

SECURITIES COMMISSION MEETING
MINUTES

October 28, 2010

Securities Staff

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
Julie Price, Board Secretary

Commission Staff

Jane Cameron, Zion's Bank
Erik Christiansen, Parsons Behle & Latimer
Michael O'Brien, VanCott, Bagley, Cornwall & McCarthy
Tim Bangerter, Bangerter Financial Group

Public

Rose Poulsen
Christy Tribe
Ben McAdams
Christian W. Clinger

Minutes: A motion was made seconded to approve the August 26, 2010 minutes. The motion was passed unanimously.

Director's Report: Director Woodwell gave an update on the base budget and the investor education training fund. He explained that we are well within our budget due to staffing vacancies. The education fund should have a healthy balance at the end of this year, even after money was swept back into the state's general fund.

Director Woodwell highlighted one of the investor education events that he participated in. He participated in an AARP tele-town hall meeting. At the height of meeting, there were over 8,000 people on the call.

Director Woodwell indicated that the Division is now fully staffed. Darren Miller was the last employee hired and will start as an examiner this next Monday. The Division will be requesting additional positions next year in connection with the Dodd/Frank Act which will increase the IA assets under management threshold. Director Woodwell has already met with the Governor's Office of Planning and Budget and they have approved the budget increase. He will work with the Legislature to also approve this increase.

Director Woodwell discussed the scheduling of a hearing that the Division suspects will possibly last three days. This would be for a Vescor related case on Christopher Zockoll. Director Woodwell asked the Commission to check their calendars and see if January 26th & 27th would work for this hearing. The Division would provide additional information on this hearing once the scheduling order is sent.

Proposed Legislation: Senator Ben McAdams addressed three draft bills being proposed in the next legislative session and asked for input on them.

The first bill has to do with enhancements to the Utah Uniform Securities Act Enforcement. The focus is to add an enhancement that addresses the abuse of relationships of trust which would include an increase in civil and criminal penalties. Discussion was held on this bill.

The second bill would deal with a whistle blower statute. The purpose of this would be to help reluctant victims to come forward and provide information to the Division and possibly be compensated through the Investor Education Fund. Discussion was held on this bill.

The third bill comes at the Division's request. This would fix an over site in the current Act brought on by a recent Division case. The bill clarifies that an investment advisor must be licensed in another state and have fewer than five clients in Utah to qualify for the out of state licensing exemption.

Senator McAdams also briefly spoke about the inclusion of tenant in common transactions and variable annuities in the scope of the Act.

Compliance & Licensing Section Report: Dave Hermansen reported that Darren Miller is the new securities examiner that was just hired. There was an overwhelming response with over 90 applicants.

This Monday, the Division is doing an outreach program to all of the IA representatives that are state covered. This also includes all the IA representatives that were federally covered that will switch over to the Division in 2011. This event will be held at the Downtown Library and will be web cast and available to anyone that missed it.

The Division is also planning to do another outreach program sometime in January to all the federally covered advisors. Mr. Hermansen believes that this outreach session will prove to be helpful.

His section is still in the process of training one of their newest examiners, Brandon Henrie which is going very well.

Corporate Finance Section Report: Benjamin Johnson reported on several items from the recent NASAA Conference. The Dodd-Frank Federal legislation has some corporate finance related items. One of the major ones was the change in accredited investor definition. There were arguments on how that will be implemented. The new law excludes the value of someone's primary residence from the net worth calculation.

Disqualification provisions initially patterned after the Regulation A disqualification provisions from Rule 262, are now also being added to 506 Offerings. The SEC will be adopting those. The NASAA representative commented on a few concerns that they wanted the SEC to take into consideration.

The Defunct Boston Stock Exchange has been purchased and is being restyled as the new BX Exchange. The new BX Exchange is trying to carve out a situation where the listing standards will remain very high. They will also allow OTC, bulletin board, and pink sheet companies if they meet the requirements. The good news for state regulators is they are not planning to petition the SEC for federal covered status for the exchange.

Enforcement Section Report: Tom Brady reported that they have filed six Orders to Show Cause; five of which have also been referred for criminal prosecution.

The Jonathon Watts case had a preliminary hearing in early September and the judge bound Mr. Watts over on all counts. This is set for jury trial in January. Susan Jones was the investigator and Jonny Stewart will be stepping in to testify on that case.

A case has been filed against Richard Smith as part of the Ascendus Capital case.

A separate case was filed against Justin Williams in Summit County. The initial appearance was finished on Monday and a plea bargain was negotiated. Mr. Williams plead on two counts. One count was second degree felony securities fraud.

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 additional funds for the Division's public service campaign, grant request, and Division operating costs.

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

Consideration of Grant Requests

Junior Achievement: Rose Poulsen and Christy Tribe presented this grant request. The Commission reviewed this grant and put it to a vote.

