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Attorneys for Respondents
Clear Investing, LLC and
John Carroll Hammans

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

In the matter of:

CLEAR INVESTING, LLC
JOHN CARROLL HAMMANS

Respondents

**MOTION FOR STAY PENDING
RESOLUTION OF CRIMINAL
PROCEEDINGS**

Docket No. SD-08-0025

Docket No. SD-08-0026

Respondents Clear Investing, LLC, and John Carroll Hammans, by and through their undersigned attorney, hereby move for a stay of these proceedings until the final resolution of *State v. Hammans*, Case No. 081700417, a criminal proceeding currently pending before the Second District Court in and for Davis County. 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 30th day of April, 2008.

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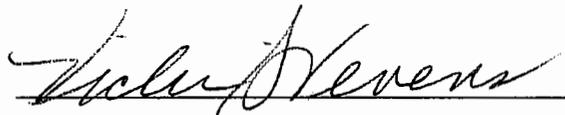
By: 

KEVIN C. TIMKEN
Attorneys for Respondents
Clear Investing, LLC and
John Carroll Hammans

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 delivered, by hand, this 30th day of April, 2008, to the following:

Jeff Buckner
Assistant Attorney General
160 East 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872



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In the matter of:

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Respondents

**MEMORANDUM IN SUPPORT
OF MOTION FOR STAY PENDING
RESOLUTION OF CRIMINAL
PROCEEDINGS**

Docket No. SD-08-0025
Docket No. SD-08-0026

Respondents Clear Investing, LLC, and John Carroll Hammans (together, "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. Hammans*, Case No. 081700417, a criminal proceeding currently pending before the Second District Court in and for Davis County, 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 (Jill Taylor¹ as alleged victim)
- Count 2—Theft (Jill Taylor as alleged victim)

Although Mr. Hammans denies all allegations in the criminal matter, a comparison of the allegations in the Affidavit of Probable Cause (attached hereto as Exhibit 1) with those in the Order to Show Cause establish that the two proceedings are based upon the same alleged facts. Both proceedings arise from Mr. Hammans accepting a \$65,000 check from Ms. Taylor (*see* Affidavit of Probable Cause ¶ 9 and Order to Show Cause ¶ 5), both allege that the funds were to be used for an investment in real estate (*see* Affidavit of Probable Cause ¶ 10 and Order to Show Cause ¶ 4), and both allege that the funds have not been repaid (*see* Affidavit of Probable Cause ¶ 9 and Order to Show Cause ¶ 8).

THIS MATTER INVOLVES SUBSTANTIALLY THE SAME FACTS AS THE CRIMINAL MATTER AND A STAY WILL NOT HARM THE PUBLIC INTEREST

The Motion is based upon the fact that any statements Mr. Hammans makes in the course of this proceeding may be used against him in the criminal proceeding, thereby affecting his Fifth Amendment rights against self-incrimination. At the same time, if Mr. Hammans exercises his Fifth Amendment rights and makes no statements in these proceedings, his defense will be significantly undermined. *See, e.g., United States v. Kordel*, 397 U.S. 1, 7-8 (1970). Courts

¹ The Order to Show Cause refers to this individual by her initials following her marriage, "JB."

have been receptive to granting stays in civil proceedings under circumstances similar to those here.

In determining a motion such as this Motion, courts consider (1) whether the parallel civil and criminal proceedings involve substantially the same facts (*see Koester v. American Republic Invs., Inc.*, 11 F.3d 818, 823 (8th Cir. 1993) (“to warrant a stay, defendant must make a strong showing . . . that the two proceedings are so interrelated that he cannot protect himself at the civil trial by selectively invoking the Fifth Amendment privilege”); and (2) that a stay is not likely to harm the public interest (*see, e.g., Brock v. Tolkow*, 109 F.R.D. 116, 120 (E.D.N.Y.1985)).²

In this case, there is no question that the facts at issue in the civil and criminal proceedings are substantially similar. Both the civil and criminal cases arise from Mr. Hammans accepting \$65,000 from Ms. Taylor, allegedly for the purpose of investing in real estate, and the allegation that Mr. Hammans has not repaid the money.

It should be noted that the Utah Attorney General’s Office is the office prosecuting both actions. *See SEC v. Graystone Nash, Inc.*, 25 F.3d 187, 193-94 (3d Cir. 1994) (“Courts must bear in mind that when the government is a party in a civil case and also controls the decision as to whether criminal proceedings will be initiated, special consideration must be given to the plight of the party asserting the Fifth Amendment.”)

It is also true that delaying this proceeding will not significantly impair the Division’s ability to proceed with this matter. First, the Order to Show Cause alleges that this matter arises

² Respondents are relying on federal case law to support the Motion because Respondents have been unable to discover 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 likely because an order granting such a stay is not a final order and therefore is not appealable. *See In re J.W.*, 950 P.2d 939, 940 (Utah App. 1997)).

from one discrete act on Mr. Hammans' part. There is no allegation that Mr. Hammans has engaged in any pattern of conduct or in perpetuating any ongoing scheme that puts the public at risk. Under these circumstances, there is no public interest harmed by the granting of a stay. See *Brock v. Tolkow*, 109 F.R.D. at 120 (noting that denial of a stay is appropriate when there is "a tangible threat of immediate and serious harm to the public at large"). The court in *Brock* held that:

A stay of civil proceedings is most likely to be granted where the civil and criminal actions involved the same subject matter . . . and is even more appropriate when both actions are brought by the government.

The noncriminal proceedings, 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)).

In one respect, a stay may in fact serve the public interest. Mr. Hammans is engaged in ongoing discussions that may result in the resolution of both the civil and criminal proceedings. The grant of a stay in the civil proceeding may serve the interest of judicial efficiency, while the ongoing criminal matter assures that the Motion in the civil matter is not merely for purposes of delay.

CONCLUSION

This case is one in which a stay of the civil proceedings should be granted. The civil proceedings are brought based upon the same alleged facts by the same government office as in the criminal proceeding, and there is no threatened future harm to the public that will be caused or allowed by a stay.

Accordingly, for the foregoing reasons, Respondents request that the Motion be granted and that these proceedings be stayed pending the resolution of *State v. Hammans*, Case No. 081700417.

DATED this 30th day of April, 2008.

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