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: **JESSE S. HEATON, CRD#5347122** **Respondent.**	**PETITION TO SUSPEND, CENSURE AND FINE** **Docket No.** SD-10-0012

Pursuant to the authority of the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-6, the Utah Division of Securities ("Division") through its Director of Licensing, George Robison, hereby petitions the Utah Securities Commission ("Commission") to enter an Order, censuring and imposing a fine upon Jesse S. Heaton ("Heaton"), CRD#5347122. In support of this petition, the Division alleges:

STATEMENT OF FACTS

1. From July 2007 through June 2009, Heaton was licensed in Utah as a broker-dealer agent of Fidelity Brokerage Services, LLC ("Fidelity"), CRD#7784. He is not currently licensed.

2. Heaton has taken and passed the Series 7, General Securities Representative Licensing Examination, and the Series 63, Uniform Securities Agent State Law Examination.

3. Peak Financial Group, LLC ("Peak") is a Utah limited liability company formed by

Heaton, Sherrell Berrett ("Berrett"), CRD#20133, and Mark Bench ("Bench")(collectively hereinafter referred to at times as "Peak Respondents"). Peak registered with the Utah Division of Corporations on July 13, 2009. Peak's place of business is 10813 South Riverfront Parkway, Suite 175, South Jordan, UT 84106.

4. During the period relevant to this action, Heaton, Berrett and Bench were the managers[1] of Peak. Heaton is Peak's registered agent.

5. Berrett has been previously licensed in Utah as a broker-dealer agent. He was most recently licensed as an agent of American Classic Securities, Inc., CRD#25399, from March 2006 through October 2008.

6. Bench has never been licensed or otherwise employed in the securities industry.

7. Peak, Berrett and Bench are named respondents in an Order to Show Cause filed by the Division contemporaneously with this Petition.

Division Investigation

8. In March 2009 a member of the public called the Division to inquire about Peak. A family member of that person had been solicited by Berrett and was considering pooling the monies of family and friends to invest with Berrett.

9. The prospective investor had limited information about the nature of the investment, but was offered a high rate of return, and intended to use retirement account funds and home equity as the sources of monies for investment.

10. Division staff found little information on the company, as Peak was not licensed with the Division, had made no securities filings with the Corporate Finance Section of the

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[1]Berrett is no longer associated with Peak. Bench and Heaton are the two sole managers.

Division, had made no filings with the United States Securities & Exchange Commission ("SEC"), and had not registered as a limited liability corporation with the Utah Division of Corporations.

11. On March 30, 2009, the Division's Licensing Section contacted Berrett, who indicated he had worked with an attorney to prepare a securities offering during 2008. Division staff thereafter had a telephone conference with the attorney, explained the Division's concerns about the lack of filings and lack of licensure of Peak and its principals, and sent an inquiry letter requesting information about the offering and how the offering complied with the requirements of the Act.

12. In May 2009, Heaton, Bench, and their counsel met with the Division, and provided a partial response to the Division's inquiry letter. Several weeks after the meeting, Peak retained new counsel and provided a more complete response.

13. Information provided by Peak indicates that beginning in November 2008, Peak began pooling investor money through a private placement offering.

14. At the time, Heaton was a Fidelity broker-dealer agent. The Central Registration Depository ("CRD")[2] shows that Heaton's investment-related activities with Peak were not reported to or approved by Fidelity.

15. Peak collected monies from 14 clients who deposited a total of $965,109.86. Some of the investor funds came directly from retirement accounts. As of May 2009, the investors had withdrawn a total of $47,175, leaving a total balance of $917,934.86.

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[2]CRD is a computerized database maintained by the Financial Industry Regulatory Authority ("FINRA"). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

16. Investor monies were deposited into a bank account held in the name of Peak and controlled by the Peak Respondents.

17. A private placement memorandum (PPM) provided to investors offered securities in the form of "investment interests" issued by Peak and gave the Peak Respondents broad discretion to invest the monies – essentially creating a "blind pool" – in securities and other investments to be determined by Berrett, Bench and Heaton.

18. The PPM further provided that the Peak Respondents were entitled to receive compensation each month based upon the performance of the investments made, "between zero to fifteen percent (0% to 15%) of the aggregate monthly net profit on funds invested once a benchmark return of 4.0% is achieved in a given month. . . To illustrate, based on a performance of 15.0% net profit in a one-month period, the Investor will receive a maximum 4% payout in the form of a distribution that month and the remaining 11.0% will be retained by the company."

