

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
Box 146760  
Salt Lake City, UT 84114-6760  
Telephone: (801) 530-6600  
FAX: (801) 530-6980

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BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

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**IN THE MATTER OF:**

**NATHAN S. TOOLE,**  
  
**Respondent.**

**ORDER TO SHOW CAUSE**

**Docket No. SD-12- 077**

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It appears to the Director of the Utah Division of Securities (Director) that Nathan S. Toole (Respondent) has 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 Respondent and the subject matter is appropriate because the Division alleges that Respondent violated § 61-1-1 (securities fraud) and § 61-1-16 (false statements) of the Act while engaged in the offer and sale of securities in or from Utah.

## **STATEMENT OF FACTS**

### **THE RESPONDENT**

2. Nathan S. Toole (Toole) was, at all times relevant to the matters asserted herein, a resident of Utah. Toole has never been licensed in the securities industry in any capacity.

### **GENERAL ALLEGATIONS**

3. Between February 2010 and May 2011, Respondent offered and sold two investment contracts to A.E., a resident of Pennsylvania.
4. Investment contracts are securities under § 61-1-13 of the Act.
5. Respondent made misstatements and omissions of material facts to the investor.
6. The investor lost \$83,750 of his principal investment.

### **INVESTOR A.E.**

7. Toole and A.E. met at a party in Salt Lake City, Utah in November 2009.
8. A.E. learned that Toole was involved in trading, and over the next few months they stayed in contact with each other.
9. In February of 2010, A.E. decided to invest with Toole. A.E. wanted collateral/security for

the investment. Toole showed A.E. a copy of a \$200,123.99 life insurance policy that Toole was to receive due to the death of his mother.

10. A.E. knew that Toole was involved in day trading, but A.E. and Toole never discussed how, or for what, A.E.'s money would be used. As long as Toole had enough money in his trading account to pay back their principal and interest, A.E. did not authorize his money to be invested for a specific purpose or product.

1<sup>st</sup> Investment Contract

11. On February 16, 2010, A.E. invested \$9,975 with Toole with the agreement that A.E. would earn 4% per month over a six-month period. At the end of the six-months, Toole was to wire the investment funds, with interest, back to A.E.
12. Prior to A.E. investing, Toole made the following statements to A.E. regarding the potential \$9,975 investment:
  - a. A.E. was guaranteed to earn 4% interest per month for six months on the investment;
  - b. Toole assured A.E. that his money/investment was safe;
  - c. A.E.'s investment was secured by the amount in Toole's futures trading account;
  - d. Toole would not let the amount in his trading account fall below what was owed to A.E; and
  - e. The interest that Toole agreed to pay A.E. would not be affected by the returns earned on Toole's trading account.

13. A.E.'s \$9,975 investment was wired to Toole's Wachovia (now Wells Fargo) bank account on February 16, 2010.
14. In exchange for the investment, A.E. received an investment agreement dated February 13, 2010, which appears to be signed by Toole.
15. Using a source and use analysis, Toole used A.E.'s \$9,975 investment from February 16, 2010 to approximately March 4, 2010, in the following manner:
  - a. \$4,999.44 paid to Toole's wife's business Borg & Ivey, LLC;
  - b. \$4,462.56 paid to other individuals;
  - c. The remainder of the funds were used to pay Toole's personal living and other expenses.
16. On August 10, 2010, Toole paid A.E. \$2,400 in interest on the investment. A.E. decided at that time to keep the initial investment of \$9,975 invested with Toole.
17. A.E. received \$4,800 in payments from Toole between August 20, 2010 and March 3, 2011.
18. Toole still owes A.E. \$5,175 on the February 2010 investment.

#### 2<sup>nd</sup> Investment Contract

19. On May 16, 2011, A.E. invested an additional \$73,775 with Toole. A new investment contract was signed on that date wherein Toole stated he would pay the principal and 5% monthly interest on the investment for six months. The investment contract appears to bear Toole's signature. The investment contract provided that the amount of the

investment was \$85,000, though the actual amount A.E. invested with the two investment contracts was \$83,750 (the sum of \$9,975 and \$73,775).

20. A.E.'s decision to invest another \$73,775 with Toole was based in part on statements Toole sent regarding the first investment. Toole had presented statements on Trade Station Securities'<sup>1</sup> (Trade Station) letterhead that reflected gains on A.E.'s first investment.
21. On September 5, 2012 Trade Station confirmed that the statements Toole sent to A.E. were not official statements from their office. Trade Station also confirmed that at the time A.E. made the first investment, Toole did not have any money in his trading account, contrary to his representations to A.E.
22. Toole's bank records confirm that A.E. transferred \$73,775 on May 16, 2011, into a Mountain America Credit Union account belonging to Toole's wife's business, Borg & Ivey, LLC.
23. Toole did not have signatory authority on the Borg & Ivey account.
24. On August 7, 2012, during an interview at the Division's offices, Toole admitted that he had spent the money that A.E. wired to the Mountain America account. Bank records show checks written in Toole's handwriting and signed by his wife.
25. Using a source and use analysis, A.E.'s funds were used from May 16, 2011 to approximately June 7, 2011, in the following manner:

- a. \$56,944.63 transfer to Trade Station Securities
- b. \$16,830.38 spent on personal expenses and payments to other investors/individuals.

