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**
MOUNTAIN FINANCIAL SERVICES, INC. **CRD #148552** **DAVID A. HARRELSON** **CRD #2246888**	**Docket No.** SD-09-0010 **Docket No.** SD.09.0011
RESPONDENTS.	

It appears to the Director of the Utah Division of Securities (Director) that Mountain Financial Services, Inc. and David A. Harrelson 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 Respondents and the subject matter is appropriate because the Division alleges that they violated §§ 61-1-1 (securities fraud) and 61-1-3 (sale by unlicensed

agent) of the Act while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Mountain Financial Services, Inc. (MFS) is a Utah limited liability company. MFS registered on August 1, 2007, but its entity status expired on December 2, 2008. Jan Harrelson is the registered agent for MFS, but there are no individual members listed for MFS in Utah Division of Corporations' records.

3. David A. Harrelson (Harrelson) is a resident of Salt Lake County, Utah. At all times relevant to the matters asserted herein, Harrelson held himself out to be the owner and operator of MFS, and held MFS out to be an investment adviser firm.

4. MFS has never been licensed as an investment adviser.

5. From July 10, 1992 until January 14, 1993, Harrelson was licensed in Utah as a broker-dealer agent of a broker-dealer. Harrelson is not currently licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

6. Starting in approximately June 2007, in several telephone conversations, Harrelson introduced investor BS to an investment opportunity in MFS.

7. At all times relevant to the matters asserted herein, Harrelson was in Utah, and BS was in Texas, where he resides.

8. Harrelson told BS the following about the investment opportunity in MFS:

a. The minimum investment was $25,000;

b. BS could get his investment funds back at any time;

c. MFS was a hedge fund, and invested in stocks, bonds, commodities, options, and foreign exchange;

d. The fund was conservative, with only 20% of investment funds traded and the other 80% held in the trading account;

e. MFS was a small business comprised of six people and a secretary;

f. Harrelson invested $50,000 of his own funds in MFS, and owned 51% of MFS;

g. If BS were to invest $50,000, Harrelson would make BS a silent partner;

h. Since BS was a non-accredited investor, Harrelson would only charge BS an 8% "load fee" on deposits made, and would not take any additional fees until BS' account was worth $350,000;

i. Harrelson would have to get approval from MFS' board before accepting BS' investment;

j. Harrelson said he would take about 0.5% of the profits made daily as a management fee once the account was above $350,000;

k. MFS had five different funds in which investors could place money, including an aggressive growth fund, a global market fund, a US capital market fund, a European market fund, and a Pacific Rim market fund;

l. MFS had about $250 million in each of the funds, and all of the funds consisted of

about 400 investors' funds;

m. The aggressive growth fund and the global market fund were making the biggest returns, which were earning around 40% per year returns;

n. Harrelson said the investment was not guaranteed;

o. MFS traded "under the radar" of the market, meaning the hedge fund could do more with client funds than what other brokerages could do when it came to techniques such as leveraging;

p. Harrelson would be able to trade in any market condition and make a profit;

q. MFS had a seven year history of performance and never had a down quarter.

9. Harrelson provided BS with some documentation entitled *The MFS Account, Customer Agreement and Additional Information*, which includes a prospectus.

10. The prospectus states "Mountain Financial Services Investments was established in 1946 to manage one of America's first funds," and "Mountain Financial Services is the largest mutual fund company in the country."

11. On or about August 1, 2007, BS completed two documents he received from Harrelson in the mail, to set up an MFS account: one entitled *Account Application* and the other *Investment Advisory Agreement*, both of which were signed by BS and dated August 1, 2007.

12. According to the *Account Application*, BS requested $10,000 be invested in MFS' Global Markets Fund and $15,000 invested in the Aggressive Growth Fund.

13. The *Investment Advisory Agreement* states "[BS] hereby employs [MFS] as investment adviser for the account." Later, the agreement states "[MFS] represents that it is not registered as an investment adviser under the Advisers Act with the Securities and Exchange Commission and that such registration is not currently effective."

14. Prior to accepting BS' investment, Harrelson failed to tell BS, among other things, that Harrelson had a criminal history, a history of civil litigation that resulted in excess of $59,300 in judgments, and filed for bankruptcy in 1992 and 2006.

15. On or about August 15, 2007, BS invested $27,000 in MFS, via electronic wire transfer to MFS' Jordan Credit Union account. Of the $27,000 invested, $2,000 (8%) represented Harrelson's "load fee."

16. Harrelson told BS that based on the price per share of the hedge fund, BS had purchased 129 shares of the fund.

17. BS only authorized Harrelson to use the $25,000 investment for trading in two of MFS' funds.

18. After investing, BS received periodic statements from Harrelson regarding the investment. The last statement sent by Harrelson to BS indicates a closing balance in BS' account of $35,354.38 as of June 30, 2008.

19. BS has asked Harrelson to return his entire investment on four different occasions, but Harrelson failed to provide the funds.

