

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:

**NATIONAL INVESTMENT ADVISORS,
IARD#148050
RANDY C. NORTON, CRD#5706948
MATTHEW SMOCK, CRD#5916907
NATIONAL CAPITAL PARTNERS I,
LLC**

Respondents.

STIPULATION AND CONSENT ORDER

Docket No. SD-12-0027

Docket No. SD-12-0028

Docket No. SD-12-0029

Docket No. SD-12-0030

The Utah Division of Securities (“Division”), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondents National Investment Advisors, Randy C. Norton, Matthew Smock, and National Capital Partners I, LLC (referred to collectively at times as “Respondents”), 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 April 10, 2012, the Division initiated administrative actions against Respondents by filing a Petition to Censure and Impose a Fine against National Investment Advisors, and an Order to Show Cause against Randy C. Norton, Matthew Smock and National Capital Partners I, LLC.

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 April 10, 2012 Petition and Order to Show Cause.
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 Stipulation and Consent 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 Kruse Landa Maycock & Ricks, LLC and are satisfied with the representation they have received.

I. FINDINGS OF FACT

The “National Capital” Entities

8. National Investment Advisors (“NIA”) is a Utah limited liability company that has been licensed as an investment adviser in Utah since October 8, 2008.
9. On September 27 and October 13-14, 2010, the Division conducted an announced examination of NIA.

10. Information contained on the Central Registration Depository (“CRD”)¹ system and the internet showed that NIA appeared to have a complex ownership structure and affiliation with a group of related companies.
11. Randy C. Norton (“Norton”) is the managing partner of NIA.
12. National Capital Partners I, LLC (“NCPI Fund”) is a Utah limited liability company and issuer of securities.
13. NIA is owned by National Investment Management, LLC (“NIM”), a Utah limited liability company, and Norton. NIM is owned by Norton Capital Inc., a Utah corporation owned by Norton.
14. National Capital Management LLC (“NCM”), a Utah limited liability company founded by Matthew Smock (“Smock”), is the manager of NCPI Fund. NCM is in turn managed by Norton Capital Inc. and two other Utah corporations, Fugal Capital Inc., and Smock Capital Inc.
15. During the September 27, 2010 examination, Norton drew a diagram on a white board to explain how an umbrella company known as “National Capital”, its principals, and its multiple related entities were structured. In contrast to its initial application in 2008, where NIA was identified as a separate, unaffiliated company, the structure Norton diagramed in September 2010 clearly indicated that NIA was just one business of many interrelated companies under an umbrella brand marketing name of National Capital.
16. Other related entities include NCPI Fund. On April 8, 2010 the Division’s Corporate

¹CRD is a computerized database maintained by the Financial Industry Regulatory Authority (“FINRA”) which contains employment, licensing, and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

Finance section received a Form D Rule 506 notice filing for a private placement securities offering by NCPI Fund (“the offering”). According to NCPI Fund’s Private Placement Memorandum (PPM), it pools investor monies to purchase and dispose of distressed real estate. NIA is described in the PPM as “advisor” to the Fund that “will provide investment advisory services for clientele, focusing on alternative investments that are real estate-centric.”

17. All of the “National Capital” entities described above share offices with NIA.
18. At the time of the Division examination, NIA had three clients with assets under management (“AUM”) of \$1,050,000. However, NIA’s then-current Form ADV² Part II amendment dated February 23, 2010 reported seven (7) clients with \$5,000,000 AUM.
19. NIA’s three advisory clients were all invested in the NCPI Fund. The clients invested in 2009 and were identified in their subscription agreements as accredited investors.

Misrepresentations

20. The NCPI Fund PPM misrepresented or omitted material facts in connection with the offer and sale of the offering, including:
 - a. stating NCPI Fund must have \$5,000,000 in capital commitments before funds could be released from an escrow account. In reality, the Fund broke escrow after raising only \$1,050,000.

²Form ADV is used by investment advisers to register with the United States Securities and Exchange Commission (“SEC”) or with state securities regulators. Section 203 of the Investment Advisers Act of 1940 requires investment advisers to furnish each advisory client and prospective advisory clients with a written disclosure statement which may be either a copy of Part II of its Form ADV or a written document or brochure that contains at least the information required by Part II of Form ADV. The license application requirements for investment adviser in Utah Admin. Code Rule R164-4-2(c) require that an investment adviser file a copy of the ADV Part II with the Division.

