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

In the matter of:	Docket No. SD-07-0084
AARON GRAHAM, CRD# 3167246	**RESPONDENT AARON GRAHAM'S MOTION FOR ISSUANCE OF AMENDED NON-PARTY SUBPOENA**
Respondent.	

Respondent Aaron B. Graham ("Mr. Graham" or "Respondent"), by and through undersigned counsel, hereby files this Motion for Issuance of Amended Non-Party Subpoena. In support thereof Respondent incorporates herein the Motion for Issuance of Non-Party Subpoenas filed on or about July 11, 2008.

On July 11, Respondent submitted his original Motion for Issuance of Non-Party Subpoenas to the Utah Division of Securities ("Division") in which he requested, pursuant to, *inter alia* and without limitation, Utah Department of Commerce Administrative Procedures Act Rule R151-46b-9(1)(a) and R151-46b-9(12), the issuance of non-party subpoenas (the "Subpoenas") to twelve (12) entities.

On August 1, 2008, the Division issued the twelve (12) Subpoenas and Respondent served the Subpoenas upon the entities.

One of the entities, Raymond James & Associates, Inc. informed the undersigned that the subpoena was directed to the incorrect entity and requested Respondent have a subpoena issued to the correct entity -- Raymond James Financial Services, Inc.

In light of the foregoing, Respondent respectfully requests that the Motion for Issuance of Amended Non-Party Subpoena directed to Raymond James Financial Services, Inc. be granted, and the subpoena be promptly issued in the current form.

RESPECTFULLY SUBMITTED this 3rd day of October, 2008.

ROSHKA DeWULF & PATTEN, PLC

By _____

Paul J. Roshka, Jr., Esq.
Jeffrey D. Gardner, Esq.
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
602-256-6100 (telephone)
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Attorneys for Respondent

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CERTIFICATE OF CERTIFICATE

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding as set forth below:

ORIGINAL and one copy of the foregoing sent *via*
Federal Express this 3rd day of October, 2008 to:

Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, Utah 84114-6760

Copy of the foregoing sent *via*
Federal Express this 3rd day of October, 2008 to:

J. Steven Eklund
Administrative Law Judge
Utah Division of Securities
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, Utah 84114-6760

Benjamin Johnson
Presiding Officer
Utah Division of Securities
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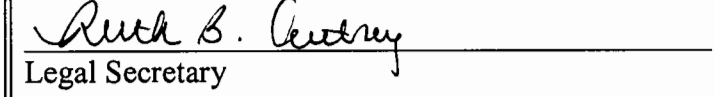
Dated this 3rd day of October, 2008.



Legal Secretary

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BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

In the matter of: AARON GRAHAM, CRD# 3167246 Respondent.	Docket No. SD-07-0084 **RESPONDENT AARON B. GRAHAM'S SUBPOENA DUCES TECUM TO RAYMOND JAMES FINANCIAL SERVICES, INC.**

TO: Raymond James Financial Services, Inc.
Legal Department
Raymond James Financial Center
880 Carillon Parkway
St. Petersburg, FL 33716

Pursuant to, *inter alia* and without limitation, Rule R151-46b-9(12) of the Department of Commerce Administrative Procedures Act Rules, you are required to produce the originals or copies of the documents listed on Exhibit "A" to Mr. Graham's counsel within ten (10) days. The time frame covered by this subpoena is January 1, 2003 through the present.

Documents responsive to this subpoena may be produced to:

Paul J. Roshka, Jr. Esq.
Jeffrey D. Gardner, Esq.
Roshka DeWulf & Patten, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

///

DATED this ____ day of October, 2008.

UTAH DIVISION OF SECURITIES

By_____
J. Steven Eklund
Administrative Law Judge

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EXHIBIT "A"

DEFINITIONS AND INSTRUCTIONS

A. "Document(s)" include(s) every "writing," "recording" and/or "photograph" as those terms are defined in Rule 1001, Utah Rules of Evidence.

B. "You" and "your" means Raymond James Financial Services, Inc., your agents, employees, officers, directors, members, managers, investigators, attorneys, accountants, assigns, affiliated companies and other individuals or entities acting on your behalf.

C. If you fail to produce any documents because of a claim of privilege, state the nature of the privilege asserted (e.g., attorney-client privilege), the facts upon which you rely to assert such privilege and identify all documents as to which you assert such privilege.

