

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: SEAQUEST OF UTAH, LLC, MARK ANTHONY NUÑEZ, Respondents.	ORDER TO SHOW CAUSE Docket No. SD-11-0091 Docket No. SD-11-0092
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It appears to the Director of the Utah Division of Securities (Director) that SeaQuest of Utah, LLC and Mark Anthony Nuñez have 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 Respondents and the subject matter is appropriate because the Division

alleges that they 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 RESPONDENTS

2. SeaQuest of Utah, LLC, (SeaQuest) is a Utah Limited Liability Company (LLC) registered on June 17, 2005. Mark A. Nuñez is a manager and member. SeaQuest has never been licensed with the Division.
3. Mark Anthony Nuñez (Nuñez) was, at all relevant times, a resident of the State of Utah. Nuñez has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

4. From October 2005 to August 2008, Respondents offered and sold investment contracts and interests in an LLC to investors, in or from Utah and collected \$110,856.
5. Investment contracts and interests in an LLC are securities under the Act.
6. Respondents made material misstatements and omissions in connection with the offer of securities to the investors below.
7. Investors lost all \$110,856 of their principal.

INVESTOR L.W.

8. In late 2005, a friend referred L.W. to SeaQuest and Nuñez for investment purposes.

FIRST INVESTMENT

9. In or about October 2005, L.W. attended a meeting at SeaQuest's office in Davis County, Utah to discuss an investment opportunity.
10. During the meeting, Nuñez made the following statements about an investment in SeaQuest:
 - a. Nuñez was selling "A" units of SeaQuest for \$5,000 per unit;
 - b. "A" unit owners would receive payments from profits earned by SeaQuest, which would come soon after the investment;
 - c. "A" unit owners could eventually expect a return of 10% per month on invested funds; and
 - d. Money raised from the unit sales would be used for business expenses, including expanding SeaQuest.
11. L.W. received a copy of SeaQuest's private placement memorandum (PPM) at the meeting.
12. Based on Nuñez' statements, L.W. invested \$5,000 in SeaQuest by delivering a cashier's check to Nuñez on October 28, 2005 while in Davis County, Utah.
13. In exchange for the cashier's check, Nuñez gave L.W. a unit certificate showing L.W. had purchased one "A" unit of SeaQuest.
14. After the initial investment, Nuñez sent weekly emails to L.W. updating him on the investment and offering new investment opportunities in SeaQuest.

SECOND INVESTMENT

15. Before November 2006, Nuñez gave L.W. a copy of a new PPM while at SeaQuest's office

in Davis County, Utah, describing an offering in a new limited partnership with SeaQuest.

16. Prior to November 9, 2006, L.W. had a telephone conversation with Nuñez. L.W. was in Utah at the time of the conversation.
17. During the conversation, Nuñez said that he was offering “B” units of SeaQuest for \$5,000 per unit. Nuñez further stated that the “B” units would pay back five times the investment once a profit was earned by SeaQuest.
18. Based on the statements made in the weekly emails from Nuñez and Nuñez’ statements in the telephone conversation, L.W. invested \$5,000 in SeaQuest by delivering a cashier’s check to Nuñez made payable to SeaQuest in exchange for “B” units of SeaQuest on or about November 9, 2006.

THIRD INVESTMENT

19. After the second investment, L.W. continued to receive weekly updates on the investments from Nuñez via email.
20. Based on the statements made in the weekly emails from Nuñez and Nuñez’ statements therein, L.W. invested \$10,000 in SeaQuest by delivering two cashier’s checks of \$5,000 each to Nuñez made payable to SeaQuest in exchange for two “B” units of SeaQuest on or about March 12, 2007.
21. Two weeks after the investment, L.W. was at a conference SeaQuest held in Salt Lake City, Utah and received three unit certificates reflecting the units he purchased with his second and

third investment.

FOURTH INVESTMENT

22. In or about September 2007, Nuñez contacted L.W. via telephone.
23. During the conversation, Nuñez made the following statements about an investment in SeaQuest:
 - a. SeaQuest had the opportunity to invest in a joint venture agreement;
 - b. SeaQuest could invest \$70,000 with another person, and in return, SeaQuest would receive back 100 times its investment funds within three months;
 - c. Nuñez' contact for the joint venture was Michael Harrington; and
 - d. Nuñez was asking people to invest at least \$5,000 with SeaQuest for the joint venture deal.
24. Based on Nuñez' statements, L.W. invested \$5,000 in SeaQuest by delivering a cashier's check of \$5,000 to Nuñez made payable to SeaQuest on or about September 26, 2007. The transaction took place in Davis County, Utah.
25. L.W. never received the promised returns from the joint venture nor did he receive his principal.
26. In or about February 2009, sent an email to Nuñez requesting his principal but has not received it.

