

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: RATIONAL CAPITAL MANAGEMENT, LLC, ALAN HERBERT OVIATT, <u>Respondents.</u>	ORDER TO SHOW CAUSE Docket No. <u>SD-11-0057</u> Docket No. <u>SD-11-0058</u>
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It appears to the Director of the Utah Division of Securities (Director) that Rational Capital Management, LLC, and Alan Herbert Oviatt have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.* (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) and § 61-1-3 (unlicensed activity) of the Act while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Rational Capital Management, LLC (RCM) is a Delaware limited liability company, registered on April 9, 2007. RCM has never been licensed by the Division in the securities industry in any capacity.
3. Alan Herbert Oviatt (Oviatt) was, at all relevant times, a resident of the State of Utah. Oviatt has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

4. From May 2008 to July 2008, Respondents offered and sold securities to an investor, in or from Utah, and collected \$701,396.
5. Respondents made material misstatements and omissions in connection with the offer of a security to the investor listed below.
6. The investor lost \$624,329 in principal.

INVESTOR S.H.

7. S.H. and Oviatt had been neighbors and attended church together since 2007.
8. In March 2008, Oviatt began discussing investments with S.H. on a regular basis while at church.
9. In May 2008, Oviatt met at S.H.'s home in Washington County, Utah to discuss an investment opportunity in RCM. During the meeting, Oviatt made the following statements:

- a. He traded stock options for about eighteen years and had been very successful;
- b. He received 50-400% annual returns from trading stock options;
- c. He was the owner of a company called RCM that was based in Delaware;
- d. He used RCM to attract investors to invest in stock options;
- e. He was going to start a hedge fund;
- f. The hedge fund would be an RCM fund;
- g. 99% of the account's funds would be S.H.'s money, but as more investors invested in the fund, S.H.'s percentage of the fund would be diluted;
- h. The trading strategy would be the same for all clients;
- i. The minimum investment amount was \$250,000;
- j. He would never put more than 50% of the funds in the account at risk;
- k. He would never buy more options than he could cover with half of the available funds;
- l. The three stocks that Oviatt followed were: Chicago Mercantile Exchange (CME), First Solar, and Apple;
- m. These stocks were very cyclical, and he had traded them long enough to know the patterns on how to make money on them;
- n. He would receive an annual fee or commission for managing the account, but only after a 20% increase in the net asset value of the fund;
- o. He was talking to other potential investors about investing in the hedge fund:

- p. He passed a test for a “finance series license” and was in the process of getting additional licensing to operate the hedge fund;
 - q. He tripled his sister’s \$50,000 investment by trading Apple Computer options;
 - r. The market did not have to do well for options to do well; and
 - s. The beauty of trading options is “you make money in up and down markets.”
10. Oviatt gave S.H. an operating agreement describing the investment. In section 3.1 of the agreement it states that Oviatt would be the “Initial Manager.” In section 4.3 it further states that the manager would be paid a “Management Fee... of (i) 2% multiplied by (ii) the Net Asset Value of such Capital Account, calculated as of the anniversary date of each calendar year.”
11. Based on Oviatt’s statements, S.H. invested \$701,396 in RCM. S.H. invested in the following manner:
- a. On May 26, 2008, S.H. rolled over \$100,000 from his IRA account to RCM’s account at OptionsXpress;
 - b. On May 26, 2008, S.H. rolled over \$101,396 from another IRA account to RCM’s account at OptionsXpress;
 - c. On May 27, 2008, S.H. gave Oviatt a cashier’s check for \$300,000 made payable to OptionsXpress; and
 - d. On July 30, 2008, S.H. gave Oviatt a cashier’s check for \$200,00 made payable to RCM.

12. An analysis performed by a CPA and forensic accountant with Hafen, Buckner, Everett & Graff, PC, shows that Oviatt used S.H.'s investment funds in the following manner:
 - a. \$201,396 was used for trading purposes and resulted in a net loss of \$124,312 and \$77,067 was returned to S.H.;
 - b. \$500,000 was used for trading purposes and resulted in a net loss of \$376,756. Oviatt withdrew an unauthorized amount of \$120,147 from the account.
13. That same analysis reports that the management fee Oviatt was due pursuant to the operating agreement was \$3,103, based on a net asset value of \$155,134 at the end of the 2009 calendar year, however, Oviatt paid himself a total of \$123,250 from S.H.'s funds.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act

