Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
Facsimile: 801 530-6980

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

IN THE MATTER OF: **RICHARD BENTON, CRD #1027495;** **ROUND HILL SECURITIES INC.,** **CRD #35223;** **Respondents.**	**PETITION FOR ORDER OF CENSURE, SUSPENSION OF LICENSE AND IMPOSITION OF FINE** **Docket No.** SD-05-0022 **Docket No.** SD-05-0023

TO: Richard Benton
8199 Stonehill Lane
Salt Lake City, UT 84121

Round Hill Securities Inc.
3191 Danville Boulevard
Alamo, CA 94507

Pursuant to the authority of § 61-1-6 of the Utah Uniform Securities Act ("Act"), the Utah Division of Securities ("Division") hereby petitions the Director of the Division to enter an Order, subject to the approval of the Securities Advisory Board censuring Round Hill Securities Inc. and suspending the license of Richard Benton ("Respondents"). In support of this petition, the Division alleges the following:

I. STATEMENT OF FACTS

A. Richard Benton ("Benton") is currently licensed as broker-dealer agent, general securities principal and an options principal with Eplanning Securities, Inc.

B. Prior to working for Eplanning, Benton was associated with Round Hill Securities, Inc., ("Round Hill") from October 25, 1996 through November 5, 2003. Benton resigned from Round Hill on November 5, 2005.

C. Round Hill was incorporated in the state of California 1993 to the present and has been licensed in Utah since August 14, 1995.

D. Round Hill has no branch offices in Utah.

E. On or about October 1, 2003, the Division of Securities ("Division") received a complaint letter from an attorney of Helen Wyatt ("Wyatt") concerning Stephen Nebeker ("Nebeker"), a broker-dealer of Round Hill.

F. Wyatt's letter alleged that Nebeker had excessively traded Wyatt's account, made unsuitable recommendations, and failed to disclose costs and fees associated with the investments sold to Wyatt.

G. The Division's investigation into Wyatt's complaint letter revealed the following:

1. On or about October 10, 2000, Round Hill opened an IRA account for Wyatt. Nebeker was the broker-dealer agent of record on the account.

2. From September 2001 to August 2003, Wyatt deposited $41,403.17 into an IRA account. During that time, the account generated $18,426.77 in commissions and ticket charges.

3. The portfolio was turned over an average of 9.6 times a year. Given the

commissions and other charges, the account would have to earn 44.78% annually to merely break-even.

4. During the 24 months of analysis, Wyatt's account value decreased from an initial deposit of $41, 403.17 to $13, 960.

5. According to trade tickets and confirmations provided by Round Hill, most of the transactions in Wyatt's account were made pursuant to Nebeker's recommendations.

6. Many of the stocks in Wyatt's account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.

7. According to Round Hill's initial new account form, Wyatt is retired with an approximate annual income of $50,000, an approximate net worth of $500,000+ and investment objectives of "growth [and] income."

8. At the time of the account opening, Wyatt was 61; however Wyatt's initial new account form lists the "approximate age" of Wyatt as 50.

9. An updated new account form was completed on March 5, 2002. According to the updated new account form, Wyatt is retired with an approximate annual income of $75,000, an approximate net worth of $1,700,000 and an investment objective is as "growth – trading."

10. Another updated new account form was completed in August of 2002. According to this updated new account form, Wyatt is retired with an approximate annual income of $75,000, an approximate net worth of $1 million and an investment objective of "aggressive."

11. Wyatt's signature does not appear on the initial or updated forms.

12. Wyatt represents that at the time she met Nebeker she informed him that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.

13. Round Hill provided a copy of a "happiness letter", dated August 9, 2002 (just prior to Wyatt's account form being updated on August 12th to reflect a new investment objective of "aggressive").

14. The "happiness" letter was sent by Benton, Nebeker's supervisor, and is a standard form letter Round Hill sends out based on the activity in a client's account. The letter stated:

> "It is the policy of [Round Hill], along with branch managers such as myself, to periodically review client accounts in the interest of confirming that the activity in an account is consistent with the goals, time horizon, financial capability and risk tolerance of the account owner. During a standard review of customer accounts, your accounts have been brought to our attention. First of all, I would like to express my appreciation for your business. You are a valued client and I want to ensure that we maintain open lines of communication. The purpose of this letter is not to restrict the manner in which you conduct your business at [Round Hill], but rather to advise you of the inherent risks associated with your account activity and positions, and to confirm that they are in line with your current investment objectives. Please sign below to confirm that you are aware of the activity and holdings in your accounts..."

15. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an "aggressive" investment objective).

16. Despite Wyatt's signature, the Division deems this letter to be insufficient proof

that Wyatt was in fact aware of the activity and the risks associated with said activity. Moreover, this type of trading strategy was not suitable for Wyatt given her specific facts and circumstances.

17 The "happiness letter" is vague and ambiguous in that it does not specifically discuss what type of activity is occurring in Wyatt's account, why this activity might be problematic, losses suffered in Wyatt's accounts, or the "inherent risks" associated with the activity in her account.

Wyatt; Trust Account

18. On or about December 7, 2000, Round Hill opened an account for the Wyatt Trust listing Wyatt as the trustee and Nebeker as the broker-dealer agent of record on the account.

19. From July 2000 to August 2003, Wyatt deposited $150,000 into the trust account. During that time, the account generated $41,167.69 in commissions and ticket charges.

20. The portfolio was turned over an average of 4.92 times a year. Given the commissions and charges, the account would have to earn 17.80% annually to merely break-even.

21 During the 37 months of analysis, Wyatt's account value decreased from an initial deposit of $150,000 to $54,492.03.

22. According to trade tickets and confirmations provided by Round Hill, most of the transactions in Wyatt's account were made pursuant to Nebeker's recommendations.

23. Many of the stocks in the account were purchased, sold, and in many cases repurchased again, within a matter of days or weeks.

24. There was no initial new account form for Wyatt's trust account in the account documentation provided by Round Hill. Round Hill did provide three account update forms: the first dated March 12, 2002, the second dated August 12, 2002 and signed by principals on August 12th and 13th, and the third dated August 12, 2002 and signed by principals on August 15th and 16th.

25. According to the March 2002 updated new account form, Wyatt is retired with an approximate annual income of $50,000 (despite the fact that the March 2002 updated account form for Wyatt's IRA lists Wyatt's annual income as $75,000) and an approximate net worth of $1,700,000. Wyatt's investment objective is listed as "growth, trading."

26. According to the August 2002 updated new account forms, Wyatt is retired with an approximate annual income of $75,000 and an approximate net worth of $1 million. H.W's investment objective is listed as "aggressive growth."

27. Wyatt's signature does not appear on the initial or updated forms.

28. Wyatt represents that at the time she met Nebeker she informed him that she was a retired widow with a limited net worth and she was only interested in safe, conservative investments because she needed to preserve and safeguard the money her deceased husband had left her for retirement.

29. Round Hill provided a copy of a "happiness letter", dated August 9, 2002 (just prior to H.W's account form being updated on August 12th to reflect a new

investment objective of "aggressive growth"). This letter was sent by Benton, Nebeker's supervisor, and is the same standard form letter Round Hill sent to Wyatt regarding her IRA account.

30. Wyatt signed this letter on August 12, 2002 (the same day that her account documentation was updated to reflect an "aggressive growth" investment objective).

31. Despite Wyatt's signature, the Division deems this letter to be insufficient proof that Wyatt was in fact aware of the activity and the risks associated with said activity. This letter is vague and ambiguous in that it does not specifically discuss what type of activity is occurring in Wyatt's account, why this activity might be problematic, losses suffered in Wyatt's accounts, or the "inherent risks" associated with the activity in her account. Moreover, this type of trading strategy was not suitable for Wyatt given her specific facts and circumstances.

32. According to Nebeker's CRD disclosure, on November 6, 2003, Wyatt filed a lawsuit in U.S. District Court. On December 18, 2003, Wyatt's suit was moved to NASD Arbitration. On August 31, 2004, Wyatt reached a settlement agreement whereby Wyatt received $90,000 from Round Hill and/or Nebeker.

33. It is unclear from the CRD record whether Nebeker contributed any amount to the $90,000 paid to Wyatt.

Failure to Supervise

34. As part of its supervisory system, Round Hill obtained monthly exception reports

from Bear, Stearns Securities Corp. ("Bear Stearns"). One such exception report is the "Big Issues" exception report which identifies activity in client accounts that raise a red flag (e.g., account turnover, account performance, commissions generated from an account, etc.).

