

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:

**RANDY C. NORTON, CRD # 5706948
MATTHEW SMOCK, CRD # 5916907
NATIONAL CAPITAL PARTNERS I,
LLC**

Respondents.

ORDER TO SHOW CAUSE

Docket No. SD-12-0028
Docket No. SD-12-0029
Docket No. SD-12-0030

It appears to the Director (“Director”) of the Utah Division of Securities (“Division”) that Respondents have engaged in acts and practices that violate the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, *et seq.* Those acts and practices are more fully described herein. Based upon the Division’s investigation into 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 FACTS

1. Randy C. Norton (“Norton”), CRD #5706948, is the managing partner of National Investment Advisors (“NIA”), a Utah limited liability company and licensed investment adviser. Norton has taken the Series 65, Uniform Investment Adviser Law Examination, three times, but has not passed it to date. NIA is named as a respondent in a Petition filed by the Division contemporaneously with this action.

2. National Capital Partners I, LLC (“NCPI Fund”) is a Utah limited liability company and issuer of securities.
3. National Capital Management LLC (“NCM”), a Utah limited liability company founded by Matthew Smock (“Smock”), 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.
4. NIA, NCPI Fund and NCM share offices.
5. During a 2010 Division examination of NIA, Norton 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 NIA’s initial investment adviser 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.
6. 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. NIA’s three advisory clients all invested in the NCPI Fund. The clients invested in 2009 and were identified in their subscription agreements as accredited investors.

Misrepresentations

8. 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 65 exam twice at the time of the offering.¹
 - 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.

9. 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” falsely described NIA as a member of FINRA and “SEC Registered Investment Adviser”.

Breaking Escrow

10. 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

¹Norton again failed to pass the exam in January 2012.

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%).

11. During the Division examination, NIA provided three subscription agreements from investors totaling \$1,050,000. Although NIA told the Division a fourth investor committed to invest \$5,000,000 in the NCPI Fund, it was unable to produce any documents showing that commitment², and the fourth investor never ultimately invested.
12. 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.³
13. 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.

²NIA indicated documents pertaining to the fourth investor were misplaced during an office move.

³NCM-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.

Failure to Disclose Conflicts of Interest

14. 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.
15. 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.

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

16. Norton, Smock and NCPI misrepresented or omitted material facts in connection with the offer or sale of securities, including but not limited to:
 - a. misrepresenting that Norton previously held a Series 65 securities license;
 - b. failing to disclose that Norton failed the Series 65 examination twice and was not licensed;
 - c. misrepresenting on its web site and in advertising materials that "National Capital Partners" was an SEC-registered investment adviser and that NIA was a member of FINRA.

- d. misrepresenting in a press release that “National Capital Partners” was an SEC registered investment adviser.
- e. misrepresenting on its web site that NIA was a member of FINRA.
- f. misrepresenting in the NCPI Fund PPM that there must be \$5,000,000 in capital 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.
- g. 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.”
- h. omitting that funds in escrow would be released despite the terms of the PPM without obtaining the 25% minimum contribution required of investors.
- i. omitting to inform investors that NIA would be buying properties through subsidiary NCM-REO rather than directly through NCPI Fund.
- j. failing to ensure NIA’s Form ADV disclosed conflicts of interest between NCPI Fund, NIA, and other entities associated with the principals.
- k. omitting to disclose a clear description of NCPI’s organizational structure in ownership and affiliates and their conflicts of interests.

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

REQUEST FOR RELIEF

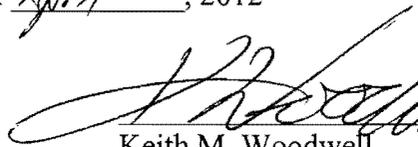
The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202 and 63G-4-204 through -209, and held before the Division. As set forth in the Notice of Agency

Action accompanying this Order, Respondent is required to file a written response with the Division, and an initial hearing on this matter has been scheduled for May 16, 2012 at 9:30 am. The initial hearing will take place at the Division of Securities, 2nd floor, 160 East 300 South, Salt Lake City, Utah. The purpose of the initial hearing is to establish a scheduling order and address any preliminary matters. If Respondent fails to file a written response or appear at the initial hearing, findings may be entered, a permanent Order to Cease and Desist may be issued, and a fine may be imposed against Respondent, as provided by Utah Code Ann. §§ 63G-4-206 or -209.

At the Order to Show Cause hearing, Respondent may show cause, if any he has:

1. Why Respondents should not be found to have engaged in the violations of the Act alleged by the Division in this Order to Show Cause;
2. Why Respondents should not be ordered permanently 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;
3. Why Respondents should not be ordered to pay a fine, jointly and severally, to the Division in the amount of \$10,000 based upon Respondents' violations of the Act.

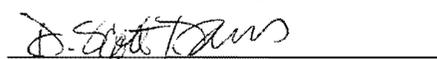
Dated this 10th day of April, 2012



Keith M. Woodwell
Director, Utah Division of Securities



Approved:



D. Scott Davis
Assistant Attorney General

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:

**RANDY C. NORTON, CRD#5706948
MATTHEW SMOCK, CRD # 5916907
NATIONAL CAPITAL PARTNERS I, LLC**

Respondent.

NOTICE OF AGENCY ACTION

**Docket No. SD-12-0028
Docket No. SD-12-0029
Docket No. SD-12-0030**

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) 366-0310

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 9:30am. 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

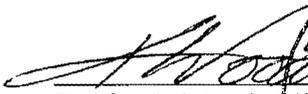
Cause.

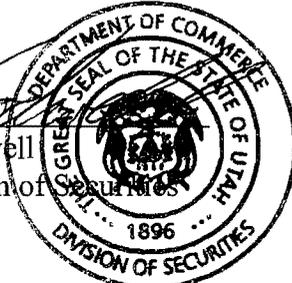
If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-4-710(2). After issuing the default order, the presiding officer 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) 366-0310.

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 Order to Show Cause to:

Randy C. Norton
1985 North 690 East
Orem, Utah 84097

Certified Mail # 7057022000100037124

Matthew Smock
8899 South 700 East, Suite 200
Salt Lake City, Utah 84070

Certified Mail # 7057022000100037131

National Capital Partners I, LLC
8899 South 700 East, Suite 200
Salt Lake City, Utah 84070

Certified Mail # 7057022000100037148



Executive Secretary