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: **JOSEPH L. JACOBY, CRD#2619787** **Respondent.**	**NOTICE OF AGENCY ACTION** **Docket No. SD-16-**0009

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"). Pursuant to Utah Admin. Code Rule R164-18-6(C) and Utah Code Ann. § 63G-4-202(3), the Division Director finds that it is in the public interest and does not unfairly prejudice the rights of any party to convert this adjudicative matter from an informal to formal proceeding, which 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. The facts on which this action is based are set forth in the accompanying Order to Show Cause. 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 Lee Ann Clark
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:
Jennifer Korb
Assistant Attorney General
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set for April 12, 2016 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City Utah, at 9:15 a.m. The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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

The Administrative Law Judge will be Greg Soderberg, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6706. This adjudicative proceeding will be heard by Mr. Soderberg and the Utah Securities Commission. At any hearings, the Division will be represented by the Attorney General's Office. You may appear and be heard and present evidence on your behalf at any such hearings.

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

Dated this 19th day of February, 2016

Keith M. Woodwell
Director, Division of Securities

GREAT SEAL OF THE STATE OF UTAH 1896 DEPARTMENT OF COMMERCE DIVISION OF SECURITIES

Certificate of Mailing

I certify that on the 19th day of February, 2016, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

[redacted]

Certified Mail # 70150640000659468209

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: **JOSEPH L. JACOBY, CRD#2619787** **Respondent**	**ORDER TO SHOW CAUSE** **Docket No. SD-16-**0009

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

STATEMENT OF FACTS

The Parties

1. Joseph L. Jacoby ("Jacoby"), CRD#2619787, is an individual who resided in Las Vegas, Nevada, during the period relevant to this action. From January 2002 until his resignation in May 2011 Jacoby was a broker-dealer agent of Legend Securities, Inc. ("Legend"), CRD#44952.

2. Jacoby has taken and passed the FINRA Series 7, General Securities Representative Examination, and Series 63, Uniform Securities Agent State Law Examination.

3. Legend is a New York corporation that has been licensed as a broker-dealer in Utah since 2006. Legend does not maintain an office in Utah.

4. Jacoby conducted his securities business from a Las Vegas, Nevada branch office of Legend where he was the sole agent. Jacoby was licensed in Utah from August 2007 until he terminated his Utah license in November 2010.

5. Jacoby is not currently licensed in the securities industry in any capacity. Records contained in the Central Registration Depository[1] ("CRD") indicate that his securities license was revoked by the State of Nevada in December 2011, following the suspension of his securities license by FINRA for exercising discretion in the account of a Utah client, K.P., without prior written authorization by the customer or Legend.

6. When Legend hired Jacoby, he had worked for ten previous firms in a six-year period. He had three customer complaints that resulted in lawsuits, involving allegations including deceptive trade practices, unauthorized trading and unsuitable investments. Two of the cases settled with payments to claimants, and the third resulted in an arbitration award against Jacoby.

7. In addition, a current FINRA arbitration proceeding is pending against Jacoby[2], alleging unauthorized and aggressive trading that resulted in significant customer losses.

8. Legend is named as a respondent in a Petition to Censure Licensee and Impose a Fine filed by the Division contemporaneously with this action.

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

[2]FINRA Case No. 11-03076.

9. Salvatore C. Caruso ("Caruso"), CRD#2363696, is a New York resident. Caruso is Legend's President and Chief Financial Officer, and an owner and securities principal of Legend. During the period relevant to this action, Caruso was Legend's Chief Compliance Officer and direct supervisor of Jacoby. Caruso was licensed in Utah from May 2006 until June 2011, when he terminated his Utah license.[3]

Division Investigation

Investor K.P.

10. On August 4, 2010, Utah resident K.P. filed a written complaint with the Division, alleging Jacoby mismanaged his securities account, causing significant losses. K.P. alleged Jacoby made unsuitable investments, conducted unauthorized transactions and excessively traded the account to generate commissions. The Division's investigation into the complaint revealed the following:

11. Jacoby began calling K.P. by telephone sometime in 2006 to solicit K.P. to invest money with Jacoby and Legend. Jacoby represented himself as a very successful broker who could make substantial profits for K.P.

12. In August 2007, K.P. agreed to open an account. At Jacoby's direction, K.P. fully liquidated two rollover IRA annuities, paying surrender fees to do so. K.P. transferred a total of $550,970.90 to Legend. Immediately prior to the transfer, the monies were invested in less-aggressive annuity products at Great American Life Insurance Company

[3]CRD records indicate that in May 2011, Caruso was sanctioned by the United States Securities & Exchange Commission ("SEC") after instructing a Legend agent to back-date books and records requested by the SEC that had not been completed or maintained as required. Caruso was fined $25,000 and Legend was fined $50,000. For more information, see: http://www.sec.gov/litigation/admin/2011/34-64502.pdf

($387,689.32) and Sun Life Financial ($163,281.58).

