

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
Telephone: (801) 530-6600  
FAX: (801)530-6980

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

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**IN THE MATTER OF:**

**LANE BIRD,**

**Respondent.**

**ORDER TO SHOW CAUSE**

**Docket No.**

SH-10240

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It appears to the Director of the Utah Division of Securities (Director) that Lane Bird has engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of 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 JURISDICTION**

1. Jurisdiction over Respondent and the subject matter is appropriate because the Division alleges that he violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah.

## **STATEMENT OF FACTS**

### **THE RESPONDENT**

2. Lane Bird (Bird) was, at all relevant times, a resident of the state of Utah. Bird has never been licensed as a broker/dealer, agent, or as an investment adviser representative in Utah. Bird failed the Series 6 exam in 1990.

### **GENERAL ALLEGATIONS**

3. From February 2007 to May 2007, Bird offered and sold securities to at least two investors, in or from Utah, and collected a total of \$247,000.
4. Bird made material misstatements and omissions in connection with the offer and sale of a security to the investors below.
5. The investors lost all \$247,000 of their investment funds.

### **INVESTORS W.M. AND S.M. (HUSBAND AND WIFE).**

6. W.M. and S.M. knew Bird because they were neighbors in Davis County, Utah.
7. Starting in or about February 2007, Bird and W.M. had numerous conversations about ClarconLab, LLC<sup>1</sup> (ClarconLab.) The conversations all took place in Davis County, Utah.
8. During the meetings, Bird made the following statements about a potential investment in Clarcon:

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<sup>1</sup>ClarconLab is a Utah limited liability company registered on July 29, 2005. Omar Bonada (Bonada) is listed as a member. In early 2007, Bird began working with ClarconLab as a non-paid “consultant” to help the company expand. Bird planned to dissolve ClarconLab and start two new businesses in its place, Clarcon Distributing and Clarcon Labs (Clarcon.).

- a. Bird put everything he had into the company, including home equity funds, and funds borrowed from his father, which was around \$500,000<sup>2</sup>;
- b. Bird had invested with Clarcon to develop the business from a “mom and pop business” into a bigger business;
- c. The investment deal was “solid,” otherwise Bird would not have put \$500,000 into Clarcon<sup>3</sup>;
- d. Clarcon needed an additional \$250,000 to improve production, upgrade equipment, and get the product into the market place;
- e. W.M. and S.M. could provide the funds as a lender and would have not have any managerial responsibilities, but Bird could still personally guarantee the return of funds;
- f. In the alternative of being a lender, W.M. could provide the funds as an investor, which would earn more money for W.M.;

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<sup>2</sup>After W.M. and S.M. had invested \$247,000, W.M. asked Bonada about Bird’s \$500,000 he claimed to have invested in ClarconLab. Bonada said that Bird had not given \$500,000 to him or ClarconLab. In or about July 2007, W.M. and S.M. asked Bird about the \$500,000 investment Bird claimed to have made and Bird stated that he told them he had invested in ClarconLab because he thought they would not have invested otherwise.

<sup>3</sup>In a later interview with an investigator with the Division. Bird said. “there was no way that I could, that we could even begin to think...or I would even. you know. invest money in [ClarconLab’s] current mess.” He also stated that when Bird told W.M. and S.M. that he had invested \$500,000 in ClarconLab he “probably misrepresented a little bit how that all came about.”

- g. Bird would own 100% of Clarcon Distributing and 40% of Clarcon Labs once they were formed;
  - h. If W.M. invested in Clarcon, Bird would sell W.M. 25% of Clarcon Distributing and 5% of Clarcon Labs in return;
  - i. If W.M. could invest the money within a couple of weeks, W.M. would increase the Clarcon Labs offering to 10% or 15% if W.M. “was lucky.” Bird claimed he needed to approve the increase with his business partner, Bonada;
  - j. Bird was in a hurry to raise the money because Clarcon was not able to meet demand without upgrading production equipment; and
  - k. Bird had other investors “ready to go” if W.M. and S.M. did not invest.
9. S.M. told Bird that she was not interested in investing in a start up company. In response, Bird said Clarcon had already been manufacturing product and making sales. Bird then showed S.M. a list of companies to which Clarcon was selling product.
10. While at Bird’s office in Layton, Utah, Bird showed W.M. and S.M. some cases of Clarcon’s product as proof that Clarcon was already making product. Bird said the product could later be sold to cover funds invested by W.M. and S.M. if needed.
11. While visiting Clarcon’s office in Roy, Utah, Bird showed W.M. unaudited financial statements of Clarcon. Bird also provided invoices and receipts showing Clarcon had an income of about \$200,000 per month.