INVESTOR C.S.

27. C.S. had known Nuñez for about a decade.
28. In or about November 2007, C.W. went to a meeting at SeaQuest's office in Davis County, Utah to discuss an investment opportunity in SeaQuest and the possibility of employment with the company. Two of Nuñez' employees were also present in the meeting.
29. During the meeting, Nuñez told C.S. he could not hire her at that time and asked if C.S. had any retirement funds. C.S. told Nuñez she had \$80,000 in an IRA.
30. Nuñez made the following statements about an investment opportunity in SeaQuest:
 - a. C.S. could withdraw the funds from her IRA and invest the funds with Nuñez;
 - b. C.S. would have a thirty or sixty day period to withdraw IRA funds without incurring a penalty;
 - c. Nuñez had an investment opportunity involving some kind of trade;
 - d. The trade had already happened, but if C.S. invested soon, Nuñez could double her money within about two weeks and return it to her by Christmas time;
 - e. Because Nuñez was the president of SeaQuest, he decided how much each investor would receive from the trade;
 - f. SeaQuest was to receive \$15 million back on the trade;
 - g. The investment funds were doubled weekly through trading;
 - h. The investment was somewhat safe;
 - i. C.S. could trust Nuñez;

- j. Nuñez had been selling “A” and “B” units of SeaQuest for \$5,000 per unit;
 - k. “A” unit owners would receive payments from profits earned by SeaQuest;
 - l. “B” unit owners would receive payments from profits on the trade;
 - m. C.S. would receive a “B” unit in return for her investment funds; and
 - n. C.S. could invest in SeaQuest, but she would have to become an employee of SeaQuest.
31. Based on Nuñez’ statements, C.S. invested \$80,856 in SeaQuest by wiring her retirement funds to SeaQuest’s checking account on December 4, 2007.
32. On or about December 5, 2007, Nuñez gave C.S. a PPM for SeaQuest’s “B” unit offering and had her fill out an investor questionnaire.
33. On March 18, 2010, C.S. gave Nuñez a letter requesting her principal back.
34. C.S. has not received any of her principal from Nuñez.
35. Bank records show that Nuñez used C.S.’s \$80,856 investment funds in the following manner:
- a. \$28,000 paid to multiple individuals;
 - b. \$5,700 paid to Enlightened Enterprises LLC, a company owned by one of the principals of SeaQuest;
 - c. \$5,500 paid to Mecca of Providence LLC, a company owned by one of the principals of SeaQuest;

- d. \$5,000 transferred to Nuñez' other accounts;
- e. \$5,000 paid to Philip Lee, one of the principals of SeaQuest;
- f. \$4,454 paid to Chance Mayberry for payroll;
- g. \$4,098 paid to IHC;
- h. \$3,858 paid to Allied Interstate;
- i. \$3,500 withdrawn;
- j. \$3,404 paid to the IRS for a payroll tax penalty;
- k. \$2,740 paid to Companies Incorporated;
- l. \$2,185 paid to Jesi Chapman;
- m. \$1,873 paid to C.S. as paychecks for her employment with SeaQuest;
- n. \$1,337 paid to Geekbox Computers;
- o. \$1,095 paid to Eschelon for telephone services; and
- p. \$3,112 paid to miscellaneous expenses.

INVESTOR T.H.

- 36. T.H. had known Nuñez for about two years.
- 37. In or about August 2008, Nuñez called T.H. via telephone and while T.H. was in Salt Lake County, Utah. Nuñez discussed his idea for a company to bring tropical fish into the country for distribution to retail pet stores.
- 38. During the conversation, Nuñez made the following statements about an investment in

SeaQuest:

- a. Nuñez had technology that could bring tropical fish into the country at a lower cost and a higher survival rate than competitors;
 - b. Nuñez had twenty-five years of experience dealing with tropical fish; and
 - c. Investing in Nuñez' company would be a great fit for T.H.
39. A couple of days after the initial phone conversation, Nuñez went to T.H.'s home in Salt Lake County, Utah to further discuss an investment in SeaQuest.
40. During the meeting, Nuñez made the following statements about an investment with SeaQuest:
- a. Nuñez was selling units of SeaQuest for \$5,000 per unit;
 - b. There were two classes of units, "A" and "B;"
 - c. Initial investors had received "A" units approximately two years prior;
 - d. The company had not yet been formed;
 - e. Previous investors had not yet received a return on their investments;
 - f. Nuñez was making a second offering to raise additional capital and would offer "B" units to new investors;
 - g. T.H. would receive a "B" unit for her investment;
 - h. T.H. would have the option of reinvesting her money in the company when the "B" shares profits were paid;

