

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:

**ZIONS BANK LIQUID ASSET
MANAGEMENT, CRD#150805**

Respondents.

ORDER TO SHOW CAUSE

Docket No. SD-10-0001

It appears to the Director ("Director") of the Utah Division of Securities ("Division") that Respondent Zions Bank Liquid Asset Management ("ZBLAM") 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. Zions Bank Liquid Asset Management ("ZBLAM") is a separately identifiable department¹ of Zions First National Bank ("ZFNB"). ZFNB is a subsidiary of Zions Bancorporation. ("Zions"), a public bank holding company with a principal place of

¹See Investment Advisers Act of 1940, Section 202(a)(26).

business in Salt Lake City, Utah. ZBLAM is not licensed as a broker-dealer or investment adviser².

2. Zions Direct (“ZD”) is a broker-dealer that has been licensed in Utah since 1986. ZD is a wholly-owned subsidiary of ZFNB. ZD was licensed with the Division as an investment adviser (“ZD-IA”) from May 2004 until it requested withdrawal on December 31, 2006.
3. Contango Capital Advisors, Inc. (“Contango”) is a federal covered investment adviser, registered with the United States Securities & Exchange Commission (“SEC”) since 2004. Contango is a subsidiary of Welman Holdings, Inc. (“Welman”). Welman is a subsidiary of Zions.

Certified Investment Adviser Process

4. Since 2005, pursuant to legislative amendments to the Utah Money Management Act³ (“MMA”), investment advisers seeking to provide advisory services to public treasurers in Utah are required to become “certified” investment advisers.
5. Certification involves submitting an application to the Division in accordance with rules⁴ adopted by the Money Management Council⁵ (“Council”). Among other things, an applicant shall:

²Following the events described in this action, ZBLAM became registered in July 2009 as a federal covered investment adviser. It withdrew that registration in January 2010.

³Utah Code Ann. § 51-7-1 et seq.

⁴See Utah Admin. Code Rule R628-15, *Certification as an Investment Adviser*.

⁵Among its duties, as set forth in Utah Code Ann. § 51-7-18, the Council advises the State Treasurer and other public treasurers regarding investment policies relating to public monies, and makes rules and establishes policies regarding the same.

- A. Submit an application to the Division on Form 628-15 clearly designating:
- (1) the investment adviser;
 - (2) its designated official as defined in R164-4-2 of the Division; and
 - (3) any investment adviser representative who provides investment advisory services to public treasurers in the state.

Utah Admin. Code Rule R628-15-6.

6. After reviewing an application, the Division Director “certifies” the investment adviser and presents the adviser’s name to the Council for Council approval.
7. A licensed ZD broker-dealer agent and principal who is also a ZFNB senior vice president and ZBLAM Manager (the “Manager”) is a member of the Council and was actively involved in implementing the policies and requirements for certification. The Manager has never been licensed as an investment adviser representative⁶.

Zions Entities as Certified Investment Advisers

8. On June 23, 2005, ZD-IA was among the first investment advisers to be certified by the Division and approved by the Council. A licensed ZD broker-dealer agent who was also then an investment adviser representative of ZD-IA (the “ZD IAR”), was identified as a certified investment adviser representative.
9. Although ZD-IA was the certified investment adviser, records pertaining to the certified investment advisory business were kept by ZBLAM, and all advisory compensation was paid to ZBLAM, rather than the licensed entity.
10. On December 31, 2006, ZD-IA withdrew its investment adviser registration with the Division. ZBLAM continued, however, to do business with treasurers through the ZD

⁶Investment adviser representatives must associate with an investment adviser and complete either 1) the Series 65, Uniform Investment Adviser Law Examination or 2) the Series 66, Uniform Combined State Law and Series 7 Examinations.

