

Division of Securities  
Utah Department of Commerce  
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P.O. Box 146760  
Salt Lake City, Utah 84114-6760  
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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**IN THE MATTER OF:**

**STEVEN B. HEINZ, CRD #1227117**

**Respondent.**

**STIPULATION AND CONSENT  
ORDER**

**Docket No. SD-06-0021**

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The Utah Division of Securities (“Division”), by and through its Director of Licensing, George Robison and Steven B. Heinz, CRD #1227117 (“Heinz”) hereby stipulate and agree as follows:

1. Heinz was the subject of an examination conducted by the Division into allegations that he violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, *et seq.*
2. On April 27, 2006, the Division filed a Petition for Order Revoking or Suspending Licensee and Imposing a Fine against Heinz.
3. In lieu of proceeding with the formal action, Heinz and the Division have agreed to settle this matter by way of this Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all claims the Division has against Heinz pertaining to this matter.

4. Heinz admits the jurisdiction of the Division over him and over the subject matter of this action.
5. Heinz waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Heinz has read the Order, understands its contents and submits to this Order voluntarily. No promises or threats have been made by the Division, nor by any representative of the Division, to induce Heinz to enter into this Order, other than as described in this Order.
7. Heinz is represented by attorney Jonathan O. Hafen and is satisfied with the legal representation he has received.

#### **I. FINDINGS OF FACT**

8. Heinz has been licensed in Utah as a broker-dealer agent with Ogilvie Security Advisors Corporation ("Ogilvie") since April 2004.
9. Prior to becoming associated with Ogilvie, Heinz was employed with Northwestern Mutual Investment Services, LLC ("NWM") from October 25, 1983 to March 31, 2004. Heinz was also employed with Robert W. Baird & Co. ("RWB"), a broker-dealer affiliated with NWM, from May 1993 to January 2002.
10. Heinz was permitted to resign from NWM during an internal review of his conduct relating to a customer complaint by S.S.
11. Heinz has taken and passed the Series 6, Investment Company/Variable Contracts Representative Licensing Examination and the Series 63, Uniform Securities Agent State Law Examination.

12. On August 1, 2003, the Division received a complaint letter from S.S. concerning Heinz.
13. The letter alleged that Heinz misrepresented and/or omitted material facts related to S.S.'s purchase of various mutual funds and made unsuitable investment recommendations.

### **Mutual Fund Share Classes**

14. A single mutual fund, with one portfolio and one investment adviser, may offer more than one "class" of its shares to investors with each. Each class represents a similar interest in the mutual fund's portfolio.
15. The principal difference between the classes is that the mutual fund will charge different fees and expenses depending upon the share class. Additionally, different share classes may result in different sales compensation being paid to broker-dealers and their agents.
16. Class A shares typically impose a front-end sales charge, meaning that when an investor invests in the fund, a certain percentage of the investor's money is not actually invested. This non-invested percentage is used to pay an initial sales charge.
17. A mutual fund may offer a discount on the front-end sales charge if the investment is a) a large purchase; b) the investor already holds other mutual funds offered by the same fund family; or c) the investor commits to regularly purchasing shares of the mutual fund.
18. Class A shares may also impose an asset-based sales charge. Asset-based sales charges are fees that are taken out of the mutual fund's assets to cover the expenses of marketing and distributing the fund's shares. These are fees that are indirectly paid by the investor.
19. Asset-based sales charges include "12b-1" fees, also called "trails." The trail is calculated daily for as long as the shares are held.

20. The fund automatically assesses the trail on the customer's investment and pays it to the brokerage firm that sold the fund to the customer. The brokerage firm usually divides the trail with its registered representative as a sales commission.
21. Because trails are deducted from the investor's principal, higher trails mean there will be less principal available in the account for capital gains and dividends, going forward.
22. The asset-based sales charge for Class A shares is generally lower than the asset-based sales charge imposed by other share classes.
23. Class A shares are usually considered to be most suitable for those investing larger amounts in the fund over a longer period of time.
24. Class B shares typically do not impose a front-end sales charge, but they do impose asset-based sales charges that may be higher than those that an investor would pay if Class A shares were purchased.
25. Class B shares usually impose a contingent deferred sales charge ("CDSC"), which the investor pays upon the sale of their shares. The CDSC normally declines and eventually is eliminated the longer the investor holds the shares.
26. The CDSC is not imposed on dividend or capital gain reinvestments. Each fund calculates its CDSC in a slightly different way. Once the CDSC is eliminated, Class B shares often then "convert" into Class A shares. When converted, the shares charge the same asset-based sales charge as the Class A shares.
27. Class B shares are generally appropriate for investors who do not want a front-end charge and are investing a smaller amount.

