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:	**ORDER TO SHOW CAUSE**
THE MCKINLEY FUND LLC **ALTAMONT GLOBAL PARTNERS, LLC** **PHILIP LEON** **JOHN G. WILKINS** **Respondents.**	**Docket No.** SD-12-0051 **Docket No.** SD-12-0052 **Docket No.** SD-12-0053 **Docket No.** SD-12-0054

It appears to the Director of the Utah Division of Securities (Director) that The McKinley Fund LLC, Altamont Global Partners, LLC, Philip Leon, and John G. Wilkins (collectively, Respondents) 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 and practices 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. The McKinley Fund LLC (Issuer) is a Florida-based limited liability company that initially registered with the Florida Division of Corporations on December 28, 2010 and is currently acting as a hedge fund with its principal place of business located in Longwood, Florida. Altamont Global Partners, LLC is listed as manager of the entity. The Issuer's registration with the Florida Division of Corporations is currently active. Issuer is not similarly registered with the Utah Division of Corporations.

3. Altamont Global Partners, LLC (Altamont) is a Florida-based limited liability company that initially registered with the Florida Division of Corporations on March 31, 2009. Philip Leon and John G. Wilkins are listed as managers of the entity. The Issuer's registration with the Florida Division of Corporations is currently active. Altamont is similarly not registered with the Utah Division of Corporations.

4. Philip Leon (Leon) was, at all relevant times, a resident of the state of Florida. From July 6, 2009 until April 20, 2010, Leon was a registered member of the National Futures Association. He has never been licensed as a broker-dealer agent, issuer agent, or investment adviser representative.

5. John G. Wilkins (Wilkins) was, at all relevant times, a resident of the state of Florida. Wilkins has been a registered member of the National Futures Association since March 3,

2009. From October 21, 1991 until December 31, 1995, he was licensed with the state of Utah as a broker-dealer agent. Wilkins has not been associated with a firm and/or licensed in any state as an agent since May 31, 2000.

GENERAL ALLEGATIONS

6. In or around September 2011, Respondents offered and sold securities to an investor, in or from Utah, and collected a total of at least $140,000.

7. Respondents made material omissions in connection with the offer and sale of securities to the investor identified below.

INVESTOR J.S.

8. In or around September 2011, J.S., a Utah resident, provided the funds and documentation necessary to participate in the Issuer's offering of limited liability company membership interests.

9. Specifically, J.S. invested $140,000 in exchange for 5.6 units of the company. This interest is documented in a membership certificate dated September 8, 2011 and signed by Wilkins.

10. Issuer first reported its sales activities in the state of Utah to the Division on September 30, 2011, when it filed a Form D for its Rule 506 offering.

11. With respect to that offering, Issuer provides all potential participants, including J.S., with a copy of its private offering memorandum, limited liability company operating agreement, and subscription agreement.

12. Within the private offering memorandum, Issuer includes certain disclosures relevant to the

offering, including a description of management.

13. However, the private offering memorandum, and all other documentation provided to potential investors, fails to disclose the following actions:

a. Between July 18, 1994 and February 10, 2010, Wilkins, manager of Altamont, filed for bankruptcy on three separate occasions[1] and later converted one of those three proceedings from Chapter 13 to Chapter 7 in an effort to discharge personal debt.[2]

b. On August 27, 2010, the Pennsylvania Securities Commission (PSC) issued a Summary Order to Cease and Desist (Cease and Desist Order) against Matterhorn Fund, LLC (Matterhorn)[3] and Altamont.

i. According to the PSC press release detailing the Cease and Desist Order, in connection with the Matterhorn offering of limited liability company membership interests, a Pennsylvania resident was cold-called and offered an opportunity to participate in the investment. The representative made various statements about high returns and mailed offering materials to the Pennsylvania resident, who had no pre-existing relationship with any of the parties involved and lacked the experience and/or knowledge sufficient to evaluate the risks of the investment. Based on these actions, PSC halted the

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1 The bankruptcy filings include: *In re* Wilkins, No. 6:10-bk-1932 (Bankr. D. Fla. 2010); *In re* Wilkins, No. 6:02-bk-5775 (Bankr. D. Fla. 2002); and *In re* Wilkins, No. 6:94-bk-3708 (Bankr. D. Fla. 1994).
2 *In re* Wilkins, No. 6:10-bk-21952 (Bankr. D. Fla. 2010).
3 Matterhorn is a hedge fund that is similarly managed by Altamont and relying on the same Longwood, Florida address as Altamont and Issuer.

offer and sale of interests in that state until a settlement could be reached; and

ii. Matterhorn and Altamont settled with the PSC on January 11, 2011, at which time Matterhorn and Altamont agreed to pay $1,500 in investigative and legal costs and $2,000 in administrative assessments in exchange for PSC prospectively rescinding the Cease and Desist Order.

