

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:

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

Respondents.

ORDER TO SHOW CAUSE

Docket No. SD-10-0013
Docket No. SD-10-0014
Docket No. SD-10-001C

It appears to the Director (“Director”) of the Utah Division of Securities (“Division”) that Respondents Peak Financial Group, LLC (“Peak”), Sherrell Berrett (“Berrett”), and Mark Bench (“Bench”) (hereinafter referred to collectively at times as “Respondents”) 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

The Parties

1. Berrett and Bench are Utah residents.
2. Peak is a Utah limited liability company originally formed by Berrett, Bench and Jesse Heaton (“Heaton”), CRD#5347122. 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.

3. During the period relevant to this action, Berrett, Bench and Heaton were the managers¹ of Peak. Heaton is Peak's registered agent.
4. 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.
5. Heaton was previously licensed in Utah as a broker-dealer agent of Fidelity Brokerage Services, LLC ("Fidelity"), CRD#7784, from July 2007 through June 2009.
6. Heaton is a named respondent in a Petition filed by the Division contemporaneously with this Order to Show Cause.
7. Bench has never been licensed or otherwise employed in the securities industry.

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

¹Berrett 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, explaining 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, Respondents began pooling investor money through a private placement offering.
14. Respondents 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.
15. Investor monies were deposited into a bank account controlled by Respondents and held in the name of Peak.
16. A private placement memorandum (PPM) provided to investors offered securities in the form of “investment interests” 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.

17. 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.”
18. 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. Respondents also indicated that despite the provisions in the PPM they had not taken any compensation for their activities to that point.
19. 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.
20. 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

21. Respondents offered and sold interests in Peak to 14 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 and Investment Adviser Representatives Under § 61-1-3

22. 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.
23. Berrett and Bench transacted business as investment adviser representatives 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. Respondents 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

Unlawful Acts of Investment Adviser Under § 61-1-2 of the Act

25. 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.

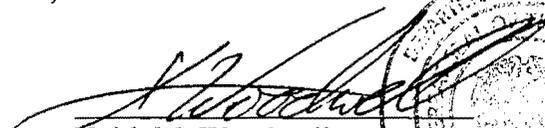
REQUEST FOR RELIEF

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 May 11, 2010 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, -7, or any other section of the Act;
3. Why Respondents should not be censured and ordered to pay a fine to the Division in an amount to be determined at a hearing.

Dated this 30th day of March, 2010


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
Telephone: (801) 530-6600
FAX: (801)530-6980

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

IN THE MATTER OF:

**PEAK FINANCIAL GROUP, LLC
SHERRELL BERRETT, CRD#20133
MARK BENCH**

Respondents.

NOTICE OF AGENCY ACTION

Docket No. SD-11-0013
Docket No. SD-11-0014
Docket No. SD-11-0015

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 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
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 May 11, 2010 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9am.

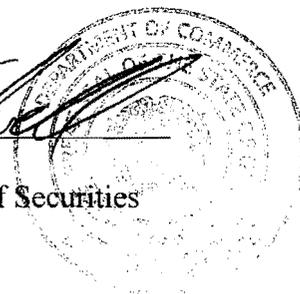
Ann. § 63G-4-209; Utah Admin. Code R151-46b-10(11). After issuing the default order, the presiding officer may grant the relief sought against you in the Petition, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine 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. At any hearings, the Division will be represented by the Attorney General's Office. 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 Petition should be directed to Scott Davis, Assistant Attorney General, 160 E. 300 South, Fifth 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



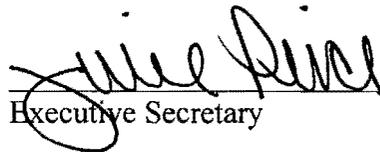
Certificate of Mailing

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

Peak Financial Group, LLC
10813 South Riverfront Parkway - Suite 175
South Jordan, UT 84106
Certified Mail # 70092820000125954715

Sherrell Berrett
1129 Eclipse Drive
St. George, UT 84770
Certified Mail # 70092820000125954718

Mark Bench
11258 South Portabello Road
South Jordan, UT 84095
Certified Mail # 70092820000125952574


Executive Secretary