

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:

**TAYLOR CAPITAL GROUP, LLC,
IARD#158016
MARK STEPHEN TAYLOR,
CRD#5996042**

Respondents

**PETITION TO CENSURE LICENSEES
AND IMPOSE A FINE**

Docket No. SD-13- 0010

Docket No. SD-13- 0011

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 Respondents Taylor Capital Group, LLC ("TCG") and Mark Stephen Taylor ("Taylor"), and imposing a fine. In support of this petition, the Division alleges:

STATEMENT OF FACTS

1. TCG is a Utah limited liability company that has been licensed as an investment adviser in Utah since October 12, 2012. Its principal place of business is located in Salt Lake City, Utah.
2. Taylor is the owner, managing director, and designated official of TCG. He has been licensed in Utah as an investment adviser representative of TCG since October 12, 2012.

Taylor has taken and passed the Series 65, Uniform Investment Adviser Law Examination.

3. Mountain West Debt Fund, LP (“MWD” or “the fund”) is a Delaware limited partnership, formed in March 2011, with its place of business in Salt Lake City, Utah.
4. TCG is the general partner of MWD.
5. According to MWD’s Private Placement Memorandum (“PPM”), through the sale of limited partnership interests, MWD uses investor monies “to invest primarily in real estate debt and similar securities.” As general partner, TCG “has discretionary investment authority over [MWD]’s assets and is responsible for all investment decisions and activities of [MWD].”
6. On November 3, 2011, TCG submitted an application to become licensed as an investment adviser in Utah by filing Form ADV¹ through the Investment Adviser Registration Depository (“IARD”)².
7. During the Division’s review of the application, it was discovered that TCG and Taylor had acted as an investment adviser and investment adviser representative prior to submitting the application and throughout the time the application was pending.

¹Form ADV is the uniform form used by investment advisers to register with both the United States Securities & Exchange Commission (“SEC”) and state securities regulators.

²IARD is an electronic filing system that facilitates investment adviser registration, regulatory review, and the public disclosure information of investment adviser firms. The Financial Industry Regulatory Authority (“FINRA”) is the developer and operator of the IARD system. The system has been developed according to the requirements of its two sponsors, the SEC and the North American Securities Administrators Association (“NASAA”), along with those of an Industry Advisory Council representing investment adviser firms.

Review of Application

8. Although TCG did not apply with the Division until November 2011, information contained in its application represented it was organized in March 2011, and that Taylor had been employed by TCG since January 2011.
9. The application described TCG as:
 - the General Partner and investment manager of the Mountain West Debt Fund, LP, a Delaware limited partnership (the "Partnership") organized for the purposes of investing in real estate secured debt instruments. [TCG] performs investment supervisory and administration services for the Partnership, including research, underwriting and investment direction for the Partnership.
10. On December 13, 2011, the Division sent a comment letter which outlined numerous deficiencies with TCG's Form ADV that needed to be resolved before the Division could approve the application.
11. Among a number of issues addressed in the December 13 letter, the Division expressed particular concern that TCG appeared to have already been acting as an investment adviser to MWD prior to applying for a license. The letter noted:
 - This raises the concern of whether Taylor, TCG, or MWD began operations prior to being licensed. In the written response, please indicate whether any advisory services have been provided by Taylor or TCG and whether MWD already has investors. If so, please provide a complete list of clients/investors with their contact information and investment date(s) and amount(s).
12. In addition, the Division expressed concerns about TCG's fee structure, which provided for both management fees and performance-based fees. The Division specifically referred TCG to Utah Administrative Code Rule R164-2-1 as the applicable rule setting forth the requirements to be met for advisers receiving performance-based compensation. The Division also provided a courtesy copy of the rule with its comment letter.

13. On December 22, 2011, TCG responded to the comment letter and submitted documents requested by the Division. Apparently with regard to the Division's inquiry about possible unlicensed activities, TCG indicated that its Form ADV "was started in March 2011 in connection with the organization of TCG and it was the understanding of TCG that it had been filed in the second quarter of 2011. However, upon review by counsel in connection with an update to the ADV, it was discovered that the filing had not been completed at that time. Upon this discovery, the ADV was filed again."³
14. The letter later vaguely asserts – in response to the Division's specific inquiry as to unlicensed activity prior to the filing of an application – "[a]s stated previously, TCG was operating with the understanding that its registration application was being processed and began soliciting investors in May 2011."
15. With respect to performance-based fees, TCG represented it had added references to Rule R164-2-1 and would follow the rule in assessing performance-based fees.
16. On February 27, 2012, Taylor submitted to the Division's Corporate Finance section ("Corporate Finance") a Form D Rule 506 notice filing for a private placement securities offering by MWD. The Form D indicated the fund had been raising monies from Utah investors and that the first sale in Utah occurred on May 1, 2011. At the time of the Form D filing, the fund had raised \$2,500,000 from 13 investors.
17. In response, on March 9, 2012, Corporate Finance sent a comment letter to Taylor which again addressed the Division's concerns about unlicensed activity:

³Neither IARD nor the Division have any record of an application being filed before November 3, 2011.