28. Class C shares typically do not carry a front-end sales charge at the time of purchase, but they may impose a CDSC or other redemption fees.
29. Class C shares typically impose higher asset-based sales charges than Class A shares, and since their shares generally do not convert into Class A shares, their asset-based sales charge will not be reduced.
30. Class C shares are typically the most economical of the three share classes for individuals with short investment horizons.
31. The expense ratio is the percentage of total investment that shareholders pay annually for mutual fund operating expenses and management fees. In most cases the expense ratio for Class C shares would be higher than Class A shares, and even higher than Class B shares, if the investor held the shares for a longer period of time.
32. Class C shares are generally appropriate for investors who do not want a front-end charge and are investing a smaller amount.
33. Breakpoints are discounts for quantity purchases. Nearly every mutual fund has a schedule of sales charges in which the sales charges decrease as an investor purchases larger and larger quantities of fund shares. The different points at which sales charges are reduced are called breakpoints.
34. Breakpoint sales are sales made by brokers just below the breakpoint with the result that the customer pays a higher sales charge than what would have been paid had the customer known of the reduction and had invested a few more dollars.
35. A letter of intent (“LOI”) has been designed by the fund industry to allow investors to

take advantage of the reduced sales charge, even though they do not at present have the full amount of dollars to invest to reach the breakpoint. It is used when the investor expects to be able to invest the monies within a 13-month period.

36. To qualify for a reduced sales charge, the purchaser must be a) an individual; or b) an individual acting on behalf of minor children, so that a parent can buy for several children in a separate account, and pool all investments to qualify for the reduced sales charge; or c) a trustee or other fiduciary of single trust or single fiduciary account or a pension or profit sharing plan qualified under Section 401 of the IRS Code.
37. NASD IM-2830-1 generally prohibits broker-dealers and their agents from selling mutual fund shares in dollar amounts just below the sales charge breakpoint in order to increase the broker-dealer's and agent's compensation. These principles apply equally to recommending a particular fund share class to an investor.
38. NASD Notice to Members 94-16 requires firms to disclose the existence of the breakpoints to enable the customer to evaluate the desirability of making a qualifying purchase.
39. NASD Notice to Members 95-80 requires firms to provide sufficient information for investors to understand and evaluate the structure of multi-class funds. Investors must also be told the differences among a front-end load, a spread load (deferred sales charge and 12b-1 fee), and a level load (sales charge which does not vary depending on how long the investor holds the investment), and be instructed about why one type of fee may be higher or lower than another. Disclosure also must be made explaining how factors such

as the amount invested, the rate of return, the amount of time the investor remains in the fund, and the fund's conversion features affect an investor's overall costs.

The Division's examination into S.S.'s complaint revealed the following:

**S.S. and N.S. Joint Account**

40. In spring 2001, S.S. was seeking a local investment professional to watch over and manage her money. She also decided at that time to transfer her retirement assets to a local investment firm. At the time, S.S. was 50 years old and single. She was responsible for the financial affairs of herself, her son, and her mother, and anticipated retiring within ten years.
41. After meeting with Heinz on several occasions, in April 2001 S.S. opened three accounts with him. The first account was a joint account she opened with her mother, N.S. The other two accounts were an IRA account and a rollover IRA account. S.S. invested a total of \$627,000 with Heinz.
42. The joint account was opened on April 27, 2001. The new account form lists their investment objective as "income with emphasis on safety."
43. The account form also indicated that S.S. and her mother had zero to one year's investment experience with stocks, bonds, options, and annuities, and more than five years investment experience with mutual funds.
44. When she met with Heinz, the extent of S.S.'s investing experience consisted of her 401(k) at her former employer, Dartmouth Hitchcock, and an IRA account at Salomon Smith Barney. Her son's father selected the mutual funds in which S.S. invested in her

