

**Utah Securities Commission
March 28, 2013
Room 451 – 9:00 AM**

Agenda

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|---|-------------------|
| Welcome/Call to Order | Erik Christiansen |
| 1. Approval of January 24, 2013 Minutes | Erik Christiansen |
| 2. Director's Report | Keith Woodwell |
| a. Update on Budget | |
| b. Update on Division Staffing | |
| c. Two Day Meeting in July (trial) | |
| d. Commissioners Terms that are Expiring | |
| 3. Investor Education Update | Karen McMullin |
| 4. Section Reports | |
| a. Licensing & Compliance Section | Ken Barton |
| b. Corporate Finance Section | Benjamin Johnson |
| - Rule Modifications | |
| c. Enforcement Section | Dave Hermansen |
| 5. Education and Training Fund Report | Benjamin Johnson |
| a. Grant Request: MountainWest Capital Network | Keith Woodwell |
| 6. Consideration and Approval of Proposed Orders | |
| a. Bryce Lee Karl dba
Karl Hospitality, Inc. | Dave Hermansen |
| b. Breakthrough Technologies
Charles Ross Chatwin
Mark Andrew Jackson | Dave Hermansen |
| c. Trump Alliance, LLC
Stephen Ronald Trump | Dave Hermansen |
| d. Rayda Roundy | Dave Hermansen |
| e. James Lee Anderson | Dave Hermansen |
| f. Craig Eldon Taylor dba The Mall Hop &
Smoothie Beach | Dave Hermansen |
| g.. Sonocine, Inc. | Benjamin Johnson |
| h. Morgan Asset Management, Inc.
Morgan Keegan & Company, Inc. | Ken Barton |
| i. Taylor Capital Group, LLC
Mark Stephen Taylor | Ken Barton |
| j. Mark L. Caldwell | Ken Barton |



In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Maria Skedros, ADA Coordinator, Division of Securities, P O Box 146760, 160 E 300 S, Salt Lake City, Utah 84114-6711, Phone (801) 530-6436, at least three working days prior to the meeting.

SECURITIES COMMISSION MEETING MINUTES

January 24, 2013

Securities Staff Present

Keith Woodwell, Division Director
Benjamin Johnson, Corporate Finance Director
Dave Hermansen, Enforcement Director
Dee Johnson, Investor Education Director
Scott Davis, Assistant Attorney General
Jennie Jonsson, Administrative Law Judge
Richard Jaramillo, Securities Examiner
Sheila Thomas, Securities Examiner
Brandon Henrie, Securities Examiner
Adam Sweet, Securities Investigator
Karen McMullin, Investor Education Coordinator
Ann Skaggs, Securities Analyst
Chip Lyons, Securities Analyst
Nadene Adams, Administrative Assistant
Julie Price, Board Secretary

Commissioners Present

Laura Polacheck, AARP Utah
Tim Bangerter, Bangerter Financial Group
Erik Christiansen, Parsons Behle & Latimer
Brent Baker, Clyde Snow & Sessions

Commissioners Absent

Jane Cameron, Zions Bank

Public Present

Craig Taylor

Minutes: A motion was made and seconded to approve the October 29, 2012 minutes. The motion to approve the meeting minutes was passed unanimously.

Director's Report: Director Woodwell:

Budget:

Legislative session is about to begin. There will be no change in the fiscal year 2014 budget; it will be the same as 2013. \$1.618 million is our base budget for the division. We have our first meeting in front of the appropriations subcommittee on January 29, 2013. We are not asking for any additional items, we are not anticipating any issues. The Investor Education Fund balance as of January 9, 2013 was \$326,000. The trend is slightly downward over the past 6-8 months. In November the balance was \$362K and in October it was \$368K. In the beginning of August the balance was at \$469K. The trend is downward, but not alarming. We are trying to manage the costs by managing some of the items the Division has previously charged, we have told prosecutors that whatever they need to do, we will support them. Expert witnesses have been where a lot of the expenses are coming from. We are not seeing the larger fines that we had in

the past. There still is a steady flow of revenue coming into the fund. The \$326K figure we are at now, even though it is lower than 2010-2012, is still a healthy balance.

Division staffing:

Tom Brady who was our Director of Enforcement has been promoted to Deputy Director of The Department of Commerce.

Dave Hermansen who was in the Licensing and Compliance Section is now the Director of Enforcement.

Ken Barton was promoted to the Director of The Licensing and Compliance Section.

Brandon Henrie was given role of lead licensing examiner. We are currently in the process of hiring a new examiner. Brandon will be under the supervision of Ken and will oversee the process for approving new applicants, particularly IA licenses which are the most complex and involved that we deal with.

Julie Price has been promoted to Executive Secretary to The Department of Commerce. We are starting to look for a replacement for Julie Price. Thank you to Julie for all your hard work for making the Commission Meeting's function so well.

Investor Education Update: Karen McMullin: On December 18, 2012 we received the expo display which has several components which include: 2: IPad kiosks. We are currently double booking events; we will be able to take portions of it to different events. There are also literature stands that hold flyers and other hand-outs. We now have the ability to introduce people to our web-site, to do broker checks and view our on-line data base. Our 2012 totals were 61 events. At the beginning of 2013, I submitted requests to previous partners to continue the relationship this year and I received responses from 13 people. We currently have 15 events booked, 4 are expos and 11 are seminars. We have a new partner: Utah Association for Home Care, the focus will be on the financial exploitation of the elderly. Last year's efforts are paying off this year.

Licensing & Compliance Section Report: Dave Hermansen: We have just completed the last version of NEMO which is our electronic auditing program that we will be using for our examination process. We have not completed as many examinations as we wanted; however, a lot of our efforts have been going toward the Dee Randall case. We are looking at the agents that were involved with selling those particular products. We are finishing up on some criminal cases and in settlement negotiations on a few cases. We have opened 5 new cases since we last met; currently we have 4 outstanding Administrative cases that are currently in settlement talks right now. We are in the process of drafting 3 more Administrative cases. We also have two cases that settled today, that we will go through today's agenda. We are currently working 3 criminal cases and we are very close to.

Corporate Finance Section Report: Benjamin Johnson reported that the year-end numbers for 2012. We did see a slight drop off after three years of consistent increases, although registration filings were flat. We did have a 50% drop off in state level exemptions and a 16% drop off in 506 notice filings. Mutual funds were up slightly but less than 1%. The rule making process for implementing the JOBS Act has been slow, but we anticipate a busy 2013 when the new rules come online.

Enforcement Section Report: Dave Hermansen: I have only been in this position for 1-1 ½ weeks, we have met with the task force we meet biannually, that task force includes the

Division, the FBI and The Department of Justice, an IRS representative and the SEC. These are agencies that we share information with and in many cases participate in joint investigations. In these last 2 months we have drafted 6 new complaints, on the administrative side we have 6 more to be drafted. Drafting has become an issue for the whole division; we really have a back log of drafting. Other people are stepping in to help the void we have. Enforcement is working 32 open cases. We have 12 complaints that are sitting and have not been assigned as of yet. We have 13 cases that have been referred for criminal action, where charges have not yet been filed yet.

Education Fund Expenditure Report: Benjamin Johnson reviewed the updated expenditure report for the Education and Training Fund and discussed line items that were being requested by the Division for Commission approval. This included routine expenses. We have one grant request from AARP; apart from that what you see is routine costs. We tend to replenish those to a standard amount.

Action: Tim Bangerter made a motion to approve the Education Fund Expenditure Report. The motion was seconded and carried.

Consideration of Grant Request

AARP of Utah: Laura Polacheck presented this grant request.

Laura: The Division of Securities has partnered with AARP. We go around the state, about 4 times a year. Primary expense is mailing to invite people to attend. In the past we have requested \$10K to help fund these efforts. Expenses are securing the location, publicity and reimbursing our volunteers. The speakers are not compensated but expenses are covered. This year the request is \$20K because there is a change in the national policy. Before they would pay for our direct mail, which was several thousand per event. We will incur significant additional costs. Keith can attest the need and excitement for these events within our State. We are educating the public on the role of the Division and informing how to protect themselves against fraud. They can find information about brokers or notify the division of questionable investments within the state.

Keith: the Division enthusiastically supports the partnership with AARP. AARP consistently delivers the largest number of participants. In Layton last year there were well over 300 people there. We get a large number of inquiry and complaints from these events. People ask for business cards, share their experiences and we end up with a lot of referrals and new cases. AARP is great at getting people to these events. We want to keep the ongoing relationship. Ken and Tom have also participated with events.

The funds would support the 4 events and telethon where we would be calling people in their homes in a certain time period participating. People would not have to travel to these events. We call about 20-30 thousand people we usually get 8,000 to stay on the phone for a period of time. It is great way to spread the message in a very efficient way.

Action: Laura Polacheck recused herself. Brent Baker made a motion to approve the grant. The motion was seconded and carried.

Request from Administrative Rules Committee:

The following questions were proposed by the Administrative Rules Review Committee, which is chaired by Senator Howard Stephens on.

Questions/Requests from the Chair of the Administrative Rules Review Committee, Sen. Howard Stephenson, from the Oct. 19, 2012 committee hearing:

- What can be done to disconnect the documents relating to previous Division of Securities enforcement actions from internet searches for people who were involved in “small” or “minor” violations (those not involving fraud) that were settled through stipulations and consent orders, and where the subject of the previous action has a clean record since the time of the stipulation and consent order?
 - Particular concern for those cases dating back to the time period (2005-2008) reviewed in the Legislative Performance Audit of the Division.
 - Information regarding these people could still be accessed through a search in the Division’s Online Database, but could not be accessed through a general internet search (e.g., Google, Bing, Yahoo). Similar to court records accessible only through the courts database.
- Asked the Securities Commission to look at the fines that were imposed during this time period. If any of the fines were excessive, what remedy should be made to those who were subject to excessive fines?
 - Asked if we would need help with statutory authority to make restitution to those who were fined excessive amounts.
- In determining fine amounts in the future, should restitution and sanctions be separated into separate amounts? In this way the amount of restitution sought through an administrative fine would not be capped, but the amount of the sanction could be capped.
 - Offered help if we need statutory authority to bifurcate the fine into a restitution amount and a penalty amount.
 - Suggestion from Legislative Auditor that fine amounts be split into three categories: 1) restitution; 2) penalty; and 3) cost recovery for the Division’s investigative costs.

Erick Christiansen: These are important policy issues. They’re worthy of the public’s time and effort to evaluate within a legislative context. The Commission struggles with trying to hide any information from the public that when you favor public disclosure, people’s enforcement histories and that if you’re going to error in favor of one side or the other, it’s protecting the investor public. If the public disclosure of information helps even one person, it’s probably better than trying to hide it from the public.

Approval of Stipulation and Consent Orders

Jonathon R. Watts: Dave Hermansen reported that from November 2006 through January 2008, Mr. Watts offered and sold an investment opportunity to Utah investors, who invested a total of at least \$974,000.00. Mr. Watts in general told investors their money would be invested

in property in Cedar City, Utah. He gave investors documents entitled "Trust Deed Note" in return for their investments; however, the notes were unrecorded and failed to give investors any interest in real property. The terms of the notes promised various rates of interest for a term of anywhere from 30 days to one year.

Mr. Watts, directly or indirectly, made false statements in connection with the offer and sale of a security to investors. Mr. Watts failed to disclose material information which was necessary to make representations not misleading in connection with the offer and sale of a security. Mr. Watts was never licensed to sell securities. He was acting as an agent of an issuer, which violates the law by selling an unregistered security.

Mr. Watts will cease and desist from violating the Utah Uniform Securities Act. He will pay a fine of \$20,000.00, which will be waived contingent on no securities laws are violated during the abeyance period. Mr. Watts is permanently barred from the securities industry, and he will cooperate with the Division in any future investigations. Mr. Watts will pay restitution as ordered in the criminal case.

Action: Laura Polacheck made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Craig Tanner Daly and Joshua Carl Johnson: Dave Hermansen reported that from July 2010 to September 2010 the Respondents offered and sold investment contracts to an investor and collected at least \$165,000.00. The Respondents omitted information in connection with the offer and sale of securities to the investor. The investor lost \$160,800.00 of his principal. The Respondents failed to disclose material information, which was necessary in order to make proper investment decisions.

The Respondents will cease and desist from violating the Utah Uniform Securities Act, they agreed to be barred from the securities industry in Utah, and they agreed to cooperate with any further investigations. Fines were imposed of \$25,900.00 against Mr. Daly and \$11,616.00 against Mr. Johnson.

Action: Tim Bangerter made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Glen A. Larsen dba Financial Advisory Services: Dave Hermansen reported that the Division staff conducted an announced examination of Financial Advisory Services (FAS) in September 2011 and an unannounced examination in January 2012. The examination revealed that FAS has no policies and procedures manual existing in any form and does not conduct an annual review of such. An earlier examination in September 2002, Mr. Larsen agreed in writing to develop and implement these measures, however, in the Division's examinations in 2011 and 2012, Mr. Larsen could not produce that he had implemented these policy and procedure manuals. Failure to implement these procedures at least annually violates the books and records requirements of the Act.

Mr. Larsen consents to the sanctions being placed by the Division. Mr. Larsen also represents that the findings of the Division is accurate and complete. Mr. Larsen agrees to cease and desist from violating the Utah Uniform Securities Act, and to comply with the requirements of the Act in all future business in this state. The Respondent agrees to pay a fine of \$1,000.00 to the Division within 30 days.

Action: Tim Bangerter made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Subhash S. Kithany: Dave Hermansen reported that the Respondent (SK Group, Inc. or SKG) is an investment advisor. On July 31, 2012, SKG initiated the process to become a Utah licensed investment advisor. During the review of SKG's application, it was discovered that Mr. Kithany was not licensed as an investment adviser representative. Mr. Kithany reported that he thought he was properly licensed and had been submitting fees for licensing through the CRD systems since 2002. In reality, the respondent submitted the required for the firm, but not for an individual license. The Respondent mistakenly believed that he had been renewing his investment adviser representative license while paying the firm's fees. Once the Respondent realized the mistake that he was not licensed as an investment adviser representative, he immediately filed his Form U4 through the CRD and paid the fees to become licensed.

The Respondent consents to the sanctions imposed by the Division, and agrees that the findings are accurate and complete. The Respondent agrees to cease and desist from violating the Utah Uniform Securities Act and to comply with the requirements of the Act in all future business in this state. The Respondent agrees to pay a fine of \$5,000.00 to the Division.

Action: Laura Polacheck made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Michael Scott Jolley: Dave Hermansen reported that the Respondent Michael Scott Jolley has never been licensed in the securities industry in any capacity. Between February and July 2008, Jolley offered and sold securities to an investor and collected a total of at least \$35,000.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investor. The Respondent received the above mentioned funds from an investor and used those funds to pay for various personal expenses based on back records. The Respondent directly and indirectly failed to disclose material information.

The Respondent consents to the sanctions placed by the Division; he agrees to the imposition of a cease and desists order, prohibiting him from any conduct that violates the Act. The Respondent acknowledges that violation of this Stipulation and Consent order is a third degree felony. The Respondent will not seek to be licensed in the securities industry in the state of Utah. He will cooperate with the Division and the Federal Government in any future investigations. The Division imposes a fine of \$35,000.00 offset by restitution payments to the investor.

Action: Brent Baker made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Dennis John Rowley: Dave Hermansen reported that Mr. Rowley is/was a resident of Utah and has never been licensed in the securities industry in any capacity. The Respondent needed \$70,000.00 to renovate a home in Draper, UT. The investor was told that he/she would receive interest of 100% from the Respondent within 60 days of his/her investment. The Respondent claimed he would renovate the home and have the property re-appraised, take out a loan on the higher value, and pay back the investor. \$70,000.00 was withdrawn from the investor's bank account and given over to the Respondent. The Respondent directly or indirectly made false statements in connection with the offer and sale of a security. The Respondent failed to disclose material information which was necessary to make representations not misleading.

