Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

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

IN THE MATTER OF: **ADVANCED TRADING SOLUTIONS, LLC** **DARIN LAYNE KRACL** **Respondents.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-08-0018 **Docket No.** SD-08-0019

It appears to the Director of the Utah Division of Securities (Director) that Advanced Trading Solutions, LLC and Darin Layne Kracl (Respondents) may have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over the Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud / fraudulent practices) of the

Act, while engaged in the offer and sale of a security in Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Advanced Trading Solutions, LLC (ATS) is a Utah limited liability company in good standing. ATS filed its articles of organization on September 27, 2006, and its current corporate status is "active." Darin Layne Kracl is one of two members of ATS, the other being JBH Ventures, LLC.

3. Darin Layne Kracl (Kracl) resides in Salt Lake County, Utah.

GENERAL ALLEGATIONS

4. From January through May 2007, Kracl collected approximately $6.9 million in investment funds from two Utah investors.

5. Starting in February 2007, investors JC and LR raised money from other investors through a registered securities offering.

6. JC and LR planned to use their own personal funds, along with the money raised from their securities offering, to invest in forex trading.

7. JC and LR were introduced by a third party to Kracl, as someone who could arrange the forex trading.

8. From December 2006 through January 2007, JC and LR met with Kracl multiple times at Kracl's office in Salt Lake County, to discuss an investment opportunity in ATS.

9. During their meetings, Kracl told JC and LR the following regarding the investment

opportunity:

a. Kracl learned to trade forex from "a group in Vancouver," and Kracl had been trading since August 2004;

b. Kracl worked with the group in Vancouver to develop a proprietary trading platform in which Kracl could trade up to ten accounts at the same time;

c. Kracl spent $250,000 to develop the platform, but it was worth over $1 million;

d. JC and LR would occupy account number seven out of an available ten spots;

e. Kracl's other six clients were his only other clients;

f. There was approximately $12 million under management in the other six accounts;

g. Kracl did not want to have additional clients, so JC and LR should consider themselves lucky to be working with Kracl;

h. Kracl made an average monthly return of 47.5% for trading accounts during the prior twelve months;

i. Kracl used FX Solutions, LLC (FX Solutions) as his broker, and JC's and LR's trading account would be with FX Solutions;

j. Kracl traded accounts for celebrities such as Charles Barkley, Evander Holyfield, and Richie McDonald.

k. Someone gave Kracl $5 million to trade, and Kracl made them $3 million in profit;

l. Kracl had never had a losing month while trading;

m. The investment funds could be liquidated at any time;

n. The minimum investment amount was $250,000;

o. Kracl would take a trading fee of 12% if there was less than a 50% gain for the month, and 24% if the account had 50% or more in gains for the month; and

p. Kracl had no licenses, since forex trading is not regulated by the SEC.

10. Kracl showed JC and LR statements on one unknown individual's account, which showed a 200% return on the investment. The statements were on FX Solutions letterhead.

11. What Kracl failed to tell JC and LR, among other things, is that in January 1992, in Utah County's Fourth District Court, Kracl was charged with theft, a third degree felony, which was later amended to a class A misdemeanor when Kracl entered his guilty plea.

12. On or about December 26, 2006, Kracl gave JC a document on FX Solutions letterhead entitled "Discretionary Trading Authorization/Power of Attorney" (Trading Agreement).

13. The Trading Agreement stated that ATS was authorized to engage in forex trading for JC and his company in one or more account with FX Solutions. The Trading Agreement also provided that ATS would earn 12-24% in management fees.

14. Kracl and JC signed the Trading Agreement while at Kracl's office in Draper, Utah.

15. On or about January 17, 2007, JC and LR invested $175,000 with Kracl and ATS, via wire transfer, to ATS's Wells Fargo Bank account.

16. After investing, Kracl told JC and LR that Kracl set up an account for them at FX Solutions on Kracl's trading platform.

17. On or about January 22, 2007, the Director of Enforcement with the Utah Division of Securities, Michael Hines (Hines), contacted Kracl about a complaint received by the Division.

18. Kracl told Hines that Kracl only traded his own funds in his personal account. Hines told Kracl, if he traded other people's money, it could be an investment contract, and he would need to be licensed with the Division. Kracl told Hines that he understood.

19. On or about February 27, 2007, JC and LR contacted Kracl, and asked about the status of their account. The same day, JC and LR received an account statement from Kracl, via facsimile.

20. The statement showed that JC's and LR's account had grown 21.6% between January 9 and February 27, 2007. The statement appeared to have been created on a word processing program, and did not appear to be from FX Solutions.

21. JC and LR asked Kracl to provide them with daily updates on their account, in addition to account statements from FX Solutions. Kracl ignored their requests.

22. In February or March 2007, Kracl told JC and LR he was working on getting an account from somebody in Phoenix, and the account would bring $200 million to ATS.

23. From January 17 to May 25, 2007, JC and LR invested approximately $6,770,000 with Kracl and ATS, via wire transfer to Kracl's bank account.

