

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

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

IN THE MATTER OF:

**DARREN LEE SHANKS
FOREX AUTO PROFITS, LLC**

Respondents.

ORDER TO SHOW CAUSE

Docket No. SD-09-0048

Docket No. SD-09-0049

It appears to the Director ("Director") of the Utah Division of Securities ("Division") that Respondents Darren Lee Shanks ("Shanks") and Forex Auto Profits, LLC ("FAP") may have engaged in acts and practices that violate the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.* Those acts and practices are more fully described herein. Based upon the Division's investigation into 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 FACTS

1. Shanks resides in Lehi, Utah.
2. FAP is a Utah limited liability company with its place of business at 4827 Shady Hollow Lane, Lehi, Utah. Shanks is FAP's registered agent, manager, and sole member.

3. Neither FAP nor Shanks have ever been licensed in the securities industry in any capacity.
4. FAP's website, www.forexautoprocfits.com, claims to provide personal mentoring services for individuals who are interested in learning to trade foreign currencies. The website lists an address of 10 West Broadway, Suite 311, Salt Lake City, UT 84101.
5. In approximately October 2007, Shanks began pooling investor moneys, through FAP, purportedly for investment in the foreign exchange market ("Forex").
6. Between 2007 and May 2009, Shanks collected at least \$1,566,721 from at least 41 investors, whose invested amounts range from \$2,000 to \$425,000.
7. Investor monies were deposited into an account controlled by Shanks ("the FAP Forex fund").
8. Contracts executed by investors, entitled "Forex Auto Profits, LLC Release and Waiver of Liability" indicate:
 - a. FAP is the "custodial agent" of the client's investment;
 - b. FAP will use invested monies to trade in the "Forex Currency Market as previously agreed upon"; and
 - c. investor monies "...will be placed into a trading account..." with FAP and a "Foreign Currency Broker."
9. The contracts further provide that FAP will "charge a percentage on all net returns based on the investment amount" according to the following schedule:

\$0 to \$49,999	35%
\$50,000 to \$99,999	33%
\$100,000 to \$249,999	31%

\$250,000 to \$499,999	29%
\$500,000 to \$999,999	27%
\$1,000,000 and above	25%

10. The performance-based fee was paid to Shanks out of investors' accounts monthly. Based upon information provided to the Division by Shanks, he has received at least \$442,849 in such fees.
11. Shanks also paid referral compensation to investors for the solicitation of additional investors. In this regard, the contract provides that "Referral credits will be paid out at 5% per month, per Client referred, and will be paid out for a maximum of 12 months."
12. Account summaries provided to the Division indicate that 10 of the 41 investors were paid referral bonuses, totaling \$18,245.60. None of the investors receiving such payments are licensed as broker-dealer agents, issuer-agents or investment adviser representatives.
13. Shanks also agreed to pay at least one non-investing individual (who is likewise unlicensed) to solicit investors for Shanks. According to the person, Shanks paid her at least \$15,000. These monies were represented to her as 10% of Shanks's 35% performance-based fee.
14. Shanks presented himself to investors as an expert trader in Forex. Shanks showed potential investors documents allegedly reflecting Shanks's successful trading history. Some investors were shown a trading history on a computer.

Division Investigation

15. In April 2009, an investor contacted the Division to inquire about Shanks and FAP. The investor explained that he had invested money, and asked whether Shanks and FAP were

- licensed, and whether the investor's account was legitimate.
16. After reviewing documents provided by the investor, the Division attempted to contact Shanks, leaving three voicemail messages.
 17. Shanks contacted the Division on May 12, 2009. He stated that FAP is an educational company that coaches, but does not manage client funds or make buy or sell recommendations. He explained that all sample trades are entered in a "demo environment."
 18. When directly asked about a Forex trading account under the name of FAP, however, Shanks acknowledged that he "personally" has a "process" by which he manages Forex accounts for a "handful" of friends and family, but said that the accounts were separate and no losses had occurred.
 19. The Division expressed concerns about unlicensed activity, and sent a letter on May 14, 2009 requesting additional information about Shanks's and FAP's activities, and how they were complying with the licensing requirements of the Act.
 20. On June 19, 2009, Shanks responded to the Division's letter through counsel. Among other things, Shanks represented:

FAP is in the business of providing educational materials about how to trade foreign currencies. These materials are informational only and do not directly or indirectly advise others as to the values of currencies or as to the advisability of investing in, purchasing, or selling specific currencies. It was never the intent or purpose of FAP to solicit funds from investors to trade foreign currencies. Mr. Shanks, through his development of FAP and his personal research and experience, has become well acquainted with how to trade foreign currencies for his own account. As a result of success he experienced in this arena, he was solicited by several friends and family members to trade on their behalf. All of his clients are the result of referrals and not of solicitation.

