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:** | **ORDER TO SHOW CAUSE** |
|---|---|
| **XTRA SOURCE, LLC**<br>**D.L. JOHNSON CO., LLC**<br>**DAVID LYNN JOHNSON**<br><br>**Respondents.** | **Docket No.** SD-08-0066<br>**Docket No.** SD-08-0067<br>**Docket No.** SD-08-0068 |

It appears to the Director of the Utah Division of Securities (Director) that Xtra Source, LLC, D.L. Johnson Co., LLC, and David Lynn Johnson (the Respondents) 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 Respondents violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah.

## STATEMENT OF FACTS

### THE RESPONDENTS

2. Xtra Source, LLC (Xtra Source) was registered as a Utah limited liability company on September 13, 2007, and its entity status is currently "active." Xtra Source, LLC is managed by Nate Miller and Kyle Miller. Nate Miller is its registered agent.

3. D.L. Johnson Co., LLC (DLJ Co.) was registered as a Utah limited liability company on June 13, 2001, and its entity status is currently "active." David Lynn Johnson is the sole manager and registered agent of DLJ Co.

4. David Lynn Johnson (Johnson) resides in Weber County, Utah.

### GENERAL ALLEGATIONS

5. On March 12, 2008, Johnson held a seminar at the Marriott Hotel in Ogden, Utah, regarding an investment opportunity with Xtra Source.

6. Four people attended the seminar, one of whom was an undercover investigator (the Investigator) from the Division.

7. During the presentation, Johnson made the following representations regarding the investment opportunity:

   a. Johnson was trading approximately $5 million in an account held at Interactive Brokers, which Johnson said is similar to an E*Trade account.

   b. Johnson normally trades "well known, big stocks that are in a really good growth phase," such as Google or Apple stock.

c. Johnson closes out his trading positions at the end of every trading day to protect the funds from big drops in price when trading opens.

d. Johnson has approximately 58 investors, and none of them have left him, with the exception of an unnamed college student who needed his funds to pay tuition.

e. All investor funds are pooled into one account.

f. Johnson is trying to grow the pool from $5 million to $20 - 25 million.

g. Johnson has averaged returns of 50% over the last ten years, and has always done 50% or better.

h. It is "not that hard" for him to pick a stock that will earn 50%.

i. Johnson's "expectation is to double [his] money in a year," and if he does not double his funds, he is disappointed.

j. Johnson makes his trading as safe as possible.

k. The volatility in the market has been good for Johnson. It is how he makes money.

l. Johnson works for a company called Xtra Source.

m. Johnson's business partner is Nate Miller (Miller).

n. Xtra Source has an outside auditor who conducts an audit of the trading account every quarter and at the end of every year.

o. The investment opportunity is "pretty cut and dried." An investor puts in money and receives a monthly payment in return.

p. The minimum investment accepted is $50,000.

q. If an investor needs his or her money back, they just need to call Johnson, and the funds should be availably by the end of the day.

r. Investors receive at least 3% per month regardless of how well he does trading.

s. Johnson tries to make between 5-10% per month to pay investors.

t. Johnson tries to make about $200,000 per month, which fulfills his monthly pay out to investors plus "a good chunk more."

u. Johnson's company went through a restructuring process when he discovered he was not in compliance with state securities laws. Johnson said he worked with an unnamed attorney to fix the problem, and prepared a private placement memorandum (PPM) to give to investors. Johnson said he was now "free and clear" to raise money for trading.

v. Johnson is not licensed to sell securities, and does not need to be because he is operating under a PPM.

w. Johnson has approximately $800,000 of his own fund in the trading account, which acts as a buffer for trading losses. If he has a losing month on trades, the monthly interest payments to investors are made from the $800,000.

x. Johnson uses approximately $3,000 from the buffer per month for living expenses.

8. Johnson gave those in attendance a one page document summarizing the investment

opportunity. The document is entitled "XtraSource Investments," and states that an investment of $50,000 provides a return of 3% per month, $250,000 provides 3.25% per month, $500,000 provides 3.5% per month, and $1 million provides 4% per month. The document also contains contact information for Miller.

9. During the presentation, the Investigator asked Johnson if investors could have a copy of the financial statements prepared by the outside auditor.

10. Johnson replied that he was not sure, and would have to check with Miller.

11. The Investigator also asked Johnson if he ever had losing months while trading.

12. Johnson replied that he has had seven months in which he did not make the amount he needed to pay investors. Johnson stated that he has had bad months, but "most of them have been years ago."

13. The Investigator asked Johnson if he had been involved in any criminal proceedings or bankruptcies.

14. Johnson replied no.

15. Johnson failed to tell those attending the presentation, among other things, that he filed for bankruptcy in 1996, and that in January 2008, Johnson sent a letter to the Division stating that he closed down his company (DLJ Co.) and was returning investment funds to his current investors.

## CAUSES OF ACTION

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

16. The Division incorporates and re-alleges paragraphs 1 through 15.

17. The investment opportunity offered by Xtra Source, DLJ Co., and Johnson to potential 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).

