

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:

**MICHAEL SHAUN KIRBY,
GREENFOLDERS, INC.,**

Respondents.

ORDER TO SHOW CAUSE

Docket No.

Docket No.

SH-005
SH-006

It appears to the Director of the Utah Division of Securities (Director) that Michael Shaun Kirby and GreenFolders, Inc. 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 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. Michael Shaun Kirby (Kirby) was, at all relevant times, a resident of the state of Utah. Kirby has never been licensed in the securities industry in any capacity.
3. GreenFolders, Inc. (GreenFolders) is a Utah corporation that registered with the Division of Corporations on January 5, 2007 under the name Emageo Holding Company, Inc. (Emageo). The name was changed to GreenFolders, Inc. on March 15, 2009, then back to Emageo on September 1, 2011. The name GreenFolders was used by Kirby with investor H.P. Kirby currently serves as Emageo's Director. GreenFolders has never registered with the Division.

GENERAL ALLEGATIONS

4. From February 11, 2009 to July 22, 2009, Respondents offered and sold stock to an investor, in or from Utah, and collected a total of \$325,000.
5. Stock is a security under the Act.
6. Respondents made material omissions in connection with the offer and sale of securities to the investor identified below.
7. The investor lost \$325,000 of his investment funds.

INVESTOR H.P.

FIRST INVESTMENT

8. H.P. met Kirby when Kirby began dating H.P.'s daughter J.T. Kirby also helped H.P. sell

some properties through Kirby's title company, Integrated Title Services, Inc. (ITS).

9. In February 2009, Kirby asked H.P. to stop by his office in Midvale, Utah to discuss a certain matter. Two of H.P.'s adult children went with H.P. At Kirby's office, H.P. was shown a video presentation on GreenFolders' paperless office software developed for title companies.
10. Kirby told H.P. that GreenFolders needed to raise money to complete the software and was selling GreenFolders stock in four tranches of 100,000 shares for \$250,000 each. With respect thereto, Kirby made the following statements:
 - a. The software was mostly finished, but was still undergoing minor tweaks and GreenFolders needed to raise an additional one million dollars;
 - b. People were lining up to invest in GreenFolders;
 - c. H.P. would have no problem doubling his investment, and likely could earn more; and
 - d. A company like Microsoft was going to buy GreenFolders.
11. On February 11, 2009, after H.P. decided to invest with Kirby, J.T. delivered to Kirby a \$250,000 check made payable to GreenFolders. In exchange for the \$250,000, HDP Properties, LLC¹ received a stock certificate for 100,000 shares of Emageo, Inc., dated February 11, 2009.
12. H.P. did not receive any disclosure documentation or other memorialization prior to his

¹ H.P. and his wife, D.P., set up HDP Properties, LLC as an estate-planning limited liability company.

investment.

13. Bank records show H.P.'s \$250,000 was deposited into the GreenFolders money market account at Bank of American Fork and used by Respondents in the following manner:
 - a. \$83,910 transferred to the GreenFolders checking account at Bank of American Fork;
 - b. \$166,000 transferred to the GreenFolders checking account at America First Credit Union; and
 - c. \$90 paid in bank fees.
14. Of the \$83,910 transferred to the GreenFolders checking account at Bank of American Fork, \$28,000 had the description "American Express," indicating the money would be used to pay an American Express bill. The remaining expenditures from the checking account are for normal business-related items, including salaries, insurance premiums, and utilities.
15. Records from American Express show Kirby is listed on two separate accounts. The first is a personal credit card account, and the second is a business account for ITS. There are no accounts for GreenFolders or Emageo at American Express. On the ITS account, there are cards assigned to several individuals, including Kirby. Charges on both the personal and business accounts include mainly restaurants, as well as charges associated with travel, including airfare and hotels.
16. Records from America First Credit Union show mostly expenses for Intuit Payroll

expenses, small transfers to other accounts, and paychecks to GreenFolders employees.

