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: **THE EQUITY ADVANTAGE, INC.,** **JOSHUA MICAH SMITH,** **Respondents.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-11-0098 **Docket No.** SD-11-0099

It appears to the Director of the Utah Division of Securities (Director) that The Equity Advantage, Inc. and Joshua Micah Smith 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) and § 61-1-3 (unlicensed activity) of the Act while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. The Equity Advantage, Inc., (EA) is a Utah corporation registered on November 15, 2007. Joshua Micah Smith is a director. On December 20, 2007, EA filed a Regulation D Rule 506 offering with the Division.

3. Joshua Micah Smith (Smith) was, at all relevant times, a resident of the State of Utah. Smith has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

4. From November 2007 to December 2008, Respondents offered and sold promissory notes and investment contracts to investors, in or from Utah, and collected at least $365,000.

5. Promissory notes and investment contracts 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 $332,100 of their principal.

INVESTOR L.C.

8. L.C. met Smith through Smith's brother, who worked with L.C. at Investors Paradigm[1] (IP). In late 2005, a friend referred L.W. to EA and Smith for investment purposes.

9. In or about October 2007, Smith's brother arranged for Smith to give a presentation via conference call to a group of IP employees, including L.C. while at IP's office in Salt Lake County, Utah.

10. During the meeting, Smith made the following statements about an investment in EA:

    a. EA was investing with a pay-day loan company;

    b. The pay-day loan company needed lending capital;

    c. The particular pay-day loan company with which EA was investing reduced the risk of default by obtaining borrowers' credit card information and establishing automatic repayments;

    d. Each investment was in increments of $10,000 and investors could choose to receive interest monthly or quarterly; and

    e. If interest was paid to investors monthly, the rate of return was 3.5% per month. If quarterly, the return was 5% per month.

11. In November 2007, L.C. spoke with Smith by telephone to learn more about the investment. L.C. was in his office in Salt Lake County, Utah at the time of the call.

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[1] Smith told investigators from the Division that IP would refer sales leads to EA in return for a portion of the return generated from the invested funds.

12. During the conversation, Smith made the following statements about an investment in EA:

    a. Investors would receive a signed promissory note;

    b. EA had been formed primarily for this investment opportunity;

    c. Smith and his brother were the principals of EA; and

    d. Investor funds would be used to invest with the pay-day loan company and would be used to make loans to customers.

13. L.C. received a private placement memorandum (PPM)[2], a form promissory note with the amount field empty, and a subscription agreement.

14. Based on Smith's statements, L.C. invested $20,000 in EA. On November 28, 2007, L.C.'s $20,000 funds were deposited in EA's account.

15. In April 2008, L.C. requested his principal back from Smith.

16. L.C. received one interest payment of $350 from Smith.

17. Smith and EA still owe L.C. $19,650 in principal alone.

18. Bank records show L.C.'s funds were used by Respondents in the following manner:

    a. $14,992 paid to Smith;

    b. $3,700 paid to a previous creditor of Smith;

    c. $826 paid to Smith's brother;

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[2] L.C.'s PPM is different from other investors' in that it contains a use of funds chart that shows 100% of investor proceeds would be applied to the investment.

d. $350 paid to L.C.;

e. $60 paid to the Division for a Regulation D filing fee;

f. $31 paid to Mail N More;

g. $25 paid to bank fees; and

h. $16 paid to Steamroller.

INVESTOR S.B.

19. In late 2007, S.B. was referred to EA by IP.

20. In or about December 2007, S.B. had one or two telephone conversations with Smith about investing with EA.

21. During the meeting, Smith made the following statements about an investment in EA:

a. Smith was raising money to invest in a pay-day loan company;

b. Smith's brother was working with him;

c. Promissory notes required a one year investment;

d. Investors could choose an interest payment schedule that included monthly or quarterly distributions; and

e. S.B. could receive her principal back early if needed.

22. S.B. received from Smith a PPM, a promissory note from EA with the amount field empty, and a subscription agreement signed by Smith.

23. Based on Smith's statements, S.B. invested $10,000 in EA. On January 8, 2008, S.B. wired

$10,000 to EA's account.

24. S.B. received interest payments from Smith totaling $3,200.

25. Smith and EA still owe S.B. $6,800 in principal alone.

26. Bank records show S.B.'s funds were used by Respondents in the following manner:

    a. $5,398 paid to Space Vu;

    b. $3,476 paid to Boulevard Home Furnishing;

    c. $1086 paid to Smith's brother; and

    d. $40 paid to Staples.