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REQUESTS

PLEASE PRODUCE: Your complete file including, but not limited to, the following:

A. All documents concerning Athena S. Metos' ("Ms. Metos") accounts with, and investments through Raymond James Financial Services, Inc. ("Raymond James") including, but not limited to:

1. All account or investment documents including, but not limited to, all new account forms, annuity applications, agreements, monthly, quarterly, and/or annual statements and all documents reflecting Ms. Metos' investment objectives, risk tolerance and investment experience;

2. All account or investment documents including, but not limited to, all new account forms, annuity applications, agreements, monthly, quarterly, and/or annual statements and all documents evidencing or relating to Ms. Metos' children's accounts, i.e. Kassandra Metos, Nicholas Metos and Melissa Metos;

3. All correspondence or documents to or from Ms. Metos noting deposits, withdrawals and sub-account reallocations, as well as any annuity exchange letters.

4. All account or investment documents including, but not limited to, all new account forms, annuity applications, agreements, monthly, quarterly, and/or annual statements and all documents evidencing or relating to all accounts held by Ms. Metos and/or her husband, Jeffrey B. Bland ("Mr. Bland");

5. All documents executed by Ms. Metos;

6. All documents reflecting or involving all complaints provided by Mr. Bland and/or Ms. Metos to Raymond James concerning, referring or relating to any customer complaints or grievances, including, but not limited to, complaints by Ms. Metos, Mr. Bland, William Sears, William Wilson, Wiley and Marilyn Bland, Kathy Ventura, Leatha R. Tiggs, Russell D. McLaughlin, and Katherine Hetrick, regarding Aaron B. Graham;

7. Raymond James' written responses to all customer complaints and/or grievances it received from Mr. Metos, Mr. Bland and/or regarding Mr. Graham; and

8. Any and all account analysis, portfolio analysis, financial analysis, and/or other financial planning or estate planning analysis performed by you for Ms. Metos and/or Mr. Bland.

B. All documents concerning Wiley Bland and/or Marilyn Bland (the "Blands") accounts with, and investments through, Raymond James, including, but not limited to:

1. All account or investment documents including, but not limited to, all new account forms, annuity applications, agreements, monthly, quarterly, and/or annual statements and all documents reflecting the Blands' investment objectives, risk tolerance and investment experience;

2. All correspondence or documents to or from the Blands noting deposits, withdrawals and sub-account reallocations, as well as any annuity exchange letters;

3. All account or investment documents including, but not limited to, all new account forms, annuity applications, agreements, monthly, quarterly, and/or annual statements and all documents evidencing or relating to all accounts held by the Blands;

4. All documents executed by the Blands;

5. All documents reflecting or involving all complaints provided by Wiley and/or Marilyn Bland to Raymond James concerning, referring or relating to any customer complaints regarding Aaron B. Graham;

6. Raymond James' written responses to all customer complaints and/or grievances it received from the Blands and/or regarding Mr. Graham; and

7. Any and all account analysis, portfolio analysis, financial analysis, and/or other financial planning or estate planning analysis performed by you for Wiley and/or Marilyn Bland.

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BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

In the matter of:	Docket No. SD-07-0084
AARON GRAHAM, CRD# 3167246	**RESPONDENT AARON GRAHAM'S SECOND MOTION FOR ISSUANCE OF NON-PARTY SUBPOENAS**
Respondent.	

Respondent Aaron B. Graham ("Mr. Graham" or "Respondent"), by and through undersigned counsel, hereby files this Second Motion for Issuance of Non-Party Subpoenas ("the Motion") and incorporates herein his Motion for Issuance of Non-Party Subpoenas filed on July 11, 2008. In support of the Motion, Respondent submits the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

The Utah Division of Securities ("Division") seeks to revoke Mr. Graham's license, bar him from the securities industry and impose a substantial fine. *See* Petition to Revoke Licenses, Bar Licensee and Impose a Fine ("Petition"). Mr. Graham has been a licensed and registered broker in Utah since November 1998. The allegations against Mr. Graham are serious. This action impacts not only Mr. Graham's ability to work in his chosen profession, but also tarnishes the positive reputation Mr. Graham has worked very hard to establish. Petition at pp. 7-11.

On or about July 11, 2008, Mr. Graham initially requested the issuance of non-party subpoenas. Subsequently, the Division issued its Initial Disclosures and identified five of Mr. Graham's previous customers as testifying witnesses. This was the first time the Division identified those individuals as witnesses.

Prior to the Division issuing its Initial Disclosures, Mr. Graham's was aware two individuals, Athena Metos[1] and Wiley Bland[2], might testify at the hearing. Mr. Graham knew that Ms. Metos submitted numerous documents to the Division. He assumed that the Division had collected all the documents relevant to Athena Metos and Wiley Bland. He also assumed the Division would have gathered all the relevant documents from any other witness (even though their identity had not yet been provided to Mr. Graham) whose testimony the Division might rely on at the hearing to support its allegations. Those assumptions were incorrect.