24. From January through April 2007, Kracl and ATS paid JC and LR $1.7 million in profit payments purportedly from forex trading. The payment amount varied from month to month.

25. In mid-June 2007, Kracl told JC and LR that their forex trading account was down, and no profit check would be sent for the month of June 2007.

26. JC and LR told Kracl that some of their clients wanted their investment funds back. On or about June 28, 2007, JC sent an e-mail to Kracl requesting the return of all of JC's and LR's invested funds.

27. In late June or early July 2007, Kracl told JC and LR that he could not get their invested funds back. Kracl said JC's and LR's funds were pooled with funds from other investors, and were being used to leverage the other investors' funds. Kracl said removing JC's and LR's funds would cause his other clients to lose money.

28. On or about July 27, 2007, JC and LR again told Kracl they wanted their invested funds returned.

29. Kracl told JC and LR that Kracl would close out their forex trading positions, and give JC and LR back the remaining principal, which was $6,495,000 minus $382,000 in trading losses. Kracl said he would have the money to JC and LR by August 6, 2007.

30. On August 3, 2007, JC sent a text-message to Kracl asking for an update on the return of the investment funds.

31. In late-August 2007, Kracl responded by sending a text-message to JC which said Kracl

was having trouble getting the investment funds.

32. On or about September 7, 2007, Kracl met with JC and LR at a restaurant in Brigham City, Utah.

33. Kracl told JC and LR he would try to return their funds. Kracl said he had not been truthful with JC and LR and had actually lost approximately $1.4 million in trades by July 27, 2007. Kracl said JC's and LR's account was down $2 million as of September 7, 2007.

34. Kracl agreed to start paying JC and LR $65,000 a month in order to pay back their principal, and gave them a check for $64,950 the same day. The check cleared the bank.

35. On or about September 28, 2007, Kracl gave JC and LR liens on real property Kracl owns in South Jordan, Utah, and St. George, Utah.

36. Kracl and ATS still owe JC and LR approximately $6,880,050 in principal.

Use of Investor Funds

37. Kracl moved JC's and LR's funds between three bank accounts. Two accounts were with Wells Fargo Bank (a personal account and a business account for ATS), and the third account was a personal account with Zions Bank.

38. With JC's and LR's money, Kracl paid a title company $395,437; purchased $869,600 worth of automobiles and other vehicles/trailers; withdrew $288,000 in cash; purchased a minor league baseball team for $327,000; paid $2.1 million to other unknown individuals/companies; and made payments of approximately $1.7 million to JC and LR.

39. Kracl also used JC's and LR's funds to pay cell/telephone bills; make insurance, mortgage, utility, and credit card payments; purchase groceries and gasoline; pay for entertainment, travel, jewelry, sports memorabilia, clothing; and to make charitable donations to Kracl's church.

40. Between February 1 and April 20, 2007, Kracl moved $1,175,000 of JC's and LR's funds to FX Solutions for forex trading. In June 2007, however, Kracl moved $1,140,000 of JC's and LR's funds back to Kracl's personal account at Wells Fargo Bank where it was used by Kracl to pay personal expenses such as those mentioned above.

CAUSES OF ACTION

COUNT I
Securities Fraud under § 61-1-1(2) of the Act
(The Respondents)

41. The Division incorporates and re-alleges paragraphs 1 through 40.

42. The investment opportunity (Trading Agreement) offered and sold by ATS and Kracl to investors is an investment contract, and therefore a security, under § 61-1-13 of the Act. An investment contract includes,

> any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor; or . . . any investment by which . . . an offeree furnishes initial value to an offerer; . . . a portion of this initial value is subjected to the risks of the enterprise; . . . the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the

> enterprise; and . . . the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.

UTAH ADMIN. CODE R164-13-1(B)(1)(a) and 1(b).

43. In connection with the offer and sale of a security to investors, ATS and Kracl, directly or indirectly, made false statements, including, but not limited to, the following:

a. Kracl would use JC's and LR's investment funds for forex trading, when in fact, Kracl used the majority of their funds for personal use;

b. Forex trading is not overseen by the SEC, and because of this, Kracl needed no license, when in fact, an agreement to trade another individuals account is a security, and Kracl needed a license to sell such an agreement;

c. Kracl had never lost money in forex trading, when in fact, Kracl had lost approximately $226,685 between November 6, 2006 and January 6, 2007, in forex trading;

d. Kracl spent $250,000 to develop a trading platform, but it was worth over $1 million;

e. Kracl made an average monthly return of 47.5% for trading accounts during the prior twelve months;

f. Kracl traded accounts for celebrities such as Charles Barkley, Evander Holyfield, and Richie McDonald; and

g. The investment funds could be liquidated at any time.