INVESTORS J.Z. AND S.Z. (HUSBAND AND WIFE)

27. In January 2008, J.Z. learned about investment opportunities in EA from his brother-in-law.

28. In or about the end of January 2008, J.Z. called Smith by telephone while in Washington County, Utah to discuss investing in EA.

29. During the conversation, Smith made the following statements about an investment in EA:

    a. Smith was raising money to invest in a check-cashing company;

    b. Smith was able to pay about 5% per month, but the actual return was based on what interest payout schedule J.Z. chose;

    c. Smith could only handle $5 million – $10 million and he was close to being "maxed out", so J.Z. needed to hurry and invest;

    d. The funds would be invested in pay-day lending and money would be used to cash

checks;

e. Profit on interest charged was split with the pay-day company and the investor; and

f. Smith had his own money invested and was making a return on the profits.

30. Smith emailed J.Z. copies of a PPM and a promissory note from EA. The PPM stated that the minimum investment was $10,000 and required a one year minimum commitment.

31. In or about February 2008, J.Z. met with Smith at his office in Washington County, Utah. During the meeting Smith made the following statements:

a. Smith and his brother were running EA and they had paired up with IP.

b. The market was "wide open" for investing in pay-day loans;

c. The worst case scenario would be Smith paying the 1% monthly minimum; and

d. The investment was a "sure bet" and Smith would sell his house to make payments if necessary.

32. Based on Smith's statements and the PPM, J.Z. and S.Z. invested $30,000 in EA. On February 6, 2008, J.Z. gave Smith a personal check for $30,000 at Smith's office in Washington County, Utah.

33. In exchange for the funds, Smith signed and gave J.Z. three promissory notes for $10,000 each. Smith also gave J.Z. a signed copy of the PPM.

34. Approximately twelve months later, Smith held a conference call with J.Z. and other investors. During the call Smith admitted misusing the funds. Smith claimed he spent

investor funds on a real estate transaction, but lost the real estate.

35. On May 6, 2008, J.Z. and S.Z. received an interest payment from Smith of $4,500.

36. Smith and EA still owe J.Z. and S.Z. $25,500 in principal alone.

INVESTOR J.C.

37. J.C. learned about EA through an employee at IP.

38. On or about January 21, 2008, J.C. contacted Smith by telephone to inquire about investing in EA. J.C. was in Salt Lake County, Utah when he made the call.

39. From January 21, 2008 to February 20, 2008, Smith and J.C. had approximately six different conversations about investing in EA.

40. During the conversations, Smith made the following statements about an investment opportunity in EA:

    a. The minimum investment was $10,000;

    b. Smith already had other investors and personally invested $250,000;

    c. Smith had been successful in real estate;

    d. The PPM was limited in terms of a formal writing to be more conservative, but EA had been paying investors a higher interest rate than the PPM offered;

    e. Investor funds would be invested in a pay-day loan company and used as working capital to issue loans;

    f. There was a minimal risk of loss because the pay-day loan company established

automatic withdrawals to receive borrowers' payments and lent money at a high interest rate;

g. Investors could get their money out at any time with thirty-days' notice; and

h. Smith's income was earned from a spread on interest rates on what EA was collecting and what was being paid to investors.

41. J.C. received a PPM, promissory notes with no signature for the maker, EA, and a copy of the subscription agreement signed by Smith on February 4, 2008.

42. Based on statements made by Smith, J.C. invested a total of $110,000 by bank wires to EA's account in the following manner:

a. $10,000 on February 20, 2008;

b. $40,000 on March, 27, 2008;

c. $20,000 on April 16, 2008; and

d. $40,000 on April 21, 2008.

43. After missing several interest payments, Smith told J.C. he could not continue making payments and that he had invested funds in Money & More, Inc.[3]

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[3] Money & More, Inc. is a Nevada corporation registered on December 18, 2002. Gale P. Robinson is the director and president. Money & More, Inc. operated as a deferred deposit transaction company (pay-day loan company), as defined by California Department of Corporations. On April 20, 2010, Gale Robinson, Larry O. Bosh, Shawn David Benson, and Michael John Smith were charged with ten counts of securities fraud, a second degree felony, ten counts of unregistered securities agent, a third degree felony, one count of pattern of unlawful activity, a second degree felony, and one count of money laundering, a second degree felony. *State of Utah v. Gale Robinson*, Case No. 101401277 in Fourth Judicial District Court of Utah. (2010)

44. J.C. has received payments from Smith totaling $2,500 and is owed $107,500 in principal alone.

INVESTOR J.W.

