

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

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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:**

**ORDER TO SHOW CAUSE**

**JEFFREY KAHN, CRD# 4830345**

**Docket No. SD-13- *0014***

**Respondent.**

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It appears to the Director (“Director”) of the Utah Division of Securities (“Division”) that Jeffrey Kahn (“Kahn/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 Division’s 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 FACTS**

1. RJR Investment Service, LLC (“RJR”), IARD#148843, is an investment adviser with its place of business in Salt Lake City, Utah. From December 11, 2008 to August 13, 2012,<sup>1</sup> RJR was noticed filed in Utah as a federal covered investment adviser. RJR is currently licensed in Utah as a state covered investment adviser.

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<sup>1</sup>Following the August 2, 2012 approval of its application to become a state licensed adviser in Utah, RJR withdrew its federal registration.

2. Jeffrey Kahn (“Kahn”), CRD# 4830345, was the president and a member of RJR. Khan has never been licensed as an investment adviser representative in Utah.
3. Richard T. Budge (“Budge”), CRD# 1262979, is the Chief Executive Officer (“CEO”) of RJR, and has been licensed in Utah as an investment adviser representative since December 15, 2008.

#### **Application for Licensure and Division Investigation**

4. On May 9, 2012, RJR initiated the process to become a Utah licensed investment adviser.<sup>2</sup>
5. During the review of RJR’s application, it was discovered that Kahn was not licensed as an investment adviser representative of the federal covered investment adviser.
6. The Division contacted RJR to determine, among other things, why Kahn was not licensed as an investment adviser representative.
7. RJR incorporated as a limited liability company in Utah in October 2008. From October 2008 through December 2008, RJR conducted organizing activities, including registering with the United States Securities and Exchange Commission (“SEC”) as a federal covered investment adviser and notice filing in Utah. RJR began operations as an investment adviser as of January 1, 2009.
8. Kahn and Budge were former employees of a bank’s trust company that was closing the Utah business unit effective December 31, 2008. At the trust company, Budge and Kahn had client relationships whose accounts totaled approximately \$29 million in assets under

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<sup>2</sup> The 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. RJR’s application with Utah was in accordance with that requirement. Investment advisers that no longer qualified to remain registered with the SEC were required to complete the switch process and withdraw from the SEC by June 28, 2012.

management. A majority of the trust company clients affected by the closure transferred their accounts to RJR for investment advisory services beginning in January 2009.

9. RJR did not do mass advertising or seminars to attract new clients. Most clients were referred, without compensation, from existing clients that came from the trust company.
10. From December 11, 2008 to August 13, 2012, Kahn managed the relationships with most of the former trust company clients, met quarterly with clients, delivered quarterly statements and presented written investment recommendations prepared by Budge, discussed written investment recommendations with the clients, and relayed client objections or approvals to Budge. Kahn also met with potential clients to discuss RJR's services.
11. During the course of an investigation undertaken by the Division while reviewing RJR's investment adviser application, RJR provided an accounting of its clients identifying the source of the client, the person who solicited the account, the person who offered RJR's services, the person that negotiated the investment adviser's contract, and the person who delivered RJR's ADV Part 2 disclosure brochure. A majority of RJR's clients on the list were attributed to Kahn.
12. Kahn was reimbursed from RJR for expenses, including mileage, entertainment, home office, and cell phone. RJR then recorded Kahn's reimbursed expenses as operating expenses of the firm.
13. Kahn received compensation from RJR that was equal to one-third of the monthly revenue RJR generated from investment advisory fees on accounts under management less RJR's operating expenses for the month.

14. Budge met with the Division a number of times in June 2012 to discuss investment adviser representative licensing requirements and to affirm that Kahn needed to be licensed. Thereafter, Budge informed Kahn that Kahn needed to be licensed.