35. Round Hill provided a summary of the number of Big Issues reports generated for Wyatt's two accounts.

36. During an 18-month period from July 2001 through December 2002, either one or both of Wyatt's accounts were listed on the Big Issues report for 11 of the 18 months. For Wyatt's account, the activities in question on these Big Issue reports were account turnover, account concentration, account performance, and commissions generated from the account.

37. Based on the documentation provided by Round Hill, the Big Issues reports were provided to Terry Emfinger ("Emfinger"), Benton's and Nebeker's Regional Sales Supervisor, and either Benton or Nebeker.

38. Benton and Nebeker were subsequently required to submit an Account Report Form providing specific client information and Nebeker's comments relating to the account.

39. According to Round Hill's Big Issues summary report, Round Hill did not provide Big Issues reports to Emfinger, Benton or Nebeker for six out of the 11 months in which one or both of Wyatt's accounts was/were listed on the monthly Big Issues report and therefore did not require Benton and Nebeker to submit account reports discussing the relevant activity.

40. According to comments on the summary report, Round Hill's Compliance Department relied on past responses provided by Benton and Nebeker for those six months.

41. Round Hill provided seven Account Report Forms completed by Nebeker and Benton for one or both of Wyatt's accounts. On these report forms, Nebeker was required to provide the client's age; occupation; annual income; liquid net worth; net worth; primary investment objective; the approximate date the client's objectives, income, liquid net worth, and net worth figures were last obtained from the client; the percentage of trades recommended by Nebeker; how often Nebeker spoke with the client; the approximate profit and loss in the account; and an explanation as to account activity and strategies, client sophistication, recent changes in client objectives, changes from past patterns of investing, etc.

42. Four of Nebeker's seven explanations on the report forms indicate that Wyatt is going to be transferring large sums into her accounts at Round Hill and that Nebeker had known Wyatt for many years.

43. Despite Wyatt's representations to the contrary, Nebeker states on four of the seven report forms that Wyatt wants to be aggressive with her account and that she is very knowledgeable and intelligent vis à vis the market and her investments. Furthermore, it appears that Nebeker copied some of his explanations from previous report forms.

44. In a handwritten statement dated February 7, 2003, Benton stated that with regards to a Big Issues report generated on H.W's two accounts, there is a "happiness

letter" on file from August 12, 2002. Benton further states that Wyatt "now owns the Eaton Vance Income F[un]d" and that he will "monitor the accounts and if she begins to trade again, I will contact her and obtain a new letter."

45. In the documentation provided by Round Hill, there were only two "happiness letters" addressed to Wyatt: the August 12, 2002 letter signed by Wyatt and discussed above and a November 5, 2002 letter that is signed by Emfinger, but not by Wyatt.

46. In a typewritten statement dated August 6, 2002, Benton states that he had "spoken to Wyatt 4 to 5 times in the last year, and she is aware of the activity, losses and commission credit in the account. All commissions in the account have been regular and below."

47. In another typewritten statement dated November 5, 2003, Benton stated:

> "[Wyatt] always knew what was in her account and approximately the price when I spoke to her about her investments. She was in the office at least once a quarter, often more than that. I would speak to her most times when she was in the office, although not always about her investments. I review the trade blotter every day. I know that many of her trades were unsolicited because I took some of [t]hem from her over the phone when Mr. Nebeker was out of the office. We also have "Big Issue" reports that relate to various things in accounts; turnover, commissions, losses, etc. When these came out I would have Mr. Nebeker write a response to the issue and I would review the account. I would speak to Mrs. W. to discuss her account and on at least two occasions we also had her sign a letter concerning her account. She usually came into the office to sign these or to hand deliver them…"

48. Despite Benton's representation to the contrary, most of the trades in Wyatt's account were solicited trades. Additionally, despite Benton's representation to the

contrary, Round Hill has only provided proof of one "happiness letter" being signed by Wyatt and, as discussed above, the Division deems that letter to be insufficient. There is no other evidence of any additional supervisory or compliance review conducted on Wyatt's accounts.

49. Additionally, Benton's CRD disclosure record indicates that Round Hill initiated an internal review on Benton "because the number of client complaints originating from [Benton's] office between 2001-2003 indicated a lack of supervision." Benton voluntarily resigned while under internal review .

