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: **BENJAMIN D. LARSEN, CRD#5785947** **Respondent.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-12-0016

It appears to the Director ("Director") of the Utah Division of Securities ("Division") that Respondent Benjamin D. Larsen ("Larsen") has engaged in acts and practices that violate the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.* Those acts and practices are more fully described herein. Based upon the Division's investigation into this matter, the Director issues this Order to Show Cause in accordance with the provisions of Section 61-1-20(1) of the Act.

STATEMENT OF FACTS

1. Larsen is an insurance agent licensed in Utah.

2. From June 2010 through August 2010, Larsen was licensed in Utah as a broker-dealer agent of Insphere Securities, Inc. ("Insphere"), CRD#136433. From August 2010 through October 31, 2012, Larsen was licensed as a broker-dealer agent of Symetra Investment Services, Inc. ("Symetra"), CRD#19061. He has not been licensed in the securities industry in any capacity since that time.

3. Larsen has taken and passed the FINRA Series 6, Investment Company/Variable Contracts Limited Representative Examination, and Series 63, Uniform Securities Agent State Law Examination.

4. During the period relevant to this action, with the exception of the period between June 2010 and August 2010, Larsen was not licensed to offer or sell any securities products. However, the Series 6 license held by Larsen during that period limited his securities activities to mutual funds and variable annuities. In addition, Larsen's authorized securities activities were restricted to products reviewed and approved for sale by his broker-dealer, Insphere.

Dee Randall and the Horizon Companies

5. During the period relevant to this action, Larsen was affiliated as an insurance agent with Horizon Financial and Insurance Group, Inc.[1] ("insurance agency"), a general insurance agent for Union Central Life Insurance Company. The insurance agency was owned and controlled by Dee Allen Randall ("Randall").

6. Larsen and others sold private placement securities investments in "Horizon Notes" which as used herein collectively refers to promissory notes issued by various companies owned and controlled by Randall. Those companies include, but are not limited to, Horizon Auto Funding, LLC, Independent Commercial Lending, LLC, Horizon Financial Center I, LLC, and Horizon Mortgage and Investment, Inc. (collectively referred to at times as "the Horizon entities").

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[1]This entity was also known as or affiliated with other entities controlled by Randall, Horizon Financial & Insurance Agency, LLC, and Utah Horizon Financial & Insurance Agency, LLC.

7. In addition to selling insurance, Randall, through the Horizon entities and Horizon Notes, purported to offer private placement securities investments[2] in commercial and residential property development and rentals, as well as an automobile loan business for individuals with poor credit.

8. The Horizon entities operated as a Ponzi scheme run by Randall[3] in which investor monies were routinely and freely commingled and transferred among the various Horizon entities. New investor monies were used to pay interest to prior investors, or for personal use, including the payment of sales compensation to agents, including Larsen.

Solicitations and Sales by Larsen

9. Between 2009 and 2010, Larsen solicited a number of his insurance clients to purchase Horizon Notes.

10. The Horizon Notes offered and sold by Larsen are securities under the Act.

11. Larsen sold Horizon Notes to thirteen investors, raising approximately $332,896.

12. None of the notes were sold through a licensed broker-dealer. Instead, Larsen met with potential investors to offer and sell the Horizon Notes and thereafter assisted with the paperwork required to transfer their monies from existing accounts into the Horizon investments. A majority of the monies raised by Larsen came from retirement accounts.

13. Prior to investing, Larsen's investors did not receive audited company financial

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[2]The Horizon Notes were purportedly sold in reliance on Rule 506 of Regulation D of the 1933 Securities Act.

[3]On December 18, 2012, the Division filed an Order to Show Cause against Randall and the Horizon entities, which action is currently pending. For additional information, see: http://securities.utah.gov/dockets/12007901.pdf

statements or a Private Placement Memorandum ("PPM") describing the details of the investment.

14. A majority of Larsen's investors only met with Larsen and never met with Randall prior to investing.

15. Larsen and other agents selling the Horizon Notes were compensated for those sales through the insurance agency. Agent compensation usually was calculated as a percentage of the amount of money invested. For investments under $50,000, compensation was generally 10% of the investment; for investments greater than $50,000, compensation was 7% of the investment.

16. Payments to agents were made by cash or check, or by other means, including credits applied to monies owed by agents to Randall.[4] Most of the payments to Larsen were characterized as "agent allowance" payments through the insurance agency. Some of the payments were also documented in the insurance agency records as a "bonus" or "other expense".

17. In an interview with the Division, Larsen estimated he received compensation for two-thirds of the investors who purchased Horizon Notes, which he believed was equal to 8% to 10% of the invested amount. Larsen estimated the total he received as between $6,000 and $7,000.[5] Based upon the total principal invested by Larsen's investors, $332,896, and

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[4]Such credits were applied against rent owed, office expenses, or monies owing as a result of "chargebacks" for insurance commissions previously received by agents when policies were later rescinded or canceled.

[5]Insurance agency records show that during the period in which the thirteen investors purchased Horizon Notes, Larsen received approximately $21,977 in agent allowance compensation.

compensation formulas used by Randall, it is likely that compensation was higher.

