

of Securities
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
PEAK FINANCIAL GROUP, LLC;
SHERRELL BERRETT, CRD#20133; and
MARK BENCH**

Respondents.

STIPULATION AND CONSENT ORDER

**Docket No. SD-10-0012
Docket No. SD-10-0013
Docket No. SD-10-0014
Docket No. SD-10-0015**

The Utah Division of Securities (“Division”), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondents Jesse S. Heaton (“Heaton”), Peak Financial Group, LLC (“Peak”), Sherrell Berrett (“Berrett”), and Mark Bench (“Bench”) (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 March 30, 2010, the Division initiated administrative actions against the Respondents by filing a Petition to suspend, censure, and fine Heaton, and filing an Order to Show Cause against Peak, Berrett and Bench.
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 March 30, 2010 Petition and 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 Mark W. Pugsley and are satisfied with the legal representation they have received.

I. FINDINGS OF FACT

The Parties

8. Respondents Heaton, Berrett and Bench are Utah residents.
9. Peak is a Utah limited liability company formed by Heaton, Berrett, and Bench. Peak registered with the Utah Division of Corporations on July 13, 2009. Peak’s place of business is 6501 South High Bluff Drive, West Valley City, Utah 84118.
10. During the period relevant to this action, Heaton, Berrett, and Bench were the managers¹ of Peak.
11. Heaton has taken and passed the Series 7, General Securities Representative Licensing Examination, and the Series 63, Uniform Securities Agent State Law Examination. 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 in any capacity.

12. 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.
13. Bench has never been licensed or otherwise employed in the securities industry.

Division Investigation

14. 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.
15. 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.
16. 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 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.
17. 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, explaining the Division’s

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

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.

18. 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.
19. Information provided by Peak indicates that beginning in November 2008, Respondents began pooling investor money through a private placement offering.
20. At the time, Heaton was a Fidelity broker-dealer agent. The Central Registration Depository ("CRD")² shows that Heaton's securities-related activities with Peak were not reported to or approved by Fidelity, although Heaton did fill out an Outside Business questionnaire that disclosed his work on real-estate investments for Peak.
21. Respondents collected monies from 15 clients who deposited a total of \$965,109.86. Some of the investor funds came from individual retirement accounts (IRAs). As of May 2009, the investors had withdrawn a total of \$47,175, leaving a total balance of \$917,934.86.
22. Investor monies were deposited into a bank account controlled by Respondents and held in the name of Peak.
23. A private placement memorandum (PPM) was drafted by the attorney initially retained by Peak for the purpose of ensuring that the offering complied with Utah law.
24. The PPM provided to investors offered securities in the form of "investment interests"

²CRD 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.

issued by Peak and gave the 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.

25. The PPM further provided that the 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.”
26. 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.
27. Respondents also indicated that despite the provisions in the PPM described above in paragraph 25, they had not taken any compensation for their activities to that point.
28. 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.
29. On October 13, 2009, Peak filed an application to license as an investment adviser. The application has since been withdrawn.

II. CONCLUSIONS OF LAW

30. Respondents offered and sold interests in Peak to 15 investors. The interests are securities

under the Act and were not registered, in violation of Section 61-1-7 of the Act.

31. Peak, as manager of pooled investor monies, transacted business as an investment adviser while not licensed, in violation of Section 61-1-3(3)(a) of the Act.
32. Heaton, Berrett and Bench transacted business as investment adviser representatives while not licensed, in violation of Section 61-1-3(3)(a) of the Act.
33. Respondents failed to disclose material facts³, 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.
34. By entering into a performance-based contract with clients who did not meet the criteria for such contract under Rule R164-2-1(D), Respondents violated Section 61-1-2(2)(a)(i) of the Act.

³Despite Respondents' efforts to obtain legal advice to prepare the offering materials, their legal counsel was not experienced or qualified to prepare such materials. Accordingly, material facts were not disclosed as required by the Act.

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

III. REMEDIAL ACTIONS/SANCTIONS

36. Respondents admit the Division’s findings and conclusions, and consent to the sanctions below being imposed by the Division. Respondents represent that they acted in good faith in reliance on the advice provided by their prior legal counsel.

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

38. Pursuant to Utah Code Ann. §§ 61-1-6 and -20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes fines, jointly and severally as to each, as follows:

- Jesse Heaton and Peak: \$2,500
- Sherrell Berrett and Peak: \$2,500
- Mark Bench and Peak: \$2,500

The fines shall be paid within thirty (30) days following entry of this Order.

39. Respondents shall wind down and liquidate Peak, return all monies to investors, and provide supporting documentation for such to the Division. Within thirty (30) days following entry of this Order, Respondents shall:

- a. advise investors in writing that Peak has been closed and is in the process of liquidation; and
- b. advise investors in writing of the investors’ rights under Section 61-1-22 of the

Act.

40. If Respondents are investors, they will not receive any pro-rata return on their investments as a result of liquidation until all other investors have received 100% of their principal.
41. The fines against Berrett and Bench shall be reduced for all monies paid back to investors. The fine against Heaton shall be reduced by up to \$1,500 for monies paid back to investors.
42. Should Heaton apply for licensure in Utah as a broker-dealer agent in the future, he agrees to requalify by taking and passing the Series 7 and 63 examinations.
43. Respondents shall cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.

