

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:

STIPULATION AND CONSENT ORDER

SUBHASH S. KITHANY, CRD #2181053

Docket No. SD-12-0060

Respondent.

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondent, Subhash S. Kithany (Kithany), hereby stipulate and agree as follows:

1. Kithany has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*
2. On or about October 24, 2012, the Division initiated an administrative action against Kithany by filing a Petition to Censure and Fine Licensee.
3. Kithany hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against him pertaining to the Petition.
4. Kithany admits that the Division has jurisdiction over him and the subject matter of this action.

5. Kithany hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Kithany has read this Stipulation and Consent Order, understand its contents, and voluntarily agrees to the entry of the Order set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce him to enter into this Order, other than as described in this Order.
7. Kithany understands that he may be represented by counsel in this matter, understands the role that counsel would have in defending and representing his interests in this case, and hereby knowingly, freely, and voluntarily waives his right to have counsel represent him in this proceeding.

I. FINDINGS OF FACT

The Respondent

8. 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.
9. 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

10. On July 31, 2012, SKG initiated the process to become a Utah licensed investment

adviser.¹ During the review of SKG's application, it was discovered that Kithany was not licensed as an investment adviser representative.

11. 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.
12. 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.
13. Kithany's mistaken belief may have also been supported by a 2008 examination of SKG's 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.
14. 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

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.

Chartered Financial Analyst (CFA). Kithany provided documentation to the Division showing that he has continuously maintained his CFA designation since 1999.

15. 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

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

II. CONCLUSIONS OF LAW

17. Kithany violated Section 61-1-3(3) of the Act by acting as an investment adviser representative from 2003 to 2012 while unlicensed.

III. REMEDIAL ACTIONS/SANCTIONS

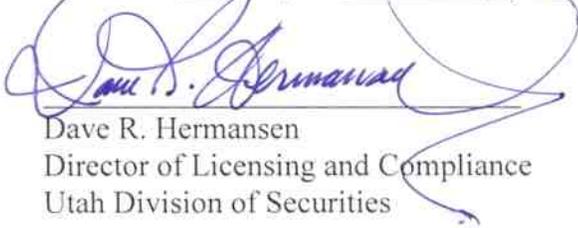
18. Kithany neither admits nor denies the Division's findings and conclusions, but consents to the sanctions below being imposed by the Division.
19. Kithany represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.
20. Kithany agrees to cease and desist from violating the Utah Uniform Securities Act, and to comply with the requirements of the Act in all future business in this state.
21. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Kithany agrees to pay a fine of \$5,000.00 to the Division payable as follows: \$1,500.00 within 30 days of the signing of this Order by the Utah Securities Commission, and \$500.00 per month on the first of each month thereafter

until paid in full.

IV. FINAL RESOLUTION

22. Kithany acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. He further acknowledges that if the Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
23. Kithany acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein. Kithany also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.
26. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

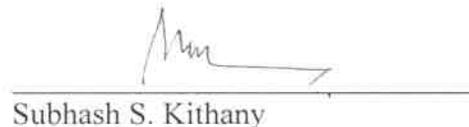
Dated this 10 day of JANUARY, 2013



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

Approved: D. Scott Davis

Dated this 10 day of JANUARY, 2013



Subhash S. Kithany

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.
3. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent shall pay a fine of \$5,000.00 to the Division, payable as follows: \$1,500.00 within 30 days of the signing of this Order by the Utah Securities Commission, and \$500.00 per month on the first of each month thereafter until paid in full.

BY THE UTAH SECURITIES COMMISSION:

DATED this 24th day of January, 2013.

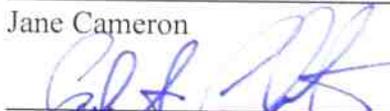


Brent Baker

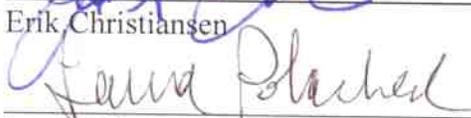


Tim Bangerter

Jane Cameron



Erik Christiansen



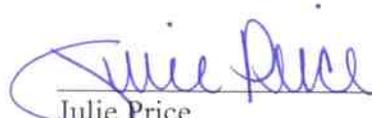
Laura Polacheck

Certificate of Mailing

I certify that on the 25th day of January, 2013, I mailed, by certified mail, a true and correct copy of the fully executed Stipulation and Consent Order to:

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

Certified Mail # 7007 0220 0001 0004 8004



Julie Price
Executive Secretary