14. As a result, J.S. never received any disclosures related to these actions prior to investing $140,000 in the offering.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act (Investor J.S.)

15. The Division incorporates and re-alleges paragraphs 1 through 14.

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

17. In connection with the offer and sale of a security to investor J.S., 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. In 2010, Wilkins filed for Chapter 13 bankruptcy relief in the United States Bankruptcy Court for the Middle District of Florida.[4] Wilkins later converted this bankruptcy proceeding into a Chapter 7 proceeding[5] for the purpose of discharging

4 *In re* Wilkins, No. 6:10-bk-1932 (Bankr. D. Fla. 2010).
5 *In re* Wilkins, No. 6:10-bk-21952 (Bankr. D. Fla. 2010).

personal debt;

b. In 2002, Wilkins filed for Chapter 7 bankruptcy relief in the United States Bankruptcy Court for the Middle District of Florida;[6]

c. In 1994, Wilkins filed for Chapter 7 bankruptcy relief in the United States Bankruptcy Court for the Middle District of Florida;[7] and

d. In 2010, PSC issued a Cease and Desist Order against Matterhorn and Altamont alleging that the entities engaged in cold-calling in the state of Pennsylvania in connection with Matterhorn's offering of limited liability company membership interests. As a result, PSC halted the offer and sale of interests in that state until a settlement could be reached. The settlement agreement, entered into on January 11, 2011, provided that Matterhorn and Altamont would pay $3,500 total in exchange for PSC prospectively rescinding the Cease and Desist Order.

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 **Thursday, October 4, 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

6 *In re* Wilkins, No. 6:02-bk-5775 (Bankr. D. Fla. 2002).
7 *In re* Wilkins, No. 6:94-bk-3708 (Bankr. D. Fla. 1994).

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 they have:

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; and

c. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by the Utah Securities Commission after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1.

DATED this 14th day of August, 2012.

KEITH WOODWELL
Director, Utah Division of Securities

Approved:

D. SCOTT DAVIS
Assistant Attorney General
A.S.

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:	**NOTICE OF AGENCY ACTION**
THE MCKINLEY FUND LLC **ALTAMONT GLOBAL PARTNERS, LLC** **PHILIP LEON** **JOHN G. WILKINS** **Respondents.**	**Docket No.** SD-12-0051 **Docket No.** SD-12-0052 **Docket No.** SD-12-0053 **Docket No.** SD-12-0054

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 **Thursday, October 4, 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 Jennie Jonsson, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6706. This adjudicative proceeding will be heard by Ms. Jonsson 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 August, 2012

Keith M. Woodwell
Director, Division of Securities

Certificate of Mailing

I certify that on the 15th day of August, 2012, I mailed, by regular and certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

THE MCKINLEY FUND LLC
ALTAMONT GLOBAL PARTNERS, LLC
PHILIP LEON
JOHN G. WILKINS
C/O TREVOR BREWER
BREWERLONG PLLC
KEEWIN LEXINGTON PARK
237 LOOKOUT PLACE, SUITE 100
MAITLAND, FL 32751

Certified Mail # 7007 0220 0001 0047 7772

THE MCKINLEY FUND LLC
ALTAMONT GLOBAL PARTNERS, LLC
195 WEKIVA SPRINGS ROAD, SUITE 350
LONGWOOD, FL 32779

Certified Mail # 7007 0220 0001 0047 7789

PHILIP LEON
ALTAMONT GLOBAL PARTNERS, LLC
195 WEKIVA SPRINGS ROAD, SUITE 350
LONGWOOD, FL 32779

Certified Mail # 7007 0220 0001 0047 7796

JOHN G. WILKINS
ALTAMONT GLOBAL PARTNERS, LLC
195 WEKIVA SPRINGS ROAD, SUITE 350
LONGWOOD, FL 32779

Certified Mail # 7007 0220 0001 0047 7802

Executive Secretary