

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:

SUBHASH KITHANY, CRD#2181053

Respondent.

**PETITION TO CENSURE AND FINE
LICENSEE**

Docket No. SD-12-00 00

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 Subhash Kithany and imposing a fine. In support of this petition, the Division alleges:

STATEMENT OF FACTS

The Respondent

1. SK Group, Inc. (“SKG”), IARD#106513, is an investment adviser with its place of business in Salt Lake City, Utah. From September 1991 to July 31, 2012 SKG was a federal covered investment adviser. SKG is currently licensed in Utah as a state covered investment adviser.
2. Subhash Kithany (“Kithany”), CRD#2181053, is the president, owner, and chief compliance officer of SKG. Kithany was licensed as an investment adviser representative

of SKG from April 20, 2001 until December 31, 2002, when he failed to renew his license.

Division Investigation

3. On July 31, 2012, SKG initiated the process to become a Utah licensed investment adviser.¹
4. During the review of SKG's application, it was discovered that Kithany was not licensed as an investment adviser representative.
5. The Division contacted Kithany to determine why he had not filed a Form U4² since 2002, and why he was not licensed as an investment adviser representative with SKG.
6. Kithany explained that he thought he was properly licensed and had been submitting fees for licensing through the Central Registration Depository ("CRD")³ system since 2002. In reality, Kithany submitted the required fees for the firm, but not for an individual license. Kithany mistakenly believed that he had been renewing his investment adviser representative license while paying the firm's fees.
7. Kithany's mistaken belief may have also been supported by a 2008 examination of SKG's

¹The Dodd-Frank Wall Street Reform and Consumer Protection Reform Act of 2010 required that federal covered investment advisers that manage less than \$100 million in assets "switch" to state jurisdiction. SKG's application with Utah was in accordance with that requirement.

²The Form U4, Uniform Application for Securities Registration or Transfer, is filed with FINRA and the Division in order for an individual to become licensed as an investment adviser representative in Utah. Investment adviser representatives of federal covered investment advisers are required to submit Form U4 to become licensed in the states in which they conduct business.

³ CRD is a computerized database maintained by the Financial Industry Regulatory Authority ("FINRA"). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

Salt Lake City office by the SEC where the agency found that another employee in the office was not licensed in Utah, but made no mention of Kithany's licensing status.

8. When Kithany initially applied for his investment adviser representative license in Utah, he relied on a waiver for the FINRA Series 65, Uniform Investment Adviser Law Examination, because he had previously taken and passed the examinations to become a Chartered Financial Analyst (CFA). Kithany provided documentation to the Division showing that he has continuously maintained his CFA designation since 1999.
9. Once Kithany realized the mistake that he was not licensed as an investment adviser representative, he immediately filed his Form U4 through the CRD and paid the fees to become licensed.

Unlicensed Activity

10. Kithany acted as an investment adviser representative from 2003 to 2012 without being properly licensed.

FIRST CAUSE OF ACTION

Unlicensed Investment Adviser Representative Under § 61-1-3 of the Act

11. Kithany violated Section 61-1-3(3) of the Act by acting as an investment adviser representative while unlicensed.

REQUEST FOR RELIEF

The Division requests that, based upon Respondent's willful violation of the Act, pursuant to § 61-1-6 of the Act, the Commission enter an order censuring Respondent and imposing a fine in the amount of \$5,000.00.

Dated this 24 day of OCTOBER, 2012.



Dave R. Hermansen
Director of Licensing and Compliance
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:

SUBHASH KITHANY

Respondent.

NOTICE OF AGENCY ACTION

Docket No. SD-12-00 100

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 December 10, 2012 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City Utah, at 9am. 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 Jennie Jonnson, 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. Jonnson 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 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 24th day of October, 2012


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 21st day of October, 2012, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Subhash S. Kithany
977 East Wilson Avenue
Salt Lake City, Utah 84105-3324

Certified Mail # 7007 0220 0001 0004 8045

Julie Price
Executive Secretary