- b. representing that Randy Norton previously held a Series 65 license, when Norton in fact had never held a Series 65 license and had failed the Series 65 exam twice at the time of the offering.
 - c. holding out NIA as a member of FINRA and a SEC Registered Investment Advisor. The PPM states, “Through our affiliate National Investment Advisers LLC (Member FINRA, SEC Registered Investment Advisor), the Fund plans to *specialize in Alternative Investments in the Real Estate sector* for fund managers, financial planners, and investors.” NIA is neither a member of FINRA nor a SEC Registered investment adviser.
21. National Capital’s web site, www.natcapfunds.com also falsely represented that “National Capital Partners” was a “Registered Investment Adviser” and that NIA was a member of FINRA. In addition, a February 19, 2009 press release identified “National Capital Partners” as a “Utah-based SEC Registered Investment Adviser specializing in alternative investments”. Finally, National Capital advertising material entitled “NCPI Synergies with Affiliates” falsely described NIA as a member of FINRA and “SEC Registered Investment Adviser”.

Breaking Escrow

22. The NCPI Fund PPM required \$5,000,000 in capital commitments before the NCPI Fund could begin operating and indicated funds would be returned to investors if that minimum was not obtained. The PPM required that upon execution and delivery of a subscription agreement, each investor contribute to NCPI Fund 25% of the investor’s capital commitment, to be held in escrow until the NCPI Fund received capital commitments totaling \$1,250,000 (\$5,000,000 x 25%).
23. During the Division examination, NIA provided three subscription agreements from investors totaling \$1,050,000. Although NIA told the Division a fourth investor committed to invest \$5,000,000 in the NCPI Fund, it was unable to produce any

documents showing that commitment³, and the fourth investor never ultimately invested.

24. From December 2008 to February 2009, NCPI Fund received \$1,050,000 from investors which were deposited with an escrow company. Despite failing to meet the minimum required in the PPM, on December 2, 2009, NIA instructed the company to release the escrowed funds. On December 2, 2009, \$999,610 was wired to NCPI Fund's bank account. One month later, in January 2010, NCPI Fund started purchasing properties through NCM REO Acquisitions I, LLC ("NCM-REO"), a Utah limited liability company.⁴
25. NIA records indicate NCM-REO purchased approximately 23 properties, 21 of which were rehabilitated and all of which have been sold.⁵

Failure to Disclose Conflicts of Interest

26. NIA represented to the Division in its initial application that it was a separate entity and unaffiliated with NCPI Fund. At that time NIA operated as a separated and unaffiliated company. After NIA's founder left, NIA changed ownership and Randy Norton became an indirect owner of NIA. Norton is also a managing partner for NCPI Fund. NIA did not update Form ADV to reflect the conflicts of interest that exist between NIA and NCPI Fund until March 31, 2011. NCPI Fund received its first investor funds on

³NIA indicated documents pertaining to the fourth investor were misplaced during an office move.

⁴NCM-REO's manager is NCM-Special Purpose Management LLC, a Utah limited liability company which is managed by Norton Capital and Smock Capital, the principals of which are Norton and Smock.

⁵Respondents represent through counsel that in the aggregate, NIA's purchase and sale of the properties yielded a profit.

December 8, 2008 and NIA failed to update Form ADV to disclose the affiliation between NIA and NCPI Fund.

Custody

27. NIA's Form ADV Part II represented it did not and would not have custody of client funds. However, during the Division examination NIA was not able to immediately produce financial statements or bank statements showing the investors' fund deposits and the use of funds. NIA subsequently produced bank records demonstrating that client funds were deposited into an escrow account then eventually transferred into NCPI Fund's bank account. Although NIA may not have had direct custody, NIA had custody through its related entity, NCPI Fund. At no time did NIA maintain a bond for custody of client assets or provide the Division proof of meeting the minimum net worth requirements as required by Utah Admin. Code Rule R164-4-4(D).