14. The Division incorporates and re-alleges paragraphs 1 through 13.
15. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
16. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. S.H.'s investment funds would only be used for options trading, when in fact, Oviatt withdrew \$120,147 of S.H.'s funds from the trading account:
 - b. Oviatt would never put more than 50% of the funds in the account at risk, when in fact, he lost over 50% of S.H.'s investment funds:

- c. Oviatt passed a test for a “finance series license” and was in the process of getting additional licensing to operate the hedge fund, when in fact, a “finance series license” does not exist and Oviatt has never passed a securities exam; and
 - d. Oviatt would receive a 2% management fee of the net asset value calculated at the end of the calendar year, when in fact, Oviatt paid himself a management fee of 77%.
17. In connection with the offer and sale of a security to the investors, Respondents, 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. In 2002, Oviatt filed for Chapter 7 and Chapter 13 bankruptcy;
 - b. In 1989, Oviatt filed for Chapter 7 bankruptcy;
 - c. From 1987 to 2003, Oviatt had seven civil judgments against him totaling \$28,149;
 - d. He would pay himself a 77% management fee; and
 - e. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, such as:
 - Financial statements;
 - Risk factors;
 - Track record to investors;
 - Respondents’ business experience and operating history; and

Whether the investment is a registered security or exempt from registration.

Unlicensed Activity under § 61-1-3 of the Act

18. The Division incorporates and re-alleges paragraphs 1 through 13.
19. RCM acted as an investment advisor to sell securities without being licensed.
20. Oviatt acted as an investment advisor representative without being licensed.
21. Oviatt paid himself \$120,147 as a management fee, although only \$3,103 was authorized.
22. Accordingly, by acting as an unlicensed investment adviser and an unlicensed investment adviser representative RCM and Oviatt violated Section 61-1-3(1) of the Act.

ORDER

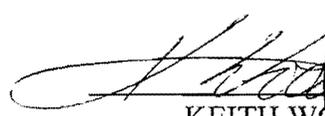
The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on Wednesday, September 7, 2011, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

- a. Why Respondents should not be found to have engaged in the violations

alleged by the Division in this Order to Show Cause;

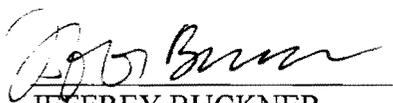
- b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act; and
- c. Why Respondents should not be barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; (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.
- d. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by stipulation or by the presiding officer after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investors.

DATED this 26th day of July, 2011.


KEITH WOOD
Director, Utah Division of Securities



Approved:


JEFFREY BUCKNER
Assistant Attorney General
A.S.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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**BEFORE THE DIVISION OF SECURITIES
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<p>IN THE MATTER OF:</p> <p>RATIONAL CAPITAL MANAGEMENT, LLC, ALAN HERBERT OVIATT,</p> <p>Respondents.</p>	<p>NOTICE OF AGENCY ACTION</p> <p>Docket No. <u>SD-11-0057</u></p> <p>Docket No. <u>SD-11-0058</u></p>
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THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through 209; see also Utah Admin. Code R151-4-101, *et seq.*

The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-4-110.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative.

Your response must include the file number and name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

Jeff Buckner
Assistant Attorney General
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set for **September 7, 2011** at the Division of

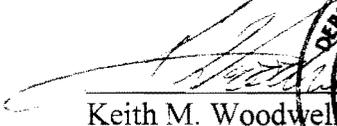
Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9 A.M.

If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-4-710(2). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be Angela Hendricks, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6035. This adjudicative proceeding will be heard by Ms. Hendricks and the Utah Securities Commission. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause should be directed to Jeff Buckner, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 26th day of July, 2011


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

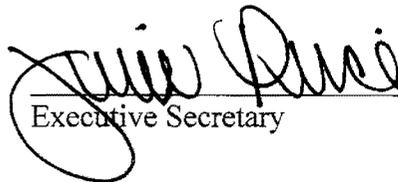
I certify that on the 28th day of JULY, 2011, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Rational Capital Management, LLC
Alan Herbert Oviatt
926 West Escalante Drive
St. George, Utah 84790

Certified Mail # 7007 0220 0001 00003 0172

Rational Capital Management, LLC
Alan Herbert Oviatt
c/o Attorney Jay Winward
150 N. 200 E. #204
St. George, Utah 84770

Certified Mail # 7007 0220 0001 00003 0189



Executive Secretary