However, please be mindful that Taylor Capital Group, LLC cannot act as investment adviser to the fund until it is appropriately licensed in the state of Utah.

18. In May 2012, the Division had a telephone conference with TCG's counsel to review a number of still-outstanding issues relative to the application, including the fact that no substantive response⁴ had been made to the Division's inquiries about unlicensed activities by TCG and Taylor. Although Division staff intended to follow that conversation with a letter memorializing the discussion, the letter was never sent, causing additional delay in the processing of the application.
19. On August 22, 2012, TCG, its counsel, and Division staff met to discuss the remaining deficiencies. At that time, TCG's counsel indicated he had erroneously advised his client that: a) no license was required when TCG began operating (due to his misinterpretation of a licensing exemption); and b) TCG could continue operating without a license during the application process.
20. Following the meeting, the Division sent a comment letter outlining the remaining deficiencies and concerns for TCG to address, including the lack of any applicable licensing exemption, and the one-year holding requirement of Rule R164-2-1 that applies to each investor before an adviser may withdraw a performance-based fee.
21. On September 7, 2012, TCG submitted a response that provided additional information on the outstanding issues and informed the Division it would be seeking new legal counsel.
22. On September 12, 2012, Division staff met with TCG to discuss the unlicensed activity. At

⁴Although TCG's December 2011 response provided investor information, the response did not directly answer whether advisory services had already been provided by Taylor or TCG.

that time, TCG stated it believed that a no-action letter previously issued by the Division to another entity was applicable to exempt its activities prior to licensure. Division staff disagreed with that interpretation.

23. Thereafter, TCG provided financial records requested by the Division and other information required to make its application complete. Because the unlicensed activity was the only remaining issue, the Division indicated it would approve the application but that an administrative action would be required to address the unlicensed activity. On October 12, 2012 the Division approved TCG as an investment adviser.
24. Financial documents reviewed by the Division revealed that TCG and Taylor began acquiring clients – the MWD fund investors – in May 2011 and immediately began charging both management fees and performance-based fees.
25. From May 2011 through the end of August 2012, management fees charged totaled \$84,997.06, with \$15,326.45 of those fees being charged prior to filing an investment adviser application. The fees were charged monthly in arrears and were based on an annual fee of 2 percent of assets under management.
26. From May 2011 through the end of August 2012, the performance-based fees charged totaled \$121,485.03, with \$18,830.51 of those fees being charged prior to filing an investment adviser application. The fees were charged monthly in arrears and were based on 15 percent of profits.

FIRST CAUSE OF ACTION
Unlicensed Investment Adviser and Investment Adviser Representative
Under Section 61-1-3(3) of the Act
(TCG and Taylor)

27. From May 2011 until the approval of TCG's investment adviser application in October 2012 – the first six months of which occurred prior to filing an investment adviser application – TCG and Taylor transacted business for compensation in Utah as an unlicensed investment adviser and unlicensed investment adviser representative, in violation of Section 61-1-3(3) of the Act.

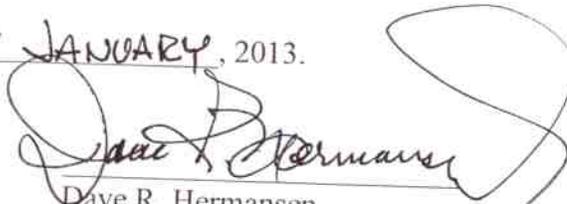
SECOND CAUSE OF ACTION
Investment Adviser - Unlawful Acts Under Section 61-1-2(2)(a)(i)
(TCG and Taylor)

28. As described herein, from the inception of the MWD fund in May 2011, limited partners were charged a performance-based fee equal to 15 percent of net profits. Those fees were charged in violation of Rule R164-2-1(E)(1)(c) of the Utah Administrative Code, which requires investor monies to be "in the client's account for a period of not less than one year." Failing to comply with Rule R164-2-1 constitutes an unlawful act under Section 61-1-2(2)(a)(i) of the Act.

REQUEST FOR RELIEF

The Division requests that, based upon Respondents' willful violations of the Act, pursuant to § 61-1-6 of the Act, the Commission enter an order censuring them and imposing a fine, jointly and severally, in the amount of \$25,000.00.

Dated this 17 day of JANUARY, 2013.


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
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Respondents.

NOTICE OF AGENCY ACTION

Docket No. SD-13-0010

Docket No. SD-13-0011

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 Petition. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-6. 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
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set for Wednesday, February 27, 2013 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 16th day of January, 2013



Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 17 day of January, 2013, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

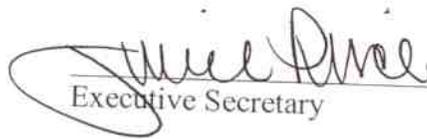
Taylor Capital Group, LLC

Attn: Mark S. Taylor

359 West Pierpont Avenue

Salt Lake City, UT 84101

Certified Mail # 7007 0220 0001 0004 8458


Executive Secretary