12. In response to Bird's statements throughout the meetings, W.M. told Bird that he could come up with the funds, but he would have to use funds from a 401k, savings, and from a second mortgage on his home.
13. Based on Bird's statements, W.M. and S.M. invested \$247,000 in Clarcon.
14. On March 7, 2007, W.M. hand delivered two checks totaling \$25,000 to Bird at Bird's home in Davis County, Utah. W.M. and Bird signed a document that day entitled *Initial Investment Stipulation*.
15. Approximately a week later, W.M. hand-delivered a check for \$142,000 to Bird at Clarcon's office in Davis County, Utah.
16. On or about April 11, 2007, W.M. and Bird signed a document entitled *Letter of Intent and Investment Agreement*. The terms of the document state the following:
  - a. W.M. and S.M. were to provide Clarcon with the remaining \$80,000 of their \$247,000 investment by the end of April 2007;
  - b. W.M. and S.M. received stock in Clarcon from Bird;
  - c. Bird acknowledged that he had "actual ownership of common stock of Clarcon Labs" and "the right to assign such stock to [W.M. and S.M.];
  - d. "Any financial investment made in... [Clarcon] shall become property of ...[Clarcon]."
17. Over the next month, W.M. and S.M. gave the following checks to Clarcon, which were then

deposited in Clarcon Lab's Wells Fargo Bank account::

- a. \$50,000 deposited on April 16, 2007;
  - b. \$10,000 deposited on May 3, 2007; and
  - c. \$20,000 deposited on May 17, 2007.
18. On or about April 11, 2007, W.M. was granted access to Clarcon Lab's Wells Fargo Bank account as well as Clarcon's ledger sheets. Upon reviewing them, W.M. found that much of his investment funds were used to purchase label machines, a modified drill press, and to cover previous "bad debts," including bills for raw ingredients, utilities, staffing, Bonada's salary, and about \$60,000 went to Powerslide Tools, Inc.<sup>4</sup>
19. W.M. confronted Bird about the use of investment funds, to which Bird responded that Clarcon had to "get caught up" financially or else Clarcon would be in trouble. Bird said that the \$60,000 paid to Powerslide was a payment for a loan that Powerslide made to Clarcon previously.<sup>5</sup>
20. Bank records confirm that \$58,000 of W.M. and S.M.'s investment funds were used to pay Powerslide.

#### CAUSES OF ACTION

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<sup>4</sup>Powerslide Tools, Inc. (Powerslide) is a Utah corporation registered on January 2, 2007. Bird is the owner and incorporator. Powerslide's status as an entity is dissolved.

<sup>5</sup>In an interview with an investigator from the Division, Bird said that he helped "nurse" along ClarconLab by providing funds for ClarconLab's payroll costs.

**COUNT I**  
**Securities Fraud under § 61-1-1 of the Act**

21. The Division incorporates and re-alleges paragraphs 1 through 20.
22. The investment opportunities offered and sold by Bird are securities under § 61-1-13 of the Act.
23. In connection with the offer and sale of a security to the investors, Bird, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. Bird had invested \$500,000 in ClarconLab, when in fact, Bird later admitted to the investors and to the Division that this was a false statement and he knew it was false when he stated it.
24. In connection with the offer and sale of a security to the investors, Bird, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
  - a. Bird had multiple civil suits filed against him from 1991 through 2006, including judgments that totaled about \$140,000;
  - b. Bird had filed for Chapter 7 bankruptcy in 1992<sup>6</sup>;
  - c. Bird had filed for Chapter 7 bankruptcy in 1999<sup>7</sup>;
  - d. Bird having to “nurse” along ClarconLab after becoming involved with the company;

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<sup>6</sup>*United States Trustee v. Lane Bird*, Case #92-27040 (Utah 1992).