45. J.C. learned about EA through a friend.

46. On or about February 13, 2008, J.W. contacted Smith by telephone to inquire about investing in EA. J.W. was in Arizona when he made the call.

47. Smith described the investment to J.W. Between February 15, 2008 and February 19, 2008, Smith and J.W. had two more follow-up conversations via telephone.

48. During the conversations, Smith made the following statements about an investment opportunity in EA:

    a. The minimum investment was $10,000;

    b. Investor funds would be invested in a pay-day loan company and used as working capital to issue loans;

    c. Pay-day loan companies were always looking for more capital and there was a very high turnover with high returns. The pay-day loan companies then pass on the returns to investors.

49. J.W. received a PPM, promissory notes with no signature for the maker, EA, and a copy of the subscription agreement signed by Smith on February 25, 2008.

50. Based on statements made by Smith, J.W. invested a total of $100,000 on or about February

29, 2008.

51. J.W. has received payments from Smith totaling $18,000 and is owed $82,000 in principal alone.

INVESTOR R.R.

52. R.R. learned about EA through IP.

53. On or about January 10, 2008, R.R. and Smith spoke by telephone to discuss investing in EA.

54. During the conversation, Smith made the following statements about an investment opportunity in EA:

a. The minimum investment was $10,000;

b. Investor funds would be invested in a pay-day loan company and used as working capital to issue loans;

c. Smith was the CEO of EA;

d. R.R. would receive an unsecured promissory note;

e. Investor funds would be pooled with other investors; and

f. Investor funds would then be lent out by a pay-day loan company.

55. R.R. received a confidential PPM, a promissory note with no signature for the maker, EA, and a copy of the subscription agreement.

56. Based on statements made by Smith, R.R. invested $15,000 on or about May 19, 2008. R.R.'s IRA company wired the funds directly to EA's account. Smith was aware that R.R.

was using IRA funds to invest.

57. R.R. later received a signed promissory note and subscription agreement.

58. R.R. has received one payment from Smith totaling $2,250 and is owed $12,750 in principal alone.

INVESTOR R.B.

59. R.B. learned about EA through IP.

60. In March 2008, R.B. and Smith spoke by telephone to discuss investing in EA.

61. Following the introductory conversation, Smith sent R.B. a confidential PPM, a promissory note with no signature for the maker, EA, and a copy of the subscription agreement.

62. Between March and May 2008, R.B. spoke with Smith by telephone on four or five different occasions.

63. During the conversations, Smith made the following statements about an investment opportunity in EA:

    a. The minimum investment was $10,000;

    b. EA had been in business five years and Smith was the owner;

    c. Smith had already raised the minimum $500,000 necessary to invest directly with a large national pay-day loan company that had branches all over the country;

    d. Smith had previous investors from the past year;

    e. Some investors had requested their money back and received it;

f. An investor could receive their money back within thirty days by providing written notice;

g. It took six months to get money out of the pay-day loan company, but he had enough money set aside to pay investors out within thirty days of a request;

h. Investor funds would be invested in a pay-day loan company and used as working capital to issue loans;

i. Investor funds would then be lent out by a pay-day loan company;

j. When the pay-day loan company receives a return on investment, it retains a percentage, EA retains a percentage, and the remainder is passed on to individual investors;

k. The pay-day loan company may not have 100% of investor funds lent out at any time, therefore, the interest rate investors received was reduced to account for EA's risk that it might not receive interest on all investor funds placed with the pay-day loan company;

l. Because Smith was selling unsecured promissory notes, they were exempt from securities registration; and

m. Smith drew a salary and paid for company expenses from a percentage of the return on investor funds paid by the pay-day loan company.

64. Based on statements made by Smith, R.B. invested $30,000 on or about May 13, 2008. R.B.

mailed Smith a check for $30,000 to his address in Washington County, Utah.

65. R.B. has received two payments from Smith totaling $600 and is owed $29,400 in principal alone.

INVESTOR J.P.

66. J.P. learned about EA through IP.

FIRST INVESTMENT

67. Prior to May 1, 2008, EA sent J.P. a confidential PPM, a promissory note, a copy of the subscription agreement, investor questionnaire, bank wire instructions, and a program agreement.

68. On or about May 1, 2008, J.P. and Smith spoke by telephone to discuss investing in EA. J.P. was in Salt Lake County, Utah during the call.

