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Utah Department of Commerce
Division of Securities

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Attorneys for Respondent Jack Phillips

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

IN THE MATTER OF:

JACK PHILLIPS,
JAMES D. ELLIOTT,

Respondents.

**ANSWER TO ORDER TO SHOW
CAUSE**

Docket No. SD-12-0001

Docket No. SD-12-0002

Respondent Jack Phillips ("Phillips"), by and through his undersigned counsel of record, hereby responds to the Order to Show Cause filed by the Utah Department of Commerce, Division of Securities ("Division") and alleges as follows:

STATEMENT OF JURISDICTION

1. Phillips denies paragraph 1.

STATEMENT OF FACTS

2. Phillips admits paragraph 2.
3. Phillips is informed and believes that James D. Elliott (Elliott) was a resident of the State of Tennessee. Phillips is without sufficient information and belief to admit or deny the remaining allegations of paragraph 3, and therefore denies the same.

General Allegations

4. Phillips denies paragraph 4 with respect to Phillips. Phillips is without sufficient information and belief to admit or deny the allegations in this paragraph with respect to Elliott and therefore denies the same.

5. Phillips admits paragraph 5.

6. Phillips denies paragraph 6 with respect to Phillips. Phillips is without sufficient information and belief to admit or deny the allegations in this paragraph with respect to Elliott and therefore denies the same.

7. Phillips denies responsibility for any investment or loss by any investor. Phillips is without sufficient information and belief to admit or deny whether persons made an investment in securities with Elliott or lost the alleged investment and therefore denies the same.

Investors B.P. and G.P. (Husband and Wife)

8. Phillips admits paragraph 8.

9. Phillips denies paragraph 9. Phillips admits only that he became involved in the multilevel marketing company Guardian International Travel (GIT), that he discussed GIT with B.P., and that B.P. and G.P. became involved in GIT.

10. Phillips denies paragraph 10.

11. Phillips denies paragraph 11.

12. Phillips denies paragraph 12. During a conversation with B.P. about GIT, Phillips and B.P. talked briefly about a transaction in emeralds that Elliott had pitched to Phillips. In November 2006, Phillips had sent a check for \$150,000 of Phillips' own money to Elliott for purchase of emeralds through a buyer. Phillips referred B.P. to Elliott.

13. Phillips denies paragraph 13.

14. Phillips denies paragraph 14.

15. Phillips denies paragraph 15.

16. Phillips denies paragraph 16 with respect to Phillips. Phillips is informed and believes that B.P. and G.P. sent money directly to Elliott and/or his third party agent in connection with an emerald transaction. Phillips is without sufficient information and belief to admit or deny the remaining allegations in this paragraph with respect to Elliott and therefore denies the same.

17. Phillips denies paragraph 17.

18. Phillips denies paragraph 18 with respect to Phillips. Phillips is without sufficient information and belief to admit or deny the allegations in this paragraph with respect to Elliott and therefore denies the same.

19. Phillips denies paragraph 19 with respect to Phillips. Phillips is without sufficient information and belief to admit or deny the allegations of this paragraph with respect to Elliott and therefore denies the same.

20. Phillips denies paragraph 20 with respect to Phillips. Phillips is without sufficient information and belief to admit or deny the allegations of this paragraph with respect to Elliott or B.P. and therefore denies the same.

21. Phillips is without sufficient information and belief to admit or deny the allegations in paragraph 21 and therefore denies the same.

22. Phillips denies paragraph 22 with respect to Phillips. Phillips denies responsibility for any investment or loss thereof by any investor. Phillips avers that Phillips did not receive emeralds or a return of the total of \$220,000 of his own money that he sent to Elliott and/or Elliott's third party agent for emeralds and is informed and believes that other persons

who sent money to Elliott and or Elliott's third party agent for purchase of emeralds did not receive their money back either. Phillips is without sufficient information and belief to admit or deny the remaining allegations of this paragraph with respect to Elliott and therefore denies the same.

23. Phillips denies paragraph 23 with respect to Phillips. Phillips is without sufficient information and belief to admit or deny the allegations of this paragraph with respect to Elliott and therefore denies the same.

Investors P.R. and S.R. (Husband and Wife)

24. Phillips admits paragraph 24.

25. Phillips denies paragraph 25. Phillips admits only that he became involved in the multilevel marketing company Guardian International Travel (GIT), that he discussed GIT with P.R. and S.R., and that P.R. and S.R. became involved in GIT.

26. Phillips denies paragraph 26 with respect to Phillips. Phillips is informed and believes that P.R. and S.R. first learned about the emerald purchase from a third party not mentioned in the complaint. Phillips is without sufficient information and belief to admit or deny the allegations of this paragraph with respect to Elliott and therefore denies the same.

27. Phillips denies paragraph 27.

28. Phillips denies paragraph 28. Phillips is without sufficient information and belief to admit or deny the allegations of this paragraph with respect to Elliott and therefore denies the same.

