

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

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

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**IN THE MATTER OF:**

**TRICAP ASSET MANAGEMENT  
DAVID BRYCE ATKINSON**

**Respondents.**

**ORDER TO SHOW CAUSE**

**Docket No. SD-08-0093**

**Docket No. SD-08-0094**

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It appears to the Director of the Utah Division of Securities (Director) that Tricap Asset Management and David Bryce Atkinson (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. Tricap Asset Management (Tricap) is a name or a business whose true identity is unknown. Tricap is not registered as a business entity and is not registered as an assumed business name of a person or another entity in Utah.
3. David Bryce Atkinson (Atkinson) resides in Utah County, Utah.

### **GENERAL ALLEGATIONS**

4. In 2004, Atkinson offered an investment opportunity in Tricap to DW and TW, a married couple. DW and TW had met with Atkinson several times from February through May 2004 to discuss their financial goals. The meetings took place at Atkinson's office in Utah County, Utah.
5. During these meetings, Atkinson told DW and TW that Atkinson was starting a side business, and offered DW and TW promissory notes in exchange for investment funds.
6. Atkinson told DW and TW the following regarding the investment opportunity:
  - a. Atkinson would utilize an automated computer program to invest funds in foreign currency exchange;
  - b. The investment would provide a guaranteed return of 36% per year;
  - c. Any money Atkinson made through the currency trading in excess of the promised rate of return would be Atkinson's compensation;
  - d. Other investors in the program were making money; and

- e. Atkinson had million-dollar clients signed up for the trading program.
7. On or about April 22, 2004, DW and TW invested \$10,000 in two separate promissory notes (\$5,000 each). DW and TW invested by giving Atkinson a personal check made payable to Atkinson.
  8. Each note stated that interest would be paid at 36% per year. One note matured in six months (Oct. 2004) and the other in one year (April 2005). Atkinson signed the notes on behalf of Tricap.
  9. Atkinson told DW and TW he would pay them monthly interest payments.
  10. Atkinson made regular interest payments to DW and TW.
  11. In November 2004, Atkinson, DW, and TW agreed verbally to extend the term of the six month note to one year.
  12. On or about June 15, 2005, in Utah County, Utah, Atkinson offered to let DW and TW roll over and combine their initial investments into a new \$10,000 promissory note.
  13. On or about June 15, 2005, DW and TW accepted Atkinson's offer and Atkinson executed a new promissory note for DW and TW.
  14. On the same day, DW and TW invested an additional \$5,000 in a second promissory note. DW and TW invested by giving Atkinson a personal check made payable to Atkinson.
  15. Both notes promised interest of 24% per year. The \$10,000 note matured in one year (June 2006) and the \$5,000 note matured in six months (December 2006).

16. Bank records reveal Atkinson did not use all of DW and TW's investment funds for foreign currency trading. Atkinson used \$1,248.20 to make interest payments to DW and TW, and a portion was used to pay personal expenses.
17. To date, Atkinson has paid DW and TW a total of \$13,548.30.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Securities Fraud under § 61-1-1 of the Act**

18. The Division incorporates and re-alleges paragraphs 1 through 17.
19. The promissory notes offered and sold by Tricap and Atkinson are securities under § 61-1-13 of the Act.
20. In connection with the offer and sale of securities, Tricap and Atkinson, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. The April 2004 promissory notes carried no-risk and paid a guaranteed interest rate of 36% per year;
  - b. The May 2005 notes carried no risk and paid a guaranteed interest rate of 24% per year;
  - c. The interest on the notes would be paid regardless of Atkinson's success in the foreign currency market;
  - d. Other investors in the program were making money; and
  - e. Atkinson had million-dollar clients signed up for the trading program.

21. In connection with the offer and sale of securities, Tricap and Atkinson, 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. Atkinson would use DW and TW's investment to pay their interest payments;
  - b. Atkinson would use DW and TW's investment to pay for Atkinson's personal expenses;
  - c. Atkinson filed for bankruptcy in 1998; and
  - d. Some or all of the information typically provided in an offering circular or prospectus regarding Tricap, such as:
    - i. The business and operating history for Tricap;
    - ii. Atkinson's experience with foreign currency trading;
    - iii. Financial statements for Tricap;
    - iv. Risk factors for investors;
    - v. The number of other investors;
    - vi. The minimum capitalization needed to participate in the investment;
    - vii. Discussion of pertinent suitability factors for the investment;
    - viii. Whether the investment is a registered security or exempt from registration; and
    - ix. Whether Atkinson was registered with the Commodity Futures Trading Commission, and whether Atkinson was licensed to sell securities.

22. Based upon the foregoing, Tricap Asset Management and David Bryce Atkinson violated § 61-1-1 of the Act.

**ORDER**

The Presiding Officer, 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, December 2<sup>nd</sup>, 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, 2<sup>nd</sup> 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 Tricap Asset Management and David Bryce Atkinson should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Tricap Asset Management and David Bryce Atkinson 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 Tricap Asset Management should not be ordered to pay a fine of fifteen thousand dollars (\$15,000) to the Division of Securities; and

- d. Why David Bryce Atkinson should not be ordered to pay a fine of fifteen thousand dollars (\$15,000) to the Division of Securities.

DATED this 22<sup>nd</sup> day of October, 2008.

  
KEITH WOODWELL  
Director, Utah Division of Securities

The seal is circular with a double border. The outer border contains the text "DEPARTMENT OF COMMERCE" at the top and "DIVISION OF SECURITIES" at the bottom. The inner border contains "THE GREAT SEAL OF THE STATE OF UTAH" at the top and "1896" at the bottom. In the center is the Great Seal of the State of Utah, featuring a shield with a beaver, a sheaf of wheat, and a cotton plant, with a star above it.

Approved:

  
JEFF BUCKNER  
Assistant Attorney General

J. G.

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
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BEFORE THE DIVISION OF SECURITIES  
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IN THE MATTER OF:

TRICAP ASSET MANAGEMENT  
DAVID BRYCE ATKINSON

Respondents.

NOTICE OF AGENCY ACTION

Docket No. SD-08-0093  
Docket No. SD-08-0094

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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:

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

A copy to:

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 Tuesday, December 2nd, 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, 2<sup>nd</sup> 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 22<sup>nd</sup> day of October, 2008.

  
KEITH WOODWELL  
Director, Division of Securities



**Certificate of Mailing/Service**

I certify that on the 22<sup>nd</sup> day of OCTOBER, 2008, I mailed, via certified mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

David Bryce Atkinson  
Tricap Asset Management  
8945 Cottage Canyon Drive  
Cedar Hills, UT 84062

Certified Mailing # 70041160000301961935

Pamela Radzinski  
Executive Secretary