance company Shurwest Financial Group headquartered in Arizona that employed Schulze-Miller.

Ewing sells to his clients.

43. Ewing stated that Schulze-Miller told him the following information during his meeting in Arizona:
 - a. That Gold Star was a holding company that offered an annual return of 6% to 8% with a minimum guarantee;
 - b. That the investment had no risk;
 - c. That the returns would fund the high insurance premiums from his client's insurance policies over a 3 to 5-year period for clients who were 59 years or older;
 - d. That the return from the investment was generated by a coupon bond;
 - e. That there's a reserve pool in case of default;
 - f. That Ewing would make a 4% commission on each sale of the investment; and
 - g. That the investment is not a security.
44. According to Respondent, he simply believed what he was told, and he believed that the investment was not a security because in Ewing's words, "*Melanie assured me a million times....*"
45. Respondent did not independently verify any of the information he was told about the "Gold Star" (FIP) investment—even though the person who was assuring him of the validity of the investment was the person who introduced Ewing to the investment, and would personally benefit if Ewing sold the investment to his clients.
46. Respondent did not independently verify any of the information he was told about the "Gold Star" (FIP) investment—even though prior to Respondent's solicitations to investors, several states (at least 5) had filed regulatory actions against FIP related to

FIP's business model. Several more states (at least 6) continued to file regulatory actions against FIP during and after Respondent's solicitations to investors. This is information that was readily available to the public with even a cursory due diligence search of the product.

47. Even though Respondent did not fully understand the FIP investment, he communicated to his clients that it was a low risk and guaranteed investment. Respondent proceeded to sell the investment to his clients as a better and safer alternative investment for their retirement assets then being invested in the stock market.
48. After the collapse of FIP in or about April 2018, Respondent's clients began receiving notices from Gold Star that it would no longer service the FIP investment. This notice prompted investors to contact Respondent to explain what happened to their investment and to provide a copy of their investment documentation. Respondent was unable to provide the documentation because he did not retain the records for his files.
49. Even after Respondent's clients contacted him with their concerns, Respondent communicated to investors that because their investment was in Gold Star, investors did not have to worry about the collapse of the FIP investment. In fact, only a few days before the collapse of FIP, Respondent was coordinating new FIP investments for at least two of his clients.

MISSTATEMENTS AND OMISSIONS

50. In connection with the offer or sale of securities, Respondent made the following 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, a large portion of investor funds were used to pay commissions and returns to earlier

- investors in FIP;
- b. That investor funds would generate an annual return of 3% to 10% with a guaranteed 3% minimum return, when in fact, there was no reasonable basis to make this claim;
 - c. That investor funds would generate a reliable income stream to pay investors' high insurance premiums and taxes from early retirement withdrawals, when in fact, this claim was false;
 - d. That FIP was a very low risk investment, when in fact, there was no reasonable basis to make this claim; and
 - e. That Respondent had also invested in FIP, when in fact, he had not
51. In connection with the offer or sale of securities, Respondent failed to disclose material information to investors including, but not limited to, the following:
- a. That Respondent would receive approximately \$68,756 in commissions from FIP investments, plus a separate insurance commission for selling investors a companion, high premium life insurance policy funded by the FIP investment;
 - b. That Respondent had not conducted reasonable due diligence on FIP's investment offering, but instead relied solely on statements and documents provided by Schulze-Miller;
 - c. That Respondent would not maintain copies of investment documents for client files, but instead relied solely on Schulze-Miller to provide the documents if Respondent needed copies;
 - d. That at the time of Respondent'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 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.

- e. That Scott Kohn, FIP's owner, had been convicted of multiple federal felonies, including aiding and abetting trafficking, conspiracy, and trafficking in counterfeit goods;
 - f. That investor funds would be used to pay returns to earlier FIP investors;
 - g. That Respondent was not licensed to sell securities, provide investment advice, or qualified to make a recommendation to liquidate securities in investor retirement accounts to purchase alternative investment products; and
 - h. Some or all of the information typically provided in an offering circular or prospectus concerning 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.
52. To date, investors are still owed at least \$1,771,392 in principal alone on their investments in FIP.

CONCLUSIONS OF LAW

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

53. Based upon the Division's investigative findings, the Division concludes that the investment opportunities offered and sold by Respondent are promissory notes and/or

investment contracts, which are securities under §61-1-13 of the Act.

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

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

56. In violation of § 61-1-3(1) of the Act, Respondent was not licensed in the securities industry in any capacity when he offered and sold FIP securities.

