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 THE LICENSES OF:	**PETITION FOR ORDERS REVOKING LICENSES, BARRING LICENSEES AND IMPOSING A FINE**
JAMES HOPKINS, CRD #2688074; ADAM HARRINGTON RUCKSDESCHEL, CRD #2481064; and ROBERT JOHN GRABOWSKI, CRD #1639890;	**Docket No.** SD-02-0138 **Docket No.** SD-02-0139 **Docket No.** SD-02-0140
Respondents.	

Pursuant to the authority of Utah Code Ann. § 61-1-6, the Utah Division of Securities, ("Division"), hereby petitions the Director of the Division, ("Director") to enter an Order, subject to the approval of a majority of the Securities Advisory Board, to revoke the licenses of James Hopkins, CRD #2688074, Adam Harrington Rucksdeschel, CRD #2481064 and Robert John Grabowski, CRD #1639890; (collectively "Respondents"), censure or bar Respondents, and impose fines. In support of its petition, the Division alleges the following.

STATEMENT OF FACTS

1. The Thornwater Company, L.P. ("Thornwater") is a broker-dealer that was licensed by the Division from November 1995 until December 2001. Thornwater maintains its principal place of business at 99 Wall Street-11th Floor, New York, NY 10005. A separate action is pending against Thornwater.

2. Thomas Russo ("Russo") is an individual who was employed by Thornwater as a broker-dealer agent from August 1998 until June 1999 and again from June 2000 until November 2000. A separate action is pending against Russo.

3. James Hopkins ("Hopkins") is an individual who was employed by Thornwater as a broker-dealer agent from October 1997 until October 2001. Hopkins was licensed with Thornwater in Utah from June 1999 through October 2001.

4. Adam Harrington Rucksdeschel ("Harrington") is an individual who has been employed with Thornwater as a broker-dealer agent from November 1999 to the present. Harrington was licensed in Utah from May 2000 until March 2002.

5. Robert John Grabowski ("Grabowski") is an individual who has been employed with Thornwater since April 1997. Grabowski was licensed in Utah from January 1999 until March 2002. Although Grabowski's CRD record lists him as a registered representative, Thornwater's CRD record lists Grabowski as President and CEO of Thornwater since July 2001.

6. In August 2001, the Division received a complaint against Thornwater from James Garland ("Garland"). The complaint included allegations of trading on margin without authorization, being forced into signing a margin agreement, trading in "market-maker stocks" against his wishes, unauthorized trading, unsuitable recommendations and high-pressure, boiler-room sales tactics.

7. In approximately March, 1999, Hopkins called Garland and introduced himself as the President of Thornwater and informed Garland that Russo no longer worked for Thornwater. In fact, Hopkins' Form U-4 and the records of the CRD do not reflect that Hopkins was ever the president of Thornwater. Hopkins convinced Garland to let him manage the account.

8. Hopkins made a few purchases for Garland before the account became dormant. Hopkins remained the account executive until April 2000. Hopkins did not become licensed in Utah until June 1999.

9. Harrington called Garland in January 2000 to offer his services. Harrington claimed to be a knowledgeable broker and assured Garland he was experienced in the technology sector. Harrington claimed to have worked for the SEC. Harrington also claimed to have non-public information on the stocks he was attempting to sell to or had sold to Garland. Harrington convinced Garland to let him (Harrington) manage the account.

10. Although he began trading in Garland's account in January 2000, Harrington did not become licensed in Utah until May 2000.

11. During the recorded conversations, Harrington admitted purchasing and/or selling stocks in Westell, C-Net, Communications Intelligence, Cell Therapeutics and Data Broadcasting in Garland's account before he was licensed in Utah.

12. Garland did not give Harrington discretionary authority on the account.

13. In recorded conversations, Harrington admitted to having placed unauthorized trades in Garland's account, including but not limited to:

    A. Four thousand shares of Data Tech;

    B. Three thousand shares of Communication Intelligence; and

    C. Two thousand shares of Westell.

14. In addition, Harrington sold stock without Garland's knowledge in order to purchase other stocks.

15. Although Garland is an unsophisticated investor who relied on the experience and knowledge of the broker-dealer and its agents. Harrington purchased low-price speculative stocks in Garland's account that generated high commissions for Harrington but offered little economic benefit to Garland.

16. From January, 2000 through July 2000, Garland deposited a total of $125,604.55 in cash and $32,693.50 in securities. From January, 2000 to October, 2000, Respondents generated $26,036.88 in commissions, charged Garland $2,459.43 in margin interest and purchased $433,047.43 in stocks. The account had a turnover ratio of 8.79 percent and a cost to equity ratio of 57.82 percent. The account lost $116,053.92 or 89.74 percent.

17. Garland told Russo, Hopkins and Harrington that they were not authorized to trade on margin, or place trades in market-maker stocks.

18. Account statements and trade confirmation provided to the Division by Garland verify that Harrington placed ten purchases in margin from January 2000 through April 12, 2000.