20. Bank records reveal that Harrelson used at least $17,000 of BS' money to pay for

personal expenses.

21. In a December 17, 2008 interview with a Division investigator, Harrelson said he traded $10,000 of BS' funds in a self-directed trading account with Thinkorswim Inc., and lost approximately $8,000.

22. To date, BS has received a total of approximately $454.00 from Harrelson.

CAUSES OF ACTION

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

23. The Division incorporates and re-alleges paragraphs 1 through 22.

24. The interests in MFS' "hedge fund" are securities under § 61-1-13 of the Act. The investment opportunity in MFS is also 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).

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

a. Harrelson would need to get MFS' board to approve BS' investment, when in fact, Harrelson was the only individual operating MFS';

b. MFS had a seven year history of performance and never had a down quarter, when in fact, MFS had made no money prior to accepting BS' investment;

c. BS' funds would be used to trade stocks, options, and foreign exchange, when in fact, Harrelson used the majority of BS' funds for personal expenses;

d. Harrelson could trade in any market condition and make a profit;

e. BS could get his investment funds back at any time;

f. MFS was a hedge fund, and invested in stocks, bonds, commodities, options, and foreign exchange;

g. The fund was conservative, with only 20% of investment funds traded and the other 80% held in the trading account;

h. MFS was a small business comprised of six people and a secretary;

i. Harrelson invested $50,000 of his own funds in MFS, and owned 51% of MFS;

j. If BS were to invest $50,000, Harrelson would make BS a silent partner

k. MFS had five different funds in which investors could place money, including an aggressive growth fund, a global market fund, a US capital market fund, a European market fund, and a Pacific Rim market fund;

l. MFS had about $250 million in each of the funds, and all of the funds consisted of about 400 investors' funds;

m. The aggressive growth fund and the global market fund were making the biggest returns, which were earning around 40% per year returns;

n. MFS traded "under the radar" of the market, meaning the hedge fund could do more with client funds than what other brokerages could do when it came to techniques such as leveraging;

o. "Mountain Financial Services Investments was established in 1946 to manage one of America's first funds," and "Mountain Financial Services is the largest mutual fund company in the country."

26. In connection with the offer and sale of securities to investors, Respondents, 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. Harrelson had a history of civil litigation which resulted in excess of $59,300 in judgments;

b. Harrelson had a criminal history;

c. Harrelson filed for bankruptcy in 1992 and 2006;

d. Financial statements for MFS;

e. MFS should have been licensed as an investment adviser;

f. Harrelson was not licensed to sell securities or provide investment advice, and his

only securities industry experience was a six month period in the early 1990's;

g. The securities offered and sold by Harrelson were not registered and had not qualified for an exemption from registration.

27. Based upon the foregoing, Mountain Financial Services, Inc. and David A. Harrelson violated § 61-1-1 of the Act.

COUNT II
Sale by an Unlicensed Agent under § 61-1-3 of the Act
(David A. Harrelson)

28. The Division incorporates and re-alleges paragraphs 1 through 27.

29. Harrelson offered or sold securities in Utah.

30. When offering and selling these securities on behalf of MFS, Harrelson was acting as an agent of an issuer.

31. Harrelson has never been licensed to sell securities in Utah as an agent of this issuer.

32. Based on the above information, David A. Harrelson violated § 61-1-3(1) of the Act.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders 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, March 3, 2009, 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 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, Respondents may show cause, if any they have:

a. Why Mountain Financial Services, Inc. and David A. Harrelson should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;

b. Why Mountain Financial Services, Inc. and David A. Harrelson 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 David A. Harrelson should not be barred from associating with any broker-dealer or investment adviser licensed in this State, and from acting as an agent for any issuer soliciting investor funds in this State;

d. Why Mountain Financial Services, Inc. should not be ordered to pay a fine of forty thousand dollars ($40,000) to the Division of Securities, which may be reduced by restitution paid to the investor; and

e. Why David A. Harrelson should not be ordered to pay a fine of forty thousand dollars ($40,000) to the Division of Securities, which may be reduced by restitution paid to the investors.

DATED this 3rd day of February, 2009.

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

IN THE MATTER OF:	NOTICE OF AGENCY ACTION
MOUNTAIN FINANCIAL SERVICES, INC. CRD #148552 DAVID A. HARRELSON CRD #2246888 Respondents.	Docket No. SD-09-0010 Docket No. SD-09-0011

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 Tuesday, March 3rd, 2009, 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 3rd day of February, 2009.

KEITH WOODWELL
Director, Division of Securities

Certificate of Mailing/Service

I certify that on the 4TH day of FEBRUARY, 2009, 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 A. Harrelson
1036 W. Halcyon Dr.
Murray, UT 84123

Certified Mailing # 70041160000301958669

Mountain Financial Services, Inc.
Attn: Jan Harrelson, Registered Agent
4781 Pine Canyon Lane
South Jordan, UT 84095

Certified Mailing # 70041160000301958676

PAMALA RADZINSKI
Executive Secretary