<sup>7</sup>*United States Trustee v. Lane Bird*. Case #99-28038 (Utah 1999).

- e. Bird's involvement in a prior "ponzi scheme" operated by Wayne Ogden;<sup>8</sup>
- f. Bird would use some of W.M. and S.M.'s funds to pay for salaries and staffing;
- g. Bird loaned about \$60,000 of Powerslide's funds to ClarconLab;
- h. Bird would use W.M. and S.M.'s funds to pay back Powerslide;
- i. Bird never provided \$500,000 to ClarconLab, but valued his time as the equivalent of \$500,000;
- j. Upon getting involved in ClarconLab, Bird thought there was no way he "could even begin to...invest money in [ClarconLab's] current mess;" and
- k. Some or all of the information typically provided in an offering circular or prospectus regarding Clarcon and Bird, such as:
  - i. Financial statements;
  - ii. Risk factors;
  - iii. Suitability factors for the investment;
  - iv. Track record to investors;
  - v. Bird's and Clarcon's business experience and operating history;
  - vi. Nature of competition;
  - vii. Whether the investment is a registered security or exempt from registration;

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<sup>8</sup>In an interview with an investigator from the Division. Bird admitted to investing with and working with Wayne Ogden in what turned out to be "just a big honking Ponzi scheme." Bird said that some of the people he introduced to the investment with Wayne Ogden later filed civil suits against him.

and

- viii. Whether Bird was licensed to sell securities or that Bird had failed his Series 6 exam in 1990.

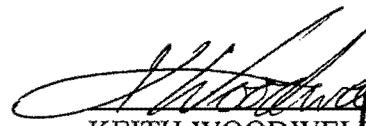
**ORDER**

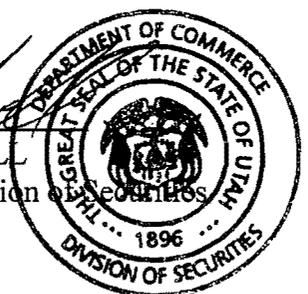
The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on Wednesday, May 4, 2011, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2<sup>nd</sup> Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondent fails to file an answer and appear at the hearing, the Division of Securities may hold Respondent in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondent may show cause, if any he has:

- a. Why Respondent should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondent should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1. or any other section of the Act; and

- c. Why Respondent should not be ordered to pay to the Division a fine amount to be determined by stipulation or by the presiding officer after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investors.

DATED this 24<sup>th</sup> day of March, 2011.

  
KEITH WOODWELL  
Director, Utah Division of Securities



Approved:



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D. SCOTT DAVIS  
Assistant Attorney General  
J.N.

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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**IN THE MATTER OF:**

**LANE BIRD,**

**Respondent.**

**NOTICE OF AGENCY ACTION**

**Docket No. 10-11-0020**

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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, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
(801) 530-6600

**A copy to:**

Scott Davis  
Assistant Attorney General  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84114-0872  
(801) 366-0358

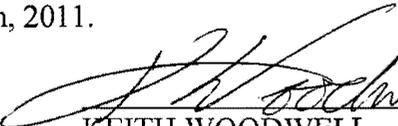
An initial hearing in this matter has been set for May 4, 2011 at the Division of Securities, 2<sup>nd</sup> Floor, 160 East 300 South, Salt Lake City, Utah, at 9:00 A.M.

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 Angela Hendricks, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6035. This adjudicative proceeding will be heard by Ms. Hendricks 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 Securities Division. Questions regarding the Order to Show Cause should be directed to the Division's attorney, Scott Davis, at (801) 366-0358.

Dated this 27<sup>th</sup> day of March, 2011.

  
KEITH WOODWELL  
Director, Division of Securities

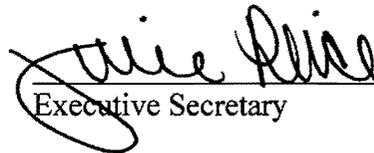


**Evidence of Mailing**

I certify that on the 24<sup>th</sup> day of March, 2011, I mailed a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

**LANE BIRD**  
2520 E. 8125 S.  
South Weber, UT 84405

Certificate # 7008 1140 0004 11042 2515

  
\_\_\_\_\_  
Executive Secretary