Action: Jane Cameron recused herself. Michael O'Brien made a motion to approve the grant for \$25,000.00. The motion was seconded and carried.

Approval of Stipulation and Consent Orders

Jared William Bird: Tom Brady reported that Mr. Bird collected \$2,500.00 from an investor and made misrepresentations of material facts by omitting to state material facts in connection with the offer and sale of a security. Mr. Bird is ordered to cease and desist from violating the Utah Uniform Securities Act and pay a \$1,000.00 fine.

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

Globie International, LLC & Joseph Paul Ottis: Counsel for Mr. Ottis in attendance. Tom Brady reported that Mr. Ottis collected a total of \$113,721.38 in investments from one investor. Respondents, directly or indirectly, made false statements, and failed to disclose material information which was necessary in order to make representations not misleading. The respondents will cease and desist from violating the Utah Securities Act and pay a \$1,000.00 fine.

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

Jory Allen: Tom Brady reported that Mr. Allen collected a total of \$454,000.00 in investments from three different investors. He made misrepresentations of material fact and omitted to state material facts in connection with the offer and sale of a security, disclosure of which is necessary in order to make the representations not misleading. The Default Order issued on December 6, 2006, is set aside and Mr. Allen will cease and desist from violating the Utah Uniform Securities Act. Mr. Allen will also pay a fine of \$25,000.00.

Action: Erik Christiansen recused himself. Michael O'Brien made a motion to approve the Default Order. The motion was seconded and carried.

Steve Schatzman: Tom Brady reported that Mr. Schatzman offered and sold securities to an investor and collected a total of \$27,182.19. He made material misrepresentations and omissions in connection with the offer and sale of securities to the investor who lost \$25,142.19 in principal. A Default Order is entered for failing to file a written response and failing to appear at the August 10, 2010 hearing. Mr. Schatzman will cease and desist from violating the Utah Uniform Securities Act and pay a \$35,000.00 fine.

Action: Michael O'Brien made a motion to approve the Default Order. The motion was seconded and carried.

Our VisionQuest, LLC & Floyd Mann: Tom Brady reported that the respondents offered and sold securities to an investor, in or from Utah, and collected a total of \$7,000.00 from him. The respondents made material misrepresentations and omissions in connection with the offer and sale of securities. The investor lost \$6,843.00 in principal. A Default Order is entered for failing to file a written response to the Division and failing to appear at the October 5, 2010 hearing. The respondents will cease and desist from violating the Utah Uniform Securities Act and pay a \$10,000.00 fine.

Action: Michael O'Brien made a motion to approve the Default Order. The motion was seconded and carried.

George Critchfield & Jeffrey Johnson: Tom Brady reported that the respondents collected a total of \$27,000.00 in investments from one investor. They directly or indirectly, made false statements to the investor and failed to disclose material information in order to make representations not misleading. A Default Order is entered for failing to file a written response to the Division and failing to appear at the April 7, 2009 hearing. The respondents will cease and desist from violating the Utah Uniform Securities Act. Mr. Critchfield is ordered to pay a \$25,000.00 fine, while Mr. Johnson is ordered to pay a \$35,000.00 fine.

Action: Michael O'Brien made a motion to approve the Default Order. The motion was seconded and carried.

Imperia Invest IBC: Tom Brady reported that Imperia Invest IBC offered investments through the internet and a network of representatives similar to a multi-level marketing program. The respondent sold an unregistered security to a Utah resident who lost \$240.00 in principal. A Default Order is entered for failing to file a written response and failing to appear at the July 6, 2010 hearing. The respondent will cease and desist from violating the Utah Uniform Securities Act and pay a \$5,000.00 fine.

Action: Michael O'Brien made a motion to approve the Default Order. The motion was seconded and carried.

Matrix Laser Technologies, LLC & Justin C. Williams: Tom Brady reported that the respondents offered and sold securities to an investor and collected a total of \$50,000.00. Mr. Williams made material omissions in connection with the offer and sale of securities to the investor who lost \$42,500.00 in principal alone. A Default Order is entered for failing to file a written response and failing to appear at the July 6, 2010 hearing. The respondents will cease and desist from violating the Utah Uniform Securities Act and pay a \$75,000.00 fine.

Action: Michael O'Brien made a motion to approve the Default Order. The motion was seconded and carried.

ABBC Management Group, Inc. & Adrienne Canata: Tom Brady reported that

respondents offered and sold securities to three investors and collected a total of \$75,000.00. Canata made material misrepresentations and omissions in connection with the offer and sale of securities to the investors. A Default Order is entered for failing to file a written response to the July 20, 2010 Order to Show Cause. Respondents are to permanently cease and desist from violating the Utah Uniform Securities Act and pay a \$75,000.00 fine.

Action: Michael O'Brien made a motion to approve the Default Order. The motion was seconded and carried.