At the time of its submission of the Initial Disclosures, the Division produced a copy of its file documents on a CD.[3] Of note is what is contained in the Division's file produced on the CD, or more accurately, what is ***not*** contained in the Division's file. There are no documents regarding the accounts of two of its listed witnesses -- Jonathan Slager and Kathy Ventura.

Jonathan Slager[4] was interviewed by the Division. Mr. Slager holds an MBA in finance from New York University. No documents regarding Mr. Slager's John Hancock/Manulife or Jackson National annuities or any documents reflecting his accounts at UBS, Raymond James, United Planners, TD Ameritrade or Cambridge have been produced. Surprisingly, the Division has not obtained documents from Mr. Slager or subpoenaed Mr. Slager's account records to test what he told the Division for accuracy or truthfulness.

Similarly, Kathy Ventura was interviewed by the Division. She told the Division that she purchased an annuity. Yet no documents regarding Ms. Ventura's accounts at UBS, Raymond James, United Planners, TD Ameritrade, or Cambridge were produced. As with Mr. Slager, the Division has not obtained documents from Ms. Ventura or subpoenaed Ms. Ventura's documents to test what she told the Division for accuracy or truthfulness.

---

[1] Athena Metos is the wife of Mr. Graham's former partner, Jeffrey Bland.
[2] Wiley Bland is the father of Mr. Graham's former partner, Jeffrey Bland.
[3] The Division's initial production was produced to Mr. Graham's counsel in an unusable format. This situation was the subject of several communications between Mr. Graham's counsel and the Division and was also the subject of a prehearing conference on August 12, 2008. Mr. Graham's counsel only recently received the Division's corrected production after retaining a private Salt Lake City duplication service to facilitate its delivery. The second corrected production resulted in Mr. Graham's counsel receiving 574 pages that had not been initially produced.
[4] Jonathan Slager is Athena Metos' brother and the brother-in-law of Mr. Graham's former partner, Jeffrey Bland.

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There are only a few documents in the Division's file regarding listed witnesses Wiley Bland and his wife, Marilyn Bland. There are no documents regarding two annuities purchased by Wiley Bland from Allstate and AXA Equitable. There are no documents regarding Wiley and Marilyn Bland's accounts at United Planners, TD Ameritrade, or Cambridge.

The evidence will not support the Division's allegations. All financial advice Mr. Graham provided was suitable and entirely consistent with client-stated objectives, full-disclosure and client approval. This proceeding, and the allegations and complaints against Mr. Graham, have been improperly influenced by Ms. Metos and Mr. Bland out of revenge, spite and the pursuit of money.

Pursuant to, *inter alia* and without limitation, Utah Department of Commerce Administrative Procedures Act Rule R151-46b-9(1)(a) and R151-46b-9(12), Mr. Graham hereby submits this Motion seeking the issuance of non-party subpoenas to the following nine (9) entities: (1) AXA Distributors, LLC; (2) Allstate Financial Services, L.L.C; (3) Cambridge Investment Research, Inc.; (4) Jackson National Life; (5) Manulife Financial Corporation, now known as John Hancock Life Insurance Company; (6) Raymond James Financial Services, Inc.; (7) T.D. Ameritrade, Inc.; (8) UBS Financial Services, Inc.; and (9) United Planners Financial Services of America. The subject subpoenas are respectively attached hereto as Exhibits "1" through "9" for ease of reference.

Since the Division has not collected these basic and essential documents, Mr. Graham requests the Administrative Law Judge to issue the subpoenas. The subpoenas sought by Respondent are limited in scope, relevant to issues in dispute in this proceeding and likely to lead to the discovery of admissible information. Mr. Graham requires this discoverable information to properly defend himself in this matter. Mr. Graham is entitled to cross-examine the Division's witnesses. To do so effectively, he requires the documents relevant to each of the witnesses and their anticipated testimony. Respondent addresses the basis for issuance of these subpoenas as follows:

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II. ANALYSIS

A. The Law and Relevant Rules Provide for Discovery of Relevant Information.

R151-46b-9(1)(a) parallels Utah Rule of Civil Procedure 26(b)(1), and broadly states: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to a claim or defense of the party seeking the discovery or to the claim or defense of any other party." R151-46b-9(12) expressly and unambiguously provides that non-party subpoenas for the production of books, papers, or other tangible things are entirely appropriate discovery vehicles under Utah's administrative rules. Thus, the presiding officer has the power and authority to issue the subject subpoenas.

