

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:

**NATIONAL INVESTMENT ADVISORS,
IARD #148050**

Respondent.

**PETITION TO CENSURE LICENSEE,
AND IMPOSE A FINE**

Docket No. SD-12-0027

Pursuant to the authority of the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-6, the Utah Division of Securities ("Division") hereby petitions the Utah Securities Commission ("Commission") to enter an Order censuring Respondent National Investment Advisors ("NIA") and imposing a fine. In support of this petition, the Division alleges:

STATEMENT OF FACTS

1. NIA is a Utah limited liability company that has been licensed as an investment adviser in Utah since October 8, 2008.
2. On September 27 and October 13-14, 2010, the Division conducted an announced examination of NIA.
3. Information contained on the Central Registration Depository ("CRD")¹ system and the

¹CRD is a computerized database maintained by the Financial Industry Regulatory Authority ("FINRA") which contains employment, licensing, and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

internet showed that NIA appeared to have a complex ownership structure and affiliation with a group of related companies.

The “National Capital” Entities

4. During the September 27, 2010 examination, NIA Managing Partner Randy C. Norton (“Norton”), CRD#5706948, drew a diagram on a white board to explain how an umbrella company known as “National Capital”, its principals, and its multiple related entities were structured. In contrast to its initial application in 2008, where NIA was identified as a separate, unaffiliated company, the structure Norton diagramed in September 2010 clearly indicated that NIA was just one business of many interrelated companies under an umbrella brand marketing name of National Capital.
5. NIA is owned by National Investment Management, LLC (“NIM”), a Utah limited liability company, and Norton. NIM is owned by Norton Capital Inc., a Utah corporation owned by Norton.
6. Other related entities include National Capital Partners I, LLC (“NCPI Fund”), a Utah limited liability company. On April 8, 2010 the Division’s Corporate Finance section received a Form D Rule 506 notice filing for a private placement securities offering by NCPI Fund (“the offering”). According to NCPI Fund’s Private Placement Memorandum (PPM), it pools investor monies to purchase and dispose of distressed real estate. NIA is described in the PPM as “advisor” to the Fund that “will provide investment advisory services for clientele, focusing on alternative investments that are real estate-centric.”
7. National Capital Management LLC (“NCM”), a Utah limited liability company, is the manager of NCPI Fund. NCM is in turn managed by three Utah corporations, Norton

Capital Inc., Fugal Capital Inc., and Smock Capital Inc.

8. All of the “National Capital” entities described above share offices with NIA.
9. NCPI Fund, Norton, and Matthew Smock (“Smock”), CRD#5916907, are named as respondents in an Order to Show Cause filed by the Division contemporaneously with this action.
10. At the time of the Division examination, NIA had three clients with assets under management (“AUM”) of \$1,050,000. However, NIA’s then-current Form ADV² Part II amendment dated February 23, 2010 reported seven (7) clients with \$5,000,000 AUM.
11. NIA’s three advisory clients were all invested in the NCPI Fund. The clients invested in 2009 and were identified in their subscription agreements as accredited investors.

Misrepresentations

12. The NCPI Fund PPM misrepresented or omitted material facts in connection with the offer and sale of the offering, including:
 - a. stating NCPI Fund must have \$5,000,000 in capital commitments before funds could be released from an escrow account. In reality, the Fund broke escrow after raising only \$1,050,000.
 - b. representing that Randy Norton previously held a Series 65 license, when Norton in fact had never held a Series 65 license and had failed the Series

²Form 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.

65 exam twice at the time of the offering.³

- c. holding out NIA as a member of FINRA and a SEC Registered Investment Advisor. The PPM states, “Through our affiliate National Investment Advisers LLC (Member FINRA, SEC Registered Investment Advisor), the Fund plans to *specialize in Alternative Investments in the Real Estate sector* for fund managers, financial planners, and investors.” NIA is neither a member of FINRA nor a SEC Registered investment adviser.

- 13. National Capital’s web site, www.natcapfunds.com also falsely represented that “National Capital Partners” was a “Registered Investment Adviser” and that NIA was a member of FINRA. In addition, a February 19, 2009 press release identified “National Capital Partners” as a “Utah-based SEC Registered Investment Adviser specializing in alternative investments”. Finally, National Capital advertising material entitled “NCPI Synergies with Affiliates” and NCPI Fund’s PPM falsely described NIA as a member of FINRA and “SEC Registered Investment Adviser”.