18. Larsen and other agents who sold Horizon Notes also received indirect compensation through rent-free use of office space in buildings owned by Randall.

Selling Away

19. Despite selling a Horizon Note to one investor and receiving compensation for that sale during the period in which he was a licensed broker-dealer agent of Insphere, Insphere was not aware of and had not approved Larsen's activities. Larsen's Form U4[6] failed to disclose his securities activities with Horizon.

Misrepresentations of Material Fact

20. In connection with the offer and sale of Horizon Notes, Larsen misrepresented or omitted material facts to investors, including but not limited to:

a. the investment was "safe", would pay a 9% annual return, was registered with the SEC, the company had been around for 15 years, and the investor could receive money back at any time;

b. the investment was "no risk" and "basically a savings account";

c. the Horizon Notes were "a very sound" investment;

d. the investment was "no to low risk investment" with a "guaranteed" 9% return, that Larsen personally knew the owner and vouched for the company's integrity; and

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[6]The Form U4, Uniform Application for Securities Registration or Transfer, is filed with FINRA and the Division in order for an individual to become licensed as a securities agent in Utah. Form U4 requires the disclosure of all business activities conducted by licensed individuals. It is the agent's responsibility to ensure the form is accurate.

e. the Horizon investment was "safer than anywhere else", would be a good way to get out of debt, pay 10-15% annual interest, and would be in a real estate investment trust (REIT), but the documents provided by Larsen instead authorized a wire transfer to Horizon Auto Funding, which the investor only found out months later after his monies had already been invested in Horizon Auto Funding.

These representations were false and/or omitted to disclose material facts necessary in order to make the statements made, under the circumstances in which they were made, not misleading.

Omissions of Material Facts

21. In connection with the offer and sale of Horizon Notes, Larsen failed to disclose material facts to investors, including but not limited to:

a. that he was not licensed to offer or sell securities such as the Horizon Notes;

b. that he was not licensed or qualified to give investment advice;

c. his lack of experience, qualifications, and training to advise investors about financial planning issues, including retirement planning;

d. that, as to one investor during the period in which he was licensed, his broker-dealer, Insphere, had not reviewed or approved his offer and sale of Horizon Notes;

e. that Larsen would be compensated through the insurance agency, which was not a broker-dealer, in violation of securities laws and industry rules; and

f. relevant disclosures about the Horizon entity issuing the notes, including its financial condition and liabilities.

22. Interest payments due to investors under the Horizon Notes began to arrive late in 2009 or

2010, and payments to most investors ceased entirely in 2010.

FIRST CAUSE OF ACTION
Misrepresentations and Omissions of Material Facts under § 61-1-1(2) of the Act

23. Larsen violated Section 61-1-1(2) of the Act by misrepresenting and omitting material facts as described herein in connection with the offer and sale of the Horizon Notes.

SECOND CAUSE OF ACTION
Selling Away - Act, Practice, Course of Business Operating as a Fraud under § 61-1-1(3) of the Act

24. By selling a Horizon Note to an investor while he was a licensed agent of Insphere, without Insphere's knowledge or approval, and receiving compensation for that transaction from an entity other than his employing broker-dealer, Larsen engaged in an act, practice, or course of business which operated as a fraud upon the investor and his employing broker-dealer, Insphere, and in so doing exposed Insphere to civil liability.

THIRD CAUSE OF ACTION
Unlicensed Agent Under § 61-1-3 of the Act

25. The only entity through which Larsen was licensed to sell securities was Insphere.

26. As described herein, Larsen conducted securities transactions through and was paid compensation by the insurance agency, which was not licensed as a broker-dealer.

27. Moreover, during the brief time he was licensed, Larsen's Series 6 license limited his securities activities to selling mutual funds and variable insurance products through Insphere.

28. Accordingly, each offer or sale of the Horizon Notes by Larsen violated Section 61-1-3(1) of the Act.

REQUEST FOR RELIEF

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondent 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, Respondents are required to file a written response with the Division, and an initial hearing on this matter has been scheduled for April 9, 2013 at 9 a.m. The initial hearing will take place at the Division of Securities, 2nd 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. § 61-1-1, -3, or any other section of the Act;
3. Why Respondent should not be barred from associating with a broker-dealer or investment adviser licensed in Utah; and
4. Why Respondent should not be ordered to pay a fine to the Division in the amount of $30,000.00.

Dated this 19th 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, 2nd 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: **BENJAMIN D. LARSEN, CRD#5785947** **Respondent.**	**NOTICE OF AGENCY ACTION** **Docket No.** SD-13-0016

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, 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 April 9, 2012 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9 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 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 19th day of February, 2013

Keith M. Woodwell
Director, Division of Securities

DEPARTMENT OF COMMERCE
THE GREAT SEAL OF THE STATE OF UTAH
DIVISION OF SECURITIES

Certificate of Mailing

I certify that on the 19th day of February, 2013, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Benjamin D. Larsen

1245 W 2980 S

Nibley, UT 84321

Janie Price

Executive Secretary