The Respondent will cease and desist from violating the Utah Uniform Securities Act. The Respondent is barred from the securities industry. The Respondent will cooperate with the Division, the State of Utah and the Federal Government in any future investigations and/or prosecutions relevant to the matter. The Respondent will pay restitution as requires in the criminal case.

Action: Brent Baker made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Craig Eldon Taylor dba The Mall Hop and Smoothie Beach: Mr. Taylor was present, and spoke against the entry of a default order in his case. The Division discussed the deadlines that had been missed by the Respondent and the reasons that default was appropriate.

Action: The Commission will not consider the Final Order by Default at this time but Mr. Taylor must fully comply with and be ready to present at the March 28, 2013 Commission Meeting. If he is not in compliance, an order will be taken against him at the next commission meeting.

Next Meeting: May 23, 2013

Tim Bangerter made a motion to adjourn the meeting. The motion was seconded and carried.

Approved: _____
Erik Christiansen, Chairman

Date: _____

R164-14-2b. Manual Listing Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(b) and Section 61-1-24.

(2) The rule specifies recognized securities manuals.

(3) The rule prescribes the information upon which each listing must be based to qualify for the exemption.

(4) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(b).

(4)(a) Except as provided in Paragraph (H), the exemption is not self-executing and may not be relied upon until the Division confirms the exemption as provided below.

(4)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(B) Definitions

(1) "Blank-check company" means a development stage company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose;

or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(b) of the Act.

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(10) "Significant change" means any change involving a reorganization, merger, acquisition, or other change which causes the issuer to increase its issued and outstanding shares of stock by at least 40% of the issued and outstanding shares before the change.

- (C) Recognized securities manuals
 - (1) The Division recognizes the following securities manuals:
 - (1)(a) [~~Standard and Poor's Corporation Records~~] S&P Capital IQ Standard Corporation Descriptions
 - (1)(b) Mergent's Industrial Manual
 - (1)(c) Mergent's Bank and Finance Manual
 - (1)(d) Mergent's Transportation Manual
 - (1)(e) Mergent's OTC Industrial Manual
 - (1)(f) Mergent's Public Utility Manual
 - (1)(g) Mergent's OTC Unlisted Manual
 - (1)(h) Mergent's International Manual
 - (D) Information upon which listing must be based
 - (1) A listing must be based upon the following information, which must be filed with the selected recognized securities manual:
 - (1)(a) the issuer's name, current street and mailing address and telephone number;
 - (1)(b) the names and titles of the executive officers and members of the board of directors of the issuer;
 - (1)(c) a description of the issuer's business;
 - (1)(d) the number of shares of each class of stock outstanding at the balance sheet date; and
 - (1)(e) the issuer's annual financial statements as of a date within 18 months which have been prepared in accordance with generally accepted accounting principles, and audited by an independent certified public accountant who has issued an unqualified opinion; if the issuer has been organized for less than one year, the financial statements must be for the period from inception.
 - (E) Confirmation requirement
 - (1) Except as provided in Paragraph (H), confirmation must be obtained prior to relying upon the exemption.
 - (2) A request for confirmation must include:
 - (2)(a) all information filed with the selected recognized securities manual;
 - (2)(b) a copy of the listing with the recognized securities manual which is based upon the information filed under paragraph (D); and
 - (2)(c) a filing fee as specified in the Division's fee schedule.
 - (3) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.
 - (4) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.
 - (F) Term of exemption
 - (1) Except as provided in Subparagraph (F)(2), the exemption becomes effective on the date confirmed by the Division.
 - (2) The exemption for the securities of an issuer which qualify under Paragraph (H) becomes effective on the date a listing, based upon the information required under Paragraph (D), is published in a recognized securities manual.
 - (3) The exemption shall expire upon the earliest of:
 - (3)(a) A date 18 months from the date of the annual financial statements required under paragraph (D);
 - (3)(b) The date of a new annual issue or edition of the recognized

securities manual which does not contain a listing based upon the information required under paragraph (D);

(3)(c) A date 45 calendar days from a change in the Chairman of the Board of Directors or a change in any two other members of the Board of Directors unless the recognized securities manual has published this information within the 45 days; or

(3)(d) A date 90 calendar days after a significant change in the issuer unless the recognized securities manual has published, at a minimum, an audited balance sheet and income statement reflecting the significant change within the 90 days.

(G) Blank-check, blind-pool, dormant, or shell company

(1) The exemption is not available to a blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) with the recognized securities manual, the information required under paragraph (D), as to all parties to such transaction;

(2)(b) with the Division, the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant or shell company; and

(2)(c) with the Division, the shareholders list of the company, current within thirty days of the request for confirmation of the exemption.

(H) Exceptions to confirmation requirement

(1) Confirmation prior to relying upon the exemption shall not be required for any security if at the time of the transaction:

(1)(a) the security is sold at a price reasonably related to the current market price of such security;

(1)(b) the security does not constitute the whole or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(1)(c) the security has been outstanding in the hands of the public for at least 90 days;

(1)(d) the issuer of the security is a going concern, actually engaged in business and is not in the development stage, in bankruptcy or receivership;

(1)(e) the issuer of the security has been in continuous operation for at least five years; and

(1)(f) the information required by Paragraph (D) is contained in a recognized securities manual listed in Paragraph (C).



STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

**Application for Grant from the Securities Investor
Education and Training Fund**

Applicant	MountainWest Capital Network
Amount Requested	\$2,500
Date	February 28, 2013

MountainWest Capital Network

("Applicant") hereby requests a grant from the Utah Division of Securities ("Division") in the amount of \$ 2,500 to be paid from the Securities Investor Education and Training Fund, created by Utah Code Ann. §61-1-18.7 ("Fund"). Applicant's charitable or educational mission is: The MountainWest Capital Network is Utah's first business networking organization devoted to supporting entrepreneurial success through:

1. Fostering the dynamic flow of information about capital formation and distribution
2. Educating and mentoring excellence
3. Recognizing and rewarding performance
4. Networking activities which promote business connections

This grant is specifically for the MountainWest Capital Network Deal Flow Event, May 16, 2013, featuring the 2012 Deal Flow Report. The Division of Securities has sponsored

this event in the past.

Applicant acknowledges that grants from the Fund can only be made for the purposes outlined in statute. These purposes include:

1. “education and training of Utah residents in matters concerning securities laws and investment decisions, by publications or presentations;” and
2. “education of registrants and licensees under [the Utah Uniform Securities Act], by . . . sponsorship of seminars or meetings to educate registrants and licensees as to the requirements of [the Act].” See Utah Code Ann. §61-1-18.7(5).

MWCN produces the Deal Flow Report, which researches and provides details on private equity, merger & acquisition and IPO activity in the state of Utah, and unveils that report at the Deal Flow Event. **This is the 18th annual Deal Flow Report.**

The Deal Flow Report fosters deal flow in Utah by informing individuals and organizations inside and outside the state as to the vibrancy of Utah capital formation.

- Investors from outside the state are informed as to the health of Utah’s economy, particularly its capital environment, and Utah’s proclivity for starting successful companies.
- Investors inside and outside the state use this data to identify companies that may need future investment.
- Companies inside or outside the state use it to identify which companies might be interested in participating in a merger or acquisition.
- The Deal Flow Report contains directories that help entrepreneurs and companies identify resources that can be helpful in future transactions:
 - Attorneys, Accounting Firms, Consultants, etc.

- Capital Providers
- Individuals use the information to identify companies which are growing and may be hiring, or to assure them that if they take a job with one company in Utah and that doesn't work out, there are many growing companies.
- This year the Deal Flow Report will add instructional how-to material about seeking capital, completing an M&A transaction, and how to prepare for an IPO.
- The Deal Flow Report is not only at the Deal Flow Event, but throughout the year.

As a Sponsor of the Deal Flow Event the Division of Securities will receive:

- A full page ad
- Eight event/lunch attendees
- One seat on luncheon dais
- Sponsor recognition at event and in PR

Applicant's activities include the following programs which meet above statutory purposes of the Fund: The MountainWest Capital Network also provides monthly education, recognition and networking activities focused on entrepreneurship and funding such as "The Entrepreneur of the Year," and "The Utah 100" which identifies the 100 Fastest Growing companies in Utah, as well as the 15 which experienced the largest revenue increase and 12 "Emerging Elite" companies. More information is available at <http://www.MWCN.org> .

Applicant acknowledges that the requested grant can only be approved by the Division upon the concurrence of the Utah Securities Commission, created under Utah Code Ann. §61-1-18.5

("Commission"), and the Executive Director of the Utah Department of Commerce.

The point of contact for Applicant is:

Name: Cheri M. Farnsworth

Title: MWCN Executive Director

Address: P.O. Box 25773, SLC, UT 84125

Phone No.: 801-966-1430

Email: Cheri@mwcn.org

Recipient's tax identification number is: 87-0541417



Dated: 2/28/2013

Applicant

Instructions for “Application for Grant from the Securities Investor Education and Training Fund”

Please complete all information on the application form. When completed, the application form (with the supporting documentation described below) should be submitted to the Director of the Utah Division of Securities by email, fax, or hard copy, as follows:

Keith M. Woodwell
Director
Utah Division of Securities
160 East 300 South, 2nd Floor
PO Box 146760
Salt Lake City, UT 84114-6760
kwoodwell@utah.gov
fax: 801-530-6980
phone: 801-530-6600

With the completed application, please provide any supporting documentation that should be considered with the application. Supporting documentation should include details on the programs or presentations that would be funded with the grant and a breakdown of how the grant monies would be allocated to each aspect of the program or presentation. If you have previously received a grant from the Fund, please also include a detailed statement of how the previous grant monies were actually spent. Independent appraisals or evaluations of the program are also appreciated, if available.



MWCN 18TH ANNUAL DEAL FLOW AWARD LUNCH

Thursday, May 16, 2013

Little America Hotel

11:30 – <i>Networking/Registration</i>		
12:00 – <i>Program/Lunch Welcome</i>	Jason F. Watson	
12:03- <i>MWCN Announcements</i>	Jason F. Watson	<ul style="list-style-type: none"> • June 20, 2013 – MWCN Business Forum, Sponsored by MWCN SS Key Bank • July 18, 2013 – Golf Tournament @ Thanksgiving Point • August 15, 2013 – Joint Lunch Event with UTC, UVEF, WBI
12:05 <i>Intro of MWCN Deal Flow Sponsors</i>	Devin Thorpe	Advanced CFO Solutions, Ballard Spahr LLP, CBIZ/MHM, Clarke Capital Partners, Diversified Insurance Group, Durham Jones & Pinegar, Ernst & Young LLP, Hansen Barnett & Maxwell, Holland & Hart, Jones Waldo, Key Bank, KUER, PwC, Sagemark Consulting, Silicon Valley Bank, Strong & Hanni, Tanner LLC, USTAR, Utah Division of Securities, Wells Fargo Bank, Woodley & Associates, & Zions Bank
12:08 - <i>MWCN Introduction</i> <i>Brief introduction of Gavin Christensen, Kickstart</i>	Drew Yergensen	MWCN is... Deal Flow is...
12:15- 12:30	Gavin Christensen	
12:30-12:33 <i>Brief Introduction of Ryan Smith, Qualtrics</i>	Drew Yergensen	
12:33-12:45	Ryan Smith, Qualtrics	
12:45 – <i>Introduction of Luke Sorenson</i>	Scott Nixon	
12:50 – 1:10 <i>Keynote</i>	Luke Sorenson	
1:10 - <i>Presentation of 2012 Deal Flow Report</i>	Drew Yergensen	Outline of the Book
1:15 - <i>Closing and Acknowledgements</i>	Jason F. Watson	
1:20 - <i>Adjourn</i>		



**2011
UTAH
DEAL
FLOW
REPORT**

Utah Department of Commerce

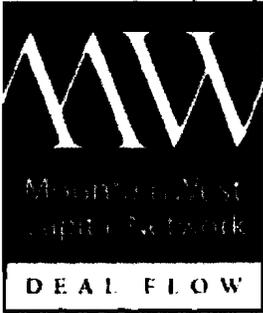
Division of Securities

The Utah Division of Securities is a valuable resource for the capital raising efforts of your business.



**Utah Division of Securities
160 E. 300 S. 2nd Floor
Salt Lake City, UT 84111
phone (801) 530-6600
www.securities.utah.gov**

Our Mission is to enhance Utah's business climate by protecting Utah's investors through education, enforcement and fair regulation of Utah's investment industry while fostering opportunities for capital formation.



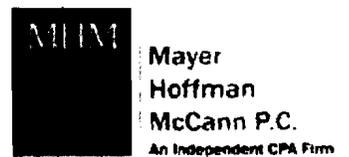
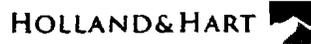
The information contained in this document has been collected from a variety of sources but has not been independently verified. Accordingly, the MountainWest Capital Network makes no representation or warranty as to the accuracy or completeness of such information. Furthermore, this is not a complete listing of all public offerings, financings, mergers, or acquisitions completed in Utah in 2011, since many deals were confidential or not reported.

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Sponsors



SVB Financial Group



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:

**BRYCE LEE KARL dba KARL
HOSPITALITY, INC.,**

Respondent.

STIPULATION AND CONSENT ORDER

Docket No.

SD-12-0012

The Utah Division of Securities (Division), by and through its Director of Enforcement, Dave Hermansen, and Bryce Lee Karl (Respondent), doing business as Karl Hospitality, Inc. (Karl Hospitality), hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act, Utah Code Ann. §61-1-1, *et seq.*, as amended (the Act).
2. On or about February 16, 2011, the Division initiated an administrative action against Respondent by filing a Notice of Agency Action (NOAA) and Order to Show Cause

(OSC). The NOAA and OSC were then re-filed on April 26, 2012.

3. Respondent hereby agrees 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 him pertaining to the OSC.
4. Respondent admits that the Division has jurisdiction over him and the subject matter of this action.
5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Respondent has read this Order, understands its contents, and voluntarily agrees 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 him to enter into this Order, other than as described in this Order.
7. Respondent is represented by Spencer Austin of Parsons Behle & Latimer, and is satisfied with his advice and representation in this matter.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

8. Respondent was, at all relevant times, a resident of the state of Utah. Respondent has never been licensed as a broker-dealer agent, issuer agent, or investment adviser representative in Utah. Respondent also operated under Karl Hospitality, which is not a registered entity in the state of Utah.
-

GENERAL ALLEGATIONS

9. From October 2008 to March 2009, Respondent offered and sold securities to at least two investors, in or from Utah, and collected a total of \$50,000.
10. Respondent made material misstatements and omissions in connection with the offer and sale of a security to the investors below.
11. The investors lost all \$50,000 of their investment funds.

INVESTORS J.H. AND C.H. (HUSBAND AND WIFE).

