

SECURITIES COMMISSION MEETING MINUTES

January 26, 2012

Securities Staff Present

Keith Woodwell, Division Director
Dave Hermansen, Director of Compliance
Benjamin Johnson, Director of Corporate Finance
Nadene Adams, Administrative Assistant
Thomas Brady, Analyst
Chip Lyons, Analyst
Karen McMullin, Investor Education Coordinator
Jeff Nielsen, Investigator
Nadia Mahallati, Investigator
Steve Eklund, Administrative Law Judge
Scott Davis, Division Counsel
Julie Price, Board Secretary

Commissioner's Present

Jane Cameron, Zion's Bank
Laura Polacheck, AARP Utah
Tim Bangerter, Bangerter Financial Group
Erik Christiansen, Parsons Behle & Latimer

Minutes: A motion was made and seconded to approve the October 27, 2011 and December 15, 2011 minutes. The motion to approve both meeting minutes was passed unanimously.

Director's Report: Director Woodwell reported that Karen McMullin, the Division's Investor Education Coordinator, has helped to increase the number of events and presentations that the Division is involved with. The Division is doing more expos and events in Utah County.

The Fraud College will take place this year on February 15, 2012 from 8:00 am – 12:00 pm at the University of Utah Student Ball Room. The Division will also have a booth at the Utah Valley Big Biz and Technology Expo being held on February 29th & March 1st from 11:00 am to 5:00 pm at the UCCU Center on the Utah Valley University Campus.

The "Red Flags" public service commercials have just started running this week on local television newscasts and a handful of cable channels. The Division is also in the process of doing billboards for this campaign which should be up in the next few weeks around the state and remain up for three or four months. Radio spots are running on a few public radio stations. Comcast is also doing some spots on Comcast Newsmakers. If funds are available, the Division will also look into doing bus wraps and other radio stations. Director Woodwell hopes that the Division will see an increase in phone calls and complaints due to these public service efforts. Karen McMullin is

working on some new brochures for topics that the Division is receiving more complaints on. Some of these include gold investments, Exchange Traded Funds (ETFs), and other related issues.

Utah has recently received some local press. The Economist Magazine has published an article entitled "Affinity Fraud, Fleecing the Flock" which comes out this weekend. The article briefly talks about Bernie Madoff and then has a section entitled "The hook of Mormon" which references the affinity fraud in the Mormon church. There are quotes from LuElla Day, Director Woodwell, Brent Baker, and Senator Ben McAdams. Director Woodwell is hoping that this article increases awareness that this problem is a serious issue and something the Division is trying to deal with.

There has been no change in the budget this year. The Division is making no new requests. Director Woodwell expects our budget to remain flat from where it was last year.

Commissioner Jan Graham has resigned from the Securities Commission. She gave several reasons. Her main concern was about the constant conflicts she would encounter while representing so many plaintiffs in the cases that would be coming before the Commission. Commissioner Graham believed that it would be a constant source of conflict for the Commission or her private practice. Director Woodwell commented favorably on her service to the Securities Commission and noted that she would be missed. He is working with the governor's office to find a replacement for her. He is hopeful that a new member will be appointed by the next commission meeting.

There has been a significant personnel change within the Division. Michael Hines, our enforcement director, has been terminated. His termination rises from violations with the Government Records Access and Management Act (GRAMA) and sharing information that is considered protected under this statute. Mr. Hines has done a lot of good in the Securities Division for a lot of years. This will be a big loss for the Division as well as the securities industry. Director Woodwell will act as the enforcement director until Mr. Hines has gone through the appeals process.

Compliance & Licensing Section Report: Dave Hermansen reported that the training of his newest examiners is coming along. All but two examiners are out on their own. The remaining two examiners have been doubled up with experienced examiners since they started.

Mr. Hermansen and Director Woodwell went up to the capital this morning to meet with Representative Dunnigan to discuss House Bill 29. The bill sets new standards for which insurance and securities licenses are needed to sell or provide advice on annuities.

House Bill 29 aligns the producer's license on the insurance side with the broker dealer agent license on the securities side. It also lines up the insurance consulting license with an investment adviser license.

Financial Industry Regulatory Authority (FINRA) has collected our yearly fees from licensees. There were 143 licensed state advisers, 923 federally covered advisers, and 2 that were both state and federally covered. There were also 3,864 investment adviser representatives, 1,564 broker dealer firms, and 94,368 broker dealer agents.

The total fees collected for the year were \$6,267,830.00.

Corporate Finance Section Report: Benjamin Johnson reported that the issue of crowd funding has been in the news recently and is currently a hot topic in Congress. There are numerous bills pending in Congress; one in the House and a couple in the Senate that are introducing provisions that would allow members of the general public to invest small amounts of money in start-up businesses. The dominate line of thought right now in Congress is to make these offers federal covered securities. Meaning, internet sites could be set up and there would be some form of regulation with the SEC but little information or involvement with state regulators. NASAA is keeping an eye on this issue and has come up with a model exemption rule.