69. During the short conversation, Smith encouraged J.P. to wire investment funds quickly.

70. Based on documents provided and statements made by Smith, J.P. invested $20,000 in EA. On or about May 13, 2008, J.P. wired $20,000 to EA's account.

SECOND INVESTMENT

71. Between May 9, 2008 and June 18, 2008, J.P. spoke with Smith by telephone on two or three different occasions.

72. During the conversations, Smith made the following statements about J.P.'s investment in EA:

a. Everything was fine;

b. The notes returned a guaranteed 1% per month, but normally paid 5% or 6% per month based on profitability;

c. EA made money by earning 17% on funds lent out to pay-day loan companies and EA would take a percentage of those earnings before passing the remaining earnings to investors; and

d. J.P. needed to know she could lose her money.

73. Based on Smith's statements, J.P. invested another $30,000 in EA. On or about June 18, 2008, J.P. wired $30,000 to EA's account.

74. J.P. then received a revised copy of her original promissory note with the original amount ($20,000) crossed out and $50,000 written into the margins. The note was not signed by Smith.

75. Between June 18, 2008 and September 2008, Smith told J.P. he had pulled her funds from the pay-day loan company and was trying to invest with another company. J.P. then requested her principal back, but Smith said he could not return her funds for one year.

76. J.P. has received three payments from Smith totaling $1,500 and is owed $48,500 in principal alone.

CAUSES OF ACTION

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

77. The Division incorporates and re-alleges paragraphs 1 through 76.

78. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.

79. 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. Funds would be used to invest in a pay-day loan company and provided a PPM disclosing 100% of investor funds would be invested, when in fact, Smith did not invest L.C.'s or S.B.'s funds in a pay-day loan company.

80. 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. What if any expenses would be drawn from investor funds;

    b. Whether Smith was drawing a salary or paying EA employees from funds;

    c. Which pay-day loan company he was going to use;

    d. Whether IP was receiving commissions or finder's fees from EA;

    e. That Smith had exercised unauthorized control over previous investors' funds (L.C. and S.B.);

    f. That there were two different versions of the PPM being distributed with one saying

100% of funds would be applied to the business venture and the other saying 72.9% would be applied to the business venture;

g. Why the PPM and the Program Agreement offered conflicting rates of return;

h. Smith had used previous investor funds to pay previous debts;

i. Some or all of the information typically provided in an offering circular or prospectus regarding EA,IP, the pay-day loan company in question, and Smith, such as:

   i. Financial statements;

   ii. Risk factors;

   iii. The involvement of Smith and EA'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 and IP were licensed to sell securities.

Employing an Unlicensed Agent under § 61-1-3(2)(a) of the Act

81. The Division incorporates and re-alleges paragraphs 1 through 76.

82. I.P. has not been licensed in the securities industry in any capacity.

83. Respondents employed and compensated I.P. as agents in the offering and/or sale of a

security in Utah.

84. Based on the above information, Respondents violated § 61-1-3(2)(a).

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, February 1, 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;

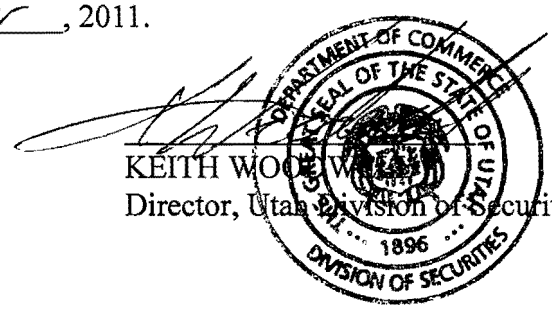
b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act;

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 14th day of December, 2011.



KEITH WOOD
Director, Utah Division of Securities

Approved:

D. SCOTT DAVIS
Assistant Attorney General
D.W.

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Utah Department of Commerce
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: **THE EQUITY ADVANTAGE, INC.,** **JOSHUA MICAH SMITH,** **Respondents.**	**NOTICE OF AGENCY ACTION** **Docket No.** SD-11-0098 **Docket No.** SD-11-0099

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 **February 1, 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 14th day of December, 2011

Keith M. Woodward
Director, Division of Securities

Certificate of Mailing

I certify that on the 15th day of December, 2011, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

The Equity Advantage, Inc.
Joshua Micah Smith
1052 White Sands Dr.
Washington, UT 84780

Certified Mail # 7007 0220 0001 0063 5474

Julie Reine
Executive Secretary