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

57. In violation of §61-1-3(3), Respondent was not licensed in the securities industry in any capacity when he recommended that investors liquidate their retirement accounts from investment in the stock market to purchase 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

58. 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 Respondent 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

59. Respondent admits to the Division's Findings of Fact and Conclusions of Law, and consents to the below sanctions being imposed by the Division.
60. Respondent represents that the information he provided to the Division as part of its investigation is accurate and complete.
61. Respondent 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.
62. Respondent 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. 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 \$20,000 against Respondent, and orders disgorgement of commissions in the amount of \$68,756.64. Respondent agrees to pay the \$20,000 fine within 30 days of entry of the final Order by the Utah Securities Commission. Respondent agrees to pay the disgorgement of \$68,756.64 to the Division in quarterly payments of \$5,729.72 for a period of three years, beginning in the first quarter of 2023 on January 31, 2023. Quarterly payments to the Division will be due by the last day of the month in January, April, July, and October until disgorgement is paid in full. Any payments that Respondent makes to the Division toward disgorgement of commissions will be sent to the Appointed Receiver for Scott Kohn and FIP, which was established in the United States District Court for the District of South Carolina in case number 6:20-cv-02101-BHH. Respondent will receive credit

for any proof of disgorgement payments paid directly to the Appointed Receiver for Scott Kohn and FIP.

FINAL RESOLUTION

64. Respondent and the Division acknowledge that this Order, upon approval by the Commission, shall be the final compromise and settlement of this matter. Respondents acknowledge that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.
65. If Respondent materially violate any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which the total fine amount is increased by 20% and becomes immediately due and payable, less any payments already made. Notice of the violation will be provided to Respondent at their last known address, and to their counsel if they have one. If Respondent fails to request a hearing, or fail to cure any missed fine payment, within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.
66. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

67. Respondent acknowledges 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. Respondent also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar this administrative action by the Division against them.
68. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondents are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 11 day of Oct 2022

Dated this ____ day of _____ 2022

Dave R. Hermansen

Dirk L. Ewing

 Dave R. Hermansen
 Director of Enforcement
 Utah Division of Securities

 Dirk L. Ewing

Approved:

/s/ Stephen Gillies

Jennifer Korb
 Stephen Gillies
 Assistant Attorneys General
 Utah Attorney General's Office
Counsel for the Division

/s/ E. Kent Winward

E. Kent Winward
 THE BANKRUPTCY FIRM
Counsel for Mr. Ewing
 (signed with permission)

ORDER

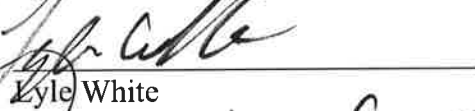
IT IS HEREBY ORDERED THAT:

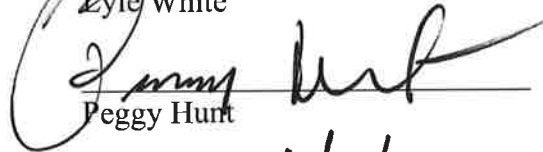
1. The Division's Findings and Conclusions, which Respondent admits, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Respondent shall be barred from associating with any broker-dealer 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, Respondent shall pay a fine of \$20,000 to the Division, and disgorge commissions in the amount of \$68,756.64 to the Division, pursuant to the terms set forth in paragraph 63 above.

BY THE UTAH SECURITIES COMMISSION:

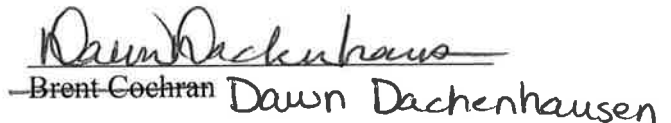
DATED this 13th day of October 2022


Lyndon L. Ricks


Lyle White


Peggy Hunt


Mark Zimelman


~~Brent Cochran~~ Dawn Dachenhausen

CERTIFICATE OF SERVICE

I certify that on the 14 day of October 2022, I mailed & emailed a true & correct copy of the **Stipulation and Consent Order** to:

Attorney for Respondent Dirk L. Ewing

E. Kent Winward
4850 Harrison Blvd, Suite 1
Ogden UT 84403
utahbankruptcyfirm@gmail.com

And emailed to:

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

Jennifer Korb, Assistant Attorney General
Utah Attorney General's Office
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Stephen Gillies, Assistant Attorney General
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Ashlee Buchholz, Administrative Assistant