29. Phillips denies paragraph 29 as to Phillips. Phillips is informed and believes that P.R. and S.R. sent money directly to Elliott or his third party agent in connection with an

emerald transaction. Phillips is without sufficient information and belief to admit or deny the remaining allegations in this paragraph with respect to Elliott and therefore denies the same.

30. Phillips denies paragraph 30 as to Phillips. Phillips is without sufficient information and belief to admit or deny the allegations of this paragraph with respect to Elliott and therefore denies the same.

31. Phillips denies paragraph 31 as to Phillips. Phillips denies responsibility for any investment or loss thereof by any investor. Phillips avers that Phillips did not receive emeralds or a return the total of \$220,000 of his own money that he personally sent to Elliott and/or Elliott's third party agent for emeralds and is informed and believes that other persons who sent money to Elliott and/or Elliott's agent for purchase of emeralds did not receive their money back either. Phillips is without sufficient information and belief to admit or deny the remaining allegations of this paragraph with respect to Elliott and therefore denies the same.

CAUSES OF ACTION

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

32. Respondents incorporate their responses to the preceding paragraphs as if fully set forth herein.

33. Phillips denies paragraph 33.

34. Phillips denies paragraph 34 as to Phillips. Phillips is without sufficient information and belief to admit or deny the remaining allegations of this paragraph with respect to Elliott and therefore denies the same.

35. Phillips denies paragraph 35 as to Phillips. Phillips is without sufficient information and belief to admit or deny the remaining allegations of this paragraph with respect to Elliott and therefore denies the same.

AFFIRMATIVE DEFENSES

Respondent Phillips asserts the following affirmative defenses:

1. The Order to Show Cause fails to state facts sufficient to constitute causes of action and/or claims for relief;
2. Some or all of the claims in the Order to Show Cause are time-barred pursuant to the applicable statutes of limitations;
3. The claims are barred by the doctrines of waiver, ratification, laches, and estoppel;
4. Phillips acted in good faith;
5. The emerald purchase was not an investment contract or other security;
6. Phillips did not receive commissions, compensation, or other monies relating to the emerald purchase and the money he sent to Elliott and/or Elliot's agents for the emerald purchase was never returned to Phillips;
7. Phillips was not a control person or agent with respect to the alleged investment;
8. Phillips did not know and in the exercise of care could not have known of the existence of the facts by which liability is alleged to exist;
9. The alleged offering of the emerald investment was not made by Phillips and Phillips had no control of the disclosures that were or were not made;
10. The alleged investors exercised independent due diligence in their dealings with Elliott and the emerald purchase;
11. The alleged losses were caused in whole or in part by the wrongful conduct of the alleged investors, or others, including B.P. and G.P.;
12. Some or all of the alleged investors did not suffer any loss;

13. Phillips is a victim of fraud and theft perpetrated by B.P. and G.P.;

14. Evidence obtained from the fraud or illegal acts of B.P. and G.P. must be barred as fruit of the poisonous tree;

15. The fine sought by the Division may be excessive and may violate the Excessive Fines Clause of the 8th and 14th Amendments to the U.S. Constitution;

16. Phillips reserves the right to amend this answer and raise additional Affirmative Defenses if, during the course of discovery, information comes to his attention that would, in good faith, allow for the raising of such affirmative defenses.

REQUEST FOR RELIEF

Respondent Jack Phillips requests that the administrative law judge find that the evidence does not support the Division's claim of securities fraud under § 61-1-1 of the Utah Uniform Securities Act.

DATED this 11th day of April 2012.

RAY QUINNEY & NEBEKER P.C.



Maria E. Heckel

Attorneys for Respondent Jack Phillips

CERTIFICATE OF SERVICE

I hereby certify on this 11th day of April 2012, a true and correct copy of the **ANSWER**

TO ORDER TO SHOW CAUSE was served by hand via a courier, to the following:

Administrative Court Clerk
c/o Julie Price
UTAH DIVISION OF SECURITIES
160 East 300 South, 2nd Floor
Post Office Box 146760
Salt Lake City, Utah 84114-6760

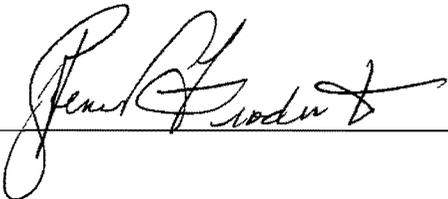
Angela Hendricks
Administrative Law Judge
UTAH DIVISION OF SECURITIES
160 East 300 South, 2nd Floor
Post Office Box 146760
Salt Lake City, Utah 84114-6760

D. Scott Davis
Assistant Attorney General
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114-0872

with a true and correct copy being sent via U.S. Mail to the following:

James D. Elliott
5131 Prince Phillip Cv.
Brentwood, TN 37027

1178779



A handwritten signature in cursive script, appearing to read "James D. Elliott", is written over a horizontal line.