Director Woodwell also gave further clarification on this topic. Essentially, crowd funding is taking all the investor protections since the 1930's; prohibitions on general solicitation, registration requirements, and licensing requirements and either eliminated them or severely limits them. When someone advertises on the internet, it is considered a general solicitation for anyone who wants to invest. There are no accreditation standards for the investor, so anyone with any income can invest in these offerings. The amount of information available will be limited. The website owners won't be fully licensed broker dealers and agents that are trying to solicit more investors won't be licensed either. So all those typical protections will be gone at the same time. Director Woodwell anticipates a lot of fraud as a result.

Enforcement Section Report: Director Woodwell reported that there are two bills that deal with the securities code that have already passed through committee. These bills make minor changes to Senator Ben McAdams' bills from last year.

Senate Bill 90 is the whistle blower law in which you can receive an incentive award if you provide material information that will help the Division with a case. This bill will sync up the language in our law with the rule on the federal side with the SEC.

Senate Bill 91 takes the affinity fraud bill that was passed last year, and extends the enhanced penalties for affinity fraud that to private rights of action.

Education Fund Expenditure Report: Benjamin Johnson reviewed the updated expenditure report for the Education and Training Fund and discussed the line items that were being requested by the Division for Commission approval. This included expert witness support expenses, investor education outreach expenses, and the Utah Securities Association grant requests.

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

Consideration of Grant Request

Utah Securities Association: Director Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

Action: Laura Polacheck made a motion to approve the grant for \$5,000.00. The motion was seconded and carried.

Young Money Events, LLC.: Director Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

Action: Laura Polacheck made a motion to deny this grant. The motion was seconded and carried.

The Utah Legislature's Operations and Political Subdivisions Interim Committee Survey: Commissioner Christiansen briefly discussed the survey and asked the other commissioners to provide input on the survey once he had a chance to respond to the questions.

Approval of Stipulation and Consent Orders

Senior Advisors LC., Larry W. Mulcock, and Steven C. Bergstrom: Dave Hermansen reported that in January 2008, the Division sent a standard letter to Senior Advisors LC (Senior Advisors) and other investment advisors who failed to renew their licenses at the end of 2007. The letter stated that the advisers needed to either immediately submit their Form ADV application to become licensed or cease conducting business as an investment adviser in Utah. Senior Advisors made no response to the Division's letter, and took no action to address the licensing deficiency. In March 2009, the Division received an inquiry about Senior Advisors and contacted Mr. Mulcock in inquire whether Senior Advisors was still acting as an investment adviser in Utah. Mr. Mulcock admitted that Senior Advisors had been acting as an investment adviser since the end of 2007 and stated he would submit the Form ADV. In May 2009, Senior Advisors began the process to become licensed and was not approved until October 2010. The respondents violated the Utah Uniform Securities Act by Senior Advisors acting as an investment adviser and Mr. Mulcock and Mr. Bergstrom acting as investment adviser representatives while unlicensed.

The respondents shall cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state. Mr. Mulcock and Senior Advisors agrees jointly and severally to pay a \$10,000.00 fine. Mr. Bergstrom and Senior Advisors agrees jointly and severally to pay a \$5,000.00 fine. The fines shall be paid in full within two years or agree to have their licenses immediately revoked.

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

Southern Star Terra #1-36 LP., Southern Star Terra #1-36 GP LLC., Southern Star Terra Fund II LP., Southern Star Resources LLC., and Darin H. Mangum: Benjamin Johnson reported that on September 13, 2010, Southern Star Terra #1-36 LP (issuer) made the first sale in its \$2,250,000.00 offering of limited and/or general partner interests, as described in its Confidential Private Placement Memorandum (PPM) dated September 1, 2010. Sometime thereafter, the respondents mad an electronic copy of the PPM publicly available on its website without password protection or any other form of viewer restriction, and without any limitation or restriction in Utah. On March 1, 2011, the Pennsylvania Securities Commission (PSC) initiated an action against Southern Star Terra #1-36 LP, Southern Star Terra #1-36 GP LLC, and Mr. Mangum, and subsequently issued a Summary Order to Cease and Desist those

parties, halting the offer and sale of unregistered securities in that state. The issuer did not update the PPM to disclose the details of the PSC action to the Utah investors. Between April 6, 2011 and April 18, 2011, three more Utah residents invested in the Offering. On August 16, 2011 Mr. Mangum prepared a letter to the issuer's existing partners soliciting additional investments in Southern Star Terra Fund II LP.

