Bryan R. Farris (8979)
FARRIS & ASSOCIATES, P.C.
3549 N. University Avenue, Suite 275
Provo, Utah 84604
Tel: (801) 377-0135
Fax: (801) 377-0134

Attorneys for Respondents Mayela Leticia Poulson, Joshua Michael Poulson and POULSON INVESTING, LLC

BEFORE THE SECURITIES DIVISION

IN THE MATTER OF: POULSON INVESTING, LLC JOSHUA MICHAEL POULSON MAYELA LETICIA POULSON	MOTION FOR STAY PENDING RESOLUTION OF CRIMINAL PROCEEDINGS Nos. SD-07-0080 SD-07-0081 SD-07-0082

OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

Respondents Mayela Leticia Poulson, Joshua Michael Poulson and Poulson Investing, LLC (collectively, "Respondents"), by and through their undersigned attorney, hereby move for a stay of these proceedings until the final resolution of *State v.* Poulson, Case No._____, a criminal proceeding currently pending before the Fourth District Court in Utah County filed 01/28/2008. The parallel criminal and civil proceedings represented by that case and this

case threaten to undermine and burden the right against self-incrimination provided under the Fifth Amendment to the United States Constitution.

This Motion is accompanied by a supporting legal memorandum. For the reasons stated therein, this Motion should be granted.

DATED this 14th day of February, 2008.

FARRIS & ASSOCIATES, P.C.

Bryan R. Farris
3549 N. University Avenue,
Suite 275 Provo, Utah
84604

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing MOTION FOR STAY PENDING RESOLUTION OF CRIMINAL PROCEEDINGS to be mailed, first-class, postage prepaid, this 14th day of February, 2008, to the following:

Division of Securities
Utah Department of Commerce
Attn. Jennifer Korb
P.O. Box 146760
Salt Lake City, Utah 84114-6760

Bryan R. Farris (6571)
FARRIS & ASSOCIATES,
P.C. 3549 N. University
Avenue, Suite 275 Provo,
Utah 84604
Tel: (801) 377-0135
Fax: (801) 377-0134

Attorneys for Respondents Joshua Michael Poulson, Mayela Leticia Poulson, and POULSON INVESTING, LLC

BEFORE THE SECURITIES DIVISION
OF THE DEPARTMENT OF COMMERCE

IN THE MATTER OF: POULSON INVESTING, LLC JOSHUA MICHAEL POULSON MAYELA LETICIA POULSON	MEMORANDUM IN SUPPORT OF MOTION FOR STAY PENDING RESOLUTION OF CRIMINAL PROCEEDINGS Nos. SD-07-0080 SD-07-0081 SD-07-0082

OF THE STATE OF UTAH

Respondents Joshua Michael Poulson and Poulson Investing LLC (collectively, "Respondents") file this memorandum in support of their Motion for Stay Pending Resolution of Criminal Proceedings ("Motion"). Specifically, Respondents are requesting that this matter be stayed until *State v. Poulson,* Case No._____ a criminal proceeding currently pending before the Fourth District Court in Utah County

(the "Criminal Matter"), is fully resolved. For the following reasons, the Motion should be granted.

FACTUAL BACKGROUND

The Criminal Matter includes the following counts:

- Count 1 - Securities Fraud

Although Respondents deny all allegations in the Criminal Matter, a comparison of the allegations in the Criminal Information (attached hereto as Exhibit 1) and Affidavit of Probable Cause (attached to as Exhibit 2) with those in the Order to Show Cause establish beyond question that the two proceedings are based upon the same alleged facts.

DISCUSSION

This motion is based upon the fact that any statements made in the course of this proceeding may be used in the criminal proceedings, thereby impinging on Fifth Amendment rights against self-incrimination; conversely, if, in an effort to preserve such Fifth Amendment rights, Respondents make no statements in these proceedings, Respondents' defense will be significantly undermined. *United States v. Kordel, 397* U.S. *1, 7-8 (1970).* As shown below, courts have been receptive to granting stays in civil proceedings in an effort to prevent defendants from facing the Hobson's choice that now faces Respondents.

In determining a motion such as this, courts look to: 1) the timeliness of the motion, and *2)* the balancing of the plaintiff's interest in proceeding with the matter expeditiously against the impairment of the rights of the defendant by so proceeding, as well as the interests of all other affected parties. *SEC v. Google, 1997* U.S. Dist Lexis *20878 *7-8* (D. Conn. April *30, 1997).*[2]

In this case, the first factor clearly weighs in favor of granting the request for stay. The Motion has been filed in a timely manner. Indeed, it is being filed within the time for Respondents' to file their initial response to the Notice of Agency Action and prior to the first hearing before the Division.