21. Shanks's counsel further indicated the United States Commodity Futures Trading Commission ("CFTC") and National Futures Association ("NFA") represented to him that there were currently no applicable federal requirements for licensure for Shanks's activities, but indicated Shanks's willingness to license with the Division as an investment adviser, if required.
22. The information provided in the June 19 letter failed to address all of the questions raised in the Division's May 14 letter, and failed to provide all requested information.
23. Among the information that was provided were summaries of investors' interests in the FAP Forex fund, which showed deposits, withdrawals, returns, fees, and net balances on a monthly basis. In addition to performance-based fees paid to Shanks, the summaries showed that clients made \$461,181.24 in withdrawals. At the end of May 2009, the net balance in the fund was \$2,097,735.94.
24. When analyzed by investor, the summaries contain discrepancies among investor returns during the same time periods, as well as inconsistencies in the fees charged to investors, which also seem to contradict the terms of the fee schedule described in paragraph 9 above.
25. In one instance, an investor with losses in the account was still charged a fee even though it is unclear how the fee was calculated. Fees also ranged from a monthly average of 14.07 percent of profits on an account with \$40,010.00 invested to an average monthly fee of 173.79 percent of profits for an account with \$8,500.00 invested. According to summaries provided to the Division, FAP charged an average of 38.06% of profits, exceeding the 35 percent maximum fee contained on the fee schedule.

26. After reviewing the June 19 letter, the Division left a voicemail message for Shanks's counsel, requesting information previously requested but not provided, including: whether Shanks had pooled investor monies; investor contact information; copies of all statements sent to investors; and the names of commodities, securities and banking institutions used for the management of the fund.
27. In August 2009, the Division requested a written response for the outstanding information. At that time, Shanks indicated he intended to pursue licensure with NFA. In September 2009, Shanks's counsel indicated he was having a difficult time reaching Shanks, but agreed to provide the information. To date, the information has not been provided, and counsel has withdrawn from representing Shanks and FAP.

September 18, 2009 E-mail from Shanks

28. On September 21, 2009, an investor forwarded an e-mail from Shanks, which was sent on September 18, 2009 to a number of the investors identified on the investor list previously submitted to the Division by Shanks.
29. The e-mail acknowledges that Shanks had not been responding to any e-mails, phone calls, or text messages. Shanks refers to himself as a "trader and an investment advisor" who had taken money from the e-mail recipients, but had "failed miserably", to the point where Shanks "lost a significant portion of it."
30. The e-mail states that despite the losses, Shanks continued to tell investors that all was well, which further required that Shanks "be very secretive in regards to the funds, fudge on the statements, and out and out lying when questioned about it."
31. Shanks notes that he tried to cover the losses with his commissions, but that those funds

were insufficient to do so.

32. The e-mail acknowledges that “the way I set up the investment funds - being housed in one single account with only my access to the money turned out to be illegal, as I came to find out 3 months ago that this type of an account is illegal.”
33. Shanks then indicates that, in an attempt to “make up for the losses” he was presented with an investment opportunity in mid-July, “to invest in a short-term banking platform trade where the funds \$255,000 would create a return of \$1.25 million. This was designed to be a 30 day short term investment.” The e-mail explains that Shanks intended to generate enough funds with that investment to pay back investors. The investment, however, had not paid out as of September 18, though Shanks states he was told “it will be paid out within the next 2-4 weeks” and that “[a]s soon as I receive the funds, everyone will be paid out.” The e-mail concludes with apologies and pleas for investors to be patient until their funds are returned.
34. Since September 18, the Division has received four written complaints and numerous inquiries from Shanks’s investors, some of whom indicated that they invested money as late as September 2009 with Shanks.

FIRST CAUSE OF ACTION
Unregistered Security Under § 61-1-7 of the Act
(Shanks and FAP)

35. Shanks and FAP offered and sold interests in the FAP Forex fund to at least 41 investors. The interests are securities under the Act and were not registered, in violation of Section 61-1-7 of the Act.

SECOND CAUSE OF ACTION
Unlicensed Broker-Dealer and Agent Under § 61-1-3 of the Act
(Shanks and FAP)

36. Shanks violated Section 61-1-3(1) of the Act by transacting business in this state as a broker-dealer agent without being licensed.
37. FAP violated Section 61-1-3(1) of the Act by transacting business in this state as a broker-dealer without being licensed.
38. FAP violated Section 61-1-3(2)(a) by employing or engaging an unlicensed agent, Shanks.

THIRD CAUSE OF ACTION
Unlicensed Investment Adviser and Investment Adviser Representatives Under § 61-1-3
(Shanks and FAP)

39. FAP, as manager of the FAP Forex fund, transacted business as an investment adviser while not licensed, in violation of Section 61-1-3(3)(a) of the Act.
40. Shanks transacted business as an investment adviser representative while not licensed, in violation of Section 61-1-3(3)(a) of the Act.