- 401(k) plan, and she relied on one of Smith Barney's investment professionals to make investment decisions and manage the Smith Barney account.
45. N.S. had no investing experience prior to opening an account with Heinz.
  46. S.S. and N.S. sought investment advice from Heinz because they wanted someone to watch over their accounts and make investment decisions because they felt they did not have enough experience and expertise to know which investments would be best given their situation and objectives.
  47. S.S. stated that Heinz never disclosed that there were different mutual fund share classes, nor did he discuss the differences between mutual fund share classes. S.S. also stated that Heinz never discussed breakpoint discounts, and never disclosed that there may be a contingent deferred sales charge if S.S. were to sell her mutual fund shares within a certain time period.
  48. S.S. and her mother signed many forms when opening their accounts. New account documents were filled out by someone other than S.S. or N.S.
  49. Among the new account documents signed by S.S. and her mother was a client acknowledgment letter indicating that the costs and benefits of "A," "B," and "C" shares had been explained to them. However, that document was one of many, and despite her signature, S.S. does not recall any discussion with Heinz of share classes, their costs and benefits.
  50. During one of the meetings S.S. had with Heinz prior to purchasing any mutual funds, Heinz reviewed the current investments in her Dartmouth Hitchcock 401(k) account and

- the Salomon Smith Barney account and compared them to other mutual funds he was recommending. Heinz provided S.S. and N.S. prospectuses for several mutual funds.
51. S.S. did not recall Heinz ever discussing what specific percentages of money would be invested in any specific fund. He essentially told her they should bring the money in, and he would invest it and “make it work.”
  52. On October 25, 2001, \$44,000 (the majority of the funds in the account) was invested in the Pilgrim Senior Income Fund (“PSI Fund”).
  53. The PSI Fund prospectus, dated April 2, 2001, described the PSI Fund as a professionally managed portfolio comprised primarily of senior loans, an investment typically not available directly to individual investors.
  54. The prospectus also stated that because the senior loans in the Fund’s portfolio were typically below investment grade credit quality and the portfolio would be leveraged, the Fund had speculative characteristics, and that the Fund could not guarantee that it would achieve its investment objective.
  55. While the PSI Fund’s investment objective of providing investors with a high level of monthly income appeared to meet S.S. and N.S.’s income investment objective, the PSI fund offered limited liquidity to its investors.
  56. The PSI Fund’s speculative characteristics (e.g., use of leverage, investment in below investment grade quality senior loans, etc.) did not meet the “with emphasis on safety” segment of S.S. and N.S.’s investment objective. Moreover, during the relevant time period (October 2001 through August 2003), all of the PSI Fund dividends paid to S.S.

and N.S.'s account were actually reinvested in the fund rather than deposited as income into the account's money market fund.

57. Based on its speculative characteristics and limited liquidity, PSI Fund was not suitable for S.S. and N.S.

### **S.S. IRA Account**

58. On or about April 25, 2001, S.S. opened an IRA account with NWM. The new account form lists S.S.'s investment objective as "appreciation with acceptance of risk." The account form also indicates that S.S. had zero to one year's investment experience with stocks, bonds, options, and annuities, and more than five years investment experience with mutual funds.
59. As with the joint account documents, several documents were filled out by someone other than S.S. Heinz or one of his associates checked the "appreciation with acceptance of risk" category under "Investment Objective" on the new account form.
60. Despite that representation, S.S.'s investment objectives were conservative. As indicated above, she was 50 years old and single. She was responsible for the financial affairs of herself, her son, and her mother, and anticipated retiring within ten years. Accordingly, she sought the guidance of an investment professional, Heinz, to achieve her investment objectives.
61. Had Heinz or his associates adequately explained and made known the levels of risk associated with the investments he had recommended, S.S. would not have agreed to invest in those mutual funds.