19. The Peak Respondents told the Division that Peak had multiple investments that ranged from short-term debt in other companies, to securities, to foreign exchange market ("Forex") investments. The Peak Respondents also indicated that despite the provisions in the PPM they had not taken any compensation for their activities to that point.

20. As of June 1, 2009, all but $32,500 was held in various investments, including several other private offerings. Although no losses had been reported as of June 2009, the Division expressed concerns because of the high-risk nature of the investments.

21. On October 13, 2009, Peak filed an application to license as an investment adviser. The application is currently pending.

FIRST CAUSE OF ACTION
Unregistered Security Under § 61-1-7 of the Act

22. Heaton sold interests in Peak to 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 Investment Adviser Representative Under § 61-1-3

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

THIRD CAUSE OF ACTION
Securities Fraud Under § 61-1-1(2)

24. Heaton failed to disclose material facts, including but not limited to the following:

    a. that the securities being offered were unregistered and not exempt from registration;

    b. that Peak, Berrett, Bench, and Heaton were not licensed as an investment adviser and investment adviser representatives as required under the Act;

    c. the PPM contained incomplete biographical information on Berrett, Bench, and Heaton, and did not disclose their lack of experience;

    d. failing to disclose: i) prior regulatory action against Berrett for selling an unregistered security; ii) an IRA tax lien against Berrett; and iii) bankruptcies of Berrett and Heaton; and

    e. that Heaton, then a licensed broker-dealer agent of Fidelity, had failed to report to or receive approval for his activities with Peak, as required under industry rules.

FOURTH CAUSE OF ACTION
Dishonest or Unethical Practices Under § 61-1-6

25. Heaton effected securities transactions not approved by or recorded on the regular books or records of his employing broker-dealer, which constitutes a dishonest or unethical practice under R164-6-1g(D)(2), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

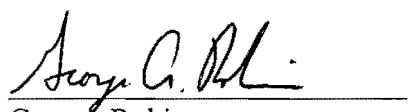
FIFTH CAUSE OF ACTION
Unlawful Acts of Investment Adviser Under § 61-1-2 of the Act

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

REQUEST FOR RELIEF

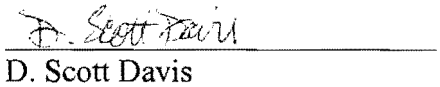
The Division requests that, based upon Heaton's willful violations of the Act, pursuant to § 61-1-6 of the Act, the Commission enter an order suspending the license of and censuring Heaton and imposing a fine in an amount to be determined at a hearing.

Dated this 30th day of March, 2010



George Robison
Director of Licensing
Utah Division of Securities

Approved:



D. Scott Davis
Assistant Attorney General

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

IN THE MATTER OF: **JESSE S. HEATON, CRD#5347122** **Respondent.**	**NOTICE OF AGENCY ACTION** **Docket No.** SD-10-0012

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Utah Division of Securities hereby commences a formal adjudicative proceeding against you as of the date of mailing of this Notice. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through -209. The facts on which this action is based are set forth in the accompanying Petition. You may be represented by counsel or you may represent yourself in this proceeding.

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 Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition 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 Petition, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

After your response is filed, a pre-hearing conference will be held. Utah Admin. Code R151-46b-9(9). The purpose of the pre-hearing conference is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

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 Julie Price
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
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

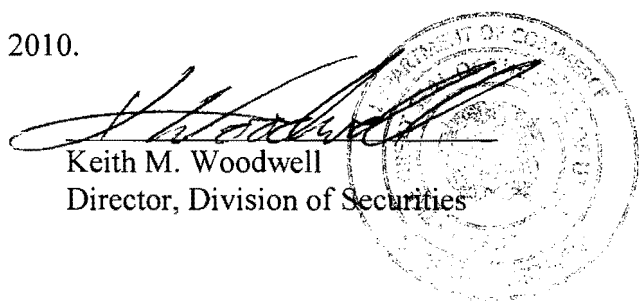
If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code

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 March, 2010.



Keith M. Woodwell
Director, Division of Securities

Certificate of Mailing

I certify that on the 1st day of ~~March~~ April, 2010, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

Peak Financial Group, LLC
Attn: Jesse S. Heaton
10813 South Riverfront Parkway - Suite 175
South Jordan, UT 84106.
Certified Mail # 70092820000125949987

Jesse S. Heaton
6501 S. High Bluff Drive
West Valley City, UT 84118

Certified Mail # 70092820000125954332

Executive Secretary