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

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

IN THE MATTER OF:	**PETITION TO CENSURE LICENSEES AND IMPOSE FINES**
WBB SECURITIES, LLC, CRD #118440; and	**Docket No.** SD-07-0054
GARY R. GYGI, CRD #1577760	**Docket No.** SD-07-0055
Respondents.	

Pursuant to the authority of Utah Code Ann. § 61-1-6, the Utah Division of Securities ("Division") hereby petitions the Presiding Officer assigned to this matter ("Presiding Officer") to enter an Order, subject to the approval of a majority of the Securities Advisory Board, censuring WBB Securities, LLC, CRD #118440 and Gary R. Gygi, CRD #1577760, and imposing fines. In support of this petition, the Division alleges:

STATEMENT OF FACTS

1. WBB Securities, LLC ("WBB"), CRD #118440, is a California limited liability company located in San Diego, California. WBB has been a licensed broker-dealer in Utah since January 4, 2006. WBB has been a licensed investment adviser in California since June

17, 2004 and in New Jersey since July 13, 2006. On January 3, 2006, WBB applied for an investment adviser license in Utah, which was approved on February 2, 2007.

2. WBB uses National Financial Services LLC ("NFS"), CRD#13041, as its clearing firm for its brokerage activities.

3. SMC Capital Management, Inc. ("SMC"), IARD #108471, is a Utah corporation located in Sandy, Utah and has been a federal-covered investment adviser registered with the United States Securities and Exchange Commission ("SEC") since April 3, 1971. SMC is notice-filed as a federal-covered adviser in Utah.

4. Eagle Gate Securities, Inc. ("Eagle Gate"), CRD #46959, is a dissolved Utah corporation which was located in Salt Lake City, Utah. Eagle Gate was licensed in Utah as a broker-dealer and investment adviser until it withdrew both licenses on December 31, 2005.

5. Gary R. Gygi ("Gygi)", CRD #1577760, has been licensed in Utah as a broker-dealer agent with WBB since January 4, 2006. On September 14, 2006, WBB submitted an application to license Gygi as an investment adviser representative in Utah. That application was approved on February 5, 2007. Prior to his association with WBB, Gygi was a licensed broker-dealer agent and investment adviser representative with Eagle Gate from April 29, 2003 until December 31, 2005.

6. Following its review of WBB's investment adviser application, in March 2006 the Division sent WBB a letter expressing concerns that the application was incomplete and requested that WBB provide additional information.

7. The Division subsequently spoke with WBB's chief executive officer in April 2006 regarding WBB's incomplete application. However, WBB did not respond in a timely

manner to the Division's request for additional information. Only after the Division sent WBB a letter in August 2006 stating that the Division intended to deny WBB's application as abandoned did WBB respond to the Division's request.

8. As the Division further reviewed WBB's investment adviser application and searched the Internet for additional information, it discovered that Gygi, a broker-dealer agent of WBB, was also soliciting investment advisory clients for SMC.

9. The Central Registration Depository ("CRD")[1] indicated that Gygi was not licensed as an investment adviser representative with SMC.

10. In September 2006, due to WBB's failure to provide additional information in a timely manner as requested by the Division, and the discovery of Gygi's unlicensed activity with SMC, the Division initiated an examination of Gygi's Sandy, Utah office. That examination revealed the following:

Unlicensed Investment Adviser Representative

11. On May 1, 2003, while he was a licensed broker-dealer agent and investment adviser representative with Eagle Gate, Gygi entered into a "Marketing Agreement" with SMC.

12. Pursuant to the terms of the Marketing Agreement, Gygi agreed to a) develop advertising and marketing pieces to promote SMC's investment management services; b) conduct seminars for potential SMC clients; c) act as the primary voice for Salt Lake radio station KSL's daily securities market update segments, which also promoted SMC; and d) solicit

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[1]CRD is a computerized licensing database maintained by the National Association of Securities Dealers ("NASD") (now "FINRA"). CRD contains employment, licensing and disciplinary information on broker-dealers, investment advisers and investment adviser representatives.

new clients for SMC's third-party money management services.

13. In consideration for his services, the Marketing Agreement provided that Gygi would receive fifty percent of the quarterly investment management fee paid by clients that Gygi solicited for SMC.

14. The Marketing Agreement further required Gygi to pay SMC $200 per month to compensate SMC for office space, equipment and secretarial services used by Gygi.

15. While associated with Eagle Gate, Gygi disclosed his solicitor arrangement with SMC as an outside business activity on the CRD.

16. In late November 2005, WBB's clearing firm, NFS, contacted WBB and informed it that Eagle Gate was going out of business and asked WBB to accept Eagle Gate's 'orphaned' accounts and 'orphaned' registered representatives, including Gygi. WBB agreed to do so.

17. On August 1, 2006, SMC and Gygi entered into a "Solicitation Agreement." Although the compensation terms were the same as the 2003 Marketing Agreement, Gygi was no longer required to pay SMC for office space, equipment rental, and secretarial services.

18. Gygi's office contained no signage reflecting his status as a broker-dealer agent of WBB.

19. Although Gygi was never licensed as an investment adviser representative with WBB or SMC, from January through September 2006, he shared in investment advisory fees paid to SMC totaling $37,626.94. This amount represented fifty percent of the quarterly investment management fee paid by the SMC clients that were referred by Gygi.

20. WBB did not file an investment adviser representative application for Gygi until September 14, 2006, after the Division conducted its examination of Gygi's office.

21. SMC did not file an investment adviser representative application with the Division for Gygi until September 15, 2006. The application was withdrawn by SMC as "made in error" on October 17, 2006.

