

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**

Respondent.

STIPULATION AND CONSENT ORDER

Docket No. SD-10-0001

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondent Zions Bank Liquid Asset Management, CRD#150805, hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that it violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*
2. On August 16, 2010, the Division initiated an administrative action against the Respondent by filing an Order to Show Cause.
3. Respondent has 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 Respondent pertaining to the August 16, 2010 Order to Show Cause.
4. Respondent admits the jurisdiction of the Division over it and over the subject matter of this action.

5. Respondent waives any right to a hearing to challenge the Division's evidence and present evidence on its behalf.
6. Respondent has read the Order, understands its contents, and submits to this Order voluntarily. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce it to enter into this Order, other than as described in this Order.
7. Respondent is represented by attorney Erik A. Christiansen and is satisfied with the legal representation it has received.

I. FINDINGS OF FACT

The Parties

8. Respondent 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 business in Salt Lake City, Utah. ZBLAM is not licensed as a broker-dealer or investment adviser².
9. 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.
10. Contango Capital Advisors, Inc. ("Contango") is a federal covered investment adviser, registered with the United States Securities & Exchange Commission ("SEC") since

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

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.

2004. Contango is a subsidiary of Welman Holdings, Inc. ("Welman"). Welman is a subsidiary of Zions.

Certified Investment Adviser Process

11. 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.
12. 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:
 - 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.

13. After reviewing an application, the Division Director "certifies" the investment adviser and presents the adviser's name to the Council for Council approval.

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.

14. 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

15. 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.
16. 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.
17. 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 IAR, who was likewise no longer qualified to engage in such business under the MMA.
18. 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.
19. Because ZD-IA was no longer licensed as an investment adviser, the Division notified the

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.

- ZD IAR that ZD did not meet the requirements to be a certified investment adviser.
20. 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.
 21. 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.
 22. 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.
 23. 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.
 24. 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.
 25. 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.

26. Contrary to the representations in the letter, no license had been "moved", nor was any other substitution of registration made.
27. On June 21, 2007, Contango was certified by the Division and approved by the Council⁷.
28. 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 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.
29. The Manager was again identified on the application as the designated official

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.

- responsible for supervision and compliance of the investment adviser.
30. 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.
 31. On June 19, 2008, Contango was certified by the Division and approved by the Council.
 32. 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").
 33. 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.
 34. 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.
 35. 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

36. 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.
37. 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.
38. 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

39. 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
 - f. that the Manager was not registered or affiliated with Contango yet signed the applications as an officer of Contango.
40. 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.

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.

41. 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.
42. The Contango CCO and President terminated their employment with Contango shortly after the Board meeting.

Investment Adviser Compensation Paid to an Unlicensed Entity

43. 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.
44. 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

45. 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.

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.

II. CONCLUSIONS OF LAW

46. 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.
47. 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.
48. 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.

III. REMEDIAL ACTIONS/SANCTIONS

49. ZBLAM neither admits nor denies the Division's findings or conclusions, but consents to the sanctions below being imposed by the Division.
50. ZBLAM represents that the information it has provided to the Division as part of the Division's investigation is accurate and complete.
51. Pursuant to Utah Code Ann. § 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of \$50,000, to be paid within ten (10) days following entry of this Order.

52. Respondent represents that it has undertaken affirmative measures to ensure:
- a. that all certified investment adviser business and compensation related thereto are properly recorded and reflected on the books and records of the certified investment adviser; and
 - b. that all advertising, marketing materials, newsletters, and other client communications are reviewed and approved by appropriate person(s) associated with the certified investment adviser.
53. Respondent shall, within thirty (30) days following entry of this Order, inform the Division in writing as to all specific measures undertaken to comply with the requirements of paragraph 52.
54. Respondent shall comply with the requirements of the Act in all future business in this state.

IV. FINAL RESOLUTION

55. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondent further acknowledges 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.
56. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against it arising in whole or in part from its actions, and that the Order does not affect any criminal causes of action that may arise as a result of its conduct referenced herein.
57. 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.

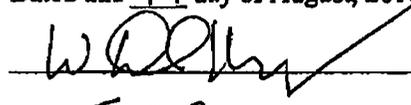
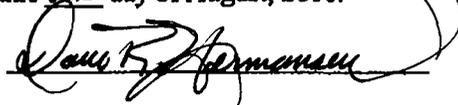
Utah Division of Securities

Zions Bank Liquid Asset Management

Dated this 23 day of August, 2010.

Dated this 19 day of August, 2010.

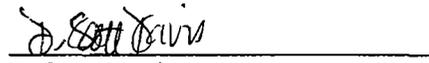
By:



Dave R. Hermansen
Director of Licensing and Compliance

Its E.V.P

Approved:


D. Scott Davis
Assistant Attorney General

Approved:


Erik A. Christiansen
Attorney for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. the Division's Findings and Conclusions, which are neither admitted nor denied by ZBLAM, are hereby entered.
2. ZBLAM pay a fine to the Division in the amount of \$50,000. The fine shall be paid within ten (10) days following entry of this Order.
3. ZBLAM, within thirty (30) days following entry of this Order, inform the Division in writing of the specific measures undertaken to comply with paragraph 52 of the Order.
4. ZBLAM shall comply with the requirements of the Act in all future business in this state.

BY THE UTAH SECURITIES COMMISSION:

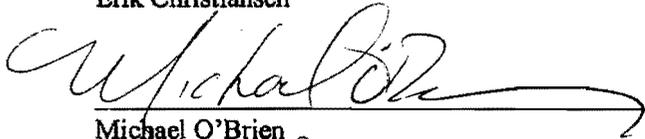
DATED this 76th day of August, 2010.



Tim Bangerter

Jane Cameron

Erik Christiansen



Michael O'Brien



Laura Polacheck

Certificate of Mailing

I certify that on the 21 day of AUGUST, 2010, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Erik A. Christiansen
PARSONS BEHLE & LATIMER
201 South Main Street Ste. 1800
Salt Lake City, UT 84111

7008 1140 0004 11072 2118



Executive Secretary