Failure to Maintain Bond

28. Because NIA had discretionary authority over its clients' monies, it obtained a bond to satisfy Division requirements for advisers with discretion. On December 31, 2008 that bond expired and was not renewed. Despite NIA's continued discretion it has operated since January 1, 2009 without a bond in place or providing the Division proof of meeting the minimum net worth requirement as required by Utah Admin. Code Rule R164-4-4(D).

Failure to Update U4 and U5

29. NIA failed to file Form U4⁶ for an investment adviser representative when he started employment with NIA, though that failure appears to be the omission of a compliance consultant hired by NIA. NIA failed to file a Form U5⁷ for more than a year after another investment adviser representative left the firm.

II. CONCLUSIONS OF LAW

30. Respondents violated Section 61-1-1(2) of the Act by misrepresenting or omitting material facts in connection with the offer or sale of NCPI Fund securities, including but not limited to:
- a. misrepresenting that Randy Norton previously held a Series 65 securities license.
 - b. failing to disclose that Norton failed the Series 65 examination twice and was not licensed.
 - c. misrepresenting that NIA and “National Capital Partners” were SEC-registered investment advisers and that NIA was a member of FINRA.
 - d. misrepresenting in the NCPI Fund PPM that there must be \$5,000,000 in capital commitments before NCPI Fund would release monies from escrow and begin

⁶The Form U4, Uniform Application for Securities Registration or Transfer, is filed with FINRA and the Division in order for an individual to become a licensed investment adviser representative in Utah. It is submitted electronically to the Division through the Central Registration Depository (“CRD”).

⁷Form U5, Uniform Termination Notice for Securities Industry Registration, is required to be filed when an investment adviser representative terminates his or her association with an investment adviser.

operating, and that funds would be returned to investors if the minimum of \$5,000,000 was not obtained.

- e. omitting to disclose that despite the terms of the PPM, NIA and NCPI Fund would use investor funds prior to having \$5,000,000 in capital commitments, thereby “breaking escrow.”
 - f. omitting that funds in escrow would be released despite the terms of the PPM without obtaining the 25% minimum contribution required of investors.
 - g. Failing to ensure NIA’s Form ADV disclosed conflicts of interest between NCPI Fund, NIA, and other entities associated with the principals.
31. NIA used investor funds to purchase real estate properties, prior to obtaining \$5,000,000 in capital commitments as required by the PPM, warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.
32. NIA falsely represented to the public that it was a member of FINRA and that it was an SEC-registered investment adviser, when neither assertion was true. These acts constitute dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(8), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.
33. NIA disclosed on Form ADV Part II it did not and would not have custody of client funds. However, NIA deposited client funds in an account for its related entity, NCPI Fund. Those funds were later released and used for investing at the direction of NIA. NIA’s conduct violates Section 61-1-2(3)(b) of the Act.
34. Despite having custody and discretion over client funds, NIA failed to maintain bonds as required by Section 61-1-4(6)(a) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

35. Respondents neither admit nor deny the Division's findings and conclusions, but consent to the sanctions below being imposed by the Division.
36. Respondents represent that the information they have provided to the Division as part of the Division's investigation is accurate and complete. Respondents further represent that the NCPI Fund investors are informed as to this administrative action and their rights under Section 61-1-22 of the Act, and that, so informed, the investors do not seek rescission of their investment. Following entry of this Order, Respondents will provide a copy of the Order to the investors.
37. Respondents agree 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. Within ten (10) business days following entry of this Order, Respondent NIA shall obtain a bond or take other action as necessary to satisfy the requirements of Section 61-1-4(6)(a).
38. So long as NIA is licensed as an investment adviser in the State of Utah or for a period of three (3) years following entry of this Order, whichever is shorter, Respondent NIA agrees to report to the Division in writing (a) any new business ventures or lines of business in which it engages⁸; and (b) outside business activities of its principals, managers, and investment adviser representatives. These reports shall be made to the Division within ten (10) business days of commencing such activities.

⁸Examples subject to reporting include but are not limited to activities requiring the amendment of Form ADV, even if such amendment is not immediately required.

39. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondents agree to pay fines to the Division, as follows:

Respondent Norton: \$7,500.00

Respondents NIA, Smock, and NCPI Fund, jointly and severally: \$17,500.00

The fines shall be paid within ninety (90) days following entry of this Order.

IV. FINAL RESOLUTION

40. 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.

41. 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 the 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.

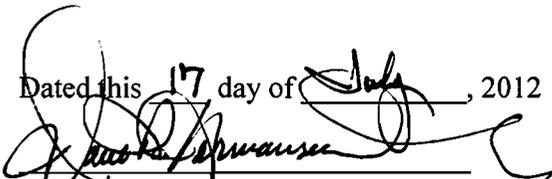
42. This Order is not intended to indicate that Respondents shall be subject to any disqualification contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications 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.

43. This Order shall not disqualify Respondents from any business that they otherwise are qualified or licensed to perform under applicable state law and this Order is not intended to form the basis for any disqualification.

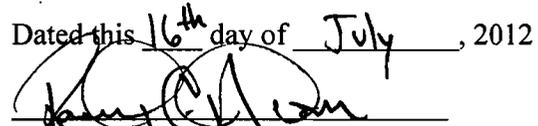
44. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in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

Dated this 17 day of July, 2012



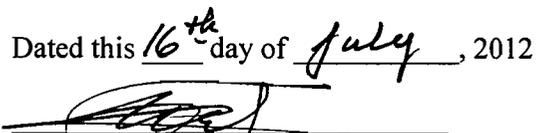
Dave R. Hermansen
Director of Licensing and Compliance
Utah Division of Securities

Dated this 16th day of July, 2012



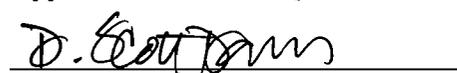
Randy C. Norton, Managing Partner
National Investment Advisors

Dated this 16th day of July, 2012



Matthew Smock, Manager
National Capital Partners I, LLC

Approved:



D. Scott Davis
Assistant Attorney General

Approved:



Kevin C. Timken
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. Following entry of this Order, Respondents will provide a copy of the Order to the investors.
3. 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.

Within ten (10) business days following entry of this Order, Respondent NIA shall obtain a bond or take other action as necessary to satisfy the requirements of Section 61-1-4(6)(a).
4. So long as NIA is licensed as an investment adviser in the State of Utah or for a period of three (3) years following entry of this Order, whichever is shorter, Respondent NIA agrees to report to the Division in writing (a) any new business ventures or lines of business in which it engages; and (b) outside business activities of its principals, managers, and investment adviser representatives. These reports shall be made to the Division within ten (10) business days of commencing such activities.
5. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, fines are imposed against Respondents as follows:

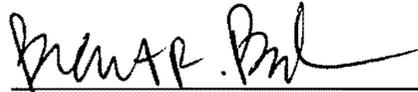
Respondent Norton: \$7,500.00

Respondents NIA, Smock, and NCPI Fund, jointly and severally: \$17,500.00

The fines shall be paid in full within ninety (90) days following entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this 14th day of July, 2012.

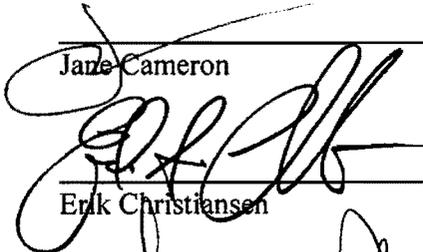


Brent Baker

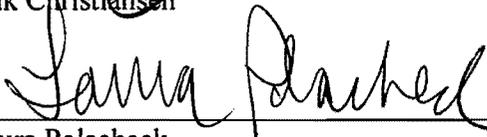


Tim Bangerter

Jane Cameron



Erik Christiansen

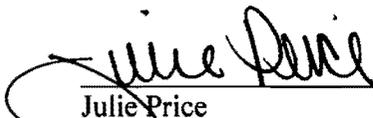


Laura Polacheck

Certificate of Mailing

I certify that on the 20th day of July, 2012, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Kevin C. Timken, Esq.
KRUSE LANDA MAYCOCK & RICKS, LLC
136 East South Temple
Twenty-First Floor
Salt Lake City, UT 84111



Julie Price
Executive Secretary