Omissions of Material Fact

22. Although he solicited clients for third-party money management agreements with SMC, Gygi omitted material facts, including but not limited to, the following:

(a) Gygi failed to disclose that he was not licensed as an investment adviser representative with SMC or WBB; and

(b) Gygi failed to disclose the terms under which he received additional indirect compensation for soliciting clients, by receiving, from August 2006 forward, free office space, equipment, and secretarial services from SMC.

WBB's Failure to Supervise

23. Although WBB approved Gygi's Form U4[2], on which he disclosed his activities with SMC, WBB failed to provide written approval of such activities, as required by WBB's written supervisory procedures.

24. WBB failed to disclose to clients who visited Gygi's office that Gygi was associated with WBB.

25. WBB failed to ensure that Gygi was properly licensed as an investment adviser or an investment adviser representative with SMC, and allowed Gygi to solicit investment advisory clients for SMC while not licensed.

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[2]The Form U4, Uniform Application for Securities Industry Registration or Transfer, is a document used to apply for a license as a securities agent. The document is filed with the Division and submitted by WBB.

CAUSES OF ACTION

COUNT I (Gygi)

(Unlicensed Investment Adviser Representative § 61-1-3(3) of the Utah Uniform Securities Act ("Act"))

26. Gygi violated Section 61-1-3(3) of the Act by transacting business in Utah as an investment adviser representative without being licensed in Utah as an investment adviser representative for WBB or SMC.

COUNT II (Gygi)

(Securities Fraud § 61-1-1(2) of the Act - Omissions of Material Fact)

27. Gygi violated Section 61-1-1(2) of the Act by failing to disclose to investors that Gygi was not licensed as an investment adviser representative, which constitutes omission of a material fact necessary in order to make Gygi's representations not misleading.

28. Gygi likewise failed to disclose to investors that from August 2006 forward, he was receiving free office space, equipment, and secretarial support from SMC.

COUNT III (WBB)

(Failure to Supervise under §§ 61-1-6(2)(g),-(j) and Utah Admin. Code R164-6-1(g)(C)(28))

29. Gygi committed violations of the Act as set forth above.

30. Gygi was subject to the supervision of WBB.

31. WBB failed to implement and/or enforce policies and procedures reasonably designed to detect and prevent Gygi's securities law violations.

32. WBB failed reasonably to supervise Gygi, warranting disciplinary sanctions under Section 61-1-6(2)(j) of the Act. WBB's failure to supervise violates NASD Conduct Rule 3010, which violation is a dishonest or unethical business practice under R164-6-1(g)(C)(28), warranting sanctions under Section 61-1-6(2)(g) of the Act.

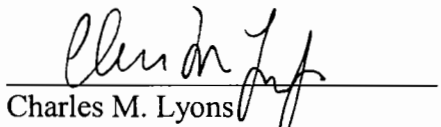
REQUEST FOR RELIEF

The Division requests that, based upon Gygi's violations of the Act, pursuant to § 61-1-6 of the Act and subject to the approval of the Securities Advisory Board, the Presiding Officer enter an order censuring and fining Gygi $40,000.

The Division requests that, based upon WBB's violations of the Act, pursuant to § 61-1-6 of the Act and subject to the approval of the Securities Advisory Board, the Presiding Officer enter an order censuring WBB, and fining WBB $5,000.

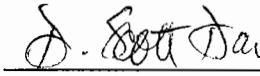
DATED this 23rd day of August, 2007.

UTAH DIVISION OF SECURITIES



Charles M. Lyons
Securities Analyst
Utah Division of Securities

Approved:



D. Scott Davis
Assistant Attorney General

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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:	**NOTICE OF AGENCY ACTION**
WBB SECURITIES, LLC, CRD #118440;	**Docket No.** SD-07-0054
and	
GARY R. GYGI, CRD #1577760	**Docket No.** SD-07-0055
Respondents.	

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Utah Division of Securities hereby commences a formal adjudicative proceeding against you as of the date of 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 accompanying Petition. You may be represented by counsel or you may represent yourself in this proceeding.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your

version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63-46b-6(1). In addition, pursuant to Utah Code Ann. § 63-46b-6(3), the presiding officer requires that your response:

(a) admit or deny the allegations in each numbered paragraph of the Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition not specifically denied are deemed admitted;

(b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and

(c) state in short and plain terms your defenses to each allegation in the Petition, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

After your response is filed, a pre-hearing conference will be held. Utah Admin. Code R151-46b-9(9). The purpose of the pre-hearing conference is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:
Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:
D. Scott Davis
Assistant Attorney General
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63-46b-11; Utah Admin. Code R151-46b-10(11). After issuing the default order, the presiding officer may grant the relief sought against you in the Petition, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63-46b-11(4); Utah Admin. Code R151-46b-10(11)(b). In the alternative, the Division may proceed with a hearing under § 63-46b-10.

The presiding officer in this case is Benjamin Johnson, Director, Corporate Finance, Division of Securities. An administrative law judge will be assigned to hear this matter. At any hearings, the Division will be represented by the Attorney General's Office. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Petition should be directed to D. Scott Davis, Assistant Attorney General, 160 E. 300 South, Fifth Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 23rd day of August, 2007.

Benjamin Johnson
Presiding Officer
Utah Division of Securities

Certificate of Mailing

I certify that on the ~~28TH~~ 29TH day of AUGUST, 2007, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

WBB Securities, LLC
Attn: M. Larae Bakerink
16835 San Bernardo Drive
Suite 203
San Diego, California 92127

Certified Mail # 7005 1820 0003 7191 3135

Gary R. Gygi
4674 W. 9980 N.
Cedar Hills, Utah 84062

Certified Mail # 7005 1820 0003 7191 3142

PAMALA RADZINSKI
Executive Secretary