62. Although S.S. signed client acknowledgment letters regarding the mutual funds she had purchased, S.S. maintains that Heinz never disclosed that there were different mutual fund share classes, nor did he discuss the differences between mutual fund share classes. Heinz never discussed breakpoint discounts and never disclosed that there may be a contingent deferred sales charge if S.S. were to sell her mutual fund shares within a certain time period.
63. On May 14, 2001, \$179,674.82 was transferred from Salomon Smith Barney, the previous custodian/trustee of S.S.'s IRA account, into S.S.'s IRA account at NWM. The transfer documentation requested that Salomon Smith Barney liquidate all of the assets in S.S.'s IRA account and that all of the assets be transferred to NWM's predecessor, RWB.
64. Heinz put S.S.'s money into 17 different mutual funds. With the exception of one fund, the Franklin Floating Rate Fund, Heinz purchased Class B shares of each fund.
65. Prospectuses for each fund chosen by Heinz indicate that each fund offered breakpoint discounts. The American Fundamental Investors Inc. Fund offered breakpoint discounts starting at \$25,000. The Pilgrim/ING funds, the Putnam funds, the Van Kampen Comstock Fund, the State Street Research Aurora Fund, the MFS Capital Opportunities Fund, and the Massachusetts Investors Growth Stock Fund offered breakpoint discounts starting at \$50,000. The MFS Utilities Fund offered breakpoint discounts starting at \$100,000.
66. In addition, most of the fund families offered like-kind investment funds in which S.S. could have invested, rather than investing in 17 different fund families. Consolidating

investments within fund families would have allowed S.S. to obtain breakpoint discounts.

67. The Class B shares purchased in S.S.'s IRA and Rollover IRA accounts assessed higher 12b-1 (asset-based) fees than the funds' corresponding Class A shares. Class A share 12b-1 fees for the purchased funds ranged from 0.23% to 0.35% of assets under management. The Class B share 12b-1 fee for each of the purchased funds was 1.00%. In addition, each purchased fund's Class B shares would convert to Class A shares eight years after purchase.
68. Given the amount of money S.S. invested in mutual funds (\$627,780.81 between all three accounts), the existence of like-kind funds at the above fund families, and S.S.'s time horizon (ten years), the purchase of Class B shares was not a suitable investment recommendation.

#### **S.S. Rollover IRA Account**

69. Heinz told S.S. and N.S. that the best strategy was for S.S. to liquidate her 401(k) account with her former employer, Dartmouth Hitchcock, which was held at T.Rowe Price, and another account with Salomon Smith Barney and invest the proceeds in a series of mutual funds that he recommended.
70. Heinz never mentioned that S.S. could have rolled her Dartmouth Hitchcock 401(k) into her current employer's 401(k) plan. Nor did Heinz mention that S.S. could have left the monies in the Dartmouth Hitchcock plan at T. Rowe Price.
71. At the time of the transfer, S.S.'s Dartmouth Hitchcock 401(k) monies were invested in three mutual funds: Fidelity Retirement Growth Fund, Fidelity Equity Income Fund, and

Dreyfus Bond Fund.

72. Heinz recommended S.S. liquidate her 401(k) and invest in similar (like-kind) funds at NWM.
73. As justification for the liquidation and purchase of like-kind funds in S.S.'s NWM account, Heinz claimed that "the Dartmouth Hitchcock 401K consisted of two stock mutual funds and one bond fund, which was moderate in risk...a NMIS [NWM] portfolio was created for a similar risk category investment, which utilized a more diversified mutual fund approach...[and according to Heinz] the NMIS portfolio provided a broader diversification than IHC [S.S.'s new employer] had available. The customers were provided with detailed information about the portfolios and approved of the selections."
74. On May 9, 2001, \$404,105.99 was transferred from T. Rowe Price into S.S.'s rollover IRA at NWM. The transfer documentation requested that all of the assets in S.S.'s IRA account be liquidated and that all of the assets be transferred to NWM's predecessor, RWB.
75. Heinz recommended that S.S. purchase Class B shares in 17 different mutual funds.
76. Each fund's prospectus showed that each fund offered different breakpoint discounts. The American funds offered breakpoint discounts starting at \$25,000. The Pilgrim/ING funds, the Putnam funds, the Van Kampen funds, the State Street Research Aurora Fund, and the MFS Capital Opportunities Fund offered breakpoint discounts starting at \$50,000. The MFS Utilities Fund offered breakpoint discounts starting at \$100,000. Most of the above fund families offered like-kind investment funds in which S.S. could have invested

rather than investing in nine different fund families. Consolidating investments within fund families would have allowed S.S. to obtain greater breakpoint discounts.

