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**
TAYLOR CAPITAL GROUP, LLC, IARD#158016	**Docket No. SD-13-0010**
MARK STEPHEN TAYLOR, CRD#5996042	**Docket No. SD-13-0011**
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Kenneth O. Barton, and the Respondents, Taylor Capital Group, LLC ("TCG"), and Mark Stephen Taylor ("Taylor"), hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*
2. On or about January 17, 2013, the Division initiated an administrative action against Respondents by filing a Petition to Censure Licensees and Impose a Fine.
3. Respondents hereby agree 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 Respondents pertaining to the Petition.

4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.

5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

6. Respondents have read this Order, understand its contents, and voluntarily agree 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 Respondents to enter into this Order, other than as described in this Order.

7. Respondents are represented by attorney J. Martin Tate ("Tate") and are satisfied with the legal representation they have received.

I. FINDINGS OF FACT

8. 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.

9. 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.

10. 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.

11. TCG is the general partner of MWD.

12. 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]."

13. On November 3, 2011, TCG submitted an application to become licensed as an investment adviser in Utah by filing Form ADV[1] through the Investment Adviser Registration Depository ("IARD")[2].

14. 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.

Review of Application

15. 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.

16. The application described TCG as:

---

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

[2]IARD 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.

> 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.

17. 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.

18. 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).

19. 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.

20. 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]

21. 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."

22. 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.

23. 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.

24. In response, on March 9, 2012, Corporate Finance sent a comment letter to Taylor which again addressed the Division's concerns about unlicensed activity:

> 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.

25. 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

---

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

substantive response[4] 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.

26. 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.

27. 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.

28. 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.

29. On September 12, 2012, Division staff met with TCG to discuss the unlicensed activity. At 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.

30. Thereafter, TCG provided financial records requested by the Division and other

---

[4]Although 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.

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.

31. 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.

32. 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.

33. 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.

II. CONCLUSIONS OF LAW

34. 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.

35. 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.

III. REMEDIAL ACTIONS/SANCTIONS

36. Respondents neither admit nor deny the Division's findings and conclusions, but consent to the sanctions below being imposed by the Division.

37. Respondents represent that the information they have provided to the Division as part of the Division's investigation is accurate and complete.

38. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.

39. Within thirty (30) days following entry of the Order, Respondents agree to disgorge to investors the $18,830.51 in performance-based fees received by Respondents prior to the time Respondents filed their application to license as an investment adviser. Respondents will provide proof of those payments to the Division also within thirty (30) days following entry of the Order.

40. Pursuant to Utah Code Ann. Section 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondents shall be liable jointly and severally to pay a fine in the amount of $1,170.00 to the Division within thirty (30) days following entry of the Order.

41. Respondents shall provide to the Division audited financial statements for the year 2012 within ten (10) days after the statements are finalized.

IV. FINAL RESOLUTION

42. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondents further acknowledge 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.

43. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of their conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them.

44. 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.

45. Respondents acknowledge that a violation of this Order is a third degree felony pursuant to Section 61-1-21(1)(b) of the Act.

Dated this 26 day of February, 2013

Kenneth O. Barton
Director of Licensing and Compliance
Utah Division of Securities

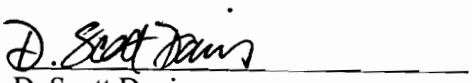
Dated this 14 day of February, 2013

Taylor Capital Group, LLC

Its Manager

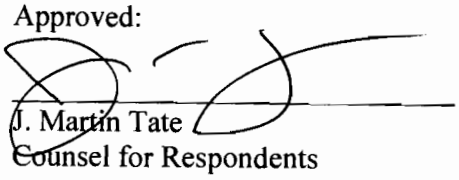
Mark Stephen Taylor

Approved:



D. Scott Davis
Assistant Attorney General

Approved:



J. Martin Tate
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondents, are hereby entered.
2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Within thirty (30) days following entry of the Order, Respondents will disgorge to investors the $18,830.51 in performance-based fees received by Respondents prior to the time Respondents filed their application to license as an investment adviser. Respondents will provide proof of those payments to the Division also within thirty (30) days following entry of the Order.
4. Pursuant to Utah Code Ann. Section 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondents shall jointly and severally pay a fine in the amount of $1,170.00 to the Division within thirty (30) days following entry of the Order.
5. Respondents shall provide to the Division audited financial statements for the year 2012 within ten (10) days after the statements are finalized.

BY THE UTAH SECURITIES COMMISSION:

DATED this 28 day of MARCH, 2013

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the 29 day of March, 2013, I mailed, by certified mail, a true and correct copy of the fully executed Stipulation and Consent Order to:

J. Martin Tate
CARMAN LEHNHOF ISRAELSEN LLP
299 S. Main Street, Suite 1300
Salt Lake City, UT 84111
Counsel for Respondents

Certified Mail # 70070220 0001 0064 2579

Executive Secretary