13. Jacoby aggressively traded K.P.'s Legend account for approximately 26 months, making a total of 233 purchases and sales from August 2007 through October 2009. During that period of time, the account sustained grievous losses, falling from its initial value of $550,970 to $147,430 as of October 31, 2009.[4]

14. Commissions and fees paid to Jacoby/Legend through markups and markdowns during that period, however, totaled at least $180,288.[5] After complaints by K.P. to Legend, another Legend agent was assigned to the account, which was eventually closed by K.P. and transferred elsewhere.

15. In 2010, K.P. filed a FINRA arbitration action, alleging claims against Jacoby, Legend, Caruso, and Legend principal Anthony Fusco, arising from the losses in his account. That action was later settled with the respondents' payment to K.P. of $117,000.

16. K.P. suffered from numerous health problems and passed away in 2012.

Unsuitable Investments and Trading

17. Jacoby's securities recommendations and his trading activities in K.P.'s account were unsuitable for K.P.

18. According to trade tickets provided by Legend,[6] 69% of the transactions in K.P.'s

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[4]K.P. took distributions totaling approximately $54,000 during this period. Considering distributions, the account value as of October 31, 2009 would be $201,430 – a loss in account value of $349,540 or 63%.

[5]This figure is based upon K.P.'s trade confirmations. Legend commission reports, however, indicate Jacoby earned $179,982.

[6]Legend failed to produce trade tickets for nearly half of the 233 transactions in K.P.'s account.

account were marked as solicited, or recommended, by Jacoby.

19. At the time K.P. opened the account with Jacoby he was 55 years old. He had retired early due to disability caused by numerous health problems and was receiving early social security benefits due to the disability. K.P. had suffered a stroke at age 48 and never fully recovered. He had ongoing heart and kidney problems requiring periodic hospital care and had also suffered a heart attack. Jacoby and Legend knew K.P.'s health history, disabled status and ongoing medical problems.

20. Among other things, K.P.'s Legend new account application clearly indicated his age and retired status, that he was divorced, that the account was a retirement account to be funded with IRA monies, and that he had been introduced to Jacoby/Legend by telephone call.

21. In addition, the new account application had boxes checked for two investment objectives: "Long term growth with safety (long term capital appreciation with relative safety of principal)" and "Long term growth with greater risk - Aggressive Growth (trade volatile securities that have wide changes in price)."[7]

22. The new account application reported K.P.'s income as $25,000-39,999, net and liquid net worth as $500,000-999,999 and tax bracket as 28%. His investment experience was reported as 20 years trading options and stocks, with average options trades in the amount

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[7]Where there is more than one investment objective, the new account instructions request a ranking from 1 to 8 among eight included objectives. Although no ranking was completed on K.P.'s new account application, two objectives which more closely fit Jacoby's trading activity in K.P.'s account, "Short term growth with high risk (Appreciation with acceptance of high risk") and "Speculative (want increase in value of investments - High Risk") were <u>not</u> checked or ranked.

of $5,000 with an average of 10 trades per year, and average stock trade amounts as $20,000 with an average of 50 trades per year. One question, "Is this a Discretionary account?" was left unanswered.

23. Jacoby communicated with K.P. exclusively by telephone. The two never met in person.

24. Soon after the account was opened, it was apparent that K.P.'s stated investment objectives of long-term growth – with either safety or greater risk – were ignored by Jacoby. Many of the securities in K.P.'s account were purchased, sold, and in some cases, repurchased again within a matter of days or weeks.

25. Jacoby and Legend knew that K.P. needed access to the monies in the account for one-time purchases and to supplement his limited monthly income. Soon after establishing his account at Legend, in October 2007 K.P. took a $7,000 distribution from the account. Subsequently, he took additional single withdrawals in December 2007 ($3,000), March 2008 ($20,000 to purchase a vehicle), and July 2008 ($1,500). In August 2008, K.P. scheduled monthly withdrawals in the amount of $1,500.

26. In a handwritten May 1, 2008 broker note, Jacoby acknowledged the prior withdrawals from the account and recorded K.P.'s need for future withdrawals in the near future. The notes state K.P. told Jacoby he was planning on using "the majority" of monies from the account to purchase a home "in about a year".[8] Despite knowing K.P.'s need for safety of principal and liquidity to buy a home, Jacoby continued to take short-term and risky positions in the account.