12. In or about October 2008, a friend referred J.H. and C.H. to Respondent as someone who could help them invest in the food service industry.
13. In or about October 2008, Respondent contacted J.H. by telephone to discuss an investment opportunity in Karl Hospitality. Respondent called from Utah while J.H. was out of town on business.
14. During the conversation, Respondent stated that he had acquired rights from Five Guys Enterprises, LLC (Five Guys) to open multiple franchises in Wyoming, Idaho, and Canada and was raising capital through his company, Karl Hospitality, to start those franchises.¹
15. Between October 2008 and March 2009, approximately three meetings took place in Draper, Utah between Respondent and J.H.
16. During the meetings, Respondent made the following statements about a potential

¹Five Guys is a limited liability company operating a restaurant franchise that sells hamburgers and french fries. On January 24, 2011, counsel for Five Guys told the Division that Respondent had been in negotiations with Five Guys to be a franchisee restaurant. Five Guys had assured Respondent that he would be a franchisee once Respondent signed the necessary paperwork and provided the necessary funds to purchase the franchise rights. Respondent never signed the paperwork or submitted the funds.

investment in Karl Hospitality:

- a. Respondent intended to raise \$10 million from a “handful” of investors;
 - b. The minimum investment was \$100,000, but Respondent would do J.H. and C. H. a favor and allow them to invest \$50,000.
17. Based on Respondent’s statements, J.H. and C.H. invested \$50,000 in Karl Hospitality.
18. On March 13, 2009, J.H. and C.H. met with Respondent in Salt Lake City, Utah to sign a subscription agreement to purchase preferred shares in Karl Hospitality.
19. Respondent and J.H. signed a document entitled “Subscription for Preferred Shares.” The agreement stated the following terms:
- a. The closing date for the shares was March 20, 2009;
 - b. The preferred shares were voting shares and were “retractable by the holder upon 60-days’ written notice to the Corporation for 3 years from their date of issue at a retraction price of USD\$1.00 per share;”
 - c. J.H. and C.H.’s shares were part of a larger offering of preferred shares of up to three million shares at \$1.00 per share;
 - d. The investment funds would be used to carry “out [Karl Hospitality’s] business plan and for general corporate purposes;”
 - e. On the closing date, investors would receive stock certificates; and
 - f. Time was of the essence.
20. Also included in the agreement was a “Representation Letter” which identified J.H. to be an accredited investor. Respondent told J.H. the document was standard legal jargon and discouraged J.H. from reading the document in its entirety before signing. J.H. signed

the agreement although he was not an accredited investor.

21. On or about March 13, 2009, J.H. transferred \$50,000 from his Wells Fargo bank account to Karl Hospitality's bank account, also with Wells Fargo.
22. Respondent did not deliver the preferred share certificates to J.H. and C.H. on, before, or any time after March 20, 2009.
23. On or about April 2010, J.H. made a written request for return of the funds in sixty days, pursuant to the subscription agreement. Respondent did not return the funds.
24. On or about September 17, 2010, J.H.'s attorney sent a written request for the funds to be returned. Respondent did not return the funds.
25. Respondent and Karl Hospitality still owe J.H. and C.H. \$50,000.
26. Using a source and use analysis of Karl Hospitality's bank records, Respondent used the majority of the \$50,000 investment funds in the following manner:
 - a. \$10,000 used to purchases horses and property for Respondent;
 - b. \$12,269 used to pay various individuals;
 - c. \$8,800 transferred to an unknown account;
 - d. \$12,126 paid to RBM Lumber, Inc.; and
 - e. \$5,000 transferred to Respondent's personal account and primarily used to pay bank fees and personal expenses.

SECURITIES FRAUD UNDER § 61-1-1 OF THE ACT

27. The Division incorporates and re-alleges paragraphs 1 through 26.
28. In connection with the offer and sale of a security to the investors, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:

- a. J.H. and C.H.'s investment funds would be used for corporate purposes, when in fact, Respondent used the funds for personal expenses and other non-corporate purposes;
 - b. Respondent had already obtained rights to be a franchisee of Five Guys, when in fact, Respondent had no reasonable basis for making this statement.
29. In connection with the offer and sale of a security to the investors, Respondent, 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. Respondent has an outstanding warrant for his arrest for larceny in Colorado;
 - b. Respondent was in default to previous investors;
 - c. What would happen with the funds if Respondent failed to raise the necessary capital;
 - d. Respondent's prior debt collection proceedings;
 - e. Some or all of the information typically provided in an offering circular or prospectus regarding Karl Hospitality, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. Suitability factors for the investment;
 - iv. Track record to investors;
 - v. Karl Hospitality and Respondent's business experience and operating history;
 - vi. Nature of competition;

- vii. Whether the investment is a registered security or exempt from registration; and
- viii. Whether Respondent was licensed to sell securities.

II. THE DIVISION'S CONCLUSIONS OF LAW

- 30. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.
- 31. In connection with the offer and sale of a security to the investors, Respondent, directly or indirectly, made false statements regarding the security, and/or failed to disclose material information necessary to make the statements not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

- 32. Respondent neither admits nor denies the Division's findings and conclusions, but consents to the sanctions below being imposed by the Division.
- 33. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.
- 34. Respondent agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.
- 35. Respondent agrees that he will be barred from (i) associating² with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities

²"Associating" includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. "Associating" does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

industry in Utah.

36. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent agrees to pay a fine of \$52,500.00 to the Division. The fine will be offset by restitution paid to the investor(s). In this case, Respondent has already paid \$50,000 in restitution, leaving a \$2,500.00 fine payable to the Division. This fine shall be paid within thirty days of the entry of the Order.
37. If the Division finds that Respondent materially violates any term of this Order, thirty days after notice and an opportunity to be heard before an administrative officer solely as to the issue of a material violation, Respondent consents to a judgment ordering the entire fine immediately due and payable.

IV. FINAL RESOLUTION

38. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. He further acknowledges 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.
39. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.
40. 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.

Utah Division of Securities

Date: JAN 29, 2013
By: [Signature]
Dave Hermansen
Director of Enforcement

Respondent

Date: Jan 22, 2013
By: [Signature]
Bryce Lee Karl

Approved:

[Signature]
D. Scott Davis
Assistant Attorney General
D.W.

[Signature]
Spencer Austin
Attorney for Bryce Lee Karl

Certificate of Mailing

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

Spencer Austin
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 94111

Certified Mail # _____

Executive Secretary

ORDER

IT IS HEREBY ORDERED THAT:

41. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondent, are hereby entered.
42. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
43. Respondent is hereby barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.
44. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent agrees to pay a fine of \$52,500.00 to the Division. The fine will be offset by restitution paid to the investor(s). In this case, Respondent has already paid \$50,000 in restitution, leaving a \$2,500.00 fine payable to the Division. This amount shall be paid within thirty days of the entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this ____ day of _____, 2013.

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF

**BREAKTHROUGH TECHNOLOGIES
CHARLES ROSS CHATWIN, CRD#1080299
MARK ANDREW JACKSON,**

RESPONDENTS

**RECOMMENDED ORDER ON
MOTION FOR DEFAULT**

**CASE NO. SD-12-0071
CASE NO. SD-12-0072
CASE NO. SD-12-0073**

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a December 10, 2012 notice of agency action. A response to the accompanying order to show cause was due by January 14, 2013. The notice specified that a failure to comply with the deadline for response would result in the entry of a default order against Respondents without any further notice.

A prehearing conference was held on February 6, 2013. Respondents failed to appear. As of the date of this order, Respondents have not filed a response to the Division's order to show cause or made any effort to participate in the proceeding. Therefore, the presiding officer finds

that, pursuant to Utah Code § 63G-4-209(1)(a) and (c), proper factual and legal bases exist for entering a default order against Respondents.

RECOMMENDED ORDER

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, to wit:

1. That the investment opportunities offered and sold by Respondents are securities under Utah Code Ann. § 61-1-13(ee)(i);
2. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondents directly or indirectly made false statements to investors;
3. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(3), Respondents engaged in an act, practice, or course of business, which operated as a fraud or deceit upon investors;
4. That in violation of Utah Code Ann. § 61-1-3(3), Respondents Jackson and Chatwin acted as investment advisers in the offer and/or sale of a security in Utah without being properly licensed in the securities industry; and
5. That Respondents' actions, which constitute one or more violations of Utah Code § 61-1-1, are grounds for sanction under the Act.

The presiding officer further recommends that the Utah Securities Commission enter a default order against Respondents, requiring them:

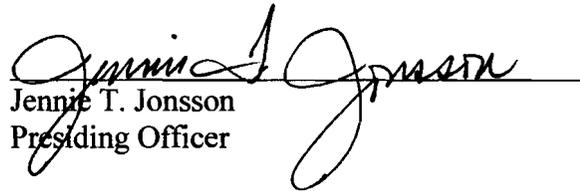
1. To cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq; and

2. To pay a fine of \$348,750 to the Utah Division of Securities, with any restitution paid to investors serving to offset the administrative fine on a dollar-to-dollar basis.

This recommended order shall be effective on the signature date below.

DATED this 7th day of February, 2013.

UTAH DEPARTMENT OF COMMERCE


Jennie T. Jonsson
Presiding Officer

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF

**BREAKTHROUGH TECHNOLOGIES
CHARLES ROSS CHATWIN, CRD#1080299
MARK ANDREW JACKSON,**

RESPONDENTS

ORDER ON MOTION FOR DEFAULT

CASE NO. SD-12-0071
CASE NO. SD-12-0072
CASE NO. SD-12-0073

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's February 6, 2013 recommended order on motion for default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

ORDER

Respondents are hereby ordered cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq.

Respondents are hereby ordered to pay a fine of \$348,750 to the Utah Division of Securities, with any restitution paid to investors serving to offset the administrative fine on a dollar-to-dollar basis.

This order shall be effective on the signature date below.

DATED this ____ day of _____, 2013

UTAH SECURITIES COMMISSION:

Tim Bangerter

Jane Cameron

Erik Anthony Christiansen

Brent Baker

Laura Polacheck

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A request or motion to set aside this order by default may be filed with the presiding officer and/or with the Director of the Division of Securities pursuant to Utah Code Ann. § 63G-4-209(3)(a) and the Utah Rules of Civil Procedure. If a defaulted party wishes a review of the presiding officer's decision on a motion to set aside a default, Utah Code Ann. § 63G-4-209(3)(c) provides that agency review of the presiding officer's decision on a motion to set aside a default order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of the presiding officer's decision. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Title 63G, Chapter 4 of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2012, the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

Breakthrough Technologies
Mark Andrew Jackson
915 East Ft. Pierce Dr.
St. George, UT 84790

Charles Ross Chatwin
P.O. Box 110
Colorado City, AZ 86021

and caused a copy to be hand delivered to:

D. Scott Davis, Assistant Attorney General
Office of the Attorney General of Utah

Ann Skaggs, Securities Analyst
Utah Division of Securities

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF

**TRUMP ALLIANCE, LLC
STEPHEN RONALD TRUMP,**

RESPONDENTS

RECOMMENDED ORDER ON DEFAULT

**CASE NO. SD-10-0066
CASE NO. SD-10-0068**

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a September 30, 2010 notice of agency action. Pursuant to Utah Administrative Code § R151-4-2-5(3), a response to the accompanying order to show cause was due within 30 days of the September 30, 2010 mailing date. The notice specified that a failure to comply with the deadline for response would result in the entry of a default order against Respondents without any further notice.

As of the date of this order, Respondents have not filed a response to the Division's order to show cause or made any effort to participate in the proceeding. Therefore, the presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(c), proper factual and legal bases exist for entering a default order against Respondents.

RECOMMENDED ORDER

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, to wit:

1. That the investment opportunities offered and sold by Respondents are securities under Utah Code Ann. § 61-1-13(ee)(i);
2. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondents directly or indirectly made false statements to investors;
3. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondents directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading; and
4. That Respondents' actions, which constitute one or more violations of Utah Code Ann. § 61-1-1, are grounds for sanction under the Act.

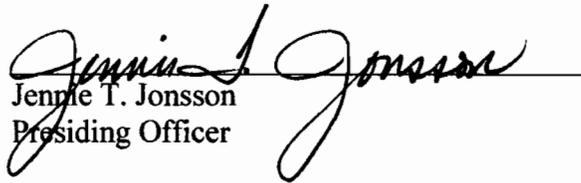
The presiding officer further recommends that the Utah Securities Commission enter a default order against Respondents, requiring them:

1. To cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq; and
2. To pay a fine of \$29,687.50 to the Utah Division of Securities.

This recommended order shall be effective on the signature date below.

DATED this 13th day of February, 2013.

UTAH DEPARTMENT OF COMMERCE


Jennie T. Jonsson
Presiding Officer

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF

**TRUMP ALLIANCE, LLC
STEPHEN RONALD TRUMP,**

RESPONDENTS

ORDER ON DEFAULT

**CASE NO. SD-10-0066
CASE NO. SD-10-0068**

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's February 13, 2013 recommended order on motion for default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

ORDER

Respondents are hereby ordered cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq.

Respondents are hereby ordered to pay a fine of \$29,687.50 to the Utah Division of Securities.

This order shall be effective on the signature date below.

DATED this ____ day of _____, 2013

UTAH SECURITIES COMMISSION:

Tim Bangerter

Jane Cameron

Erik Anthony Christiansen

Brent Baker

Laura Polacheck

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A request or motion to set a aside this order by default may be filed with the presiding officer and/or with the Director of the Division of Securities pursuant to Utah Code Ann. § 63G-4-209(3)(a) and the Utah Rules of Civil Procedure. If a defaulted party wishes a review of the presiding officer’s decision on a motion to set aside a default, Utah Code Ann. § 63G-4-209(3)(c) provides that agency review of the presiding officer’s decision on a motion to set aside a default order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, Box 146701, Salt lake City, Utah 84114-6701, within thirty (30) days after the date of the presiding officer’s decision. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Title 63G, Chapter 4 of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2013 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

Trump Alliance, LLC
Stephen Ronald Trump
11 Park Place Ln.
Centerville, UT 84014

and caused a copy to be hand delivered to:

D. Scott Davis, Assistant Attorney General
Office of the Attorney General of Utah

Ann Skaggs, Securities Analyst
Utah Division of Securities

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF

RAYDA ROUNDY,

RESPONDENT

**RECOMMENDED ORDER ON MOTION
FOR DEFAULT**

CASE NO. SD-08-0079

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to an August 5, 2008 notice of agency action. On September 23, 2008, Respondent filed an answer. Thereafter, the parties conducted negotiations regarding a stipulated settlement agreement, but were unable to come to a resolution.

On February 15, 2013, the presiding officer issued a scheduling order setting an initial hearing for March 6, 2013. The notice advised Respondent that she would be permitted to participate in the hearing telephonically and included the following warning:

If Respondent fails to attend the hearing or participate by telephone, the presiding officer will, without further notice, hold her in default and assess a sanction and penalty consistent with the allegations contained in the Division's order to show cause.

Respondent failed to attend the March 6, 2013 hearing. As of the date of this order, Respondent has not contacted the Division or made any effort to participate in the proceeding. The Division has verified that the address to which the hearing notice was sent is a correct and active address for Respondent. Therefore, the presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(b), proper factual and legal bases exist for entering a default order against Respondent.

RECOMMENDED ORDER

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, to wit:

1. That the investment opportunities offered and sold by Respondent are securities under Utah Code Ann. § 61-1-13(ee)(i);
2. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly made false statements to one or more investors;
3. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading;
4. That Respondent offered or sold securities in Utah without holding a valid license to do so; and
5. That Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1-1, are grounds for sanction under the Act.

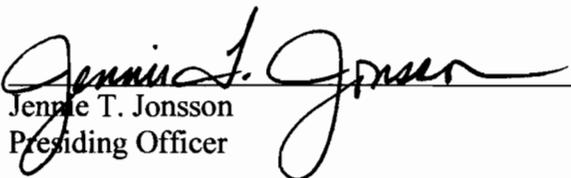
The presiding officer further recommends that the Utah Securities Commission enter a default order against Respondent, requiring her:

1. To cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq; and
2. To pay a fine of \$81,250 to the Utah Division of Securities, with any restitution paid to investors serving to offset the administrative fine on a dollar-to-dollar basis.

This recommended order shall be effective on the signature date below.

DATED this 6th day of March, 2013.

UTAH DEPARTMENT OF COMMERCE


Jennie T. Jonsson
Presiding Officer

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF

RAYDA ROUNDY,

RESPONDENT

ORDER ON MOTION FOR DEFAULT

CASE NO. SD-08-0079

BY THE UTAH SECURITIES COMMISSION:

The presiding officer's March 6, 2013 recommended order on motion for default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

ORDER

Respondent is hereby ordered cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq.