19. In April 2000, a sales assistant called Garland and notified him that if he (Garland) did not sign a margin agreement his account would be sold out due to margin calls. Garland attempted to contact Harrington to discuss this message, but was unable to reach him. Garland reluctantly signed a margin application on April 12, 2000 and faxed it to Thornwater. Garland received 16 additional margin calls after April 12, 2000.

20. Garland repeatedly asked Harrington to take him out of margin, however, Harrington ignored Garland's requests and made additional purchases in margin.

21. On June 6, 2000, Garland asked Harrington if he was completely out of CICI. Harrington responded that he was. Account statements, however, show that only 2,500 shares of CICI were sold as of June 6, 2000 and the remaining 1,500 shares were not sold until June 8, 2000.

22. As President and CEO of Thornwater, Grabowski had a duty to supervise Thornwater's agents and implement programs designed to detect and prevent violations of securities laws.

23. Concerned about his account, Garland called Thornwater and spoke to Chee Yang ("Yang"), the compliance manager. Yang asked Garland to make a written complaint will all the details. A copy of this complaint was sent to the Division in August 2001.

24. On December 10, 2001, Division auditors attempted to conduct an audit of Respondent including an examination of Respondent's books and records. The auditors documented portions of their audit with a video tape.

25. Thornwater prohibited the Division from videotaping in its offices and refused to provide the books and records for examination until the videotape was surrendered.

26. Thornwater and its legal counsel Ziegler, Ziegler and Altman LLP ("ZZA") contacted Grabowski who was in England at the time. Grabowski gave explicit instructions not to supply the Division with any documentation until the Division turned over the videotape used to document the examination.

27. The auditors refused to turn over the videotape and informed Thornwater that its license in Utah would be suspended if Respondent did not provide the Division access to the books and records.

28. When Respondent refused to provide the books and records, the Division issued an Emergency Order to Suspend Respondent's license.

29. The Notice of Agency Action ("Notice") sent to Respondent provided Respondent 30 days to respond to the suspension and set a hearing date. The Notice warned that the

suspension would become permanent if the Division did not receive a response and/or Respondent did not appear for the hearing.

30. Respondent did not file a response or appear at the hearing and on January 5, 2002, Respondent's were held in default and a permanent order of suspension was issued.

31. On March 11, 2002, Respondent filed a motion to set aside the default order. That motion was denied on March 13, 2002.

32. Although Respondents are not currently licensed in Utah, the withdrawal provisions found in §61-1-6(6)(c) of the Act provide that "if no proceeding is pending or instituted, and withdrawal automatically becomes effective, the director may initiate a revocation or suspension proceeding under Section 61-1-6 within one year after withdrawal became effective.

33. Each Respondent withdrew his license in March 2002 so revocation proceedings are appropriate under §61-1-6(6) of the Act.

GROUNDS FOR RELIEF

34. Section 61-1-1 of the Act states:

> **It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly to:**
> **(1) employ any device, scheme or artifice to defraud;**
> **(2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or**

(3)engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

35. Harrington misrepresented facts about his experience including but not limited to the fact that he had worked for the SEC. He also stated that he had non-public information pertaining to the stocks he was attempting to sell to or had sold to Garland. These representations made the statements about Harrington's knowledge and experience misleading.

36. In addition, Hopkins misrepresented himself as the President of Thornwater when he was not.

37. Section R164-1-3 of the UAC provides a list of acts which are deemed fraudulent under §61-1-1(3) of the Act. Included in this list are:

> **(1)(e) Leading a customer to believe that you are in possession of material, non-public information which would impact on the value of a security whether or not you are in possession of the material non-public information.**
> **(1)(h)(vi) failing or refusing to execute sell orders from a customer from whom you or your firm solicited the purchase of the designated security in a principal transaction.**

38. Harrington's statements concerning non-public information about Garland's stocks and Harrington's failure to execute transactions requested by Garland are fraudulent acts in violation of §61-1-1(3) of the Act.

39. Section 61-1-3 of the Act states:

> **It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.**

40. Respondent Harrington executed transactions in Garland's account prior to being licensed in Utah in violation of §61-1-3 of the Act.

41. In addition, Hopkins aided and abetted Harrington in violating the licensing provisions of §61-1-3 of the Act by remaining the broker of record on Garland's account during the time that Harrington was not licensed.

42. Section 61-1-5 of the Act provides the post-licensing provisions for licensed individuals and entities. Section 61-1-5(5)(a) states:

> **All the records referred to in Subsection (1) [accounts, correspondence, memoranda, papers, books and other records] are subject at any time or from time to time to reasonable periodic, special, or other examinations by representatives of the division, within or without this state, as the division deems necessary or appropriate in the public interest or for the protection of investors.**

43. Grabowski violated §61-1-5 of the Act by directing his legal counsel and employees to deny the Division auditors access to the books and records based upon the auditors failure to turn over the videotaped documentation of their audit.