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[8]When Jacoby began soliciting K.P. in 2006, K.P. was living with his son in Las Vegas, Nevada. K.P. later moved to Utah, where he rented an apartment during the period relevant to this action.

27. Most of the trades in K.P.'s accounts were in equity securities and non-traditional exchange-traded funds ("ETFs"). There was no diversification among asset classes and no positions were taken for preservation of capital. No mutual funds were purchased, and there were minimal cash or money market positions maintained for liquidity purposes to facilitate K.P.'s withdrawals.[9]

Leveraged, Inverse ETF Trades

28. K.P. had no knowledge of leveraged, inverse ETFs, commonly referred to as non-traditional ETFs, prior to opening his Legend account.

29. Non-traditional ETFs are highly complex products which have risk factors that differ from traditional ETFs and may include leveraging, daily reset, and time decay, all of which effect investment return. Investors holding non-traditional ETFs for more than one trading session can expect their performance to greatly differ from the underlying index or benchmark, particularly in volatile market conditions.

30. The investments recommended by Jacoby included inverse ETFs, which utilize derivatives for the purpose of profiting from the decline in the value of a benchmark, as well as double and triple-leveraged ETFs, meaning that a 1% move in the underlying index or benchmark would produce a 2% or 3% rise (or fall if inverse) of the investment's value. Some of the ETFs Jacoby purchased were both inverse and

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[9]According to other entries in Jacoby's broker notes, he and Caruso allegedly recommended K.P. purchase a new variable annuity prior to the first stock transaction taking place in August 2007. If true, the recommendations to liquidate two annuities for which K.P. paid surrender fees in order to simply purchase a new variable annuity from Jacoby/Legend would have been dubious. The notes further state Jacoby recommended the annuity to K.P. on three other occasions, all of which were after Jacoby knew K.P. needed current income and that his investment horizon was one year in order to purchase a home with monies from the account.

leveraged.[10]

31. Non-traditional ETFs are designed to be used by sophisticated investors and held in an account for a single trading day, given their volatility and significant risks. They are completely unsuitable for non-speculative investors with long-term investment objectives.

32. Jacoby placed 62 transactions in leveraged and inverse ETFs, which were particularly ill-suited to K.P.'s needs, as, among other things, K.P. was not seeking market speculation or implementing a sophisticated daily trading strategy.

33. Jacoby's broker notes made no reference to discussing with K.P. the risks and costs of investing in leveraged and inverse ETFs, why they would be suitable for K.P., or of mailing any information about them to K.P. prior to investing. In an interview with the Division, K.P. indicated he received no such disclosures.

34. The average holding period for the ETF investments was over 13.7 days, with the longest holding period being 63 days. Net losses in K.P.'s account from ETF transactions were approximately $146,823.

Churning/Excessive Trading

35. The 233 trades placed by Jacoby in K.P.'s account benefitted Jacoby and Legend to the significant financial detriment of K.P.

36. Jacoby had *de facto* control of K.P.'s account. Of the trade tickets provided by Legend, 69% of the transactions in the account were marked as solicited, or recommended, by Jacoby.

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[10]Trading symbols for the ETFs purchased in K.P.'s account included DIG, DUG, DXD, EEV, FXP, QID, SKF, SRS, and UYG.

37. Commissions paid to Jacoby from K.P.'s account alone comprised 41% of Jacoby's total compensation from Legend during the time he traded the account.

38. During the 12-month period from September 2007 to August 2008, K.P.'s portfolio was turned over an average of 6.68 times monthly. From September 2008 to August 2009, K.P.'s portfolio was turned over an average of 7.40 times monthly.

39. In the aggregate, for the 26 months Jacoby managed K.P.'s account, Jacoby turned over the account approximately 14.93 times.

40. Based on records provided by Legend, K.P. paid approximately $104,372 in commissions from August 2007 through August 2008, which was 26.65% of the average monthly account value. From September 2008 to August 2009, K.P. paid approximately $69,481 in commissions, which was 31.74% of the average monthly account value.

41. The portfolio turnover and amount of commissions paid far exceed acceptable industry standards. Given the commissions paid, the account would have had to earn 28% annually to merely break even.

42. The trades recommended and placed by Jacoby were unsuitable and excessive in size and frequency in view of the financial resources and character of K.P.'s account.

<u>Unauthorized Exercise of Discretion</u>

43. While Legend permitted discretionary trading accounts, K.P.'s account was never established as a discretionary account.

44. Jacoby often called K.P. with a trade recommendation, which was then consented to by K.P. However, Jacoby would then place additional trades in the account that were not discussed or authorized, and would call K.P. to report the trades after the fact.