Respondent is hereby ordered to pay a fine of \$81,250 to the Utah Division of Securities, with any restitution paid to investors serving to offset the administrative fine on a dollar-to-dollar basis.

This order shall be effective on the signature date below.

DATED this ____ day of _____, 2013

UTAH SECURITIES COMMISSION:

Tim Bangerter

Jane Cameron

Erik Anthony Christiansen

Brent Baker

Laura Polacheck

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A request or motion to set a aside this order by default may be filed with the presiding officer and/or with the Director of the Division of Securities pursuant to Utah Code Ann. § 63G-4-209(3)(a) and the Utah Rules of Civil Procedure. If a defaulted party wishes a review of the presiding officer’s decision on a motion to set aside a default, Utah Code Ann. § 63G-4-209(3)(c) provides that agency review of the presiding officer’s decision on a motion to set aside a default order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, Box 146701, Salt lake City, Utah 84114-6701, within thirty (30) days after the date of the presiding officer’s decision. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Title 63G, Chapter 4 of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2013 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

Rayda Roundy
93 West 400 South #4
Hurricane, UT 84737

and caused a copy to be hand delivered to:

D. Scott Davis, Assistant Attorney General
Office of the Attorney General of Utah

Ann Skaggs, Securities Analyst
Utah Division of Securities

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146760
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

In the matter of: JAMES LEE ANDERSON (CRD# 4712967), Respondent.	<u>FINAL ORDER BY DEFAULT</u> Docket No. SD 12-0039
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The notice of agency action and order to show cause in this matter were filed by the Division of Securities (hereinafter "Division") on June 26, 2012. The Scheduling Order entered in this matter set an administrative hearing date of March 28, 2013.

Prior to the hearing on March 28, 2013, Respondent failed to file an Answer to the Order to Show Cause, Initial Disclosures, Witness and Exhibit Lists in accordance with the Scheduling Order entered in this matter on November 7, 2012. With Respondent having failed to participate in the adjudicative proceeding, to file a response to the Division's agency action, and upon a motion by the Division, an Order of Default shall be entered by the Division pursuant to UTAH CODE ANN. § 63G-4-209.

IT IS HEREBY ORDERED:

1. In violation of UTAH CODE ANN. § 61-1-1(2), Respondent made false statements, directly

or indirectly, in connection with the offer and sale of securities to investors.

2. In violation of UTAH CODE ANN. § 61-1-1(2), Respondent failed to disclose material information which was necessary in order to make statements made not misleading in connection with the offer and sale of securities to investors.

3. In accordance with UTAH CODE ANN. § 61-1-20(f), Respondent is assessed and ordered to pay a fine in the amount of \$187,405.00.

4. In accordance with UTAH CODE ANN. § 61-1-20(e), Respondent is ordered to cease and desist from engaging in any act or practice constituting a violation of UTAH CODE ANN. Title 61, Chapter 1 and UTAH ADMIN. CODE R164.

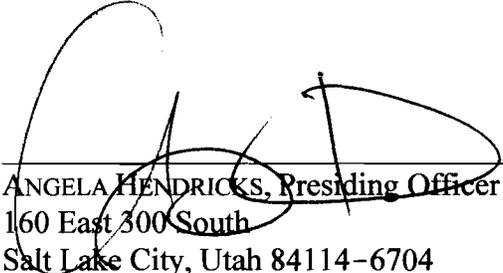
5. Pursuant to UTAH CODE ANN. § 61-1-21(1), a person who willfully violates an order entered by the Division is guilty of a third degree felony.

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A request or motion to set aside this order by default may be filed with the presiding officer and/or with the Director of the Division of Securities pursuant to UTAH CODE ANN. § 63G-4-209(3)(a) and the Utah Rules of Civil Procedure. If a defaulted party wishes a review of the presiding officer's decision on a motion to set aside a default, UTAH CODE ANN. § 63G-4-209(3)(c) provides that agency review of the presiding officer's decision on a motion to set aside a default order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of the presiding officer's decision. The agency action in this

case was an informal proceeding. The laws and rules governing agency review of this proceeding are found in Title 63G, Chapter 4 of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

Dated this 13th day of March, 2013.



ANGELA HENDRICKS, Presiding Officer
160 East 300 South
Salt Lake City, Utah 84114-6704
Telephone No. (801) 530-6305

BY THE UTAH SECURITIES COMMISSION:

The foregoing Final Order by Default is hereby accepted, confirmed and approved by the Utah Securities Commission.

DATED this _____ day of _____, 2013.

Tim Bangerter

Jane Cameron

Erik Anthony Christiansen

Brent Baker

Laura Polacheck

CERTIFICATE OF SERVICE

I certify that I have this _____ day of _____, 2013 served the foregoing FINAL ORDER BY DEFAULT on the parties in this proceeding by mailing a copy, properly addressed by first class mail with postage prepaid, to:

JAMES LEE ANDERSON
10291 SOUTH 1300 EAST #121
SANDY, UT 84094

And by hand-delivery to:

D. Scott Davis, Assistant Attorney General
Office of the Attorney General of Utah

Ann Skaggs, Securities Analyst
Utah Division of Securities

Division of Securities
Utah Department of Commerce
160 East 300 South
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:

**CRAIG ELDON TAYLOR,
d.b.a. THE MALL HOP and
SMOOTHIE BEACH,**

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD -12-0038

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Dave Hermansen, and Craig Eldon Taylor (Respondent), doing business as The Mall Hop¹ and Smoothie Beach,² hereby stipulate and agree as follows:

1. Respondent was the subject of an investigation conducted by the Division into allegations that he violated certain provisions of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the Act).

¹ The Mall Hop was a Utah DBA that registered with the Division of Corporations on December 1, 2006. That registration expired on January 27, 2010 for failure to file a renewal.

² Smoothie Beach was a Utah DBA that registered with the Division of Corporations on August 20, 2009. That registration expired on September 19, 2012 for failure to file a renewal.

2. In connection with that investigation, the Division issued an Order to Show Cause against Respondent on June 25, 2012, alleging securities fraud.
3. Respondent waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf. Respondent understands that by waiving a hearing, he is waiving the requirement that the Division prove the allegations against him by a preponderance of evidence, waiving his right to confront and cross-examine witnesses who may testify against him, to call witnesses on his own behalf, and any and all rights to appeal the findings, conclusions and sanctions set forth in this Stipulation and Consent Order.
4. Respondent understands that he has a right to be represented by counsel, and he voluntarily and knowingly waives the right to have counsel represent him in this matter.
5. Respondent acknowledges that this Stipulation and Consent Order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Respondent admits the jurisdiction of the Division over him and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

7. Respondent, doing business as The Mall Hop and Smoothie Beach, was, at all relevant

times, a resident of the state of Utah. Respondent has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

8. Between April 2009 and December 2011, Respondent offered and sold securities to an investor, in or from Utah, and collected a total of \$5,800.
9. Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investor identified below.

INVESTOR J.V.

First Offer and/or Sale of a Security

10. J.V. initially contacted Respondent in response to an advertisement posted on KSL.com in April 2009. Through the advertisement, Respondent sought a partner to invest in a start-up smoothie company called Smoothie Beach.
11. Over a four-month period following the initial contact, J.V. and Respondent met multiple times in Utah County, Utah to discuss a possible investment in the company.
12. During those meetings, and prior to J.V.'s investment, Respondent made the following statements:
 - a. J.V.'s investment would be in Respondent's start-up smoothie company, Smoothie Beach;
 - b. Smoothie Beach would be located inside The Mall Hop, a miniature mall that

Respondent created;

- c. The investment fee would be \$6,800;
 - d. In return for his investment, J.V. would receive 50% of the profits of the first two Smoothie Beach stores, as well as 10% of the profits of all future Smoothie Beach stores that Respondent expected to open and franchise;
 - e. J.V.'s role in the business would include: handling the accounting, creating the books, and managing the money;
 - f. J.V.'s investment was secure and protected, and Respondent would repay J.V. his principal plus interest upon request;
 - g. If the first Smoothie Beach store did not open within ninety days of August 21, 2009, Respondent would pay J.V. \$200 per month until the store opened; and
 - h. J.V. would not receive any ownership interests in the business.
13. After having decided to invest with Respondent, and while in Utah County, Utah, J.V. delivered to Respondent a Zions Bank personal check in the amount of \$5,800. J.V. made the check payable to The Mall Hop for "Smoothie Beach Buy in."
14. At that time, J.V. and Respondent agreed that J.V. would invest an additional \$1,000 when the store opened. That money would be placed in the cash register for inventory and product purchases.
15. J.V. understood that some of his investment funds would be paid to Respondent personally, but the rest of his funds would go toward opening the Smoothie Beach store.

Specifically, Respondent would use the funds to purchase products and other inventory items.³

16. At the time of investment, J.V. and Respondent executed a document entitled “*Investment/Partnership Contract Between Craig Taylor and [J.V.]*.” The contract is dated August 21, 2009, contains both parties’ signatures, and was notarized on that same date.
17. The terms of the contract memorialize the agreement and include the following provisions:
 - a. Investment description: “To invest in Smoothie Beach. Business will be in all future Mall Hop locations planned to open across country as investment is established;”
 - b. The stated investment amount is \$6,800;
 - c. In return for the investment, J.V. will receive “50% of net profits for 1st Orem Location and 50% of net profits of a 2nd location that will be in operation no later than August 21, 2010. Also promised with this investment are 10% of all net

³ In an interview with an investigator from the Division, Respondent stated that he invested \$50,000 to \$60,000 of his own money into Smoothie Beach and used some of J.V.’s funds to “retrieve money that [Respondent] had already put in.” Respondent also stated that he pooled J.V.’s investment funds with the money Respondent had invested, thereby combining the money in one “large pot.” Bank records for Respondent show that from J.V.’s \$5,800 investment, \$4,135 went to Heather Taylor, \$1,565 went to Craig Taylor, and \$100 went to Brent Wheeler. Of the money given to Heather Taylor, \$3,500 was transferred through a check, written by and payable to Heather Taylor, that included “Trade Show” on the memo line.

profits⁴ of all future Smoothie Beach locations in the United States with no extra investment except time and talent in helping administer accounting and ideas to help the business to be profitable. 10% of the purchase price (buy in price) for all future locations in the United States will also be given to [J.V.];”

- d. Additionally, “due to the 50% partnership in the 2nd store being delayed one year, [J.V.] will receive 20% on the net profits of the 2nd store in operation, instead of the contracted rate of 10%;” and
 - e. “If after nine months of the signature date on this contract, [J.V.] chooses to discontinue this agreement, he will receive a 10% return on his investment plus principal back.”
18. J.V. never performed any accounting or other work-related duties for Smoothie Beach, as provided for in the arrangement, because the project never progressed to that point.
19. Furthermore, Respondent failed to provide J.V. with any substantive information related to the operation of the company after his investment.
20. Instead, on April 17, 2010, J.V. and Respondent entered into an amendment to the original contract that clarified the “Protections” section of their agreement.
21. Both parties signed this amendment, entitled “*Investment/Partnership Contract Amendment 1 Between Craig Taylor and [J.V.]*,” while in Utah County, Utah.

⁴ The contract provides a footnote in connection with the term “net profits,” in which it states “According to this agreement, net income is defined as follows: Total Sales Revenue minus (-) COGS (Food and Beverage Costs) minus (-) Labor expense minus (-) Rent/utilities = [J.V.’s] 10% Payments. All other expense accounts listed on the Income Statement will not be included as deductions to total sales revenue when figuring [J.V.’s] 10% payments.”

22. The amendment includes the following provisions:
 - a. Due to delays in opening the first store, Respondent would forgive J.V.'s remaining \$1,000 investment;
 - b. For every month that the first store remains unopened, Respondent will pay J.V. \$200 on the eighteenth day of the month; and
 - c. The first payment will be due on May 18, 2010.
23. Respondent did not make the \$200 payment to J.V. on May 18, 2010, or any time thereafter, despite their arrangement.

Second Offer and/or Sale of a Security

24. On or about September 1, 2011, while in Utah County, Utah, J.V. told Respondent that he did not want to continue the partnership, and he asked for a complete return of his investment, plus interest.
25. Respondent agreed to repay the \$5,800 investment, plus an additional \$2,200 in interest.
26. On December 22, 2011, J.V. and Respondent formalized their agreement by executing a document entitled "*Promissory Note.*"
27. Both parties executed the document, with J.V. listed as lender and Respondent as borrower.
28. The promissory note includes the following provision: For value received, Respondent will pay J.V. \$6,000 in principal by January 10, 2012 and \$2,000 in interest by February 5, 2012.

29. The value received, as contemplated by the terms of the promissory note, includes J.V.'s forfeiture of his rights to the net profits in Smoothie Beach, as described in the original agreement.
30. J.V. agreed to these terms because Respondent had told him on several occasions that he had no pre-existing debt.
31. J.V. then received two checks from Respondent, dated February 16, 2012, in the amounts of \$6,000 and \$2,000.
32. However, at that time, Respondent told J.V. that he could not cash either check due to lack of funds. Respondent would notify J.V. when the funds became available.
33. On April 23, 2012, Respondent deposited \$6,000 into J.V.'s bank account. Respondent told J.V. that he had borrowed the money from a family member.

CAUSES OF ACTION

SECURITIES FRAUD UNDER § 61-1-1 OF THE ACT

34. The Division incorporates and re-alleges paragraphs 1-33.
35. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.

First Offer of a Security

36. In connection with the offer and sale of a security to the investor, Respondent, 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. On April 7, 2008, a \$15,429.42 judgment was rendered against Respondent in a debt collection case;⁵
- b. On September 17, 1990, Respondent was arrested in Utah by the Alpine Police Department for theft;
- c. On October 16, 1989, Respondent was arrested in Utah by the South Salt Lake Police Department for issuing a bad check. Respondent was later convicted;
- d. On September 29, 1988, Respondent was arrested in Utah by the Woods Cross Police Department for issuing a bad check. Respondent later pled guilty. As a result of the guilty plea, Respondent was fined \$1,500 and sentenced to one year in prison, of which he served 245 days;
- e. Respondent was on felony probation from June 27, 1989 until October 16, 1991, was a prison inmate from October 16, 1991 until December 10, 1992, and was on parole from December 10, 1992 until January 9, 1995; and
- f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent, The Mall Hop, and Smoothie Beach, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. The number of investors;

⁵ *Collection Services Bureau UT v. Best Price Utah LLC*, Fourth Judicial District of Utah, Case No. 070200879 (2007).

- iv. Suitability factors for the investment;
- v. Business experience and operating history;
- vi. Whether the investment was a registered security or exempt from registration; and
- vii. Whether Respondent was licensed to sell securities in Utah.

Second Offer of a Security

37. In connection with the offer and sale of securities to the investor, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:
- g. Respondent told J.V. that he did not have any pre-existing debt, when in fact, Respondent had a \$15,429.42 judgment against him in April 2008.⁶
38. In connection with the offer and sale of a security to the investor, Respondent, 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. How Respondent used J.V.'s original investment of \$5,800;
 - b. On September 17, 1990, Respondent was arrested in Utah by the Alpine Police Department for theft;
 - c. On October 16, 1989, Respondent was arrested in Utah by the South Salt Lake Police Department for issuing a bad check. Respondent was later convicted;

⁶ *Collection Services Bureau UT v. Best Price Utah LLC*, Fourth Judicial District of Utah, Case No. 070200879 (2007).