Utah Rule of Evidence 401 provides that "[r]elevant evidence" means having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *See* Utah.R.Evid. 401. The ultimate objective of a lawsuit is determination of dispute, and whatever helps achieve that objective is "relevant" to the lawsuit, within the discovery rule. *See Ellis v. Gilbert,* 119 Utah 2d 189, 191 (1967); Utah.R.Civ.P. 26(b).

The documents and information sought by Respondent through these subpoenas are highly relevant and not privileged. The information is inextricably linked with Mr. Graham's defenses in this matter. Thus, the subpoenas fall directly within the express language of the cited administrative and civil rules authorizing this discovery. Mr. Graham's Motion should be granted and the subpoenas issued.

B. Respondent Has a Right to Contest and Rebut the Division's Allegations.

The Division apparently intends to seek to introduce testimony from Athena Metos, Wiley Bland, Marilyn Bland, Jonathan Slager and Kathy Ventura (collectively referred to as "Customer Witnesses"). *See* generally, Initial Disclosures.

Through the allegations, the Division has made, without limitation, the Customer Witnesses' investment histories and experience, risk-tolerance, and purported expressed investment strategies relevant and disputed facts of consequence. Under the aforementioned

administrative and discovery rules and case authority, Respondent has a right to discover any evidence relevant to his defense or that may lead to the discovery of admissible evidence.

If the subpoenas are authorized, Respondent believes the documents produced in response will show the investments were suitable and entirely consistent with the Customer Witnesses' originally-expressed investment objectives and stated risk tolerance and inconsistent with what these individuals have told the Division.

Respondent should be afforded the opportunity to discover additional information that directly contradicts the Division's allegations and the statement of the Customer Witnesses. Respondent does not have the necessary and relevant investment history and financial information for the Customer Witnesses to accomplish this task, and it is clear the Division never bothered to collect these important documents before initiating this proceeding. Therefore, this information is not discoverable through regular requests for production and disclosure exchanges. Hence, Respondent seeks reasonable non-party discovery to establish his defenses to the Division's allegations.

C. The Subpoenas.

The documents and information sought by Respondent through the subject subpoenas are limited in scope, relevant to the Division's allegations and likely to lead to the discovery of admissible information. The specific support for the subpoenas is addressed, in turn, below.

1. AXA Distributors, LLC, aka AXA Equitable.

Several years ago, Mr. and Mrs. Wiley Bland purchased an annuity from AXA Equitable.[5] The Division's allegations relate to the purchase of variable annuities. Respondent is seeking the issuance of a subpoena to be served on AXA Equitable because it will have documentation, e.g. prospectus, correspondence, and other relevant documents in its possession that relate to Wiley Bland's previous investments in annuities and his familiarity with them before ever meeting Mr. Graham.

[5] Because the Blands purchased annuities from AXA and Allstate some time ago, these two subpoenas cover a longer time frame than the others that are being requested.

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There is no question, therefore, that AXA is in possession of highly-relevant documents and information. Mr. Graham requires this information to properly defend himself in this matter.

2. Allstate Financial Services, L.L.C.

Mr. and Mrs. Wiley Bland purchased an annuity from Allstate several years ago. The Division's allegations relate to the purchase of variable annuities. Respondent is seeking the issuance of a subpoena to be served on Allstate because it will have documentation, e.g. prospectus, correspondence, and other relevant documents in its possession that relate to Wiley Bland's previous investments in annuities.

There is no question, therefore, that Allstate is in possession of highly-relevant documents and information. Mr. Graham requires this information to properly defend himself in this matter.

3. Cambridge Investment Research, Inc.

The Respondent seeks the production of relevant financial information involving Wiley Bland, Jonathan Slager and Kathy Ventura from Jeffrey Bland's previous broker-dealer. Jeffrey Bland is Mr. Graham's former business partner and, upon information and belief, moved his clients' accounts to Cambridge when he and Mr. Graham ended their partnership. Therefore, Cambridge is likely in possession of highly relevant information related to Wiley Bland, Jonathan Slager and Kathy Ventura and/or the disputed Division-alleged customer complaints. This information will rebut the Division's allegations, and support Respondent's defenses.

4. Jackson National Life Insurance Company.

Each of the Customer Witnesses may have purchased variable annuities from Jackson National Life Insurance Company. The Division's allegations relate to the purchase of these annuities. This information, sought by the subpoena, is relevant to the Division's claims and the Customer Witnesses' investment history, experience, risk-tolerance and the like.