**Bank and Trust Referral Agreement**

15. In mid-June 2012, RJR became aware of a referral fee agreement Kahn negotiated on or about March 8, 2012 with a bank and trust company (“bank and trust”). Under the agreement, Kahn was to refer new clients to the bank and trust for wealth management or custodial services to be provided by the bank and trust. Client assets would be placed in either a custodial account or a self-directed IRA account.
16. On March 8, 2012, an Executive Vice President for the bank and trust addressed a “letter of acknowledgment and approval of a referral arrangement between you” and the bank and trust to Kahn, President of RJR<sup>3</sup>. Material provisions of the arrangement included:
  - a. A one-time only cash payment made up-front for 20% of the expected annual gross fee revenue<sup>4</sup> on a new wealth management or custodial account established with the bank and trust.
  - b. A one-time only cash payment made up-front for 20% of the expected annual increase in gross fee revenue due to a deposit to an existing account. The increase in the fee must be at least \$100 in order to be paid.
  - c. The agreement was for a non-employee, independent contractor status, for

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<sup>3</sup> The acknowledgment letter was addressed to Kahn as President of RJR at Kahn’s home address in Provo, Utah and not the principal office and place of business of RJR in Layton, Utah.

<sup>4</sup> Gross fee revenue is defined as the expected revenue collected in the next twelve calendar months by the bank and trust for custodial, tax, base, and/or minimum fees, based on the market value of the account as reflected the time the account is funded on the bank’s accounting system.

purposes of federal income and withholding tax, and therefore, no individual or corporate taxes were to be withheld from any payment. An Internal Revenue Service ("IRS") Form W-9 was provided to report the Taxpayer Identification number.

- d. Any and all payments under the plan would be disclosed in advance to the customer(s) or principal(s) who own, control, or have an interest in the accounts. The customer would be required to approve of the proposed payment. A copy of the customer signed disclosure and approval would be provided to the bank and trust before any payment would be processed.
  - e. An attached Schedule A listed the possible initial accounts to be included under the arrangement if approved by the customer. Schedule A listed seventeen (17) account names with total market account value of \$3,125,770 as of January 31, 2012.
  - f. Kahn acknowledged and accepted the agreement as President of RJR on March 16, 2012.
17. Kahn completed the IRS W-9 form with: 1) his individual name, 2) no business name, 3) federal tax classification as an individual/sole proprietor, and 4) taxpayer identification number as his individual social security number and signature dated March 15, 2012.
18. On April 30, 2012, Kahn obtained client J.B.'s signature on a "Disclosure of Referral Payment" acknowledgment form. The form informed client J.B. that RJR was a separate entity from the bank and trust, and that RJR had an agreement that stipulated a portion (20%) of "the expected first year fee collected on your account is paid to RJR/Jeffrey Kahn as a referral fee. This referral payment is also paid on additional deposits made into

the account. This payment has absolutely no effect on your total fee whatsoever, but we wish to make full disclosure of this to you.”

19. After learning of Kahn’s activities, on July 31, 2012, RJR delivered a letter to the bank and trust canceling the March 16, 2012 agreement. RJR stated the reasons for cancellation were:
  - a. RJR’s Form ADV Part 2 specifically states RJR does not accept direct or indirect referral fees,
  - b. Mr. Kahn may not have been legally able to either sign a fee-sharing contract or participate in its benefits, and
  - c. Mr. Kahn did not inform the other RJR principals of the existence of the contract, and instead, acted on his own using RJR’s name.
20. RJR, Budge, and Kahn were not able to come to an agreement regarding Kahn taking the applicable exams and becoming licensed as an investment adviser representative. RJR and Budge then took steps to disassociate Kahn from the investment adviser. Kahn was removed as an officer of RJR and as an active member of the LLC, and placed on “inactive status” until he became licensed.
21. On July 2, 2012, Kahn contacted the Division for information to take the Series 65 examination and the process for becoming licensed. To date, Kahn has not sought to be licensed with RJR or another investment adviser.