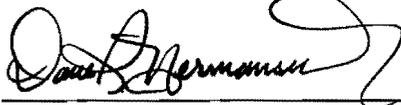
IV. FINAL RESOLUTION

44. 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.
45. 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.
46. 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 18th day of October, 2010.

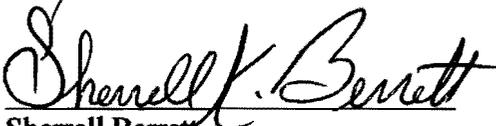
By: 
Dave R. Hermansen
Director of Licensing and Compliance

Peak Financial Group, LLC

Dated this 10 day of October, 2010.

By: Jesse Heaton, Sherrell Berrett, Mark Bench
Its Managers


Jesse S. Heaton

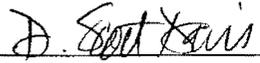

Sherrell Berrett

Mark Bench

Approved:

Mark W. Pugsley
Attorney for Respondents

Approved:


D. Scott Davis
Assistant Attorney General

or otherwise affect this Order in any way.

Utah Division of Securities

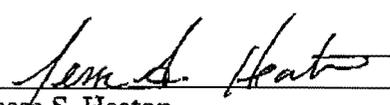
Peak Financial Group, LLC

Dated this 18th day of October, 2010.

Dated this 25 day of August, 2010.

By: 
Dave R. Hermansen
Director of Licensing and Compliance

By: Jesse S. Heaton
Its Manager

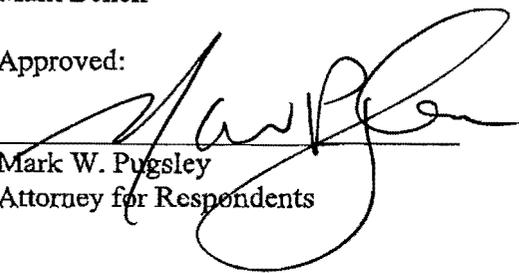

Jesse S. Heaton

Sherrell Berrett

Mark Bench

Approved:

D. Scott Davis
Assistant Attorney General

Approved:

Mark W. Pugsley
Attorney for Respondents

or otherwise affect this Order in any way.

Utah Division of Securities

Peak Financial Group, LLC

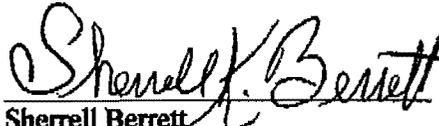
Dated this 18th day of October, 2010.

Dated this ___ day of _____, 2010.

By: 
Dave R. Hermansen
Director of Licensing and Compliance

By: _____
Its _____

Jesse S. Heaton


Sherrell Berrett

Mark Bench

Approved:

Approved:


D. Scott Davis
Assistant Attorney General

Mark W. Pugsley
Attorney for Respondents

or otherwise affect this Order in any way.

Utah Division of Securities

Dated this 18th day of October, 2010.

By: 

Dave R. Hermansen
Director of Licensing and Compliance

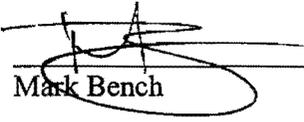
Peak Financial Group, LLC

Dated this ___ day of _____, 2010.

By: _____
Its _____

Jesse S. Heaton

Sherrell Berrett



Mark Bench

Approved:



D. Scott Davis
Assistant Attorney General

Approved:

Mark W. Pugsley
Attorney for Respondents

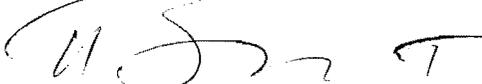
ORDER

IT IS HEREBY ORDERED THAT:

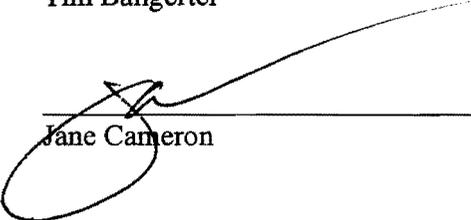
1. The Division's Findings and Conclusions, which have been admitted by the Respondents, are hereby entered.
2. Respondents pay fines to the Division and undertake the remedial actions as set forth in Section III, above. The fines against Berrett and Bench shall be reduced for all monies paid back to investors. The fine against Heaton shall be reduced by up to \$1,500 for monies paid back to investors.
3. Should Heaton apply for licensure in Utah as a broker-dealer agent in the future, he shall requalify by taking and passing the Series 7 and 63 examinations.
4. Respondents shall cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.

BY THE UTAH SECURITIES COMMISSION:

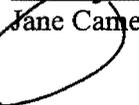
DATED this 28th day of October, 2010.



Tim Bangerter



Jane Cameron



Erik Christiansen



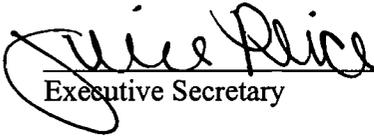
Michael O'Brien

Laura Polacheck

Certificate of Mailing

I certify that on the 10th day of NOVEMBER, 2010, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Mark W. Pugsley
RAY QUINNEY & NEBEKER
36 South State Street Ste. 1400
Salt Lake City, UT 84111



Executive Secretary