- d. On September 29, 1988, Respondent was arrested in Utah by the Woods Cross Police Department for issuing a bad check. Respondent later pled guilty. As a result of the guilty plea, Respondent was fined \$1,500 and sentenced to one year in prison, of which he served 245 days;
- e. Respondent was on felony probation from June 27, 1989 until October 16, 1991, was a prison inmate from October 16, 1991 until December 10, 1992, and was on parole from December 10, 1992 until January 9, 1995; and
- f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent, The Mall Hop, and Smoothie Beach, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. The number of investors;
 - iv. Suitability factors for the investment;
 - v. Business experience and operating history;
 - vi. Whether the investment was a registered security or exempt from registration; and
 - vii. Whether Respondent was licensed to sell securities in Utah.

II. THE DIVISION'S CONCLUSIONS OF LAW

39. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunities offered and sold by Respondent are securities under

§ 61-1-13 of the Act.

- b. Respondent violated § 61-1-1(2) of the Act by making untrue statements of material fact and omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

40. Respondent neither admits nor denies the Division's findings of fact and conclusions of law but consents to the sanctions below being imposed by the Division.
41. Respondent agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.
42. Respondent agrees not to seek licensure or engage in the offer or sale of securities in the state of Utah.
44. Pursuant to § 61-1-20(1)(f) of the Act and in consideration of the guidelines set forth in Utah Administrative Code Rule R164-31-1, the Division imposes a fine of \$500 against Respondent, due and payable within six months of the Securities Commission's approval of the Stipulation and Consent Order.

IV. FINAL RESOLUTION

45. Respondent acknowledges that this Stipulation and Consent Order, upon approval by the

Securities Commission, shall be the final compromise and settlement of this matter.

46. Respondent further acknowledges that if the Securities Commission does not accept the terms of the Stipulation and Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
47. Respondent acknowledges that the Stipulation and Consent Order does not affect any civil or arbitration causes of action that third-parties may have against him rising in whole or in part from his actions, and that the Stipulation and Consent Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.
48. Respondent acknowledges that a violation of this Stipulation and Consent Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
49. The Stipulation and Consent 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 the Stipulation and Consent Order in any way.

Utah Division of Securities:

Date: MARCH 22 2013

By: *[Signature]*
Dave Hermansen
Director of Enforcement

Respondent:

Date: MAR 21-2013

By: *[Signature]*
Craig Eldon Taylor

Approved:

Wade Faraway
D. Scott Davis *Wade Faraway*
Assistant Attorney General
A.S.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondent cease and desist from violating the Utah Uniform Securities Act.
3. Respondent not seek licensure or engage in the offer or sale of securities in the state of Utah.
4. The Division imposes a fine of \$500 against Respondent.
5. Payment of the fine is due and payable within six months of the entry of this Order.

DATED this ____ day of _____, 2013.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the _____ day of _____, 2013, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Craig Eldon Taylor
524 West 440 South
Orem, UT 84058

Certified Mailing # _____

Julie Price
Executive Secretary

HELEN W. MELMAN
ATTORNEY AT LAW
815 MORAGA DRIVE
LOS ANGELES, CALIFORNIA 90049
TELEPHONE (310) 472-4421
FACSIMILE (310) 472-7020
EMAIL HMELMAN@MSN.COM

RECEIVED

February 11, 2013

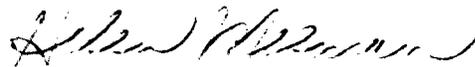
Ms. Ann Skaggs
Securities Examiner
Utah Division of Securities
160 East 300 South
2nd Floor
Salt Lake City, UT 84114-6760

Re: Sonocine, Inc.
Stipulation and Consent Order No. SD-12-0059

Dear Ms. Skaggs:

Enclosed please find a copy of the Stipulation and Consent Order that you sent to me via e-mail on February 6, 2013. It has been signed by Sonocine, Inc., Mark Pugsley and me. Please return a countersigned copy to me and let me know when it has been approved by the Commission.

Very truly yours,



HELEN W. MELMAN

cc: Mr. Karsten Damgaard-Iversen (via e-mail)
Mr. Mark Pugsley (via e-mail)

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:

SONOCINE, INC.

Respondent.

STIPULATION and CONSENT ORDER

Docket No. SD-12-0059

The Utah Division of Securities (“Division”), by and through its Corporate Finance Director, Benjamin Johnson, and Respondent, Sonocine, Inc. (“Sonocine” or “Issuer”), hereby stipulate and agree as follows:

1. Sonocine has been the subject of an investigation by the Division into allegations that it violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, *et seq.*
2. On or about October 3, 2012, the Division initiated an administrative action against Sonocine by filing a Notice of Agency Action and an Order to Show Cause (“OSC”).
3. In order to avoid protracted and expensive proceedings, Sonocine is willing to resolve 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 Sonocine

pertaining to the OSC.

4. Sonocine admits that the Division has jurisdiction over it and the subject matter of this action.
5. Sonocine hereby waives any right to a hearing to challenge the Division's evidence and present evidence on its behalf.
6. Respondent has read this Order, understands its contents, and voluntarily agrees 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 Respondent to enter into this Order, other than as described in this Order.
7. Sonocine is represented by Helen W. Melman, a California attorney, and local counsel Mark W. Pugsley of RAY QUINNEY & NEBEKER, and is satisfied with their advice and representation in this matter.

I. FINDINGS OF FACT

8. Jurisdiction over Respondent and the subject matter is appropriate because the Division alleges that it violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah.
9. Issuer was initially incorporated in California on February 11, 2000. On August 16, 2010, it then reincorporated in Delaware. Issuer's registration with the Delaware Division of Corporations remains active, and its principal place of business is located in Nevada. Issuer is not currently, and has not ever been, registered with the Utah Division of Corporations.

10. In or around February 2012, Respondent offered and sold securities to investors, in or from Utah, and collected a total of \$9,000.
11. Respondent made a material omission in connection with the offer and sale of securities to the investors identified below.
12. In or around February 2012, T.M. and K.M., husband and wife, Utah residents, provided the funds and documentation necessary to participate in the Issuer's offering of Series B Preferred Stock.
13. Specifically, T.M. and K.M. invested a total of \$9,000 in exchange for 5,625 shares of Series B Preferred Stock. This interest is documented in a subscription agreement signed by the investors on February 23, 2012 and accepted by the Issuer on February 29, 2012.
14. Issuer first reported its sales activities in the state of Utah to the Division on March 6, 2012, when it filed a Form D for its Rule 506 offering.
15. With respect to that offering, Issuer provided potential participants, including T.M. and K.M., with a copy of its private offering memorandum and subscription agreement.
16. Within the private offering memorandum, Issuer included certain disclosures relevant to the offering, including a description of management.
17. However, the private offering memorandum, and all other documentation provided to potential investors, did not disclose the following action:

On November 8, 2010, Safiye Cangal ("Cangal"), the current Chief Financial Officer

of the Issuer, filed for Chapter 7 bankruptcy relief in Nevada.¹ Cangal was later discharged from bankruptcy on March 28, 2011.

18. As a result, T.M. and K.M. never received any disclosure related to this action prior to investing \$9,000 in the offering.

II. CONCLUSIONS OF LAW
Securities Fraud under § 61-1-1 of the Act

19. The investment opportunities offered and sold by Sonocine are securities under § 61-1-13 of the Act.
20. In connection with the offer and sale of a security to the investors, Sonocine, directly or indirectly, failed to disclose the information described in paragraph 17 above, which was material information necessary to make the statements made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

21. Sonocine neither admits nor denies the Division's Findings of Fact and Conclusions of Law, but, solely for the purpose of this Order, consents to the sanctions below being imposed by the Division.
22. Sonocine represents that the information it has provided to the Division as part of the Division's investigation is accurate and complete.
23. Sonocine agrees that until the earlier of (i) Safiye Cangal ceasing to be an executive officer of Sonocine or (ii) ten years after her discharge from bankruptcy, prior to selling

¹ *In re* Cangal, No. 10-54413 (Bankr. D. Nev. 2010).

any securities to any person resident in Utah, Sonocine will disclose to such person in writing the fact of Ms. Cangal's personal bankruptcy.

24. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Sonocine agrees to pay a fine of \$1,000.00 to the Division. The fine shall be paid within 30 days of the entry of the order below.

IV. FINAL RESOLUTION

25. Sonocine acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. The Division agrees that it will take no action adverse to Respondent or its agents based solely on the same conduct describe in this Order. Sonocine further acknowledges 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.
26. This Order is entered into solely for the purpose of resolving the Division's investigation and is not intended to be used for any other purpose. Sonocine also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third parties against it have no effect on, and do not bar, this administrative action by the Division against it. For any person or entity not a party to this Order, this Order does not create any private rights or remedies against Sonocine, create liability on the part of Sonocine, or limit or preclude any legal or factual positions or defenses of Sonocine in response to any claims.

27. 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.
28. This Order is not intended to indicate that Respondent shall be subject to any disqualification contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications from relying upon the registration exemptions or safe harbor provisions contained therein. In addition, this Order is not intended to form the basis for any such disqualifications and to the extent applicable, this Order hereby waives any disqualification from the same. Further, this Order is not intended to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934.
29. This Order shall not disqualify Respondent from any business that it otherwise is qualified or licensed to perform under applicable state law, and this Order is not intended to form the basis for any disqualification.

Utah Division of Securities

Date: _____

By: _____

Benjamin Johnson
Director of Corporate Finance

Approved:

D. Scott Davis
Assistant Attorney General
A.S.

Sonocine, Inc., Respondent

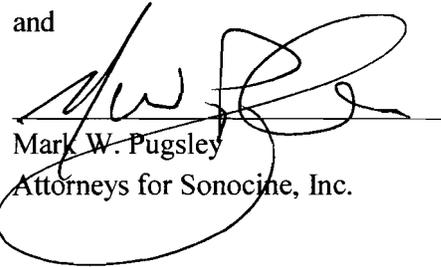
Date: _____

By: _____

Title: _____

Helen W. Melman

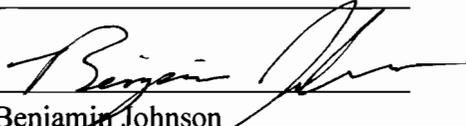
and



Mark W. Pugsley
Attorneys for Sonocine, Inc.

Utah Division of Securities

Date: 2-19-2013

By: 
Benjamin Johnson
Director of Corporate Finance

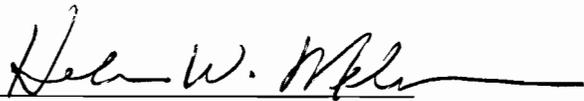
Approved:


D. Scott Davis
Assistant Attorney General
A.S.

Sonocine, Inc., Respondent

Date: Feb 8 - 2013

By: 
Karsten Damgaard-Iversen
Title: CEO


Helen W. Melman

and

Mark W. Pugsley
Attorneys for Sonocine, Inc.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondent, are hereby entered.
2. Until the earlier of (i) Safiye Cangal ceasing to be an executive officer of Sonocine or (ii) ten years after her discharge from bankruptcy, prior to selling any securities to any person resident in Utah, Sonocine will disclose to such person in writing the fact of Ms. Cangal's personal bankruptcy.
3. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Sonocine agrees to pay a fine of \$1,000.00 to the Division. The fine shall be paid within 30 days of the entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this _____ day of _____, 2013.

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the ____ day of _____, _____, I mailed, by certified mail, a true and correct copy of the fully executed Order to:

Helen W. Melman
Attorney at Law
815 Moraga Drive
Los Angeles, CA 90049

Certified Mail # _____

Mark W. Pugsley
RAY QUINNEY & NEBEKER
36 South State Street, 14th Floor
Salt Lake City, Utah 84145-0385

Certified Mail # _____

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
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:

MORGAN ASSET MANAGEMENT, INC.,
(CRD No. 111715); and

MORGAN KEEGAN & COMPANY, INC
(CRD No. 4161)

Respondents.

**STIPULATION AND CONSENT
ORDER**

Docket No. _____

Docket No. _____

The Utah Division of Securities (“Division”), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and the Respondents, Morgan Asset Management, Inc. and Morgan Keegan & Company, Inc., hereby stipulate and agree as follows:

WHEREAS, Morgan Keegan & Company, Inc. (“MKC”) is a broker-dealer conducting business in the State of Utah; and

WHEREAS, Morgan Asset Management, Inc. (“MAM”) was at all relevant times herein a federally registered investment advisor and affiliate of MKC in the State of Utah; and

WHEREAS, coordinated investigations into the activities of MKC and MAM, in connection with certain violations of the Utah Uniform Securities Act (“Act”) and other states’ securities acts, and certain business practices, have been conducted by a multistate task force (“Task Force”) and an additional investigation has been conducted by the United States Securities and Exchange Commission (“SEC”) and the Financial Industry Regulatory Authority (“FINRA”) (collectively, the “Regulators”); and

WHEREAS, MKC and MAM have cooperated with the Task Force conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing Regulators with access to facts relating to the investigations; and

WHEREAS, MKC and MAM have advised the Regulators of their agreement to resolve the investigations; and

WHEREAS, MKC and MAM elect to permanently waive any right to a hearing and appeal under the Utah Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code, with respect to this Stipulation and Consent Order (the “Consent Order”); and

WHEREAS, MKC and MAM admit the jurisdictional allegations herein, and MKC and MAM admit to the allegations in paragraphs 41 through 43 of Section II, relating to the maintenance of books and records, but MKC and MAM, except as admitted above, otherwise neither admit nor deny any of the findings of fact, allegations, assertions or conclusions of law that have been made herein in this proceeding;

NOW, THEREFORE, the Division, as administrator of the Act, hereby enters this Consent Order:

**RESPONDENTS AND PERSONS/ENTITIES AFFILIATED WITH THE
RESPONDENTS**

1. Respondent **Morgan Keegan & Company, Inc.** (“MKC”) (CRD No. 4161), a Tennessee corporation, is a registered broker-dealer with the Division and the SEC, as well as a federally registered investment adviser with the SEC. At all relevant times MKC was properly registered and notice-filed with the Division. MKC was at all relevant times a wholly owned subsidiary of Regions Financial Corporation (“RFC”) which is headquartered in Birmingham, Alabama. MKC’s primary business address is 50 Front Street, Morgan Keegan Tower, Memphis, Tennessee 38103-9980.

2. Respondent **Morgan Asset Management, Inc.** (“MAM”), a Tennessee corporation, is a federally registered investment adviser with the SEC (CRD No. 111715) and at all relevant times was properly notice-filed with the Division. MAM was at all relevant times herein a wholly owned subsidiary of MK Holding, Inc., which was at all relevant times a wholly owned subsidiary of RFC. MAM is headquartered in Alabama with a principal business address of 1901 6th Avenue North, 4th Floor, Birmingham, Alabama 35203. MAM is now known as Regions Investment Management, Inc.

3. **Wealth Management Services** (“WMS”), a division of MKC, developed, recommended, and implemented asset allocation strategies for MKC and was to perform due diligence on traditional and alternative funds and fund managers for the benefit of MKC, its Financial Advisers (alternatively referred to as “FAs”, “sales force” or “agents”), and certain investor clients.

4. **James C. Kelsoe, Jr.** (“Kelsoe”) (CRD No. 2166416) was Senior Portfolio Manager of the Funds, as defined in paragraph II.5 below, and was responsible for selecting and

purchasing the holdings for the Funds. Kelsoe was an employee of MAM and registered through MKC.¹

II.

FINDINGS OF FACT

5. The seven (7) funds at issue are Regions Morgan Keegan Select Intermediate Bond Fund (“Intermediate Bond Fund”), Regions Morgan Keegan Select High Income Fund (“Select High Income Fund”), Regions Morgan Keegan Advantage Income Fund (“Advantage Income Fund”), Regions Morgan Keegan High Income Fund (“High Income Fund”), Regions Morgan Keegan Multi-Sector High Income Fund (“Multi-Sector High Income Fund”), Regions Morgan Keegan Strategic Income Fund (“Strategic Income Fund”), and Regions Morgan Keegan Select Short Term Bond Fund (“Short Term Bond Fund”) (collectively, the “Funds”).

