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**

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| **IN THE MATTER OF:** | **STIPULATION AND CONSENT ORDER** |
| **DARREN LEE SHANKS**<br>**FOREX AUTO PROFITS, LLC** | **Docket No. SD-09-0048**<br>**Docket No. SD-09-0049** |
| **Respondents.** | |

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondents Darren Lee Shanks and Forex Auto Profits, LLC (referred to collectively at times as "Respondents") hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*

2. On November 3, 2009, the Division initiated administrative action against the Respondents by filing an Order to Show Cause against them.

3. Respondents have agreed with the Division to settle this matter by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondents pertaining to the November 3, 2009 Order to Show

Cause.

4. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

5. Respondents waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

6. Respondents have read the Order, understand its contents, and submit to this Order voluntarily. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce them to enter into this Order, other than as described in this Order.

7. Respondents are represented by attorney Ken R. Olson and are satisfied with the legal representation they have received.

## I. FINDINGS OF FACT

The Parties

8. Darren Lee Shanks ("Shanks") is a Utah resident.

9. Forex Auto Profits, LLC ("FAP") is a Utah limited liability company with its place of business at 4827 Shady Hollow Lane, Lehi, Utah[1]. Shanks is FAP's registered agent, manager, and sole member.

10. Neither FAP nor Shanks have ever been licensed in the securities industry in any capacity.

11. FAP's website, www.forexautoprofits.com[2], claimed to provide personal mentoring

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[1]This address was Shanks's residence during the period relevant to this action.

[2]The website has since been taken down, and the domain name was purchased by a party who presently operates a website unrelated to Respondents.

services for individuals who were interested in learning to trade foreign currencies. The website listed an address of 10 West Broadway, Suite 311, Salt Lake City, UT 84101.

12. In approximately October 2007, Shanks began pooling investor monies, through FAP, purportedly for investment in the foreign exchange market ("Forex").

13. 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.

14. Investor monies were deposited into an account controlled by Shanks ("the FAP Forex fund").

15. 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."

16. 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% |

17. 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.

18. 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."

19. 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.

20. 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.

21. 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

22. 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.

23. After reviewing documents provided by the investor, the Division attempted to contact Shanks, leaving three voicemail messages.

24. 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."

25. 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.

26. 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.

27. On June 19, 2009, Shanks responded to the Division's letter through prior legal counsel ("prior 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.

28. Shanks's prior 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.

29. 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.

30. 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.

31. 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 16 above.

32. 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.

33. After reviewing the June 19 letter, the Division left a voicemail message for Shanks's prior 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.

34. 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 prior counsel indicated he was having a difficult time reaching Shanks, but agreed to provide the information. The information was not provided, and prior counsel withdrew from representing Shanks and FAP.

September 18, 2009 E-mail from Shanks

35. 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.

36. 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."

37. 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."

38. Shanks notes that he tried to cover the losses with his commissions, but that those funds were insufficient to do so.

39. 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."

40. 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.

41. Since September 18, 2009, the Division has received fourteen written complaints and numerous inquiries from Shanks's investors, some of whom indicated that they invested money as late as September 2009 with Shanks.

42. During a December 15, 2009 meeting with the Division, Shanks explained the true nature of FAP, including the following:

    a. FAP began losing money from its inception;

    b. Shanks created a second, fictitious account that he used to show gains and from which he falsified investor account statements;

    c. Shanks used investor monies to finance his personal spending, including mortgage payments and recreational travel;

    d. In a final effort to regain losses, FAP invested in a private placement offering, in which all remaining investor funds were lost.

    e. Through investment losses and personal spending, all monies in FAP have

been exhausted.

Criminal Charges

43. On April 20, 2010, Shanks was criminally charged by the United States Attorney's Office with felony wire fraud for his activities as described herein, Case No. 2:10-CR-00318 CW. He later pled guilty, and on July 29, 2010 was sentenced to 41 months in federal prison, and ordered to pay restitution to investors in the amount of $1,702,770.94.

## II. CONCLUSIONS OF LAW

44. 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.

45. FAP and Shanks violated Section 61-1-3(1) of the Act by transacting business in this state as a broker-dealer and broker-dealer agent, respectively, without being licensed.

46. FAP violated Section 61-1-3(2)(a) by employing or engaging an unlicensed agent, Shanks.

47. 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.

48. Shanks transacted business as an investment adviser representative while not licensed, in violation of Section 61-1-3(3)(a) of the Act.

49. 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.

50. 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 account statements; and

c. using investor monies in a manner that was contrary to their representations to investors.

51. 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 account statements to the Division.

52. Respondents' representations were false and misleading at the time and in light of the circumstances under which they were made.

53. By paying referral fees to unlicensed individuals as described in paragraphs 18-20 above, Shanks and FAP violated Section 61-1-2(1)(c).

54. 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.

## III. REMEDIAL ACTIONS/SANCTIONS

55. Respondents admit the Division's findings and conclusions, and consent to the sanctions below being imposed by the Division.

56. Respondents represent that the information they have provided to the Division as part of the Division's investigation is accurate and complete.

57. Pursuant to Utah Code Ann. § 61-1-20(1)(f), and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of $170,000 jointly and severally. The fine shall be reduced for all monies paid back to investors pursuant to the restitution order in the criminal matter.

58. Shanks is 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 Utah

59. Respondents shall cease and desist from violating the Utah Uniform Securities Act.

## IV. FINAL RESOLUTION

60. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondents further acknowledge that if the Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

61. Respondents 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.

62. 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

Dated this 13 day of September, 2010.

By: _____
Dave R. Hermansen
Director of Licensing and Compliance

Approved:
_____
D. Scott Davis
Assistant Attorney General

Forex Auto Profits, LLC

Dated this 18 day of August, 2010.

_____
Darren Lee Shanks as Manager of FAP
and as an Individual

Approved:
_____
Ken R. Olson
Attorney for Respondents

## ORDER

IT IS HEREBY ORDERED THAT:

1. the Division's Findings and Conclusions, which have been admitted by the Respondents, are hereby entered.
2. Respondents jointly and severally pay a fine to the Division in the amount of $170,000. The fine shall be reduced for all monies paid back to investors pursuant to the restitution order in the criminal matter.
3. Shanks is 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 Utah.
4. Respondents shall cease and desist from violating the Utah Uniform Securities Act.

**BY THE UTAH SECURITIES COMMISSION:**

DATED this 28th day of October, 2010.

Tim Bangerter

Jane Cameron

Erik Christiansen

Michael O'Brien

Laura Polacheck

**CERTIFICATE OF MAILING**

I, Julie Price, hereby certify that on the 24th day of November 2010, I mailed, by certified mail, a true and correct copy of the forgoing **Stipulation and Consent Order** to:

Ken R. Olson
Attorney at Law
1656 Ensign Place
Salt Lake City, UT 84121
Certified Receipt #: 7008 1140 0004 1642 0893

Julie Price
Executive Secretary