50. The above findings evidence that Benton and Round Hill failed to reasonably supervise Nebeker and as a result Nebeker was able to engage in excessive trading and make unsuitable investment recommendations in Wyatt's accounts.

Books and Records

51. In a letter dated February 17, 2004, Round Hill informed the Division that it could not provide the documentation listed below because the documentation was "maintained by the Registered Representative making the recommendations and not at the Corporate Office."

    a. Copies of all reports, analyses, notes, financial plans, and recommendations made for the purchase or sale of securities, including any variable and fixed contracts/policies, in Wyatt's accounts;

    b. Copies of all prospectuses that were in effect for all securities products discussed or recommended for Wyatt's accounts; and

    c. Copies of all commission reports and commission-related documents

which would disclose any compensation and consideration paid to Nebeker, and any other persons, as a result of transactions in Wyatt's account.

52. At the time of Round Hill's letter, Nebeker was no longer employed by Round Hill.

53. By allowing its agents, upon termination, to retain books and records of the firm, it appears that Round Hill is not maintaining all books and records of the firm.

GROUNDS FOR SUSPENSION AND CENSURE

(Failure to Supervise Under § 61-1-6 of the Act)

H. Benton and Round Hill violated § 61-1-6(2)(j) of the Act because they failed reasonably to supervise their agent Nebeker, who made unsuitable recommendations and excessively traded Wyatt's accounts.

(Failure to Maintain Books and Records of the Firm Under Utah Administrative Code R 164-5-1(C))

I. Round Hill violated Rule R164-5-1(C) of the Utah Administrative Code ("UAC") because Round Hill failed to maintain and retain books and records required by the UAC.

(Dishonest and Unethical business practices Under Utah Administrative Code R 164-6-1g)

J. Round Hill violated Rule R164-6-1g(C)(2) of the Utah Administrative Code ("UAC") by 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.

K. Round Hill violated Rule R164-6-1g(C)(3) of the Utah Administrative Code ("UAC") by recommending to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that tsuch 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.

II. REQUEST FOR RELIEF

The Division requests that the Director enter an order pursuant to Utah Code Ann. § 61-1-6 of the Act and subject to the approval of the Securities Advisory Board, prohibiting Respondent Benton from acting in the capacity of a supervisor and suspending Benton's license for a period of not less than two weeks. The Division also requests that Benton be ordered to pay a fine of $10,000 at hearing. Further, the Division requests that Respondent Round Hill Securities Inc. be censured and be ordered to pay a fine of $60,000 at hearing.

DATED this 13th day of May, 2005.

George Robison
Director of Licensing
Utah Division of Securities

Approved:

Laurie L. Noda
Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600
Facsimile: 801 530-6980

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

IN THE MATTER OF: **RICHARD BENTON** **CRD# 1027495;** **ROUND HILL SECURITIES INC.** **CRD # 35223;** **Respondents.**	**NOTICE OF AGENCY ACTION** **Docket No.** SD-05-0022 **Docket No.** SD-05-0023

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 the mailing of this Notice. 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 for Order of Censure, Suspension of License and Imposition of Fine.

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.

After your response is filed, a hearing will be set at a date and time agreed upon by the parties.

If you fail to file a written response, as set forth herein, or fail to appear at the hearing, you will be held in default, an Order to Cease an Desist will enter, and a fine will be imposed against you in accordance with Utah Code Ann. §64-46b-11.

The presiding officer in this case is David N. Preece, 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 Clinton D. Jensen, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6021. At such hearing, the Division will be represented by the 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 hearing. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Petition and Notice of Agency Action should be directed to Laurie Noda, Assistant Attorney General, 160 E. 300 South P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

Dated this 20 day of May, 2005.

David N. Preece
Director, Division of Securities
Utah Department of Commerce

Certificate of Mailing

I certify that on the 23RD day of May, 2005, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition for Order of Censure, Suspension of License and Imposition of Fine to:

Richard Benton
8199 Stonehill Lane
Salt Lake City, UT 84121

Round Hill Securities Inc.
3191 Danville Boulevard
Alamo, CA 94507

Certified Mail # 7004 1160 0004 1730 6859

Certified Mail # 7004 1160 0004 1730 6866

Pamela Radzinski
Executive Secretary