44. In connection with the offer and sale of a security to investors, ATS and Kracl, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:

a. In January 1992, in Utah County's Fourth District Court, Kracl was charged with theft, a third degree felony, which was later amended to a class A misdemeanor when Kracl entered his guilty plea;

b. The Director of Enforcement at the Division of Securities had contacted Kracl and told him that if he traded funds for anyone other than himself, he was required to be licensed with the Division; and

c. Some or all of the information typically provided in an offering circular or prospectus regarding ATS, such as:

i. Financial statements for ATS;

ii. The nature of the competition for ATS' service(s); and

iii. Risk factors for investors.

45. Based upon the foregoing, Advanced Trading Solutions, LLC and Darin Layne Kracl violated § 61-1-1 of the Act.

COUNT II
Fraudulent Practices under § 61-1-1(3) of the Act
(Darin Layne Kracl)

46. The Division incorporates and re-alleges paragraphs 1 through 45.

47. ATS and Kracl engaged in acts, practices, or courses of business that operate or would

operate as a fraud or deceit on JC and LR including, but not limited to, the following:

a. Supplying JC and LR with a false account statement showing that they were making a profit, in order to obtain more money or delay suspicion; and

b. Requiring JC to execute the FX Solutions Trading Agreement authorizing ATS and Kracl to do forex trading on behalf of JC and LR, despite the fact that FX Solutions would not have allowed ATS and Kracl to trade on behalf of a third party, in order to add create the appearance of legitimacy.

48. Based upon the foregoing, Advanced Trading Solutions, LLC and Darin Layne Kracl violated § 61-1-1 of the Act.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders the Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur on March 18th, 2008, at 10:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If the Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63-46b-11. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, the Respondents may show cause, if any they have:

a. Why Advanced Trading Solutions, LLC and Darin Layne Kracl should not be

found to have engaged in the violations alleged by the Division in this Order to Show Cause;

b. Why Advanced Trading Solutions, LLC and Darin Layne Kracl should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act;

c. Why Advanced Trading Solutions, LLC should not be ordered to pay a fine of five hundred thousand dollars ($500,000) to the Division of Securities, which may be reduced by restitution paid to the victims; and

d. Why Darin Layne Kracl should not be ordered to pay a fine of five hundred thousand dollars ($500,000) to the Division of Securities, which may be reduced by restitution paid to the victims

DATED this 5th day of February, 2008.

WAYNE KLEIN
Director, Utah Division of Securities

Approved:

JEFF BUCKNER
Assistant Attorney General

J. N.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

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

IN THE MATTER OF: **ADVANCED TRADING SOLUTIONS, LLC** **DARIN LAYNE KRACL** **Respondents.**	**NOTICE OF AGENCY ACTION** **Docket No.** SD-08-0018 **Docket No.** SD-08-0019

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. 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 foregoing Order to Show Cause.

Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include the information required by Utah Code § 63-46b-6 (1). In addition, you are required by § 63-46b-6 (3) to state: a) by paragraph, whether

you admit or deny each allegation contained in the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission; b) any additional facts or documents which you assert are relevant in light of the allegations made; and c) any affirmative defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Order to Show Cause are not disputed in your Answer, they will be deemed admitted.

Your Answer, 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:	A copy to:
Administrative Court Clerk c/o Pam Radzinski Division of Securities 160 E. 300 S., Second Floor Box 146760 Salt Lake City, UT 84114-6760 (801) 530-6600	Jeff Buckner Assistant Attorney General 160 E. 300 S., Fifth Floor Box 140872 Salt Lake City, UT 84114-0872 (801) 366-0310

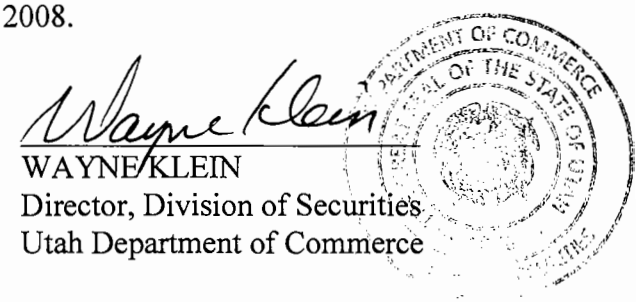
A hearing date has been set for March 18th, 2008, at 10:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah.

If you fail to file an Answer, as set forth herein, or fail to appear at the hearing, the Division of Securities may hold you in default, and a fine and other sanctions may be imposed

against you in accordance with Utah Code Ann. § 63-46b-11, without the necessity of providing you with any further notice. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, you may appear and be heard and present evidence on your behalf. You may be represented by counsel during these proceedings.

The presiding officer in this case is Wayne Klein, Director, Division of Securities. Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

DATED this 5TH day of February, 2008.



WAYNE KLEIN
Director, Division of Securities
Utah Department of Commerce

Certificate of Mailing

I certify that on the 5TH day of FEBRUARY, 2008, I mailed a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

Advanced Trading Solutions, LLC
C/O Darin Layne Kracl
15 S 800 W
Blackfoot, ID 83221

Certified No. 70070710000302081798

Karin Layne Kracl
15 S 800 W
Blackfoot, ID 83221

Certified No. 70070710000302081785

PAMALA RADBINSK
Executive Secretary