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RAY QUINNEY

APR 13 2009

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Utah Department of Commerce  
Division of Securities

& NEBEKER

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
Box 146760  
Salt Lake City, UT 84114-6760  
Telephone: (801) 530-6600  
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BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

<p>IN THE MATTER OF:</p> <p>SAGEMARK CAPITAL, LLC JOHN ROGERS MARTIN, CRD# 1878129</p> <p>Respondents.</p>	<p>STIPULATION AND CONSENT ORDER</p> <p>Docket No. SD-09-0027 Docket No. SD-<u>09-0028</u></p>
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The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and Sagemark Capital, LLC and John Rogers Martin, hereby stipulate and agree as follows:

1. Sagemark Capital and Martin were the subject of an investigation conducted by the Division regarding 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. Sagemark Capital, Martin, and the Division have agreed to settle this matter by way of this Stipulation and Consent Order (Order).

3. Sagemark Capital and Martin are represented by the law firm of Ray Quinney & Nebeker, and are satisfied with the representation they have received.
4. Sagemark Capital and Martin admit the jurisdiction of the Division over them and over the subject matter of this action.
5. Sagemark Capital and Martin 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 May 2008 to the present the Division has been conducting an investigation of this matter which revealed the following:

6. Sagemark Capital, LLC was registered as a Utah limited liability company on October 18, 2005, and its entity status is currently "active." John Rogers Martin is the manager and registered agent of Sagemark Capital.
7. John Rogers Martin resides in Wasatch County, Utah. At all times relevant to the matters asserted herein, Martin was a registered broker with Lincoln Financial Advisors Corporation (Lincoln). Martin currently holds securities licenses, but has not worked in the securities industry in any capacity since January 2008.
8. In October 2005, while visiting the home of one of his clients (YU), Martin introduced YU to an investment opportunity in Sagemark Capital.
9. Martin recommended that YU invest the money in her Lincoln brokerage account, which amounted to approximately \$400,000, in Sagemark Capital.

10. Martin told YU the following about the investment in Sagemark Capital:
  - a. This was a rare opportunity for YU to get a return of 1% per month;
  - b. YU's principal investment was safe because it was secured by real estate;
  - c. YU's money would be invested in real estate;
  - d. A good investment amount to start with would be \$400,000, because it would provide income sufficient to meet YU's stated goals.
11. Martin recommended that YU liquidate her Lincoln brokerage account into her bank account, and then issue a cashier's check to Sagemark Capital for \$400,000.
12. On December 30, 2005, after YU had liquidated her brokerage account and deposited the funds into her checking account, Martin accompanied YU to her bank in Salt Lake County, Utah, at YU's request, to get the funds.
13. While at the bank, YU invested \$400,000 in Sagemark Capital, via intra-bank transfer to Sagemark Capital's Wells Fargo bank account.
14. On December 30, 2005, Martin gave YU a Sagemark Capital promissory note, dated December 30, 2005, in the amount of \$400,000.
15. The promissory note states that Sagemark Capital will pay YU interest of 1% per month starting February 15, 2005<sup>1</sup>, and that the note matures in eight months.
16. Martin signed the promissory note as the managing member of Sagemark Capital.

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<sup>1</sup> The note was issued in December 2005, and therefore the first interest payment date was probably meant to read February 2006 as opposed to 2005.

17. From February 2006 through October 2007, YU received a total of 21 interest payments from Sagemark Capital, for a total of \$81,800.64.
18. YU has since received no additional payments of principal or interest from the Respondents.
19. The Respondents currently owe YU a total of \$400,000 in principal alone.

## **II. THE DIVISION'S CONCLUSIONS**

20. The promissory note offered and sold by Sagemark Capital and Martin is a security under the Act.
21. Sagemark Capital and Martin violated § 61-1-1 of the Act by misrepresenting material facts and omitting material facts, necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in connection with the offer and sale of a security, including the following:

### **Misrepresentations**

- a. The principal investment was safe because it was secured by real estate;
- b. YU would receive a return of 1% per month;
- c. The investment would be used to purchase real estate, when in fact, Martin invested the funds with other companies.

### **Omissions**

- a. Martin filed for bankruptcy in 1989;

- b. Some or all of the information typically provided in an offering circular or prospectus regarding Sagemark Capital such as:
- i. The business and operating history for Sagemark Capital;
  - ii. Financial statements for Sagemark Capital;
  - iii. The market for Sagemark Capital's service(s);
  - iv. The nature of the competition for the service(s);
  - v. The current capitalization for Sagemark Capital;
  - vi. The number of other investors;
  - vii. The disposition of any investments received if the minimum capitalization were not achieved;
  - viii. Discussion of pertinent suitability factors for the investment;
  - xiv. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment;
  - x. Agent commissions or compensation for selling the investment;
  - xi. Whether the investment is a registered security or exempt from registration;
  - xii. Whether the person selling the investment is licensed;
  - xiii. The identities of Sagemark Capital's principals;
  - xiv. A description of how the investment would make money;
  - xv. The track record of Sagemark Capital to prior investors;

- xvi. The risk factors;
- xvii. The liquidity of the investment.

