

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:

WBB SECURITIES, LLC, CRD#118440;
and
Gary R. Gygi, CRD#157760

Respondents.

**STIPULATION AND CONSENT
ORDER AS TO GARY R. GYGI**

Docket No. SD-07-0054

Docket No. SD-07-0055

The Utah Division of Securities (“Division”) and Gary R. Gygi, CRD#157760 (“Gygi”) hereby stipulate and agree as follows:

1. Gygi was the subject of an examination conducted by the Division into allegations that he, his broker-dealer, WBB Securities, LLC, CRD#118440 (“WBB”) and SMC Capital Management Inc., IARD#108471 (“SMC”) violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, *et seq.*
2. On August 23, 2007, the Division filed a Petition to Censure Licensees and Impose Fines against Gygi and WBB. The Division also initiated an administrative action against SMC at that time. The action against WBB is currently pending, and the action against SMC has been resolved by a stipulation and consent order.
3. In lieu of proceeding with the formal action, Gygi 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 Gygi pertaining to this matter.

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

I. FINDINGS OF FACT

8. WBB 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.
9. WBB uses National Financial Services LLC (“NFS”), CRD#13041, as its clearing firm for its brokerage activities.
10. SMC 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.

11. 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.
12. Gygi 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.
13. Prior to this action, Gygi has never been the subject of a complaint, investigation or administrative action by the Utah Division of Securities.
14. Following its review of WBB’s investment adviser application, the Division sent WBB a letter in March 2006 expressing concerns that the application was incomplete and requested that WBB provide additional information.
15. The Division subsequently spoke with WBB’s chief executive officer in April 2006 regarding deficiencies in WBB’s application. WBB did not respond to the Division’s request for additional information until August 2006.
16. During its review, the Division discovered that Gygi, a broker-dealer agent of WBB, was also soliciting investment advisory clients for SMC.

17. The Central Registration Depository (“CRD”)¹ indicated that Gygi was not licensed as an investment adviser representative with SMC.
18. In September 2006, based on the still-incomplete status of WBB’s application 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

19. 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.
20. 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 new clients for SMC’s third-party money management services.
21. 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.
22. 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.
23. While associated with Eagle Gate, Gygi disclosed his solicitor arrangement with SMC as an outside business activity on the CRD.

¹CRD is a computerized database maintained by the Financial Industry Regulatory Authority (“FINRA”). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

24. 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.
25. 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.
26. Gygi's office contained no signage reflecting his status as a broker-dealer agent of WBB.
27. 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.
28. 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.
29. SMC did not file an investment adviser representative application with the Division for Gygi until September 15, 2006, 10 days after the Division conducted its examination of Gygi's office. The application was withdrawn by SMC as "made in error" on October 17, 2006.
30. Although WBB approved Gygi's Form U4², on which he disclosed his activities with SMC, WBB failed to provide written approval of such activities, as required by WBB's

²The 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.

written supervisory procedures.

31. 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.

II. CONCLUSIONS OF LAW

32. 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.

III. ADMISSIONS

33. For purposes of this Order only, Gygi admits that he inadvertently acted as an investment adviser representative while unlicensed. Gygi affirmatively represents he believed SMC had licensed him appropriately as an investment adviser representative.

IV. REMEDIAL ACTIONS/SANCTIONS

34. With the exception of the Admission contained in Section III, Gygi neither admits nor denies the Division's findings and conclusions, but consents to the Division entering an Order requiring him to pay a fine of \$4,000.00 within thirty (30) days of this Order.

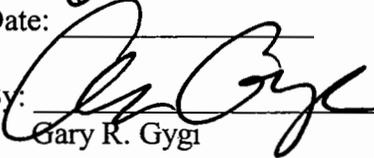
V. FINAL RESOLUTION

35. Gygi acknowledges that this Order, upon approval by the Division Director and Securities Advisory Board shall be the final compromise and settlement of this matter. Gygi 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.

36. Gygi acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal cause of action that a prosecutor might bring.
37. 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

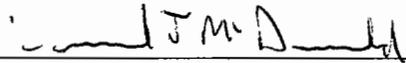
Date: 6/18/08
By: 
Thad LeVar
Director

Date: 6-9-08
By: 
Gary R. Gygi

Approved:


D. Scott Davis
Assistant Attorney General

Approved:


Daniel J. McDonald
Counsel for Gary R. Gygi

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, including Gygi's admission that he acted as an investment adviser representative while unlicensed.
2. Gygi pay a fine in the amount of \$4,000.00 within thirty (30) days of entry of this Order.
3. Gygi comply with the requirements of the Utah Uniform Securities Act in all future business in this state.

DATED this 14th day of June, 2008.



THAD LEVAR
Director, Utah Division of Securities



BY THE UTAH SECURITIES ADVISORY BOARD:

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

DATED this 28th day of July, 2008.



Tim Bangerter

Jane Cameron



Laura Polacheck

Mark Pugsley



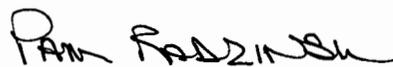
Craig Skidmore

Certificate of Mailing

I certify that on the 7th day of AUGUST 2008, I mailed a true and correct copy of the Stipulation and Consent Order to:

Daniel J. McDonald
SMITH HARTVIGSEN, PLLC
215 South State Street, Suite 650
Salt Lake City, UT 84111
Counsel for Respondent Gary R. Gygi

WBB Securities, LLC
Attn: M. LaRae Bakerink
16835 West Bernardo Drive, Suite 203
San Diego, CA 92127



Executive Secretary