- i. T.H. would be fortunate to invest at this stage because she would not have to wait as long for a return on her investment as the “A” shareholders had;
 - j. T.H. would be a passive investor and would not have any rights as a “B” shareholder;
 - k. T.H. would receive twenty times her initial investment within two to three months;
 - l. If the company became successful enough, Nuñez could offer T.H. a job;
 - m. The investment would work out and T.H. did not have to worry; and
 - n. SeaQuest needed a warehouse and Nuñez needed T.H.’s funds to rent the building.
41. T.H. told Nuñez that the investment seemed too good to be true, to which Nuñez responded “that was small thinking.” Nuñez said the investment was on a “grander scale,” which added to its safety.
42. Nuñez then provided T.H. with a copy of the “B” share PPM and certificate. Nuñez told T.H. to sign the subscription agreement, but not the investor questionnaire. Nuñez told T.H. to read the PPM later and then return it to Nuñez.
43. Based on the statements of Nuñez, T.H. invested \$5,000 with Nuñez to invest in SeaQuest. About an hour after the meeting, Nuñez accompanied T.H. to her credit union in Davis County, Utah where T.H. purchased a \$5,000 cashier’s check payable to Nuñez. T.H. gave the check Nuñez.
44. In August 2009, T.H. went to Nuñez’ home in Davis County, Utah and requested her investment funds back.

45. T.H. has not received any of her investment funds back.

CAUSES OF ACTION

Securities Fraud under ' 61-1-1 of the Act

46. The Division incorporates and re-alleges paragraphs 1 through 45.
47. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
48. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
- a. The investment was somewhat safe, when in fact, in a later PPM Nuñez disclosed that the investment held very high risk;
 - b. That investors could trust Nuñez, when in fact, Nuñez had no reasonable basis for making such a statement; and
 - c. The investment would work out and investors did not have to worry, when in fact, Nuñez had no reasonable basis for making such a statement.
49. In connection with the offer and sale of a security to the investors, Respondents, 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. How many “A” and “B” units were available;
 - b. How many units had been sold;

- c. The amount SeaQuest was looking to raise from the unit sales;
- d. The background and experience of Michael Harrington;
- e. Whether any SeaQuest investors had requested funds returned and failed to receive them;
- f. Nuñez had at least fifteen civil suits filed against him, many of which included judgments;
- g. Some or all of the information typically provided in an offering circular or prospectus regarding SeaQuest and Nuñez, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. The involvement of Nuñez and SeaQuest's principals in legal proceedings;
 - iv. The number of investors;
 - v. Suitability factors for the investment;
 - vi. Nature of competition;
 - vii. Whether the investment was a registered security or exempt from registration;
and
 - viii. Whether Respondents were licensed to sell securities.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents 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, July 11, 2012, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents 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, Respondents may show cause, if any he has:

- a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondents 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;
- c. Why Respondents should not be barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah; and
- d. Why Respondents 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 16th day of May, 2012.


KEITH WOODWELL
Director, Utah Division of Securities



Approved:



D. SCOTT DAVIS
Assistant Attorney General
J.N.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**SEAQUEST OF UTAH, LLC,
MARK ANTHONY NUÑEZ,**

Respondents.

NOTICE OF AGENCY ACTION

**Docket No. SD-11-0091
Docket No. SD-11-0092**

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 R151-4-101, *et seq.* The facts on which this action is based are set forth in the accompanying Order to Show Cause. 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 R151-4-110.

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) 366-0358

An initial hearing in this matter is set for **July 11, 2012** at the Division of Securities, 2nd

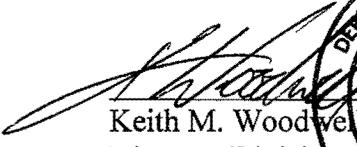
Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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 R151-4-710(2). 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). 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 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) 366-0358.

Dated this 16th day of May, 2012


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

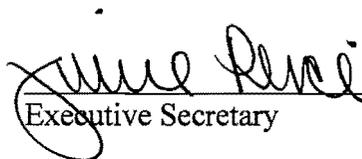
I certify that on the 11th day of May, 2012, I mailed, by certified mail and regular mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

SeaQuest of Utah, LLC
Mark Anthony Nuñez
155 Peregrine Lane Apt. 33
Bountiful, UT 84010

Certified Mail # 70070221 0001 0005 0491

Robert K. Engar, Esq.
Salt Lake Legal Defenders Association
424 East 500 South, Suite 300
Salt Lake City, UT 84111

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Executive Secretary