### **III. REMEDIAL ACTIONS / SANCTIONS**

- 22. Martin admits that he recommended and placed client YU in an investment not approved by Lincoln.
- 23. Sagemark Capital and Martin neither admit nor deny the Division's remaining findings and conclusions, and consent to the sanctions below being imposed by the Division.
- 24. Sagemark Capital and Martin represent that the information they provided to the Division as part of the Division's inquiry into this matter is accurate.
- 25. If either Respondent materially violates any of the terms of this Order within three years of the entry of this Stipulation and Consent Order, after notice and opportunity to be heard before an administrative officer, a fine of \$50,000 shall be imposed against the Respondents, jointly and severally, and become due immediately, 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.

26. Martin is barred from associating<sup>2</sup> with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in Utah.
27. Sagemark Capital and Martin agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.

#### IV. FINAL RESOLUTION

28. Sagemark Capital and Martin 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.
29. Sagemark Capital and Martin 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.

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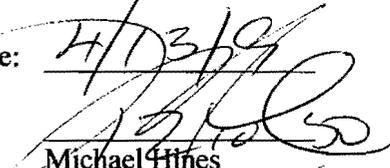
<sup>2</sup> “Associating” includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any securities-related business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. “Associating” does not include any contact with or receipt of compensation from a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah. Specifically, “associating” does not include acting as an agent selling non-variable insurance products (excluding indexed annuities) for an insurance company regardless of whether that company also acts as a broker-dealer or is related to a broker-dealer.

30. This Order constitutes 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 this Order in any way.

Utah Division of Securities

Date:

By:

  
Michael Hines  
Director of Enforcement

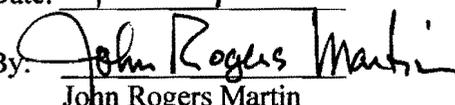
Respondent Sagemark Capital, LLC

Date:

By:

Its:

4-7-09

  
John Rogers Martin

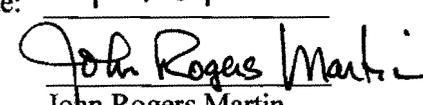
Manager

Respondent Martin

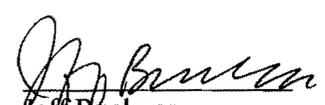
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By:

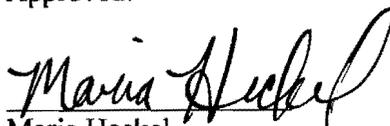
4-7-09

  
John Rogers Martin

Approved:

  
Jeff Buckner  
Assistant Attorney General

Approved:

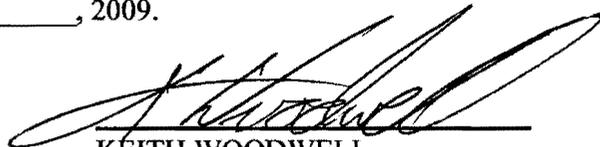
  
Maria Heckel  
Ray Quinney & Nebeker  
Counsel for Respondents

**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. If either Respondent materially violates any of the terms of this Order within three years of the entry of this Consent Order, after notice and opportunity to be heard before an administrative officer, a fine of \$50,000 shall be imposed against the Respondents, jointly and severally, and become due immediately, 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.
3. Martin is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent of any issuer soliciting investor funds in Utah.
4. Sagemark Capital and Martin cease and desist from violating the Utah Uniform Securities Act.

DATED this 20<sup>th</sup> day of April, 2009.



KEITH WOODWELL  
Director, Utah Division of Securities

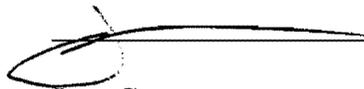
**BY THE UTAH SECURITIES ADVISORY BOARD:**

The foregoing Stipulation and Consent Order is hereby accepted, confirmed and approved by the Utah Securities Advisory Board.

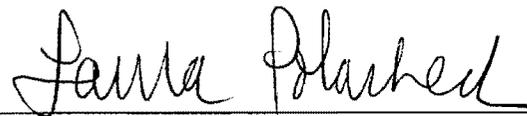
DATED this 11th day of MAY, 2009.



Tim Bangerter

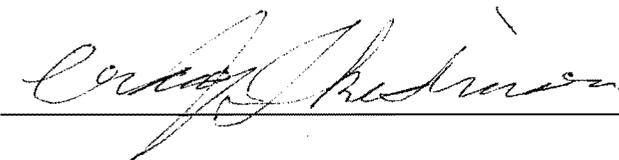


Jane Cameron



Laura Polacheck

Mark Pugsley



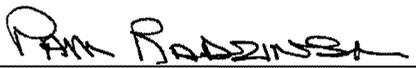
Craig Skidmore

**Certificate of Mailing**

I certify that on the 13<sup>th</sup> day of MAY, 2009, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Maria Heckel (Counsel for Respondents)  
Ray Quinney & Nebeker  
36 S. State St. #1400  
Salt Lake City, UT 84111

Certified Mailing # 70041160000301959024

  
Executive Secretary