6. Six (6) of the seven (7) Funds were largely invested in mezzanine and lower subordinated “tranches,” or slices, of structured debt instruments, which carry more risk than the senior tranches.² The Funds were comprised of many of the same holdings. On June 30, 2007, approximately two-thirds (2/3) of the holdings of the four (4) closed-end funds and the Select High Income Fund were substantially identical. Approximately one quarter (1/4) of the Intermediate Bond Fund’s holdings corresponded to the holdings of the five (5) high yield

¹ Pursuant to a separate order of the SEC, Kelsoe agreed to the revocation of all of his existing securities registrations and/or licenses and to an order of permanent bar from involvement in the securities industry. Kelsoe cannot serve as an officer, director, or manager of, or issuer of interests in, a mutual fund, money market fund, pooled investments or similar securities and investment vehicles which are publicly offered or sold. For more information, see: <http://www.sec.gov/litigation/admin/2011/34-64720.pdf>

² The seventh, the Short Term Bond Fund, had significant investments in mezzanine and subordinated tranches of structured debt instruments.

Funds. The Funds were highly correlated, meaning they behaved like each other under similar market conditions. The combination of subordinated tranche holdings and the high correlation of the Funds caused investors owning more than one (1) of these funds to have a heightened risk of over concentration.

7. The Funds were created and managed by Kelsoe, MAM Senior portfolio manager. Kelsoe was also principally responsible for the purchase and sale of all of the holdings in the Funds.

8. When WMS ceased reporting and dropped its coverage of the Select Intermediate Bond Fund and Select High Income Fund in July 2007, it failed to announce the drop in coverage in writing until November, 2007. WMS did not publish a withdrawal of its prior analysis or recommend the Funds' replacement.

9. On January 19, 2007, WMS announced it was reclassifying the Intermediate Bond Fund on the Select List from "Fixed Income" to "Non-Traditional Fixed Income." Meanwhile, WMS profiles for the Intermediate Bond Fund continued to label it as the "Intermediate Gov't/Corp Bond."

10. Certain of the Funds' annual, semi-annual, and quarterly reports filed with the SEC did not adequately disclose the risks of subordinated tranches and the quantity of subordinated tranches held within the Funds.

11. MAM produced quarterly glossies for all seven (7) Funds. In the glossies, MAM did not adequately describe the risks of owning the lower tranches of structured debt instruments or the quantity of such holdings within the Funds.

12. MKC, through WMS, produced quarterly Fund Profiles for the Intermediate Bond Fund, the Select High Income Fund, and the Short Term Bond Fund that did not adequately

describe the risks of owning the lower tranches of structured debt instruments or the quantity of such holdings within the Funds.

13. In SEC filings and other state notice filings of March and June 2007 involving the Funds, Four Hundred Million Dollars (\$400,000,000.00) of what MAM characterized as corporate bonds and preferred stocks were, in fact, the lower, subordinated tranches of asset-backed structured debt instruments. MAM eventually reclassified certain of these structured debt instruments in the March 2008 Form N-Q Holdings Report for the three (3) open-end funds.

14. In SEC filings, MAM compared the four (4) closed-end funds and the Select High Income Fund (collectively the “RMK high-yield funds”), which contained approximately two-thirds (2/3) structured debt instruments, to the Lehman Brothers U.S. High Yield Index (“Lehman Ba Index”). The Lehman Ba Index is not directly comparable to the RMK high-yield funds given the fact that the Lehman Ba Index contained only corporate bonds and no structured debt instruments.

15. Certain marketing materials and reports minimized the risks and volatility associated with investing in funds largely comprised of structured debt instruments. In the June 30, 2007 glossy, and in previous quarterly glossies created by MAM, MAM and MKC marketed the Intermediate Bond Fund as a fund appropriate for “Capital Preservation & Income.” MAM later revised the Intermediate Bond Fund glossy in September 2007 by removing the caption “Capital Preservation & Income” and replacing it with “Income & Growth,” and by removing the word “stability,” which had previously been used to describe the fund.

16. The Intermediate Bond Fund glossies dated June 30, 2007, and September 30, 2007, stated that the Intermediate Bond Fund “...does not invest in speculative derivatives.” However, the Intermediate Bond Fund did use derivatives, including interest-only strips, and

collateralized debt obligations (CDOs), which are derived from the mezzanine and lower tranches of other debt securities.

17. Respondent MKC through WMS labeled the Intermediate Bond Fund with varying names. None of the three labels “Taxable Fixed Income” “Enhanced Low-Correlation” and “Intermediate Gov’t/Corp Bond” used by MKC adequately portrayed the nature of the Intermediate Bond Fund, of which approximately two-thirds (2/3) of the portfolio was invested in the mezzanine or lower subordinated tranches of structured debt instruments. The label “Gov’t/Corp Bond,” which first appeared on the December 31, 2006 profile sheet, was never changed after that date.

A. SUPERVISION AND SUPERVISORY DUE DILIGENCE

18. During the period January 1, 2007 through July 31, 2007, preceding the collapse of the subprime market, MAM made 262 downward price adjustments for the purpose of adjusting the net asset value of the Funds. In some instances, MAM’s communications led MKC, through its sales force, to actively discourage investors from selling the Funds—even while fund prices continued to decline -- by advising investors to “hold the course.” Some members of MKC, MAM, and their management personnel continued during this period to advise FAs and investors to buy the Funds through, *inter alia*, statements that characterized the decline as “a buying opportunity.”

19. MKC and MAM failed to adequately supervise the flow of information to the MKC sales force concerning the Funds. For example, in conference calls with the sales force, the senior portfolio manager for the Funds cited sub-prime fears and liquidity as the primary factors for a decline in the net asset value of the Funds without fully explaining the market impact on certain securities held by the Funds.

20. WMS did not complete a thorough annual due diligence report of the open-end funds and the management of the open-end funds in 2007. A fixed income analyst for WMS, attempted to complete an annual due diligence review of the open-end funds and the management of the open-end funds in the summer of 2007, but was unsuccessful due to Kelsoe's and MAM's failure to provide sufficient information and Kelsoe's failure to be available for a meeting during normal operating hours. Subsequently, WMS failed to notify the MKC sales force of WMS's failure to complete the annual on-site due diligence review. An incomplete draft of WMS's annual due diligence report for internal use only was submitted by the WMS analyst, but it was neither completed nor released to the sales force.

21. On July 31, 2007, WMS dropped coverage of all proprietary products, which included the funds for which WMS could not produce a thorough report. This fact was not disclosed in writing to the sales force until November 2007.

22. Based on WMS's one (1) page, one (1) paragraph report of the August 18, 2006 on-site due diligence review, the due diligence visits by the WMS fixed income analysts were not "detailed, thorough, and exhaustive," as advertised by MKC. There are two (2) WMS profiles of the Intermediate Bond Fund dated September 30, 2006. The sections titled "investment philosophy" in the profile sheets contain substantial differences. The first WMS profile for the Intermediate Bond Fund, based on the information for the quarter ending September 30, 2006, is titled "Taxable Fixed Income." The first profile, much like previous quarterly profiles, does not refer to any of the holdings as "inferior tranches." Neither does it mention potential lack of demand and lack of liquidity. Further, it includes the statement that "The fund does not use derivatives or leverage."

23. WMS's changing of the Intermediate Bond Fund profile label indicated WMS's inability and lack of supervision in the creation of these marketing pieces to accurately categorize the Intermediate Bond Fund. Within one (1) quarter, WMS identified the Intermediate Bond Fund three (3) different ways:

September 30, 2006 - Taxable Fixed Income
September 30, 2006 - Enhanced Low Correlations Fixed Income
December 31, 2006 - Intermediate Gov't/Corp Bond

24. The "Gov't/Corp Bond" label implied that the Intermediate Bond Fund holdings were predominately government and corporate bonds carrying a certain degree of safety. This improper labeling indicates a failure to conduct proper due diligence, a duty of MKC.

25. In addition, all profiles for the Intermediate Bond Fund from March 31, 2006, through June 30, 2007, stated that Kelsoe was joined by Rip Mecherle ("Mecherle") as assistant portfolio manager. Mecherle left MAM in 2004. The failure to detect the errors in promotional materials relating to management does not reflect the "detailed, thorough, and exhaustive due diligence" claimed by MKC in its sales and promotional material distributed to investors.

B. SUITABILITY OF RECOMMENDATIONS

26. Respondent MAM indicated that risks and volatility were minimized in the Intermediate Bond Fund portfolio. In the June 30, 2007 glossy, and previous quarterly glossies created by MAM, Respondents marketed the Intermediate Bond Fund's broad diversification of asset classes three (3) times on the first page of each of the glossies, when in fact, approximately two-thirds (2/3) of the Intermediate Bond Fund portfolio was composed of structured debt instruments which included risky assets. The four (4) closed-end funds also advertised diversification among asset classes, despite the similarities in asset classes as set forth in Section C below.

27. Furthermore, the glossies emphasized the Select High Income Fund's net asset value as being less volatile than typical high-yield funds. The glossies failed to state that a reason for any lower volatility was that the structured debt instruments within the Select High Income Fund were not actively traded, and that the daily fair value adjustments of certain holdings were imprecise in a market that became illiquid.

28. In certain cases, MKC and its sales force failed to obtain adequate suitability information regarding risk tolerance that was necessary to determine suitability for using the Funds for regular brokerage account customers. New account forms for regular brokerage accounts provided a menu of four (4) investment objectives to choose from: Growth, Income, Speculation, and Tax-Advantaged. Risk tolerance was not addressed by the form, was not noted by the sales force whose records were examined during the investigation, and may not have been taken into consideration when the sales force made its recommendations.

29. In at least one instance, an agent of MKC provided a customer with a self-made chart assuming the hypothetical growth of One Hundred Thousand Dollars (\$100,000.00) over five (5) years, and comparing the rate of return on CDs to the return on the Intermediate Bond Fund. The chart failed to address any risks of investing in the fund, save the caption "Not FDIC Insured."

C. ADVERTISEMENTS BY RESPONDENTS

30. Marketing glossies prepared by MAM for the Intermediate Bond Fund and Select High Income Fund contained allocation pie charts dividing the categories of holdings by percentages of the total portfolio. Between June 2004 and March 2005, the pie charts for both funds changed significantly: MAM divided the category originally titled "asset-backed securities" into multiple categories. These changes indicated that the holdings of these Funds

were more diversified than they actually were because the majority of the portfolios continued to be invested in asset-backed securities.

- a. In the Intermediate Bond Fund glossy dated June 30, 2004, the Asset-Backed Securities (ABS) and Commercial Mortgage Backed Securities (CMBS) are listed under a single heading comprising seventy percent (70%) of the portfolio.
- b. In the Intermediate Bond Fund glossy dated December 31, 2004, the pie chart was revised and the ABS and CMBS are shown as separate categories, but together still comprise seventy-six percent (76%) of the portfolio.
- c. The Intermediate Bond Fund glossies dated March 31, 2005, show the ABS category further split into six (6) categories that, together with CMBS, comprised seventy-seven percent (77%) of the portfolio. Those six (6) categories were: "Manufactured Housing Loans," "Home Equity Loans," "Franchise Loans," "Collateralized Debt Obligations," "Collateralized Equipment Leases," and "Other." Subsequent glossies continue to show the ABS split into six (6) categories.
- d. In the Select High Income Fund glossy dated June 30, 2004, the ABS and CMBS are listed under a single heading comprising sixty percent (60%) of the portfolio.
- e. In the Select High Income Fund glossy dated December 31, 2004, the pie chart was revised and the ABS and CMBS are shown as separate

categories, but together still comprise fifty-nine percent (59%) of the portfolio.

- f. The Select High Income Fund glossy dated March 31, 2005, shows the ABS category further split into six (6) categories which, together with CMBS, comprised sixty-four (64%) of the portfolio. Those six (6) categories were: “Collateralized Debt Obligations,” “Manufactured Housing Loans,” “Collateralized Equipment Leases,” “Franchise Loans,” “Home Equity Loans,” and “Other.” Subsequent glossies continue to show the ABS split into six (6) categories.

31. The pie charts in the glossies for the High Income Fund were also changed in a similar manner between June 2004 and March 2005.

32. Similar changes were also made to pie charts in glossies for the Advantage Income Fund and the Strategic Income Fund between December 2004 and March 2005.

33. Respondent MKC used different index comparisons in the Select High Income Fund “Profile” sheets produced by WMS. These profile sheets compared the Select High Income Fund to the Credit Suisse First Boston High Yield Index, as well as the Merrill Lynch US High Yield Cash BB Index. These two indices only contain corporate bonds and no structured debt instruments. The Select High Income Fund contained substantially different risks than the portfolios within either of the two indices, and therefore these benchmarks were not directly comparable.

D. REQUIRED EXAMINATIONS OF CUSTOMER ACCOUNTS TO DETECT AND PREVENT IRREGULARITIES OR ABUSES

34. While the models for WMS managed accounts limited the use of the Intermediate Bond Fund to certain percentages, usually no more than fifteen percent (15%) of any client's portfolio, there was no such limitation for non-managed accounts. Additionally, no guidance was provided to the FAs regarding limiting concentrations of the Intermediate Bond Fund in non-managed accounts. As a result, certain customer accounts contained in excess of a twenty percent (20%) concentration of the Intermediate Bond Fund.

35. The four closed-end funds, the Select High Income Fund and the Intermediate Bond Fund were all highly correlated. However, MKC provided limited guidance to the FAs regarding limiting concentrations of combinations of the Funds in non-managed accounts.

36. Up until six (6) months before the collapse of the fund, WMS classified the Intermediate Bond Fund as "Core Plus" in the Fixed Income section of the Select List. At that time it was reclassified as "Alternative Fixed Income" in the Non-Traditional section of the Select List. Yet MKC's concentration for many of its non-WMS managed accounts continued to be above twenty percent (20%) which could indicate its use as a core holding. An e-mail chain from Gary S. Stringer of WMS states as follows:

From: Stringer Gary [Gary.Stringer@morgankeegan.com]
Sent: Tuesday, May 15, 2007 4:10 PM
To: Hennek, Roderick
Subject: Re: RMK Intermediate Bond Fund

Rod,

I did notice that you didn't cc anyone on your email, and I appreciate that. We've always had good, candid conversation.

You have a good point in that we have some low correlation equity strategies on the Traditional side. What worries me about this bond fund is the tracking error and the potential risks associated with all that asset-backed exposure. **Mr & Mrs Jones don't expect that kind of risk from their bond funds. The bond exposure is not supposed to be where you take risks. I'd bet that most of the people who hold that fund have no idea what's it's actually invested in. I'm just as sure that most of our FAs have no idea what's in that fund either.** They think the return are

great because the PM is so smart. He definitely is smart, but it's the same as thinking your small cap manager is a hero because he beat the S&P for the last 5 years.

If people are using RMK as their core, or only bond fund, I think it's only a matter of time before we have some very unhappy investors.

(Emphasis added.).

Certain MKC brokers and branch managers interviewed during the investigation stated that they received limited or no guidance as to appropriate concentrations of the Funds to use within clients' accounts.

E. REQUIREMENT TO CONDUCT AN ADEQUATE AND THOROUGH CORRESPONDENCE REVIEW

37. An agent of MKC provided one known customer with a self-made chart assuming the hypothetical growth of One Hundred Thousand Dollars (\$100,000.00) over five (5) years, and comparing the rate of return on CDs to the return on the Intermediate Bond Fund. The chart failed to address any risks of investing in the fund, save the caption "Not FDIC Insured."