18. In connection with the offer of a security to potential investors, Xtra Source, DLJ Co., and Johnson, directly or indirectly, made false statements, including, but not limited to, the following:

a. Johnson said he makes his trading as safe as possible, when in fact, according to DLJ Co.'s and Johnson's Interactive Brokers trading statements, Johnson raised the level of risk between September and December 2007, when Johnson began to trade his account on margin and borrowed in excess of $1 million for four months;

b. The volatility has been good for him and is how he has made money, when in

fact, between August 2007 (when the volatility began, according to Johnson) and February 2008, Johnson had a net loss of $2,819,247;

c. Johnson was trading approximately $5 million in an account held at Interactive Brokers, when in fact, Johnson had just over $1 million in the account at that time;

d. Johnson has averaged returns of 50% over the last ten years, and has always done 50% or better, when in fact, this is mathematically impossible;

e. Investors would receive at least 3% per month on their investment, when in fact, given the losses Johnson experienced in his trading account, he had no reasonable basis on which to make this statement;

f. Johnson said he had seven months in which he did not make enough to pay investors, when in fact, Johnson's account reflects numerous losing months, and significant losses;

g. Johnson said he had not been involved in any bankruptcies, when in fact, Johnson filed for bankruptcy in 1996.

19. In connection with the offer of a security to potential investors, Xtra Source, DLJ Co., and Johnson, 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. Johnson filed for bankruptcy in 1996;

b. On January 25, 2008, in connection with a request for information from the Division, Johnson mailed a letter to the Division stating that he closed down DLJ Co. and was returning invested funds to investors;

c. Some or all of the information typically provided in an offering circular or prospectus regarding DLJ Co. and Xtra Source, LLC, such as:

i. The principals of Xtra Source, LLC and DLJ Co. and their experience with trading stock;

ii. Financial statements for DLJ Co. and Xtra Source, LLC;

iii. The nature of competition with trading stocks;

iv. Suitability factors for the investment opportunity;

v. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment.

20. Based upon the foregoing, Xtra Source, DLJ Co., and Johnson 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 Tuesday, July 1st, 2008, at 9:00 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 Xtra Source, LLC, D.L. Johnson Co., LLC, and David Lynn Johnson should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;

b. Why Xtra Source, LLC, D.L. Johnson Co., LLC, and David Lynn Johnson 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 Xtra Source, LLC should not be ordered to pay a fine of one hundred thousand dollars ($100,000) to the Division of Securities, which may be reduced by restitution paid to any victims

d. Why D.L. Johnson Co. 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 any victims; and

e. Why David Lynn Johnson should not be ordered to pay a fine of two hundred fifty thousand dollars ($250,000) to the Division of Securities, which may be reduced by restitution paid to any victims.

DATED this 6th day of June, 2008.

THAD LEVAR
Acting 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
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Salt Lake City, UT 84114-6760
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**BEFORE THE DIVISION OF SECURITIES**
**OF THE DEPARTMENT OF COMMERCE**
**OF THE STATE OF UTAH**

| **IN THE MATTER OF:** | **NOTICE OF AGENCY ACTION** |
|---|---|
| **XTRA SOURCE, LLC**<br>**D.L. JOHNSON CO., LLC**<br>**DAVID LYNN JOHNSON**<br><br>**Respondents.** | **Docket No.** SD-08-0066<br>**Docket No.** SD-08-0067<br>**Docket No.** SD-08-0068 |

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:

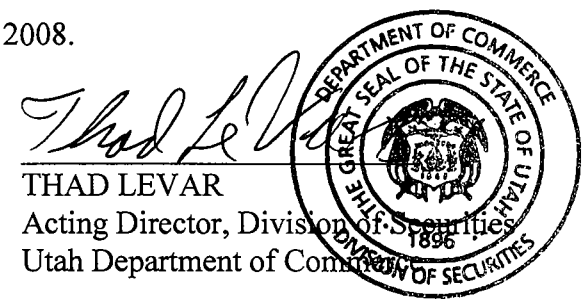
| Signed originals to: | A copy to: |
| --- | --- |
| Administrative Court Clerk<br>c/o Pam Radzinski<br>Division of Securities<br>160 E. 300 S., Second Floor<br>Box 146760<br>Salt Lake City, UT 84114-6760<br>(801) 530-6600 | Jeff Buckner<br>Assistant Attorney General<br>160 E. 300 S., Fifth Floor<br>Box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

A hearing date has been set for Tuesday, July 1st, 2008, at 9:00 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 Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. Pursuant to U.C.A. Subsection 63-46b-2(1)(h), Mr. Eklund is hereby designated as presiding officer for the purpose of conducting this formal administrative proceeding. 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 6TH day of June, 2008.




THAD LEVAR
Acting Director, Division of Securities
Utah Department of Commerce

**Certificate of Mailing**

I certify that on the 9TH day of JUNE, 2008, I mailed, via certified and regular mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

David L. Johnson
4583 South 950 West #1
Riverdale, UT 84405

Certified Mail # 70041160 00030196 7777

D.L. Johnson Co. LLC
250 22nd Street
Ogden, UT 84401

Certified Mail # 70041160 00030196 7760

Xtra Source, LLC
Attn: Nate Miller, Registered Agent
920 N. 2000 W.
Pleasant Grove, UT 84062

Certified Mail # 70041160 00030196 7753

Pam Radzinski
Executive Secretary