

Division of Securities
Utah Department of Commerce
160 East 300 South
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:

TRICAP ASSET MANAGEMENT
DAVID BRYCE ATKINSON

Respondents.

STIPULATION AND CONSENT
ORDER

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

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and Tricap Asset Management and David Bryce Atkinson, hereby stipulate and agree as follows:

1. Tricap Asset Management (Tricap) and David Bryce Atkinson (Atkinson) were the subject of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-

1, *et seq.*, as amended.

2. In connection with that investigation, on October 22, 2008, the Division issued an Order to Show Cause to Tricap and Atkinson alleging securities fraud.
3. Tricap, Atkinson, and the Division have agreed to settle this matter by way of this Stipulation and Consent Order.
4. Tricap and Atkinson have been advised of their right to be represented by counsel, but have voluntarily chosen to proceed without counsel in this matter.
5. Tricap and Atkinson admit the jurisdiction of the Division over them and over the subject matter of this action.
6. Tricap and Atkinson waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

I. THE DIVISION'S FINDINGS OF FACT

From approximately January 2008 to the present the Division has been conducting an investigation into this matter which revealed the following:

7. Tricap is not registered as a business entity in Utah.
8. Atkinson resides in Utah County, Utah.

Investors DW and TW, A Married Couple

9. DW and TW met Atkinson on or about February 2004 when Atkinson sold them a life insurance policy.
10. DW and TW met with Atkinson several times from February through May 2004 to discuss their financial goals.
11. These meetings took place at Atkinson's Guardian Life Insurance office in Provo, Utah.
12. 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.
13. Atkinson told DW and TW the following regarding the investment opportunity:
 - a. Atkinson would utilize an automated computer program to invest the funds in foreign currency exchange;
 - b. The investment would provide a guaranteed return of 36% per year; and
 - c. Any money Atkinson made through the currency trading in excess of the promised rate of return would be Atkinson's compensation.
14. 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.
15. 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.

16. Atkinson told DW and TW he would pay them monthly interest payments.
17. Atkinson made regular interest payments to DW and TW.
18. In November 2004, Atkinson and DW and TW agreed verbally to extend the term of the six month note to one year.
19. On or about June 15, 2005, in Provo, Utah, Atkinson offered to let DW and TW roll over and combine their initial investments into a new \$10,000 promissory note.
20. DW and TW accepted Atkinson's offer and Atkinson executed a new promissory note for DW and TW.
21. 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.
22. 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).
23. Bank records reveal Atkinson did not use all of DW and TW's investment funds for foreign currency trading, as represented to the investors.

24. To date, DW and TW have been paid a total of \$13,548.30 in interest and principal.

Misrepresentations and Omissions

25. 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; and
- c. The interest on the notes would be paid regardless of Atkinson's success in the foreign currency market.

26. 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 some of DW's and TW's investment funds for things other than foreign currency trading;
- b. Atkinson filed for bankruptcy in 1998;
- c. 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.

II. THE DIVISION'S CONCLUSIONS OF LAW

27. Based on the Division's investigative findings, the Division concludes that:
 - a. The promissory notes offered and sold by Tricap and Atkinson are securities under § 61-1-13 of the Act; and
 - b. Tricap and Atkinson violated § 61-1-1 of the Act by making misrepresentations of

material facts and by omitting to state material facts in connection with the offer and sale of a security.

III. REMEDIAL ACTIONS/SANCTIONS

28. Tricap and Atkinson admit the Division's findings and conclusions and consent to the sanctions below being imposed by the Division.
29. Tricap and Atkinson represent that any information they have provided to the Division as part of the Division's investigation of this matter is accurate.
30. Pursuant to Utah Code Ann. § 61-1-6(1)(d) and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of \$9,178.
31. As part of the resolution of this matter, Atkinson has expressed a willingness and desire to disgorge the monies collected from the investors according to the following terms:
 - a. By August 15, 2009, Atkinson shall disgorge all monies collected from the investor. The Division believes that amount to be \$8,678, which includes annual interest of 12%, calculated from June 15, 2005. Atkinson shall pay the investors directly according to the following terms: \$964.22 at the signing of the Stipulation and \$964.22 due on the 15th of each month beginning December 15, 2010⁰⁹, and the remainder (\$964.24) by July 15, 2010.