Breaking Escrow

- 14. The NCPI Fund PPM required \$5,000,000 in capital commitments before the NCPI Fund could begin operating and indicated funds would be returned to investors if that minimum was not obtained. The PPM required that upon execution and delivery of a subscription agreement, each investor contribute to NCPI Fund 25% of the investor’s capital commitment, to be held in escrow until the NCPI Fund received capital commitments totaling \$1,250,000 (\$5,000,000 x 25%).
- 15. During the Division examination, NIA provided three subscription agreements from investors totaling \$1,050,000. Although NIA told the Division a fourth investor

³Norton again failed to pass the exam in January 2012.

committed to invest \$5,000,000 in the NCPI Fund, it was unable to produce any documents showing that commitment⁴, and the fourth investor never ultimately invested.

16. From December 2008 to February 2009, NCPI Fund received \$1,050,000 from investors which were deposited with an escrow company. Despite failing to meet the minimum required in the PPM, on December 2, 2009, NIA instructed the company to release the escrowed funds. On December 2, 2009, \$999,610 was wired to NCPI Fund's bank account. One month later, in January 2010, NCPI Fund started purchasing properties through NCM REO Acquisitions I, LLC ("NCM-REO"), a Utah limited liability company.⁵
17. NIA records indicate NCM-REO purchased approximately 23 properties, of which 21 were rehabilitated and 17 of which were sold for a profit. The remaining four properties are pending sale.

Failure to Disclose Conflicts of Interest

18. NCM-REO is not identified in the NCPI Fund PPM as a company doing business with NCPI Fund. NCM-REO is the entity that NCPI Fund uses to purchase real estate. Because the PPM failed to disclose NCM-REO is an entity affiliated with NCPI Fund, investors were unaware of the conflicts of interest that may exist between NIA, NCPI Fund and NCM-REO.

⁴NIA indicated documents pertaining to the fourth investor were misplaced during an office move.

⁵NCM-REO's manager is NCM-Special Purpose Management LLC, a Utah limited liability company which is managed by Norton Capital and Smock Capital, the principals of which are Norton and Smock.

19. NIA represented to the Division in its initial application that it was a separate entity and unaffiliated with NCPI Fund. At that time NIA operated as a separated and unaffiliated company. After NIA's founder left, NIA changed ownership and Randy Norton became an indirect owner of NIA. Norton is also a managing partner for NCPI Fund. NIA did not update Form ADV to reflect the conflicts of interest that exist between NIA and NCPI Fund until March 31, 2011. NCPI Fund received its first investor funds on December 8, 2008 and NIA failed to update Form ADV to disclose the affiliation between NIA and NCPI Fund.

Custody

20. NIA's Form ADV Part II represented it did not and would not have custody of client funds. However, during the Division examination NIA was not able to immediately produce financial statements or bank statements showing the investors' fund deposits and the use of funds. NIA subsequently produced bank records demonstrating that client funds were deposited into an escrow account then eventually transferred into NCPI Fund's bank account. Although NIA may not have had direct custody, NIA had custody through its related entity, NCPI Fund. At no time did NIA maintain a bond for custody of client assets or provide the Division proof of meeting the minimum net worth requirements as required by Utah Admin. Code Rule R164-4-4(D).

Failure to Maintain Bond

21. Because NIA had discretionary authority over its clients' monies, it obtained a bond to satisfy Division requirements for advisers with discretion. On December 31, 2008 that bond expired and was not renewed. Despite NIA's continued discretion it has operated

since January 1, 2009 without a bond in place or providing the Division proof of meeting the minimum net worth requirement as required by Utah Admin. Code Rule R164-4-4(D).

Failure to Update U4 and U5

22. NIA failed to file Form U4⁶ for an investment adviser representative when he started employment with NIA, though that failure appears to be the omission of a compliance consultant hired by NIA. NIA failed to file a Form U5⁷ for more than a year after another investment adviser representative left the firm.

FIRST CAUSE OF ACTION
Securities Fraud Under Section 61-1-1(2) of the Act

23. NIA misrepresented or omitted material facts in connection with the offer or sale of NCPI Fund securities to its clients, including but not limited to:
- a. misrepresenting that Randy Norton previously held a Series 65 securities license;
 - b. failing to disclose that Randy Norton failed the Series 65 examination twice and was not licensed;
 - c. misrepresenting that NIA and “National Capital Partners” were SEC-registered investment advisers and that NIA was a member of FINRA.
 - d. misrepresenting in the NCPI Fund PPM that there must be \$5,000,000 in capital

⁶The Form U4, Uniform Application for Securities Registration or Transfer, is filed with FINRA and the Division in order for an individual to become a licensed investment adviser representative in Utah. It is submitted electronically to the Division through the Central Registration Depository (“CRD”).