45. Pursuant to a FINRA investigation of Jacoby, Jacoby provided a written narrative, dated April 14, 2010, of his activities in K.P.'s account, which included the following:

> Sometime during the first quarter of 2009, [K.P.] informed me that he would be going through medical procedures that required him to be in and out of the hospital and doctors offices for approximately 2 months. He gave me instructions to sell any stock in his account if it was going down substantially and I was unable to reach him prior to the sale. I agreed to accommodate him in order to protect his account and quite frankly, I was afraid to not follow his instructions. Once [K.P.] finished his procedures I only conducted buys and sells after I first spoke to him on the phone.

46. On April 15, 2011, FINRA took regulatory action against Jacoby for the unauthorized exercise of discretion in K.P.'s account from approximately January 2009 through March 2009. FINRA found that Jacoby effected at least six (6) transactions during that period "without obtaining prior written authorization from the customer to exercise such discretion or prior written acceptance of the discretionary account by [Legend]."[11]

47. Nowhere in Jacoby's broker notes, for the period of January 1, 2009 to March 12, 2009, where the notes abruptly end, is there any mention of placing trades without K.P.'s approval. In fact, on at least 11 occasions the notes purportedly document speaking to K.P. during that time. The entries are inconsistent with Jacoby's written representations to FINRA as described above.

48. Moreover, despite written representations to FINRA that K.P. was "self-directing" his account, to the contrary, Jacoby's broker notes indicate that Jacoby, and not K.P., was directing the trading in the account. With few exceptions, the broker note language states

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[11] As a disciplinary sanction, FINRA suspended Jacoby's securities license for five business days and fined him $2,500. See April 15, 2010 FINRA Letter of Acceptance, Waiver and Consent, Case No. 2010021688401: http://disciplinaryactions.finra.org/Search/ViewDocument/14956

Jacoby recommended particular transactions, and K.P. "agreed" to them.

Trade Ticket Irregularities

49. Notwithstanding Jacoby's notes, Jacoby marked approximately 31% of the trade tickets for K.P.'s account as "unsolicited", suggesting that K.P. brought such trades to Jacoby. The accuracy of those tickets, however, is questionable, and appears to be intended to overstate K.P.'s involvement in trading the account.

50. For example, Jacoby's trading logs show that he placed "unsolicited" trades in the exact same stock or ETF in K.P.'s account as well as in other Jacoby-managed investor accounts on the same trading day. Of ten such instances, seven of the trades were also marked "unsolicited" in the other investor account. For that to happen, absent the trade tickets being incorrectly marked, completely unrelated investors would need to have had the exact same trading idea as K.P. on the exact same day with Jacoby purchasing shares in the securities just minutes from each other.

51. In addition, although Legend had a form entitled "Acknowledgment of Non-Solicitation" designed to document that particular transactions were not solicited by a Legend agent, no such forms were ever provided to or executed by K.P. with respect to the trades marked "unsolicited" in his account.

"Happiness" Statements

52. Despite disastrous results in K.P.'s account, Jacoby's broker notes continually included self-serving "happiness statements" – statements often used to "confirm" knowledge and approval of questionable trading patterns in an account which may not mirror the account's investment objectives. For example:

a. March 23, 2008: “He was very thankful for all my help and isn’t worried about recent market pull backs”

(As of March 30, 2008, year-to-date losses were approximately $86,000);

b. June 24, 2008: “[K.P.] told me I was doing a good job and thanked me for calling”

(As of June 30, 2008, year-to-date losses were approximately $150,000, or 30%);

c. October 30, 2008: “he was happy and thanked me.”

(As of October 31, 2008, year-to-date losses were approximately $249,000 or 50%)

53. K.P. told the Division that those representations were fabricated and that his reaction to the mounting losses in the account was great dissatisfaction and concern.

54. The accuracy of the entries is further questionable because even though Jacoby continued to communicate with K.P. and to trade the account through October 2009, there is not a single note entered after March 12, 2009 despite Jacoby placing more than 50 trades in that period.[12]

Fraudulent Practices

55. Jacoby knew K.P. had retired early due to health disabilities and that he had ongoing health problems; that he had limited income; that the sources of monies in his account were rollover IRA retirement funds; that K.P. had most recently been invested in less-aggressive annuity products with fixed returns; that he was relying on Jacoby’s

[12] According to Legend’s Written Supervisory Policies and Procedures, agents are required to maintain “logbooks” which are to be reviewed for accuracy on a monthly basis by supervisors.

recommendations; that he needed liquidity for the monies in the Legend account; and that his time frame for needing the monies in the account was short. Nevertheless, Jacoby excessively traded or churned K.P.'s account, and made unsuitable and unauthorized investments that greatly enriched Jacoby and Legend to the detriment of K.P.