- IAR, who was likewise no longer qualified to engage in such business under the MMA.
11. Pursuant to MMA rules, renewals for investment advisers seeking certified status are required to be submitted to the Division by April 30th of each year. On April 30, 2007, the ZD IAR submitted a renewal application in his own name as an individual rather than in the name of an entity seeking to be certified as an investment adviser.
 12. Because ZD-IA was no longer licensed as an investment adviser, the Division notified the ZD IAR that ZD did not meet the requirements to be a certified investment adviser.
 13. On May 23, 2007, a revised application was submitted by the ZD IAR, in the name of Contango as the investment adviser seeking to be certified.
 14. The Manager was identified on the application as the designated official responsible for supervision and compliance of the investment adviser. At no time, however, has the Manager been licensed as a designated official or otherwise associated with Contango.
 15. In signing the execution page, the ZD IAR represented that he executed the application on behalf of and with the authority of Contango, and that the information contained therein was current, true, and complete.
 16. As part of the application the ZD IAR and the Manager both signed an Affidavit of Knowledge of the Utah Money Management Act, which, among other things, specifically represents they had read and understood the Act's Post Certification Requirements set forth in Utah Admin. Code Rule R628-15-9. The Manager signed the Affidavit as the designated official or supervisor of the applicant. Contango.
 17. The Post Certification Requirements include maintaining a current application throughout the term of any agreement or contract with a public treasurer, and notifying the Division

of any changes to information contained in the original application within 30 calendar days of the change.

18. Also on May 23, 2007, the ZD IAR sent a letter to the Council, referencing a “technical problem with our renewal application.” The letter further states:

Over this last year Zions Bank Liquid Asset Management has been certified with RIA licenses held through a wholly owned subsidiary Zions Direct. Beginning January 1, 2007 Zions Direct relinquished its RIA license designation and moved it to another wholly owned Zions Bank subsidiary Contango Capital Advisors. Liquid Asset Management was operating under the assumption that the investment advisor certification could simply be renewed under the same parent company with specific RIA licenses being held under the new subsidiary of the bank: Contango Capital Advisors. . . The actual investment advisor representative to state municipalities that was certified in 2006 by the securities division under “Zions Bank Liquid Asset Management” is still the same: [ZD IAR] and he has not changed or moved in his capacity as an investment advisor representative. The principal difference is that the RIA designation has moved between subsidiaries under Zions Bank.

Upon notification of this issue by the Division of Utah Securities, Zions Bank Liquid Asset Management has amended its 2007 application to reflect the RIA designation now being held through Contango Capital Advisors as of May 23, 2007.

19. Contrary to the representations in the letter, no license had been “moved”, nor was any other substitution of registration made.
20. On June 21, 2007, Contango was certified by the Division and approved by the Council⁷.
21. On April 30, 2008, a renewal application was filed on behalf of Contango. Like the 2007 application, the ZD IAR again certified that he executed the application on behalf of and

⁷On June 7, 2007 the Manager and Zions’ legal counsel met with the Council’s legal counsel and the Division Director of Licensing to discuss Zions’ belief that as a bank it could engage in advisory business under the Zions bank trust powers and was exempt from licensing under the Utah Uniform Securities Act. Counsel for the Council and the Division Director of Licensing agreed, but indicated the express provisions of the MMA would not permit the Division Director to certify the bank entity to engage in business with public treasurers. To the Division’s knowledge, no request for exemption or waiver from the requirements of the MMA was ever sought.

with the authority of Contango, and that the information contained therein was current, true, and complete. Additional signature pages making the same representations were filed by two other individuals then-licensed as investment adviser representatives of Contango.