FOURTH CAUSE OF ACTION
Securities Fraud Under § 61-1-1(2)
(Shanks and FAP)

41. Shanks and FAP misrepresented or omitted material facts in connection with the offer and sale of interests in the FAP Forex fund, including but not limited to the following:
 - a. failing to disclose that shares of the fund were unregistered and were not exempt from registration;
 - b. lying to investors about losses in the account;

- c. misrepresenting investor account values on statements; and
- d. misrepresenting the use of investor monies;

FIFTH CAUSE OF ACTION
Securities Fraud Under § 61-1-1(3)
(Shanks and FAP)

42. Shanks and FAP engaged in an act, practice, or course of business which operated as a fraud, in violation of Section 61-1-1(3), by:
- a. lying to investors about losses in the account;
 - b. falsifying investor statements; and
 - c. using investor monies in a manner that was contrary to their representations to investors.

SIXTH CAUSE OF ACTION
False Statements to Division Under § 61-1-16 of the Act
(Shanks and FAP)

43. Shanks and FAP violated Section 61-1-16 of the Act by a) falsely stating to the Division that there had been no losses to investors and b) providing falsified investor statements to the Division.
44. Respondents' representations were false and misleading at the time and in light of the circumstances under which they were made.

SEVENTH CAUSE OF ACTION
Unlawful Acts of Investment Adviser Under § 61-1-2 of the Act
(Shanks and FAP)

45. By paying referral fees to unlicensed individuals as described in paragraphs 11-13 above, Shanks and FAP violated Section 61-1-2(1)(c).

46. By entering into performance-based contracts with clients who did not meet the criteria for such contracts under Rule R164-2-1(D), Shanks and FAP violated Section 61-1-2(2)(a)(i) of the Act.

REQUEST FOR RELIEF

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202 and 63G-4-204 through -209, and held before the Division. As set forth in the Notice of Agency Action accompanying this Order, Respondents are required to file a written response with the Division, and an initial hearing on this matter has been scheduled for December 21, 2009 at 9am. The initial hearing will take place at the Division of Securities, 2nd floor, 160 East 300 South, Salt Lake City, Utah. The purpose of the initial hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file a written response or appear at the initial hearing, findings may be entered, a permanent Order to Cease and Desist may be issued, and a fine may be imposed against Respondents, as provided by Utah Code Ann. §§ 63G-4-206 or -209.

At the Order to Show Cause hearing, Respondents may show cause, if any they have:

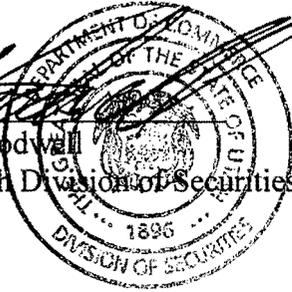
1. Why Respondents should not be found to have engaged in the violations of the Act alleged by the Division in this Order to Show Cause;
2. Why Respondents should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, -2, -3 or any other section of the Act;
3. Why Respondents should not be ordered to pay a fine to the Division in an

amount to be determined at a hearing.

4. Why Respondents should not be barred from: a) associating with a licensed broker-dealer or investment adviser licensed in this state; and b) from acting as an agent for any issuer raising funds in this state.

Dated this 3rd day of November, 2009


Keith M. Woodwell
Director, Utah Division of Securities



Approved:



D. Scott Davis
Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
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:

**DARREN LEE SHANKS
FOREX AUTO PROFITS, LLC**

Respondents.

NOTICE OF AGENCY ACTION

**Docket No. SD-09-0048
Docket No. SD-09-0049**

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through 209; see also Utah Admin. Code R151-46b-1, *et seq.* The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-46b-6.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your version of the

facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, 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
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

D. Scott Davis
Assistant Attorney General
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set for December 21, 2009 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9am.

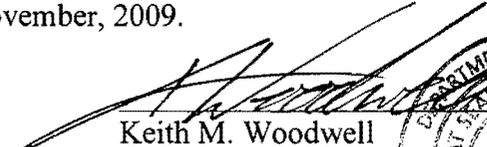
If you fail to file a response, as described above, or fail to appear at any hearing that is set,

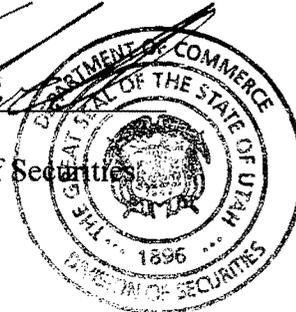
the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-46b-10(11). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4); Utah Admin. Code R151-46b-10(11)(b). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

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. This adjudicative proceeding will be heard by Mr. Eklund and the Utah Securities Commission. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause should be directed to D. Scott Davis, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 30th day of November, 2009.


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 3RD day of November, 2009, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Darren Lee Shanks
4827 Shady Hollow Lane
Lehi, Utah 84043
Certified Mail # 7009 00800000 0284 4165

Forex Auto Profits, LLC
10269 S. Alder Grove Lane
South Jordan, UT 84095
Certified Mail # 7009 00800000 0284 0143

Forex Auto Profits, LLC
10 West Broadway, Suite 311
Salt Lake City, UT 84101
Certified Mail # 7009 00800000 0284 0150

PAM RABZINSKI
Executive Secretary