SECOND INVESTMENT

17. In July 2009, Kirby asked H.P. if he was interested in investing another \$250,000 with Kirby. H.P. said he could invest half that amount, \$125,000.
18. On July 22, 2009, after H.P. decided to invest the additional sum with Kirby, J.T. delivered to Kirby a \$125,000 check made payable to GreenFolders. In exchange for the \$125,000, HDP Properties, LLC received a stock certificate for 50,000 shares of Emageo, Inc., dated September 9, 2009.
19. H.P. did not receive any disclosure documentation or other memorialization prior to his investment.
20. Bank records show H.P.'s \$125,000 was deposited into the GreenFolders money market account at Bank of American Fork and used by Respondents in the following manner:
 - a. \$74,566 transferred to the GreenFolders checking account at Bank of American Fork;
 - b. \$50,000 transferred to the GreenFolders checking account at America First Credit Union;
 - c. \$369 to First America Professional Real Estate Services; and
 - d. \$65 paid in bank fees.
21. Bank records for the GreenFolders checking account at Bank of American Fork show expenditures on normal business-related items, including salaries, insurance premiums,

and utilities. The account also shows payments to various title companies and trade associations, as well as large payments to American Express, totaling \$25,624.14 between July 22, 2009 and November 20, 2009.

22. American Express charges on both the personal and ITS accounts include mainly restaurants, as well as charges associated with travel, including airfare and hotels.
23. Records from America First Credit Union show mostly expenses for Intuit Payroll expenses, small transfers to other accounts, and paychecks to GreenFolders employees.
24. In August, 2011, another company offered to buy GreenFolders. H.P. said he went to a shareholder meeting to discuss the sale. There, H.P. learned he was the only shareholder who paid \$2.50 per share; many other shareholders only paid \$0.40 per share.
25. H.P. has not been repaid any of his \$325,000 investment principal.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act

26. The Division incorporates and re-alleges paragraphs 1 through 25.
27. The stock offered and sold by Respondents are securities under § 61-1-13 of the Act.
28. In connection with the offer and sale of a security to the investor, Kirby, 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. Some of H.P.'s money would be used to pay Kirby's personal American Express card and the American Express card for Kirby's title company;

- b. Why Kirby believed a company like Microsoft would be interested in purchasing GreenFolders;
- c. How much GreenFolders had already raised, and what would happen if GreenFolders did not raise one million dollars;
- d. No product sales of the GreenFolders software had taken place yet;
- e. Previous shareholders had paid significantly less than \$2.50 per share to purchase stock in GreenFolders; and
- f. Some or all of the information typically provided in an offering circular or prospectus regarding Kirby and GreenFolders, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. Suitability factors for the investment;
 - iv. Business experience and operating history;
 - v. Whether the investment is a registered security or exempt from registration; and
 - vi. Whether Respondents were licensed to sell securities.

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 **Wednesday**,

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, 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 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:

- g. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- h. 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
- i. 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, which may be reduced by restitution paid to the investor.

DATED this day of January 31, 2013.


KEITH WOOD
Director, Utah Division of Securities



Approved:



D. SCOTT DAVIS
Assistant Attorney General
N.B.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
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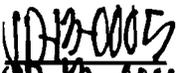
**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

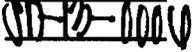
IN THE MATTER OF:

**MICHAEL SHAUN KIRBY,
GREENFOLDERS, INC.,**

Respondents.

NOTICE OF AGENCY ACTION

Docket No. 

Docket No. 

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 **February 6, 2013** at the Division of Securities, 2nd

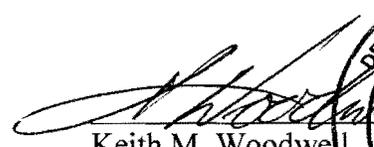
Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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) 530-6035. 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 3rd day of January, ~~2012~~ 2013.


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 8th day of January, 2012, I mailed, by certified mail and regular mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

GreenFolders, Inc.
Michael Shaun Kirby
2863 Fallentine Road
Sandy UT 84093

Certified Mailing # 7007 0220 0001 0004 82104

Lyndon Ricks
Paula Faerber
Kruse Landa Maycock & Ricks, LLC
136 E. S. Temple 21st Fl.
Salt Lake City, UT 84111

Certified Mailing # 7007 0220 0001 0004 82173


Executive Secretary