22. The Manager was again identified on the application as the designated official responsible for supervision and compliance of the investment adviser.
23. The ZD IAR, Manager, and the other investment adviser representatives signed an Affidavit of Knowledge of the Utah Money Management Act, representing they had read and understood the Act's Post Certification Requirements set forth in Utah Admin. Code Rule R628-15-9. The Manager again signed as the designated official or supervisor of the applicant, and wrote in his title of Senior Vice President.
24. On June 19, 2008, Contango was certified by the Division and approved by the Council.
25. On April 30, 2009, Contango filed a renewal application. That application identified the Contango Chief Compliance Officer ("Contango CCO") as the designated official or supervisor. The execution page was signed by Contango's then-President ("President").
26. Although the Contango CCO was identified on the application as the designated official or supervisor, the President signed the Affidavit of Knowledge of the Utah Money Management Act as the designated official or supervisor. The ZD IAR and the two other investment adviser representatives who signed the 2008 application also signed that document.
27. In addition, a fourth individual signed the Affidavit seeking to become a certified investment adviser representative. However, that individual was not licensed with

Contango as an investment adviser representative at the time and had not taken the appropriate examination to be so licensed.

28. Because of the investment adviser representative licensing deficiency, after reviewing the application the Division contacted Contango and spoke with the Contango CCO. The application was subsequently amended, and the Contango CCO informed the Division that the individual would plan to take the investment adviser examination. Contango was certified by the Division on June 25, 2009.

Contango Was Unaware of ZBLAM's Activities Using Contango's Registration as an Investment Adviser

29. The Contango CCO indicated to the Division that Contango had no knowledge of the 2007 and 2008 applications to become a certified investment adviser, and that Contango did not know and had not authorized ZBLAM and the individuals described above to use the Contango investment adviser registration to engage in business as a certified investment adviser.
30. When interviewed by the Division, neither prior Contango compliance officers nor the former president knew that ZBLAM was engaging in business using Contango's investment adviser registration.
31. The Contango CCO discovered the activity in early 2009 when marketing material for ZBLAM was directed to her for review by the ZBLAM Compliance Officer.

June 2009 Board of Directors Meeting

32. During a June 16, 2009 Contango Board of Directors meeting, the Contango CCO submitted a letter to the Board informing of Contango management's compliance

concerns relating to the activities of ZBLAM and its agents, which included:

- a. that Contango management was not involved in or made aware of the applications submitted to the Division by ZBLAM and its agents for the past two years;
- b. that Contango's status as a certified investment adviser, products being offered and activities conducted over the past two years were not disclosed as required on Contango's Form ADV⁸, since Contango had no knowledge of them;
- c. that as a consequence, Contango had not supervised or monitored any of the activities, advice being given, products offered, or marketing material used, all of which was required as a condition of SEC registration;
- d. that Contango had no customer records, compensation information, or any other books and records required to be maintained for the activities;
- e. that the three individuals who signed the certified investment adviser applications did not disclose that activity to Contango on their outside business activities forms or on their securities registration Form U4⁹, which disclosures were required to be updated and attested to annually; and

⁸Form ADV is used by investment advisers to register with the United States Securities and Exchange Commission ("SEC") or with state securities regulators. Section 203 of the Investment Advisers Act of 1940 requires investment advisers to furnish each advisory client and prospective advisory clients with a written disclosure statement which may be either a copy of Part II of its Form ADV or a written document or brochure that contains at least the information required by Part II of Form ADV. The license application requirements for investment adviser in Utah Admin. Code Rule R164-4-2(C) require that an investment adviser file a copy of the ADV Part II with the Division.

⁹Form U4 requires the disclosure of all business activities conducted by licensed individuals. Any securities-related activities must be approved in advance by the individual's employing firm.

- f. that the Manager was not registered or affiliated with Contango yet signed the applications as an officer of Contango.
33. In response, the Board approved a resolution, retroactively ratifying and affirming “in all respects” the Manager’s actions in signing the 2007 application on behalf of Contango – though it appears no such resolution was passed concerning the 2008 application.
34. Regardless of the corporate resolution, the Manager could not be considered a designated official or supervisor at Contango because he had no association with the entity, and was not qualified to supervise or act in an officer or designated official capacity.
35. The Contango CCO and President terminated their employment with Contango shortly after the Board meeting.