The respondents, individually or collectively, violated the prohibition against general solicitation by posting the issuer's PPM on Southern Star Resources LLC website. As a result, the sale of the Issuer's securities in the State of Utah constitutes the sale of unregistered securities. The failure to disclose the PSC action in an updated PPM to potential investors in Utah constitutes a material misrepresentation of fact. The respondents, individually and collectively, violated the prohibition against general solicitation due to the August 16, 2011 letter soliciting investors for the Southern Star Terra Fund II LP offering. As a result, the Southern Star Terra Fund II LP offering did not qualify as federally covered and constituted the sale of unregistered securities.

The respondents are prohibited from violating the Utah Uniform Securities Act, pay a \$8,000.00 fine, and agree to cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to this matter.

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

Advanced Trading Solutions, LLC and Darin Layne Kraci: Tom Brady reported that from January through May 2007, Mr. Kraci collected approximately \$6.9 million in investment funds from two Utah investors. The respondents, directly or indirectly, made false statements to the investors in connection with the offer and sale of a security. The respondents, directly or indirectly, failed to disclose material information which was necessary in order to make statements not misleading in connection with the offer and sale of a security. The respondents engaged in acts, practices, or courses of business that operate or would operate as a fraud or deceit.

The respondents shall cease and desist from violating the Utah Uniform Securities Act, Mr. Kraci agrees to be barred from associating with any broker-dealer or investment adviser; acting as an agent for any issuer soliciting investor funds in Utah, and from being licensed in any capacity in the securities industry in Utah. The respondents will cooperate with the Division in any future investigations.

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

Bryce Anderson: Tom Brady reported that the respondent failed to attend or participate in a hearing scheduled on December 7, 2011. The respondent made false statements, directly or indirectly, in connection with the offer and sale of a security to an investor. The 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 a security to an investor.

The respondent is ordered to pay a \$19,000.00 fine and cease and desist from

engaging in any act or practice constituting a violation of Utah Code Annotated Title 61, Chapter 1 and Utah Administrative Code R164.

Action: Tim Bangerter made a motion to approve the Final Order by Default. The motion was seconded and carried.

Newwest Corporation, Brisam Corporation, and Brian Arthur Kitts: Tom Brady reported that the respondents, directly or indirectly, made false statements in connection with the offer and sale of a security to investors. The respondents, directly or indirectly, failed to disclose material information which was necessary in order to make misrepresentations not misleading, in connection with the offer and sale of a security. The respondents also engaged in acts, practices, or courses of business that operate or would operate as a fraud or deceit on investors.

Action: This Stipulation and Consent Order has been tabled by the Commission.

Troy Wesley Dennett: Tom Brady reported that Mr. Dennett made false statements in connection with the offer and sale of a security to investors. Mr. Dennett also failed to disclose material information which was necessary in order to make representations made not misleading, in connection with the offer and sale of a security to investors.

Mr. Dennett will cease and desist from engaging in any conduct in violation of the Utah Uniform Securities Act and pay a \$10,000.00 fine.

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

Crime-Loss Stop Corporation and Linton Dale Livingston: Tom Brady reported that the respondents failed to attend or participate in a hearing scheduled on October 4, 2011. Instead of responding to the Order to Show Cause and Notice of Agency Action in this matter, Mr. Livingston filed a lawsuit in the U.S. District Court, District Court of Utah, naming multiple defendants. This action was later dismissed with prejudice. Mr. Livingston then attempted to remove the administrative action case to U.S. District Court, District of Utah. This attempt was denied.

In November 2008, the respondents offered and sold a security to an investor, in or from Utah, and collected a total of \$5,000.00. The respondents made material misrepresentations and omissions in connection with the offer and sale of a security. The investor lost \$5,000.00 of his principal.

The respondents are to permanently cease and desist from violating the Utah Uniform Securities Act.

Action: Tim Bangerter made a motion to approve the Notice of Entry of Default and Order. The motion was seconded and carried.

Atlantis Development Team, LLC and Camrie Renee Tauaese: Tom Brady reported that in September 2008, the respondents offered and sold investment contracts to an investor and collected a total of \$35,000.00. The investor lost \$35,000.00 of their

principal investment. The respondents, directly or indirectly, made false statements in connection with the offer and sale of a security. The respondents, directly or indirectly, failed to disclose material information which was necessary in order to make statements not misleading, in connection with the offer and sale of a security.

The respondents will cease and desist from violating the Utah Uniform Securities Act, pay a \$35,000.00 fine, and cooperate with the Division in any future investigations. Ms. Tauaese agrees to be barred from the securities industry in Utah until the full \$35,000.00 fine is paid in full.

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

Next Meeting – March 22, 2012.

Laura Polacheck made a motion to adjourn the meeting. The motion was seconded and carried.

Approved: _____



Erik Christiansen, Chairman

Date: _____

3/22/12