77. The Class B shares purchased in S.S.'s account assessed higher 12b-1 (asset-based) fees than the funds' corresponding Class A shares. Class A share 12b-1 fees for the purchased funds ranged from 0.23% to 0.35% of assets under management. The Class B share 12b-1 fee for each of the purchased funds was 1.00%. In addition, each purchased fund's Class B shares would convert to Class A shares eight years after purchase.
78. Given the amount of money S.S. invested in mutual funds (\$627,780.81 among all three accounts), the existence of like-kind funds at the above fund families, and S.S.'s time horizon (ten years), the purchase of Class B shares was not a suitable investment recommendation.
79. In addition, Heinz's recommendation that S.S. liquidate mutual funds in her 401(k) only to invest the proceeds in like-kind funds, which served to enrich him, was unsuitable.

#### **Fraud**

80. Prior to her investments, Heinz provided S.S. with Morningstar mutual fund reports supporting his recommendations which show performance and fee information for Class A shares of each represented fund.
81. With the exception of the Franklin Floating Rate Fund, Heinz purchased Class B shares in S.S.'s accounts.
82. Heinz provided S.S. with a moderately aggressive portfolio proposal for her IRA account. On this report, Heinz, or his assistant, made a notation indicating the Income/Bond Funds

portion of the portfolio would be Class B shares. There is no notation as to share class for the other funds recommended in the proposal.

83. In late November 2002, Heinz provided S.S. with a Portfolio Snapshot Report and a Portfolio Summary Report. These reports indicate that S.S.'s portfolio was in Class A shares. With the exception of the Franklin Floating Rate Fund, however, all of S.S.'s portfolio was in Class B shares.
84. According to S.S., Heinz denied he would make any compensation on the investments he recommended. He told S.S. that he made his money off of wealthy clients, that he would make nothing on S.S.'s initial investment of \$600,000, and that he would only make money on any future investments S.S. and/or her mother might make because he would receive a commission from those transactions.
85. The transactions in S.S.'s and N.S.'s accounts generated \$23,490.92 in gross compensation. Of that amount, Heinz and his partner Peterson were paid a total of \$13,045.16 (Heinz = \$10,475.83, Peterson = \$2,569.33) in compensation from the accounts' inception through August 2003. The remaining \$10,445.76 was paid to NWM and Heinz's network office. Had S.S. known of such compensation, which contradicted Heinz's representations to her, she would not have considered making the transactions he recommended.
86. Heinz indicated in his notes that he told S.S. and N.S. that he would be paid a quarter of a percent trail on Class B shares "and sometimes up to 1%..." A 0.25% trail, however, is indicative of Class A shares, not Class B shares. The Class B shares purchased in S.S.'s

and N.S.'s accounts actually assessed a 1.00% trail. None of the Class B shares assessed a 0.25% trail. As previously indicated, S.S. maintains that Heinz denied he would make any compensation from these transactions and that he did not discuss share classes, their costs or benefits.

87. In February 2003, Heinz met with S.S.'s husband, D.S., and told D.S. that there were substantial penalties associated with liquidating S.S.'s mutual fund investments. According to D.S., this was the first time either he or S.S. had heard of the withdrawal penalties or Class B shares.