44. Grabowski operated and was the president of a boiler-room. Boiler room is defined by Barron's Financial Guides Dictionary of Finance and Investment Terms as a:

> place where high-pressure salespeople use banks of telephones to call lists of potential investors (know in the trade as sucker lists) in order to peddle speculative, even fraudulent, securities. They are called boiler rooms because of the high-pressure selling. Boiler

> room methods, if not illegal, clearly violate the National Association of Securities Dealers' Rules of Fair Practice, particularly those requiring that recommendations be suitable to a customer's account.

45. To the extent auditors were able to observe the business of Thornwater, it appeared that Thornwater, under the direction of Grabowski, was operating a boiler-room. This is consistent with the complaints alleged by Garland.

46. Sections 61-1-6(1)(b), 61-1-6(1)(g), and 61-1-6(1)(j) of the Act provide that upon approval by a majority of the Securities Advisory Board, the Director, may issue an order suspending or revoking any license granted by the Division, may censure or bar any licensee, and may impose a fine if he finds that it is in the public interest, and that the licensee has (1) willfully violated or willfully failed to comply with any provision of this chapter. . . or any rule or order under this chapter, (2) engaged in dishonest or unethical practices in the securities business, or (3) failed to reasonably supervise its agents or employees.

47. As stated above, Respondent's violated §§ 61-1-1, 61-1-3 and 61-1-5 of the Act warranting disciplinary action under §61-1-6 of the Act.

48. In addition, Respondent's engaged in dishonest and unethical practices in the securities business, defined in §R164-6-1g(C) of the Utah Administrative Code ("UAC") applied to agents in §R164-6-1g(D) to include:

> **(2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.**

(3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

(4) executing a transaction on behalf of a customer without prior authorization to do so.

(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both.

(6) executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

49. Respondent's acts, as described above, are dishonest and unethical business practices as defined in §R164-6-1g of the UAC.

50. It is in the public interest that Respondents' licenses to act as broker-dealer agents be revoked, that Respondents be barred from association with a licensed broker-dealer or investment adviser in this state, and that a fine be imposed.

REQUEST FOR RELIEF

Wherefore, the Division respectfully requests that the Director enter an Order, pursuant to §61-1-6 of the Act and subject to the approval of the Securities Advisory Board, providing:

1. That Respondents' broker-dealer agent licences be revoked;

2. That Respondents be barred from association with a licensed broker-dealer or investment adviser in this state; and

3. That the following fines be imposed:

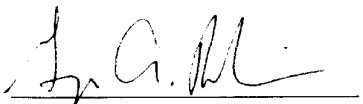
   a. Hopkins: $15,000 fine for aiding and abetting Harrington in circumventing licensing laws and misrepresenting his position;

   b. Harrington: $128,496.31 for unlicensed activity, unauthorized trades, trading in margin without proper documentation, excessive trading, unsuitable transactions and fraud;

   c. Grabowski: $75,000 for failing to supervise and failure to grant Division auditors access to the books and records of Thornwater.

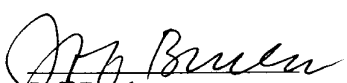
DATED this 17th day of September, 2002.

Utah Division of Securities



George Robison
Director of Licensing

Approved:



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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:	**NOTICE OF AGENCY ACTION**
JAMES HOPKINS, CRD #2688074; **ADAM HARRINGTON RUCKSDESCHEL, CRD #2481064; and** **ROBERT JOHN GRABOWSKI, CRD #1639890;**	**Docket no. SD-02-0138** **Docket no. SD-02-0139** **Docket no. SD-02-0140**
Respondents.	

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of mailing of the mailing of the Petition for Orders Revoking Licenses, Barring Licensees and Imposing a Fine ("Petition"). The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Petition.

Within thirty (30) days of the date of this notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Petition.

If you fail to file a written response, as set forth herein, you will be held in default and an order revoking the licenses and barring the licensees will be entered and a fine may be imposed against you in accordance with Utah Code Ann. §63-46b-11.

After the response has been filed, a discovery schedule will be established and a hearing will be set where you may appear and be heard and present evidence on your behalf.

The presiding officer in this case is S. Anthony Taggart, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600. The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. At such hearing, the Division will be represented by the Utah Attorney General's Office, 160 East 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310. At the hearing, you may appear and be heard and present evidence on your behalf.

You may attempt to negotiate a settlement of the matter without filing an answer or proceeding to a hearing. Should you so desire, please contact the Utah attorney General's Office. Question regarding the Order to Show Cause and Notice of Agency Action should be directed to Jeff Buckner, Assistant Attorney General, 160 E. 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

DATED this 23rd day of September, 2002.

S. Anthony Taggart
Director, Division of Securities
Utah Department of Commerce

Certificate of Mailing

I certify that on the 23rd day of September, 2002, I mailed, by certified mail, a true and correct copy of the Petition and Notice of Agency Action to:

James Hopkins
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Certified Mail # 70001670 00006025 3171

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[illegible]
Executive Secretary