38. The MKC agent referred to in the preceding paragraph created a sales illustration in which he compared the returns for the Intermediate Bond Fund to the returns for traditional bank CDs. The agent used the illustration in order to market the Intermediate Bond Fund to bank customers. The agent stated that he created the illustration and that the illustration was not reviewed or approved by appropriate supervisory personnel of MKC. The chart fails to address any risks of investing in the Intermediate Bond Fund, save the caption "Not FDIC Insured."

F. SUPERVISION

39. Carter Anthony, President of MAM from 2001 until the end of 2006, has testified under oath that he conducted performance reviews of all MAM mutual fund managers that included reviews of their portfolios and trading. However, he testified that he did not conduct the same supervisory review and oversight of Kelsoe and the Funds because he was instructed to "leave Kelsoe alone." MAM denies that any such instruction was given.

40. In December 2001, Kelsoe signed a new account form as branch manager, when he, in fact, was never a branch manager nor held any supervisory/compliance licenses. Proper supervision of Kelsoe's activities would have detected such an unauthorized action on his part.

G. MAINTENANCE OF REQUIRED BOOKS AND RECORDS

41. MAM's Fund Management fundamental and qualitative research was touted in marketing and research material.

42. MAM, through its Portfolio Managers, selected securities for investments by the Funds' portfolios. MAM was consulted regarding the fair valuation of certain securities held by the portfolios. Adequate documentation was not retained as to pricing adjustments recommended by MAM to be made to certain of the securities.

43. WMS performed annual due diligence reviews of certain of the Funds and Fund management (MAM and Kelsoe). In mid-2007, MAM and Kelsoe did not provide sufficient information to allow completion of the 2007 annual due diligence review conducted by MKC through WMS. Kelsoe did not make himself available for a meeting during normal operating hours, further delaying the completion of WMS's on-site due diligence review. As a consequence, the report for two of the open-end funds was not completed. By August 2007, WMS dropped coverage of proprietary products and a report for 2007 was never released to the MKC sales force.

H. RESPONSIBILITIES AND CONDUCT OF JAMES KELSOE

44. In addition to his duties regarding management of the Funds and selection of investments, Kelsoe was responsible for reviewing information regarding holdings of the Funds to be included in marketing materials and filings with the SEC. Kelsoe also was responsible for supervising his staff's involvement with these processes, as well as their interaction with third parties. Kelsoe had the most knowledge at MAM about the nature of the holdings of the Funds,

including the types of securities being purchased or sold for the Funds, the risks associated with the holdings, and the correlation of the holdings among the Funds. Kelsoe and his staff provided information for the preparation of regulatory filings, marketing materials, reports and communications about the Funds. Kelsoe contributed to and delivered commentaries for the Funds and management discussions of fund performance. The SEC filings for the Funds, for which Kelsoe and his staff furnished information regarding holdings of each of the Funds, were provided to Kelsoe for his review prior to filing.

45. Kelsoe contributed to and was aware of the usage of the glossies and certain other marketing materials for the Funds by MAM, as described above, including the descriptions of the Funds, the allocation pie charts, the use of benchmarks, and characterizations of risks and features of the Funds.

46. Kelsoe's involvement in the fair valuation process for securities held by the Funds during the period from January 1, 2007 to July 31, 2007, including influencing some dealer confirmations that were returned, contributed to certain inaccurate valuations of selected holdings on various dates during that period.

47. From January 1, 2007 through July 31, 2007, Kelsoe did not retain documentation relating to his recommendations of price changes of certain securities held by the Funds. These recommendations were used on occasion in the calculation of the daily net asset values of the Funds.

48. From January 1, 2007 through July 31, 2007, Kelsoe failed to review and approve certain emails and other communications of his staff that characterized the downturn of the market for certain securities contained within the Funds as a "buying opportunity," which were circulated to certain MKC FAs.

III.

CONCLUSIONS OF LAW

1. The Division is responsible for the enforcement of laws governing the issuance, sale, and other transactions relative to securities pursuant to the Act.

2. MKC and/or MAM conducted and participated in the following practices³, warranting sanctions under Sections 61-1-6(2)(a)(ii)(G) and (J) of the Act:

- a. MAM failed to adequately disclose in quarterly, semi-annual and annual reports filed with the SEC prior to late 2007 some of the risks associated with investment in the Funds.
- b. In SEC disclosure filings, MAM classified approximately Four Hundred Million Dollars (\$400,000,000.00) of asset-backed securities as corporate bonds and preferred stocks, when they were the lower tranches of asset-backed structured debt instruments.
- c. MKC and MAM used industry benchmarks not directly comparable to the Funds.
- d. In certain marketing and disclosure materials, MKC and MAM did not correctly characterize the Funds and their holdings.
- e. In certain instances, MKC and MAM failed to adequately disclose to retail customers the Funds' risks of volatility and illiquidity.
- f. In certain instances, MKC, through some of its FAs, inappropriately compared the returns of the Intermediate Bond Fund to the returns of certificates of deposit and other low risk investments.
- g. In certain marketing materials, MKC and MAM used charts and visual aids that demonstrated a level of diversification in the Funds that did not exist.

3. Within the meaning of Section 61-1-6(2)(a)(ii)(J), MKC and/or MAM failed to reasonably supervise their agents, employees and associated persons in the following manner:

³ Certain sections within the Act require willful conduct for a violation to be actionable, but, as with federal securities laws, a "willful violation" means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 413 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949).

- a. In certain instances, MKC and MAM allowed the Funds' manager, Kelsoe, to operate outside of the firm organizational supervisory structure.
 - b. In certain instances, MAM and MKC failed to perform adequate supervisory reviews of Kelsoe.
 - c. MKC, through WMS, and MAM failed to perform sufficient due diligence reviews of the Funds.
 - d. MAM and MKC allowed Kelsoe to improperly influence the net asset value calculations of the Funds in certain instances during the period from January through July of 2007.
 - e. MKC failed to assure adequate training and supervision of certain agents in the composition and true nature of the funds.
 - f. MKC allowed agents to recommend (or in discretionary accounts, to purchase) an overconcentration of the Funds in some client accounts.
4. Within the meaning of Section 61-1-6(2)(a)(ii)(G), MKC and/or MAM failed to make suitable recommendations to some investors as demonstrated by the following:
- a. MKC allowed agents to recommend (or in discretionary accounts, to purchase) an overconcentration of the Funds in some client accounts.
 - b. MAM and MKC recommended and sold the Intermediate Bond Fund and the Short Term Bond Fund to clients as a low risk, stable principal, liquid investment opportunity.
 - c. In a number of instances, MKC sold or recommended investments to retail investors without determining the risk tolerances of the investors.
5. Within the meaning of Sections 61-1-6(2)(a)(ii)(G) and (J), MKC failed to enforce their supervisory procedures in the following manner:
- a. MKC failed to review certain customer accounts for over concentration and proper diversification.
 - b. MKC failed to adequately determine suitability of the Funds as it related to the investment needs of certain of their clients.
6. Within the meaning of Section 61-1-6(2)(a)(ii)(J), MKC and/or MAM in many instances failed to review correspondence and marketing materials used by associated persons to sell the Funds:

- a. MKC failed to discover that an agent used a comparison of the return of the Intermediate Bond Fund to the returns of a bank certificate of deposit.
- b. MAM and MKC allowed marketing materials containing inaccurate representations relating to the composition of the Funds to be used by their agents.
- c. MAM and MKC allowed marketing materials that represented that no derivative products were contained in the Select Intermediate Fund to be used by agents, when in fact some derivative products were contained in the Fund.

7. Within the meaning of Section 61-1-6(2)(a)(ii)(G), in certain cases, MAM and MKC inappropriately recommended the purchase of the Funds for client portfolios without reasonable justification that said recommendation was suitable for the client.

8. Within the meaning of Section 61-1-6(2)(a)(ii)(G), MKC distributed marketing materials and MAM distributed disclosure materials that were inaccurate:

- a. MAM failed to adequately disclose in quarterly, semi-annual and annual reports filed with the SEC prior to late 2007 some of the risks associated with investment in the Funds.
- b. In SEC disclosure filings, MAM classified approximately Four Hundred Million Dollars (\$400,000,000.00) of asset-backed securities as corporate bonds and preferred stocks, when they were the lower tranches of asset-backed structured debt instruments.
- c. MKC and MAM used industry benchmarks not directly comparable to the Funds.
- d. In certain marketing and disclosure materials, MKC and MAM did not correctly characterize the Funds and their holdings.
- e. In certain instances, MKC, through some of its FAs, inappropriately compared the returns of the Intermediate Bond Fund to the returns of certificates of deposit and other noncomparable lower risk investments.

9. As a result of the foregoing, the Division finds this Consent Order and the following relief appropriate and in the public interest, and consistent with the Act.

IV.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and MKC's and MAM's consent to the entry of this Order,

IT IS HEREBY ORDERED:

1. Entry of this Consent Order concludes the investigation by the Division and any other action that the Division could commence under applicable Utah law on behalf of the Division as it relates to MKC and MAM, any of their affiliates, and any of their past or present employees or other agents in any way relating to the Funds, and acceptance by the Division of the settlement offer and payments referenced in this Consent Order shall be in satisfaction of and preclude any action that the Division could commence under applicable Utah law against the foregoing; provided however, that excluded from and not covered by this paragraph are (a) individual sales practice violations that could have been brought even had the violations asserted herein against MKC or MAM not occurred, and (b) any claims by the Division arising from or relating to violations of the provisions contained in this Consent Order. Nothing in this paragraph shall preclude the Division from opposing a request for expungement by a past or present employee or other agent before a regulatory or self-regulatory entity, any court of competent jurisdiction, or any hearing officer, under circumstances it deems appropriate.

2. This Consent Order is entered into for the purpose of resolving in full the referenced multistate investigation with respect to Respondents who have executed this Consent Order and any of their affiliates.

3. MKC and MAM will CEASE AND DESIST from violating the Act, and will comply with the Act.

4. Pursuant to this Consent Order and related Consent Orders of the States of Alabama (SC-2010-0016), South Carolina (File No.: 08011), Kentucky (Agency Case No.: 2010-AH-021/Administrative Action No.: 10-PPC0267), Tennessee Consent Order (Docket No.: 12.06-107077J/Order No. 11-005), and Mississippi (Administrative Proceedings File No. S-08-0050), the offer of settlement in SEC Administrative Proceeding (File No. 3-13847) (the "SEC Order") and the FINRA Letter of Acceptance, Waiver and Consent No. 2007011164502, MKC and MAM has or shall pay in resolution of all of these matters, within ten (10) days of the entry of the SEC Order the sum of Two Hundred Million Dollars (\$200,000,000.00) to be distributed as follows: 1) One Hundred Million Dollars (\$100,000,000.00) to the SEC's Fair Fund to be established in this matter for the benefit of investors in the Funds that are the subject of the SEC Order; and 2) One Hundred Million Dollars (\$100,000,000.00) to a States' Fund to be established in this matter for the benefit of investors in the Funds that are the subject of this Consent Order. Any costs, expenses, and charges associated with the Fair Fund and States' Fund management and distributions shall be paid by MKC and MAM and shall not diminish the fund corpus. The Fair Fund and the States' Fund shall be distributed pursuant to distribution plans drawn up by the administrator(s) ("Fair Fund Administrator" for the SEC's portion and "Fund Administrator" for the States' portion). The administrator(s) are to be respectively chosen by a representative designated by the state agencies of Alabama, Kentucky, Tennessee, South Carolina and Mississippi ("States' Fund Representative"), and the SEC. Nothing in this paragraph shall require or limit the SEC's and the States' choice of fund administrators which may or may not be the same entity or person for both funds.

5. MKC and MAM shall pay the sum of \$6,043.00 to the Division as an administrative fine for deposit in the Securities Investor Education, Training and Enforcement

Fund, pursuant to Section 61-1-18.7 of the Act, which amount constitutes the State of Utah's share of the state settlement amount of Ten Million Dollars (\$10,000,000.00). All funds shall be delivered to the office of the Division within ten (10) days of the execution of this Consent Order. In the event another state securities regulator determines not to accept the settlement offer, the total amount of the payment to the State of Utah shall not be affected.

6. If the payment is not made by MKC or MAM, the Division may vacate this Consent Order, at its sole discretion, upon thirty (30) days notice to MKC and/or MAM, or as appropriate, Kelsoe, and, without opportunity for an administrative hearing, enter a final order or decree if such default is not cured to the satisfaction of the regulators within the thirty (30) day notice period. Any dispute related to any payments required under this Consent Order shall be construed and enforced in accordance with, and governed by, the laws of the State of Utah without regard to any choice of law principles.

7. This Consent Order shall not disqualify MKC and MAM, or any of their affiliates or registered representatives from any business that they otherwise are qualified or licensed to perform under any applicable state law and is not intended to and shall not form the basis for any disqualification or suspension in any state. Further, this Consent Order is not intended to and shall not form the basis for any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations, or various states' securities laws including but not limited to any disqualifications from relying upon the registration exemptions or safe harbor provisions.

8. MKC, MAM, and all of their existing and future affiliates and subsidiaries are prohibited from creating, offering or selling a proprietary fund⁴ that is a registered investment company and is marketed and sold to investors other than institutional and other qualified investors as defined in Section 3(a)(54) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(54), (“proprietary fund”) for a period of two (2) years from June 21, 2011, the date of entry of the first of the State Consent Orders to be entered in this matter. MKC, MAM, their affiliates or subsidiaries, may seek permission to resume offering or begin offering a proprietary fund in Utah after the lapse of the first year of the prohibition, but may not proceed with the offer and sale of such proprietary fund in the State of Utah prior to receiving the express written consent and approval of the Director of the Division.

9. State Regulatory Audits or Examinations as authorized by Sections 61-1-5(4) and 61-1-19 of the Act. In addition to any state regulatory audits or examinations authorized by the Act, the Division may conduct appropriate audits or examinations of the offices and branch offices of the Respondents MKC and MAM. Appropriate costs associated with such audits or examinations conducted within two (2) years from the date of this Consent Order, shall be borne by MKC and/or MAM. This provision in no way limits the assessment of costs by states which routinely assess registrants with the costs of audits.

10. If prior to January 1, 2016, MKC and/or MAM shall again form and sell any proprietary investment products⁵, they shall at that time retain, for a period of three (3) years, at

⁴Any such proprietary fund is specifically deemed to be subject to the oversight in paragraph 10.

⁵ The term “proprietary investment product” or “proprietary product” or “proprietary fund,” as used in this Consent Order, refers to those investment products or offerings which MKC and/or MAM have created or may create and for which they or any of their existing or future affiliates is the issuer and lead underwriter. This definition, however, shall not apply to proprietary products or offerings in existence at the time of affiliation with MKC or MAM through any future

their own expense, an independent auditor, acceptable to the representative designated by the state agencies of Alabama, Kentucky, Mississippi, Tennessee, and South Carolina (“States’ Representative”) and the SEC. The independent auditor cannot be an affiliated entity of MKC or MAM. Further, to ensure the independence of the independent auditor, MKC and/or MAM: (a) shall not have the authority to terminate the independent auditor without prior written approval of the States’ Representative; (b) shall not be in and shall not have an attorney-client relationship with the independent auditor and shall not seek to invoke the attorney-client or any other privilege or doctrine to prevent the independent auditor from transmitting any information, reports, or documents to the States; and (c) during the period of engagement and for a period of two (2) years after the engagement, shall not enter into any employment, customer, consultant, attorney-client, auditing, or other professional relationship with the independent auditor.