#### **Unlicensed Activity**

22. Kahn acted as an investment adviser representative from 2008 to 2012 without being properly licensed.
23. Kahn had clients that exceeded the *de minimis* tests, and on a regular basis met with and

solicited clients for RJR.

24. In addition, Kahn acted as an unlicensed investment adviser from March 2012 to July 2012 by negotiating and entering an agreement to receive referral fees from the bank and trust without properly being licensed.

**FIRST CAUSE OF ACTION**

**Unlicensed Investment Adviser Representative Under § 61-1-3 of the Act**

25. Respondent Kahn violated Section 61-1-3(3) of the Act by acting as an investment adviser representative from 2008 to 2012 while unlicensed.
26. In addition, Kahn's activities pertaining to the bank and trust agreement constitute further unlicensed activity in violation of Section 61-1-3(3) of the Act.

**SECOND CAUSE OF ACTION**

**Investment Adviser - Unlawful Acts Under Section 61-1-2 of the Act**

27. By negotiating and executing a contract on behalf of RJR to benefit himself personally without the knowledge, consent or approval of the other principals or designated official of RJR, Kahn engaged in an act practice or course of business that operated as a fraud on RJR, its principals, potential clients, and the bank and trust, in violation of Section 61-1-2(1)(b), of the Act.

**REQUEST FOR RELIEF**

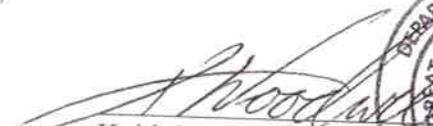
The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202 and 63G-4-204 through -209, and held before the Division. As set forth in the Notice of Agency Action accompanying this Order, Respondent is required to file a written response with the Division, and an initial hearing on this matter has been scheduled for March 12, 2013 at 9am. The initial hearing will take place at the Division of Securities, 2<sup>nd</sup> floor, 160 East 300 South,

Salt Lake City, Utah. The purpose of the initial hearing is to establish a scheduling order and address any preliminary matters. If Respondent fails to file a written response or appear at the initial hearing, findings may be entered, a permanent Order to Cease and Desist may be issued, and a fine may be imposed against Respondent, as provided by Utah Code Ann. §§ 63G-4-206 or -209.

At the Order to Show Cause hearing, Respondent may show cause, if any, he has:

1. Why Respondent should not be found to have engaged in the violations of the Act alleged by the Division in this Order to Show Cause;
2. Why Respondent should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-2, -3 or any other section of the Act;
3. Why Respondent should not be ordered to immediately pay a fine to the Division in the amount not less than \$10,000 based upon Respondent's violation of the Act.

Dated this 5<sup>th</sup> day of February, 2013

  
Keith M. Woodwell  
Director, Utah Division of Securities



Approved:



D. Scott Davis  
Assistant Attorney General

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 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:**

**JEFFREY KAHN, CRD# 4830345**

**Respondent.**

**NOTICE OF AGENCY ACTION**

**Docket No. SD-13-0014**

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

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) 366-0310

An initial hearing in this matter has been set for March 12, 2013 at the Division of Securities, 2<sup>nd</sup> Floor, 160 East 300 South, Salt Lake City, Utah, at 9am. The purpose of the initial hearing is to

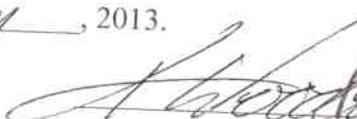
enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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) 530-6706. 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) 366-0310.

Dated this 5<sup>th</sup> day of February, 2013.

  
Keith M. Woodwell  
Director, Division of Securities



Certificate of Mailing

I certify that on the 11th day of FEB., 2013, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Mr. Jeffrey Kahn  
3875 Little Rock Lane  
Provo, UT 84604

Mr. Jeffrey Kahn  
C/O Mr. Jonathan K. Hansen  
Hansen Black Anderson PLLC  
2940 West Maple Loop Drive, Suite 103  
Lehi, UT 84043