## **II. CONCLUSIONS OF LAW**

88. Heinz willfully violated Section 61-1-1(2) of the Act by misrepresenting and/or omitting the following material facts:
- (a) Heinz represented that he would not receive compensation on the mutual investments he recommended when in fact he made \$23,490.92 in gross compensation from transactions in S.S. and N.S.'s joint account;
  - (b) Heinz misrepresented the share class of mutual funds he was going to purchase for S.S.'s and N.S.'s accounts;
  - (c) Heinz misrepresented the performance and fee characteristics of mutual funds held in S.S.'s portfolio;
  - (d) Heinz failed to disclose that based on the amount of money she was investing, S.S. qualified for breakpoints;
  - (e) Heinz failed to disclose the material facts that:

- i) S.S. could have simply maintained her 401(k) account at no cost with its current custodian, or moved it into her current employer's plan; and
- ii) a rollover to similar funds at NWM provided no benefit to her and in fact resulted in additional undisclosed compensation being paid to Heinz.

89. Heinz engaged in dishonest and unethical conduct as proscribed by Utah Admin. Code Rule R164-6-1g(C)(3), made applicable to agents through R164-6-1g(D)(7), by making investment recommendations that were unsuitable for S.S. and N.S. based upon their investment objectives, financial situation and needs.
90. Heinz engaged in dishonest and unethical conduct, warranting sanctions under Section 61-1-6(2)(g) of the Act, by recommending a) that S.S. roll over her 401(k) to similar funds at NWM when she could have maintained the account at no cost with its current custodian or moved it into her current employer's plan; and b) a rollover to similar funds provided no benefit to S.S. and in fact resulted in additional undisclosed compensation to Heinz.

### **III. REMEDIAL ACTION/SANCTIONS**

91. Heinz neither admits nor denies the Division's investigative findings and conclusions, but agrees to pay a fine to the Division in the amount of \$50,000 within thirty (30) days of the entry of this Order. Dollar-for-dollar credit shall be given for any restitution Heinz can prove has been paid to S.S. and N.S.

### **IV. FINAL RESOLUTION**

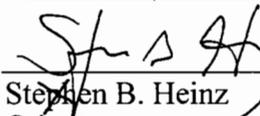
92. Heinz acknowledges that this Order, upon approval by the Division Director and Securities Advisory Board shall be the final compromise and settlement of this matter. Heinz further acknowledges that if the Division Director and Securities Advisory Board do not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
93. Heinz acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against Heinz arising in whole or in part from Heinz's actions, and that the Order does not affect any criminal cause of action that a prosecutor might bring.
94. 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.

Utah Division of Securities

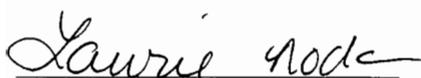
Date: 6/12/07

By:   
George Robison  
Director of Licensing

Date: 5/25/2007

By:   
Stephen B. Heinz  
Steven

Approved:



Approved:



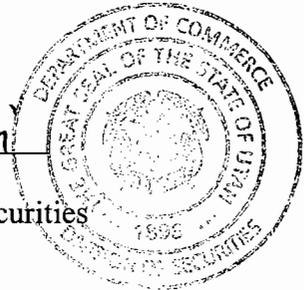
**ORDER**

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Heinz pay a fine to the Division in the amount of \$50,000 within thirty (30) days following the entry of this Order. Dollar-for-dollar credit shall be given for any restitution Heinz can prove has been made to S.S. and N.S.
3. Heinz comply with the requirements of the Utah Uniform Securities Act in all future business in this state.

DATED this 13<sup>th</sup> day of June, 2007.

  
WAYNE KLEIN  
Director, Utah Division of Securities



**BY THE UTAH SECURITIES ADVISORY BOARD:**

The foregoing Order is hereby accepted, confirmed and approved by the Utah Securities  
Advisory Board.

DATED this 26<sup>TH</sup> day of June, 2007.



\_\_\_\_\_  
Tim Bangerter



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Edward L. McCartney



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Laura Polacheck



\_\_\_\_\_  
Mark Pugsley

\_\_\_\_\_  
Craig Skidmore

Certificate of Mailing

I certify that on the 28<sup>th</sup> day of JUNE 2007, I mailed a true and correct copy of the

Stipulation and Consent Order to:

Jonathan O. Hafen  
Parr Waddoups Brown Gee & Loveless  
185 South State Street Suite 1300  
Salt Lake City, UT 84111

Pamela Raszinski  
Executive Secretary