The scope of the independent auditor’s engagement shall be approved by the States’ Representative prior to the commencement of the audit, and shall include, but is not limited to, reviews and examinations of:

- a. All firm policies and procedures, relating to proprietary products and/or proprietary offerings including, but not limited to, supervisory, books and records, compliance and document retention policies and procedures;
- b. The composition of each proprietary fund sold or recommended to clients at least annually;

acquisition, merger or other form of business combination with an entity not currently under common control with MKC or MAM. Nor shall this definition apply to future proprietary products or offerings that are created following such acquisition, merger or other form of business combination, unless such proprietary products are created by MKC or MAM.

- c. All proprietary product and/or proprietary offering marketing materials used or distributed by their agents, representatives, or other employees or affiliates, at least quarterly;
- d. Potential/actual conflicts of interest with any affiliates, including Regions Morgan Keegan Trust, F.S.B., MKC and MAM, or affiliated persons/control persons. Said review shall be annual unless an increased frequency is deemed necessary by state, federal, and SEC entities; and

11. Further, the independent auditor shall:

- a. Consult with the States' Representative and the SEC about areas of concern prior to entering into an engagement document with MKC and MAM;
- b. Draft and provide reports as often as may be agreed upon by the States' Representative and the independent auditor with an assessment of the status, compliance, and recommendations pertaining to the organizational, procedural, and policy issues that are the subject of the engagement;
- c. Simultaneously distribute copies of the reports from paragraph 12b above to MKC, MAM, the States' Representative and the SEC; the States' Representative may distribute the report to NASAA members as the States' Representative deems appropriate. These reports will be deemed confidential and, upon receipt of any legal process or request pursuant to a state's public information statute or a federal Freedom of Information Act ("FOIA") request for access, the state regulator shall promptly notify

MKC and/or MAM, in order that the Respondents have an opportunity to challenge the release of the information;

- d. Submit copies of all drafts, notes, and other working papers to coincide with the issuance of the reports;
- e. Issue recommendations for changes to policies, procedures, compliance, books and records retention programs, and all other areas that are the subject of the engagement;
- f. Establish reasonable deadlines for the implementation of the recommendations provided in the report; and
- g. For any recommendations noted but not included in the final report, provide justification for excluding the recommendation from the final report.

12. MKC and MAM shall:

- a. Review the reports submitted by the independent auditor;
- b. Within sixty (60) days of the issuance of an audit report, submit, in writing, to the States' Representative and the SEC any objections to implementation of any of the recommendations made by the independent auditor;
- c. If no objection to a recommendation is made within the sixty (60) day deadline, the recommendation will be implemented within the time frame established for the recommendation by the independent auditor in the report; and

- d. If objection is timely made to a recommendation, the States' Representative and the SEC will consider the objections, review the recommendation and determine jointly whether implementation shall be required over the objections of MKC and MAM.

13. MKC and MAM hereby confirm that they retained within of the time allowed after entry of the first of the State Consent Orders in this matter, at their own expense, an independent consultant ("Consultant"), acceptable to the States' Representative, and the SEC. The Consultant engagement included the review of MKC's and/or MAM's: (i) current written supervisory and compliance procedures concerning product suitability; (ii) current written supervisory and compliance procedures regarding recommendations and disclosures relating to registered investment companies; (iii) current written supervisory and compliance procedures relating to advertising and sales literature regarding the purchase and sale of registered investment companies; and (iv) the implementation and effectiveness of (i) through (iii); provided that the lookback period for (i) through (iii) shall not exceed the twelve (12) month period prior to June 21, 2011. The following provisions applied to the engagement and report:

- a. Within one hundred twenty (120) days after the entry of the first of the State Consent Orders to be entered in this matter, the Consultant shall make an Initial Report with recommendations thereafter on such policies and procedures and their implementation and effectiveness. The Initial Report shall describe the review performed and the conclusions reached, and will include any recommendations for reasonable changes to policies and procedures. MKC and MAM shall direct the Consultant to submit the

Initial Report and recommendations to the States' Representative and the SEC at the same time it is submitted to MKC and MAM.

- b. The parties hereto recognize that the Consultant will have access to privileged or confidential trade secrets and commercial or financial information and customer identifying information the public dissemination of which could place MKC and MAM at a competitive disadvantage and expose their customers to unwarranted invasions of their personal privacy. Therefore, it is the intention of the parties that such information shall remain confidential and protected, and shall not be disclosed to any third party, except to the extent provided by applicable FOIA statutes or other regulations or policies.
- c. Within thirty (30) days of receipt of the Initial Report, MKC and MAM shall respond in writing to the Initial Report. In such response, MKC and MAM shall advise the Consultant, the States' Representative, and the SEC, the recommendations from the Initial Report that MKC and MAM have determined to accept and the recommendations that they consider to be unduly burdensome. With respect to any recommendation that MKC and MAM deem unduly burdensome, MKC and MAM may propose an alternative policy, procedure or system designed to achieve the same objective or purpose.
- d. MKC and MAM shall attempt in good faith to reach agreement with the Consultant within sixty (60) days of the date of the receipt of the Initial Report with respect to any recommendation that MKC and MAM deem

unduly burdensome. If the Consultant and MKC and MAM are unable to agree on an alternative proposal, MKC and MAM shall submit, in writing, to the States' Representative and the SEC, their objections and any alternative proposal(s) made to the Consultant, and the States' Representative and the SEC shall determine jointly whether implementation shall be required over the objections of MKC and MAM or whether to accept the alternative proposal(s). Within ninety (90) days of the date of the receipt of the Initial Report or, in instances in which an alternative proposal is submitted, ninety (90) days from a joint decision by the States' Representative and the SEC regarding any objectionable portions of the Initial Report, MKC and MAM shall, in writing, advise the Consultant, the States' Representative, and the SEC of the recommendations and proposals that they are adopting.

- e. No later than one (1) year after the date of the Consultant's Initial Report, MKC and MAM shall cause the Consultant to complete a follow-up review of MKC's and MAM's efforts to implement the recommendations contained in the Initial Report, and MKC and MAM shall cause the Consultant to submit a Final Report to the States' Representative, and the SEC. The Final Report shall set forth the details of MKC's and MAM's efforts to implement the recommendations contained in the Initial Report, and shall state whether MKC and MAM have fully complied with the recommendations in the Initial Report.

- f. MKC and MAM shall cause the Consultant to complete the aforementioned review and submit a written Final Report to MKC, MAM, the States' Representative, and the SEC within three hundred sixty (360) days of the date of the Initial Report. The Final Report shall recite the efforts the Consultant undertook to review MKC's and MAM's policies, procedures, and practices; set forth the Consultant's conclusions and recommendations; and describe how MKC and MAM are implementing those recommendations.
- g. To ensure the independence of the Consultant, MKC and/or MAM: (a) shall not have the authority to terminate the Consultant without prior written approval of the States' Representative; (b) shall compensate the Consultant, and persons engaged to assist the Consultant, for services rendered pursuant to this Order at their reasonable and customary rates; (c) shall not be in and shall not have an attorney-client relationship with the Consultant and shall not seek to invoke the attorney-client or any other privilege or doctrine to prevent the Consultant from transmitting any information, reports, or documents to the States; and (d) during the period of engagement and for a period of two (2) years after the engagement, shall not enter into any employment, customer, consultant, attorney-client, auditing, or other professional relationship with the Consultant. Notwithstanding the foregoing, the Consultant may serve as a Consultant for both MKC and MAM.

14. MKC and MAM shall provide, for a period of three (3) years from June 21, 2011, to all of their registered agents and investment adviser representatives mandatory, comprehensive, and ongoing (i) product/offering training on each of the proprietary products/offering that they sell or recommend to clients, and (ii) training on suitability and risks of investments generally. The training required pursuant to this paragraph shall be in addition to any continuing education training required to maintain the registrations of the registered agents and investment adviser representatives and shall include, at a minimum, training on all of the following:

- a. Suitability as it applies to the various types of products/offering, proprietary or otherwise, the FA sells at MKC;
- b. The type and nature of the holdings and risks attendant thereto in any proprietary product/offering sold by the firm, for which the firm or any affiliate purchased the underlying holdings, that the registered person will be selling or recommending to clients;
- c. The risks associated with the proprietary product/offering; and
- d. Conflicts of interest that may arise as a result of the sale/recommendation of the proprietary product/offering.

15. For training related to proprietary products/offering, MKC and MAM shall develop and implement course evaluations to be completed by each FA in order to assess the effectiveness of the training.

16. MKC and MAM shall;

- a. Maintain a log of each agent/representative's completed courses, copies of which they shall provide to the States' Representative upon request;

- b. Only allow agents/representatives to sell/recommend proprietary products and/or proprietary offerings for which they have completed and verified training;
- c. Maintain an archive of all training material that may be accessed by agents/representatives on an as-needed basis after training is completed, copies of which they shall provide to the States' Representative upon request;
- d. Maintain current training materials on proprietary products and/or proprietary offerings being offered or sold to any of their clients, copies of which they shall provide to the States' Representative upon request;
- e. Maintain a manned product/offering help desk that is available to answer questions from agents/representatives during regular business hours, the person manning such shall be registered with a minimum of a Series 65 or 7 license or registration; and
- f. Provide to the Division an annual certification that MKC and MAM are in compliance with the required training and maintenance of training materials.

17. One person shall not simultaneously hold the positions of General Counsel and Chief Compliance Officer for either Respondent.

18. Nothing herein shall preclude the State of Utah, its departments, agencies, boards, commissions, authorities, political subdivisions, and corporations (collectively "State Entities"), other than the Division and only to the extent set forth herein, from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative,

civil, criminal, or injunctive relief against MKC and MAM in connection with the marketing and sales practices of the Funds at MKC or MAM.

19. Any dispute or default other than related to the payment as referenced in paragraph 6 related to this Consent Order shall be construed and enforced in accordance with, and governed by, the laws of the State of Utah without regard to any choice of law principles.

20. Unless otherwise stipulated, the parties intend that the monies allocated through the SEC's Fair Fund and/or the States' Fund, including the monies allocated pursuant to this Consent Order, to the investors of any given State will be treated as an offset against any order for MKC or MAM, or any of them, to pay any amount (whether designated as restitution, fines or otherwise compensatory in nature) in any action brought by that State or any of the regulatory agencies thereof and not concluded by this Consent Order. Notwithstanding the foregoing, and except as delineated in paragraphs 41 through 43, this Consent Order is presumed to be treated as a settlement for evidentiary purposes and not as evidence of either damage or liability itself. MKC and MAM further agree that in the event they should enter into a consent order prior to an adjudication on the merits with another State's securities regulator which provides each investor a higher return of losses per invested dollar than under the terms of this Consent Order, then the Division may, at its option, obtain the same payout of losses per invested dollar for the investors of this State.

21. Respondents MKC and MAM agree not to make or permit to be made any public statement denying, directly or indirectly, any finding in this Consent Order or creating the impression that this Consent Order is without factual basis. Nothing in this Paragraph affects MKC's or MAM's: (i) testimonial obligations, or (ii) right to take legal or factual positions in

defense of litigation or arbitration or in defense of other legal proceedings in which the Division is not a party.

22. Nothing herein shall affect any statutory authority of the Division, including but not limited to, inspections, visits, examinations, and/or the production of documents

23. This Consent Order shall be binding upon MKC and MAM, and their successors and assigns, with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

24. The Respondents acknowledge that this Consent Order, upon approval by the Utah Securities Commission (“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 Consent Order, it shall be deemed null and void and without any force or effect whatsoever.

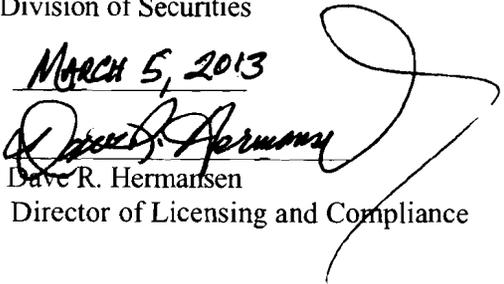
25. This Consent Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Consent Order in any way.

Dated this 5TH day of MARCH, 2013.

Utah Division of Securities

Date: MARCH 5, 2013

By:


Dave R. Hermansen
Director of Licensing and Compliance

RECEIVED

MAR 04 2013

Utah Department of Commerce
Division of Securities

**CONSENT TO ENTRY OF CONSENT ORDER BY MORGAN ASSET
MANAGEMENT, INC. AND MORGAN KEEGAN & COMPANY, INC.**

Morgan Asset Management, Inc. and Morgan Keegan & Company, Inc. ("Respondents") hereby acknowledge that they have been served with a copy of this Consent Order, have read the foregoing Consent Order, are aware of each of their right to a hearing and appeal in this matter, and have waived the same.

Respondents admit the jurisdiction of the Division; admit to the allegations in paragraphs 41 through 43 of Section II, relating to the maintenance of books and records, but otherwise neither admit nor deny any of the findings of fact, allegations, assertions or conclusions of law that have been made herein in this proceeding; and Respondents further consent to entry of this Consent Order by the Division as settlement of the issues contained in this Consent Order.

Respondents enter into this Consent Order voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Division or any member, officer, employee, agent, or representative of the Division to induce Respondents to enter into this Consent Order other than as set forth in the Consent Order.

Brian Buller represents that ~~he~~she is President of Regions Investment Management, Inc. f/k/a Morgan Asset Management, Inc. and that, as such, has been authorized by Morgan Asset Management, Inc. to enter into this Consent Order for and on behalf of Morgan Asset Management, Inc.

PAUL L. MATECKI represents that ~~he~~she is Sr. VP - GENERAL COUNSEL of Morgan Keegan & Company, Inc. and that, as such, has been authorized by Morgan Keegan & Company, Inc. to enter into this Consent Order for and on behalf of Morgan Keegan & Company, Inc.

Respondents agree that they shall not claim, assert, or apply for a tax deduction or tax credit with regard to the State of Utah for any monetary penalty or restitution that Respondents

shall pay pursuant to this Consent Order. Respondents understand and acknowledge that these provisions are not intended to imply that the Division would agree that any other amounts Respondents shall pay pursuant to this Consent Order may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal, or local tax.

Dated this 19th day of February, 2013.

Regions Investment Management, Inc. f/k/a
MORGAN ASSET MANAGEMENT, INC.

By: Brian B. Sullivan
Title: President

STATE OF Alabama)
) ss.
County of Jefferson

SUBSCRIBED AND SWORN TO before me by Brian Sullivan, this
19th day of Feb, 2013.

Janice E. Wills
Notary Public

My commission expires:

MY COMMISSION EXPIRES 12/13/2014

MORGAN KEEGAN & COMPANY, INC.

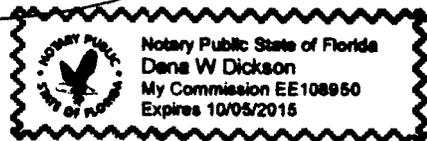
By: [Signature]
Title: JR. VP - GENERAL COUNSEL

STATE OF FLORIDA)
) ss.
County of PINELAS

SUBSCRIBED AND SWORN TO before me by PAUL L. MATECKI, this
13th day of FEB., 2013.

[Signature]
Notary Public

My commission expires: _____



BY THE UTAH SECURITIES COMMISSION:

The foregoing Stipulation and Consent Order is hereby accepted, confirmed, and entered by the Utah Securities Commission.

DATED this ____ day of _____, 2013.

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Service

I, Maria Lohse, certify that on the _____ day of _____, 2013, I served the foregoing Stipulation and Consent Order by mailing a copy to:

John N. Bolus
Maynard Cooper & Gale, PC
1901 Sixth Avenue North
2400 Regions Harbert Plaza
Birmingham, AL 35203-2618

via e-mail: jbolus@maynardcooper.com

Executive Secretary

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.

STIPULATION AND CONSENT ORDER

Docket No. SD-13-0010

Docket No. SD-13-0011

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 ADV¹ 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:

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.

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

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

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.

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

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.

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 _____ day of _____, 2013

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the ____ day of _____, 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 # _____

Executive Secretary