#### CAUSES OF ACTION

#### **First Cause of Action** **Securities Fraud under § 61-1-1(2) of the Act**

26. In connection with the offer and sale of a security, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:
- a. That investment funds would be safe, and that Toole would not let his trading account balance drop below the amount A.E. had invested, when in fact, Respondent had no reasonable basis for making such a statement;
  - b. A.E. was guaranteed a 4% and 5% rates of return on his investments; and
  - c. Toole had enough money in the trading account to secure the investment.
27. In connection with the offer and sale of a security, Respondent, 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. Toole did not have money in the trading account at the time of A.E.'s investment;
  - b. How Toole would earn 4% interest on A.E.'s investment;
  - c. That A.E.'s investment funds would be used for Toole's wife's business, paying other

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<sup>1</sup> Trade Station is a licensed broker dealer with a platform that offers electronic order execution.

- individuals, and paying Toole's personal and other expenses;
- d. Some or all of the information typically provided in an offering circular or prospectus regarding Toole, such as:
- i. Financial statements;
  - ii. The market for Toole's service(s);
  - iii. The nature of the competition for the service(s);
  - iv. The track record of Toole regarding other investors;
  - v. The number of other investors;
  - vi. The risk factors for investors;
  - vii. Discussion of relevant suitability factors for the investment;
  - viii. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment;
  - ix. Agent commissions or compensation for selling the investment;
  - x. Any involvement of Toole in certain legal proceedings, including bankruptcy or prior violations of state or federal securities laws;
  - xi. Whether the investment was a registered security or exempt from registration; and
  - xii. Whether the person selling the investment was licensed.
28. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act;
29. Respondent violated § 61-1-1(2) of the Act by making misstatements of material facts and by omitting to state material facts in connection with the offer and sale of a security.

**Second Cause of Action**  
**False Statements to the Division under § 61-1-16 of the Act**

30. On August 7, 2012, during an interview at the Division's offices, Toole stated that none of the

investor's money was spent on personal expenses. Toole stated that A.E.'s first investment of \$9,975 was deposited into his Wells Fargo account and then transferred to his trading account at Trade Station Securities. Toole further stated that A.E.'s second investment of \$73,775 was wired into Toole's wife's Mountain America Credit Union account and that all of the second investment funds were also transferred to his trading account at Trade Station. These statements by Toole to the Division are false.

### **ORDER**

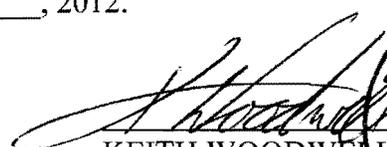
The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on February 6, 2013, at **9:00 a.m.**, at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2<sup>nd</sup> Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondent fails to file an answer and appear at the hearing, the Division of Securities may hold Respondent 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, Respondent may show cause, if any he has:

- a. Why Respondent should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondent should not be ordered to cease and desist from engaging in any

further conduct in violation of Utah Code Ann. §§ 61-1-1 and 61-1-3, or any other section of the Act;

- c. Why Respondent should not be barred from being licensed in any capacity in the securities industry in the State of Utah; and
- d. Why Respondent 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, which may be reduced by restitution paid to the investor.

DATED this 18<sup>th</sup> day of December, 2012.

  
KEITH WOODWELL  
Director, Utah Division of Securities



Approved:

  
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D. SCOTT DAVIS  
Assistant Attorney General  
K.W.

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
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**BEFORE THE DIVISION OF SECURITIES  
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**IN THE MATTER OF:**

**NATHAN S. TOOLE,**

**Respondent.**

**NOTICE OF AGENCY ACTION**

Docket No. 10-12-0077

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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, 2<sup>nd</sup> 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, 5<sup>th</sup> Floor  
Salt Lake City, UT 84114-0872  
(801) 366-0358

An initial hearing in this matter is set for **February 6, 2013** at the Division of Securities, 2<sup>nd</sup>

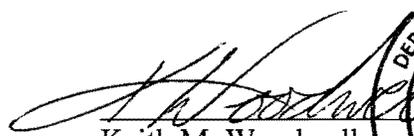
Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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) 530-6035. 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 18<sup>th</sup> day of December, 2012

  
Keith M. Woodwell  
Director, Division of Securities



**Certificate of Mailing**

I certify that on the 18th day of December, 2012, I mailed, by certified mail and regular mail, a true and correct copy of the Stipulation and Consent Order to:

Nathan S. Toole  
3606 S. Granite Park CV  
Salt Lake City, Utah 84106

Certified Mailing # 7007 0220 0001 0064 8243

Julie Rine