- b. Atkinson shall maintain records verifying payments to investors in the form of canceled checks. Within 20 days after each payment to investors, Atkinson shall provide a copy of the front and back of each cancelled check to the Division.
- 32. Each dollar paid by Atkinson to the investors shall be credited by the Division toward payment of the fine, up to \$8,664. Payment of the remaining fine amount, \$500, is due to the Division by July 15, 2010. If Atkinson does not timely make the disgorgement payments or materially violates any of the terms of the Order, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due.
- 33. Tricap and Atkinson agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.

IV. FINAL RESOLUTION

- 34. Tricap and Atkinson acknowledge that this Order, upon approval by the Division Director shall be the final compromise and settlement of this matter. Respondents further acknowledge that if the Division Director does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
- 35. Tricap and Atkinson acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from

their actions, and that the Order does not affect any criminal causes of action that may arise as a result of their conduct referenced herein. The Division represents that, with respect to the matters asserted herein, and absent additional information being discovered by the Division, it does not intend to refer Atkinson to the Attorney General's office for criminal prosecution.

36. The Stipulation and Consent Order constitute the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way.

Utah Division of Securities

Date: 11/12/09

By: [Signature]
Michael Hines
Director of Enforcement

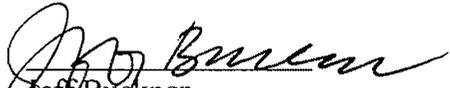
Respondent Tricap Asset Management

By: DAVID ATKINSON

Its: REPRESENTATIVE

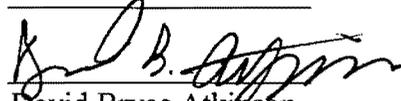
Date: 11/10/2009

Approved:


Jeff Buckner
Assistant Attorney General

Respondent Atkinson

Date: 11-10-2009

By: 
David Bryce Atkinson

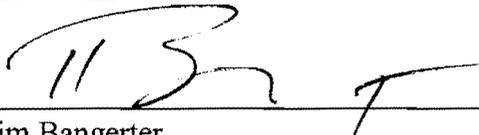
ORDER

IT IS HEREBY ORDERED THAT:

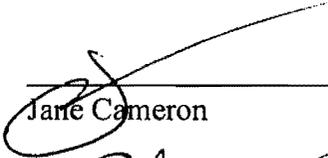
1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Atkinson pay a fine of \$9,178 to the Division by July 15, 2010. Based upon Atkinson's agreement to disgorge monies collected from the investors, each dollar paid by Atkinson to the investors shall be credited by the Division toward payment of the fine, up to \$8,678 as described in paragraph 31(a) and (b) above. If Atkinson does not timely make the disgorgement payments or materially violates any of the terms of this Order, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due.
3. Respondents cease and desist from violating the Utah Uniform Securities Act.

BY THE UTAH SECURITIES COMMISSION:

DATED this 18th day of November, 2009.



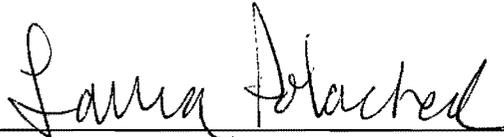
Tim Bangerter



Jane Cameron



Erik Christiansen



Laura Polacheck



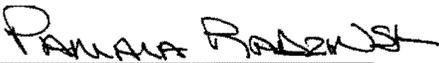
Michael O'Brien

Certificate of Mailing

I certify that on the 3RD day of DECEMBER, 2009, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

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

Certified Mailing #7609008000002842598


Pamela Raden
Executive Secretary