⁷Form U5, Uniform Termination Notice for Securities Industry Registration, is required to be filed when an investment adviser representative terminates his or her association with an investment adviser.

commitments before the NCPI Fund would release monies from escrow and begin operating, and that funds would be returned to investors if the minimum of \$5,000,000 was not obtained.

- e. omitting to disclose that despite the terms of the PPM, NIA and NCPI Fund would use investor funds prior to having \$5,000,000 in capital commitments, thereby “breaking escrow.”
- f. omitting that funds in escrow would be released despite the terms of the PPM without obtaining the 25% minimum contribution required of investors.
- g. omitting that NIA would be buying properties through subsidiary NCM-REO rather than directly through NCPI Fund.
- h. Failing to disclose in Form ADV conflicts of interest between NCPI Fund and NIA.
- i. NCPI Fund omitted a clear description of its organizational structure in ownership and affiliates and their conflicts of interests.

These misrepresentations and omissions violate Section 61-1-1(2) of the Act.

SECOND CAUSE OF ACTION

Dishonest or Unethical Practices Under Section 61-1-6(2)(a)(ii)(G)

- 24. NIA used investor funds to purchase real estate properties, prior to obtaining \$5,000,000 in capital commitments as required by the PPM, warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.
- 25. NIA falsely represented to the public that it was a member of FINRA and that it was an SEC-registered investment adviser, when neither assertion was true. These acts

constitute dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(8), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

THIRD CAUSE OF ACTION
Improper Custody of Client Funds under Section 61-1-2(3)

26. NIA disclosed on Form ADV Part II it did not and would not have custody of client funds. However, NIA deposited client funds in an account for its related entity, NCPI Fund. Those funds were later released and used for investing at the direction of NIA. NIA's conduct violates Section 61-1-2(3)(b) of the Act.

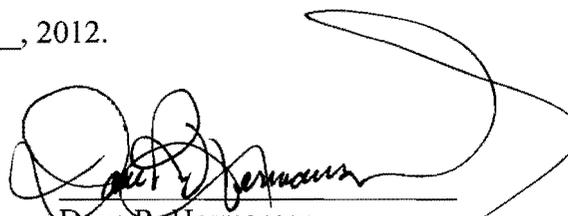
FOURTH CAUSE OF ACTION
Failure to Maintain Bond under Section 61-1-4(6)

27. Despite having custody and discretion over client funds, NIA failed to maintain bonds as required by Section 61-1-4(6)(a) of the Act.

REQUEST FOR RELIEF

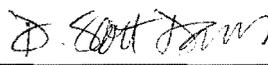
The Division requests that, based upon Respondent's willful violations of the Act, pursuant to § 61-1-6 of the Act, the Commission enter an order censuring NIA and imposing a fine in the amount of \$20,000.00.

Dated this 10 day of April, 2012.



Dave R. Hermansen
Director of Licensing and Compliance
Utah Division of Securities

Approved:



D. Scott Davis
Assistant Attorney General

Division of Securities
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**NATIONAL INVESTMENT ADVISORS,
IARD #148050**

Respondent.

NOTICE OF AGENCY ACTION

Docket No. 00-12-0027

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 R151-4-101, *et seq.* The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-6. The facts on which this action is based are set forth in the accompanying Petition. 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 Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition 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 Petition, 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
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set for May 16, 2012 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City Utah, at 9:30 am. The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other

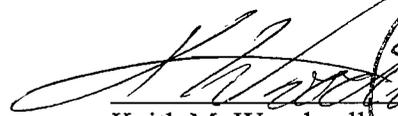
deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

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 Petition, 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. At any hearings, the Division will be represented by the Attorney General's Office. 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 Petition should be directed to Scott Davis, Assistant Attorney General, 160 E. 300 South, Fifth Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 10th day of April, 2012.


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 12th day of April, 2012, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

National Investment Advisors
8899 South 700 East, Suite 200
Salt Lake City, Utah 84080

Certified Mail # 7007 0220 0001 0003 7117



Julie Price
Executive Secretary