FIRST CAUSE OF ACTION

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G) (Churning/Excessive Trading)

56. The Division incorporates the allegations of paragraphs 1 through 55 as if fully set forth herein.

57. As described herein, Jacoby churned K.P.'s account, making trades excessive in size and frequency in view of the financial resources and character of the account, which paid him significant commissions. Jacoby's conduct constitutes dishonest or unethical practices under Utah Admin. Code ("UAC") Rule R164-6-1g(C)(2), applicable to agents through (D)(7).

58. Jacoby's conduct also violates FINRA Rules 2010, 2310/2111, the violation of which are also dishonest or unethical practices under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7).

SECOND CAUSE OF ACTION

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G)(Unsuitable Investments)

59. The Division incorporates the allegations of paragraphs 1 through 58 as if fully set forth herein.

60. Jacoby's recommendations and trading activities in K.P.'s account were unsuitable given K.P.'s disabled and retired status, objectives, financial situation, and needs, which conduct constitutes dishonest or unethical practices under UAC Rule R164-6-1g(C)(3), applicable to agents through (D)(7).

61. Jacoby's conduct also violates FINRA Rules 2010, 2090, 2310/2111, the violation of which are also dishonest or unethical practices under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7).

THIRD CAUSE OF ACTION
Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G)(Unauthorized Exercise of Discretion)

62. The Division incorporates the allegations of paragraphs 1 through 61 as if fully set forth herein.

63. Jacoby exercised discretion in K.P.'s account without first obtaining written discretionary authority from K.P., which constitutes dishonest or unethical practices under UAC R164-6-1g(C)(5), applicable to agents through (D)(7).

64. Jacoby's conduct also violates FINRA Rules 2510, the violation of which is also a dishonest or unethical practice under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7).

FOURTH CAUSE OF ACTION
Securities Fraud - Act, Practice, Course of Business Operating as a Fraud Under § 61-1-1(3) of the Act

65. Division incorporates the allegations of paragraphs 1 through 64 as if fully set forth herein.

66. Jacoby, in connection with the offer, sale, or purchase of securities, engaged in acts, practices, and a course of business which operated as a fraud or deceipt on K.P., which include but are not limited to:

    a. excessively trading or churning K.P.'s account in view of the financial resources and character of the account in order to generate substantial commissions;

b. making investments in K.P.'s account that were not suitable based upon K.P.'s disabled and retired status, objectives, financial situation, and needs;

c. exercising unauthorized discretion in K.P.'s account without first obtaining written discretionary authority from K.P.;

d. violating industry rules and standards, including FINRA Rules 2010 (high standards of commercial honor and just and equitable principles of trade), 2090 (know your customer), 2310/2111 (suitability and excessive trading), and 2510 (discretion);

e. creating self-serving broker notes that were inconsistent with actual account activity, his statements to FINRA, and were materially incomplete; and

f. marking trade tickets "unsolicited" in K.P.'s and other client accounts for trade activities occurring in multiple accounts on the same day; and

g. disregarding Legend policies and procedures as described herein.

REQUEST FOR RELIEF

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202 and 63G-4-204 through -209, and held before the Division. As set forth in the Notice of Agency Action accompanying this Order, Respondent is required to file a written response with the Division, and an initial hearing on this matter has been scheduled for April 12, 2016 at 9:15 a.m. The initial hearing will take place at the Division of Securities, 2nd floor, 160 East 300 South, Salt Lake City, Utah. The purpose of the initial hearing is to establish a scheduling order and address any preliminary matters. If Respondent fails to file a written response or appear at the initial hearing, findings may be entered, a permanent Order to Cease and Desist may be issued, and a fine may be imposed against Respondent, as provided by Utah Code Ann. §§ 63G-4-206 or -209.

At the Order to Show Cause hearing, Respondent may show cause, if any he has:

1. Why Respondent should not be found to have engaged in the violations of the Act as alleged by the Division in this Order to Show Cause;

2. Why Respondent should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, -6 or any other section of the Act,

3. Why Respondent should not be ordered to pay a fine to the Division in the amount of $125,000.00

4. Why Respondent should not be barred from a) associating with a licensed broker-dealer or investment adviser licensed in this state; and b) acting as an agent for any issuer raising funds in this state.

Dated this 19th day of February, 2016

Keith M. Woodwell
Director, Utah Division of Securities

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

Approved:

Jennifer Korb
Assistant Attorney General