Investment Adviser Compensation Paid to an Unlicensed Entity

36. During the years 2005 through August 2009, while ZD-IA and later Contango were investment advisers certified to provide advisory services to Utah public treasurers, ZBLAM and its agents provided such services to nine municipal or state entities.
37. During that period, based upon information provided by ZBLAM, investment advisory fees totaling approximately \$402,656 were paid to ZBLAM. None of the compensation was paid to the certified investment advisers ZD-IA or Contango, nor were any of the activities reported on the books and records required to be maintained by ZD-IA or Contango.

ZBLAM Held Itself Out as the Certified Investment Adviser

38. ZBLAM held itself out to the public treasurers as an investment adviser. Client

contracts¹⁰, account statements, client communications, a newsletter sent to clients and marketing materials provided to clients all used the name “Zions Bank - Liquid Asset Management” with certified investment adviser clients.

FIRST CAUSE OF ACTION
Filing False Statements with the Division Under § 61-1-16 of the Act

39. As described above, ZBLAM violated Section 61-1-16 of the Act by filing documents containing false information with the Division, including but not limited to:
- a. the 2007 and 2008 certified investment adviser applications purportedly filed with the authorization of and on behalf of Contango; and
 - b. falsely representing that the Manager was a designated official or supervisor for Contango.
40. ZBLAM’s use of Contango’s investment adviser registration without the knowledge of Contango caused Contango to file false documents with the Division because Contango’s Form ADV did not disclose the ZBLAM activities, and also caused the Division Director to falsely certify Contango to the Money Management Council.

SECOND CAUSE OF ACTION
Unlicensed Investment Adviser Under § 61-1-3

41. As described above, ZBLAM held itself out and acted as an investment adviser in Utah, receiving a total of \$402,656 in investment advisory compensation between 2005 and 2009, while not licensed, in violation of Section 61-1-3(3) of the Act.

¹⁰It appears that after the Contango CCO reported her concerns, actions were taken to conceal ZBLAM’s activity. In at least one case, a treasurer reported to the Division having been sent, in June 2009, a single replacement first page of a contract – which listed the managing agent as Contango instead of ZBLAM.

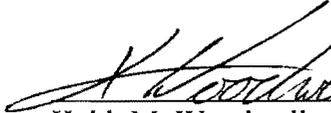
REQUEST FOR RELIEF

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondent 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, Respondent is required to file a written response with the Division, and an initial hearing on this matter has been scheduled for September 16, 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 Respondent fails 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 Respondent, as provided by Utah Code Ann. §§ 63G-4-206 or -209.

At the Order to Show Cause hearing, Respondent may show cause, if any it has:

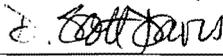
1. Why Respondent should not be found to have engaged in the violations of the Act alleged by the Division in this Order to Show Cause;
2. Why Respondent should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-3, -16, or any other section of the Act;
3. Why Respondent should not be ordered to pay a fine to the Division in the amount of \$50,000.

Dated this 16th day of August, 2010


Keith M. Woodwell
Director, Utah Division of Securities



Approved:



D. Scott Davis
Assistant Attorney General

Division of Securities
Utah Department of Commerce
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Box 146760
Salt Lake City, UT 84114-6760
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FAX: (801)530-6980

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

IN THE MATTER OF:

**ZIONS BANK LIQUID ASSET
MANAGEMENT, CRD#150805**

Respondents.

NOTICE OF AGENCY ACTION

Docket No.

00-10-0001

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

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 September 16, 2010 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9am.

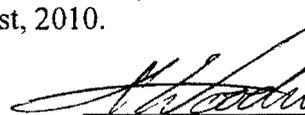
If you fail to file a response, as described above, or fail to appear at any hearing that is set,

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 16th day of August, 2010.


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 24 day of August, 2010, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Zions Bank Liquid Asset Management
Attn: Jane Cameron
One South Main Street - 17th Floor
Salt Lake City, UT 84133

Certified Mail # 7008 1140 0004 1072 2078


Executive Secretary