Respondents are not aware of any case law from Utah courts addressing the propriety of staying civil and/or administrative proceedings during the pendency of related criminal proceedings. (This is probably because an order granting such a stay is not a final order and therefore is not appealable. *In re J.W.,* 950 P.2d 939, 940 (Utah App. 1997).) Therefore, Respondents rely on federal case law to support their Motion.

Turning to the balancing of interests prong, it is clear that delaying this proceeding will not significantly impair the Division's ability to proceed with this matter. First, because actions by the SEC and the Utah Securities Division and the State of Utah have effectively ended Respondents' involvement that is the core of the allegations in both this and the criminal proceedings, Respondents are no longer involved with the promoting the product to any one. Accordingly, there is no concern that Respondents' are making false statements to the investing public. Cf. *Brock v. Tot/cow,* 109 F.R.D. at 120 (noting that denial of a stay is more appropriate where there is "a tangible threat of immediate and serious harm to the public at large").

Second, the criminal proceedings are aimed at enforcing nearly identical interests and there is no indication that further alleged harm to the public will occur due to a stay of the civil proceedings. *SEC v.* Google, 1997 U.S. Dist Lexis 20878 (D. Conn. April 30, 1997). Moreover, in the event the criminal case is decided against Respondents, the civil proceeding will be substantially simplified for the State since the Division would be able to assert collateral estoppel against those convicted.

In contrast, Respondents are now facing these proceedings while being distracted by the pending Criminal Matter. Even were there no Fifth Amendment

issues, the simple inability to focus all efforts on one case severely undermines Respondents' ability to fully defend this matter. As the Second Circuit held concerning instances where there are parallel criminal and civil proceedings:

> More generally, because all parties - those who invoke the Fifth Amendment and those who oppose them - should be afforded every reasonable opportunity to litigate a civil case fully and because exercise of Fifth Amendment rights should not be made unnecessarily costly, courts, upon an appropriate motion, should seek out those ways that further the goal of permitting as much testimony as possible to be presented in the civil litigation, despite the assertion of the privilege. Thus, if there is a timely request made to the court, the court should explore all possible measures in order to select that means which strikes a fair balance and accommodates both parties.

United States v. 4003-4005 5th Ave., 55 F.3d 78, 83-84 (2d Circuit 1995). Similarly, the court in *Brock v. Tolkow,* 109 F.R.D. 116 (E.D.N.Y. 1985), held that:

> A stay of civil proceedings is most likely to be granted where the civil and criminal actions involve the same subject matter . . . and is even more appropriate when both actions are brought by the government.
>
> > The noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits [allowed by the rules governing discovery in criminal cases], expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case. If delay of the noncriminal proceeding would not seriously injure the public interest, a court may be justified in deferring it.

Id. at 119 (quoting *SEC v. Dresser Indus.,* 628 F.2d 1368, 1375-76 (footnotes omitted by *Brock* court)).

This case falls squarely within the ambit of those in which a stay of the civil proceedings has been granted. It is a case brought based upon the same alleged facts by the same government office as in the criminal proceeding. There is no threatened

future harm to the public that will be caused or allowed by a stay. At most, there may be some inconvenience to the Division. Such inconvenience, however, cannot be seriously equated with the burden otherwise being placed by these dual proceedings on the constitutional right against self-incrimination presented.

CONCLUSION

Accordingly, for the foregoing reasons, Respondents request that the Motion be granted and that these proceedings be stayed pending the resolution on *State v. Poulson,* Case No. _____

DATED this 14th day of February, 2008.

FARRIS & ASSOCIATES, P.C.

Bryan R. Farris
3549 N. University Avenue,
Suite 275 Provo, Utah
84604

Attorneys for Respondents Joshua Michael Poulson, Mayela Leticia Poulson and POULSON INVESTING, LLC

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR STAY PENDING RESOLUTION OF CRIMINAL PROCEEDINGS to be mailed, first-class, postage prepaid, this 14th day of February, 2008, to the following:

Division of Securities
Utah Department of Commerce
Attn. Jennifer Korb
P.O. Box 146760
Salt Lake City, Utah 84114-6760