There is no question, therefore, that Jackson National may be in position of highly-relevant documents and information. The allegations are disputed. Mr. Graham should be afforded the opportunity to obtain this relevant information to properly defend himself.

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5. John Hancock Life Insurance Company.

Upon information and belief, Mr. Slager purchased a Manulife Venture III variable annuity. The Division's allegations against Mr. Graham are inextricably linked to the purchase of variable annuities. Manulife is a division of John Hancock Life Insurance Company. Respondent is seeking issuance of a subpoena to John Hancock because the entity irrefutably will have documentation, e.g. prospectus, annuity contracts, statements, correspondence, and other materials in its possession that relate to Mr. Slager's investment in the subject annuity. Mr. Slager discussed his annuities with the Division. These documents will provide the necessary information to test the accuracy and truthfulness of his statements to the Division.

There is no question, therefore, that John Hancock is in position of highly-relevant documents and information. Mr. Graham should be afforded the opportunity to obtain this relevant information to properly defend himself.

6. Raymond James Financial Services, Inc.

Mr. Graham and Jeffrey Bland were associated with Raymond James at the time their partnership was formed. The Division has alleged various customer complaints have been made against Mr. Graham. Petition at ¶ 6. Respondent believes that Ms. Metos and Jeffrey Bland are responsible for these complaints being filed, and that there is no merit to any of them. Respondent believes information from Raymond James will link Ms. Metos and Jeffrey Bland to the complaints. Further, Raymond James' investigation and denial of the customer complaints will be obtained through the subpoena.

Each of the Customer Witnesses maintained investment accounts at Raymond James.[6] There is no question, therefore, that Raymond James is in position of highly-relevant documents and information. The allegations are disputed. Mr. Graham should be afforded the opportunity to obtain this relevant information to properly defend himself.

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[6] Mr. Graham's earlier Motion for Issuance of Subpoenas requested documents from Raymond James on Athena Metos' and Wiley and Marilyn's accounts. Raymond James informed the undersigned that the subpoena is directed to the incorrect entity and requested that a new subpoena be issued. See Motion for Issuance of Amended Non-Party Subpoena filed concurrently herewith which corrects the previous subpoena directed to Raymond James.

7. T.D. Ameritrade, Inc.

For a time, Mr. Graham and Mr. Bland were associated with T.D. Ameritrade. Consequently, the Customer Witnesses may have maintained an account with T.D. Ameritrade. Information from T.D. Ameritrade is relevant to the Division's claims and the Customer Witnesses' investment history, experience, risk-tolerance and the like, as well as Mr. Graham's defenses.

8. UBS Financial Services, Inc.

Mr. Graham, Mr. Gould and Jeffrey Bland were licensed with UBS Financial Services, Inc. Each of the Customer Witnesses may have had accounts with UBS.

There is no question, therefore, UBS is in position of highly-relevant documents and information. Mr. Graham should be afforded the opportunity to obtain this relevant information to properly defend himself.

9. United Planners Financial Services of America.

Mr. Graham and Jeffrey Bland were associated with United Planners. Each of the Customer Witnesses may have had accounts with United Planners. Therefore, the firm may be in possession of relevant financial and investment information for each of the Customer Witnesses. One of the complaints is from Ms. Metos and another from Wiley Bland. Respondent believes that Ms. Metos and Jeffrey Bland are responsible for complaints being filed against Mr. Graham at United Planners. Respondent believes the information from United Planners will link Ms. Metos and Jeffery Bland to the wrongful complaints. Further, United Planners' investigation and its denial of the customer complaints will be obtained through the subpoena. This information is highly relevant and is expected to support Respondent's defenses in this action.

III. CONCLUSION

In light of the foregoing, Respondent respectfully requests that the Motion for Issuance of Non-Party Subpoenas be granted, and the foregoing nine (9) subpoenas be promptly issued in their current form.

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RESPECTFULLY SUBMITTED this 3rd day of October, 2008.

ROSHKA DeWULF & PATTEN, PLC

By

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Attorneys for Respondent

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CERTIFICATE OF CERTIFICATE

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding as set forth below:

ORIGINAL and one copy of the foregoing sent *via*
Federal Express this 3rd day of October, 2008 to:

Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, Utah 84114-6760

Copy of the foregoing sent *via*
Federal Express this 3rd day of October, 2008 to:

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Administrative Law Judge
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Benjamin Johnson
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Utah Division of Securities
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Dated this 3rd day of October, 2008.

Legal Secretary

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