Darren Lee Shanks & Forex Auto Profits, LLC: Dave Hermansen reported that the respondents offered and sold interests in the Forex Auto Profits Forex (FAP) fund to at least 41 investors. The respondents transacted business in this state as a broker-dealer and broker-dealer agent, without being licensed. FAP employed or engaged an unlicensed agent, Shanks. FAP transacted business as an investment adviser while not being licensed. Mr. Shanks transacted business as an investment adviser representative while not licensed. Mr. Shanks and FAP misrepresented or omitted material facts in connection with the offer and sale of interests in the FAP Forex fund. Shanks and FAP engaged in an act, practice, or course of business which operated as a fraud. The respondents provided falsified investor account statements to the Division as well as falsely stating that there were no losses to the investors. The respondents are jointly and severally ordered to pay a \$170,000.00 fine. Mr. Shanks is barred from associating with any broker-dealer or investment adviser licensed in this state, and from acting as an agent for any issuer soliciting investor funds in Utah. The respondents will cease and desist from violating the Utah Uniform Securities Act.

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

Joshua Floyd Black: Dave Hermansen reported that through his activities with Paragon and Ascent, Mr. Black transacted business as an investment adviser representative while not licensed. Mr. Black effected securities transactions not recorded on the regular books or records of the broker-dealer which he represents, which transactions were not authorized in writing by the broker-dealer either prior or after the execution of the transactions. Mr. Black's conduct constitutes dishonest or unethical practices. Mr. Black also made false and/or misleading statements to the Division. Mr. Black is ordered to cease and desist from violating the Utah Uniform Securities Act, pay a \$7,500.00 fine, and undertake remedial actions set forth in the order.

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

Alex Murillo: Dave Hermansen reported that Mr. Murillo was never licensed in the securities industry in any capacity. He received compensation as an unlicensed investment adviser pursuant to two contracts with Ascendus, for soliciting three investors to invest with Richard Smith, Roger Taylor, and Ascendus. Smith and Taylor were the two principals of Ascendus. The three investors in which solicited initially, invested \$190,900.00 in which Mr. Muriillo was paid \$58,512.90 in compensation. Mr. Murillo will cease and desist from violating the Utah Uniform Securities Act, pay a \$10,000.00 fine, immediately disgorge the \$58,512.90 he received from his activities, and provide truthful testimony and cooperation with any state or federal investigation involving Richard Smith and Roger Taylor.

Action: Erik Christiansen recused himself. Michael O'Brien made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Paragon Capital Investments, LP, Ascent Capital Management, LLC, Jonathan Charles Thatcher, Kevin Stewart, and Randall Homer: Dave Hermansen reported that the Paragon and Ascent transacted business as investment advisers while not licensed. Through

their activities with Paragon and Ascent, Thatcher, Stewart, and Homer transacted business as investment adviser representatives while not being licensed. The respondents are ordered to cease and desist from violating the Utah Uniform Securities Act, provide the Division supporting documentation that the fund has been unwound and all remaining monies have been distributed pro-rata among investors, and each pay jointly and severally fines of \$2,500.00.

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

Western Pacific Securities, Inc. & Leonard V. Ross: Dave Hermansen reported that Mr. Ross transacted business in Utah as a broker-dealer agent without being licensed. Western Pacific also transacted business in Utah as a broker-dealer without being licensed. Western Pacific employed or engaged an unlicensed agent, Ross. Respondents will cease and desist from violating the Utah Uniform Securities Act and Western Pacific Securities, Inc. will pay a \$5,000.00 fine.

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

Jesse S. Heaton, Peak Financial Group, LLC, Sherrell Berrett, and Mark Bench: Dave Hermansen reported respondents collected \$965,109.86 from 15 investors which were not registered. Peak transacted business as an investment adviser while not licensed. Heaton, Berrett, and Bench transacted business as investment adviser representatives while not licensed. The respondents failed to disclose material facts and entered into a performance-based contract with clients who did not meet the criteria for such a contract. Mr. Heaton effected securities transactions not approved by or recorded on the regular books and records of his employing broker-dealer, which constitutes a dishonest or unethical practice. Respondents shall wind down and liquidate Peak, cease and desist from violating the Utah Uniform Securities Act, and pay Division imposed fines jointly and severally of \$2,500 for Berrett, Heaton, and Bench. If Mr. Heaton should apply for licensure in Utah as a broker-dealer agent, he will need to re-qualify by taking and passing the Series 7 and 63 examinations.

Action: Erik Christiansen recused himself. Michael O'Brien made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

David Sterling Jensen: Dave Hermansen reported that between 1983 and 1986, Mr. Jensen was employed by several broker-dealer firms. During that time, he passed the Series 22 Direct Participation Limited Representative Examination, and the Series 63 Uniform Securities Agent State Law examination. He failed to pass the Series 7, General Securities Representative Licensing Examination and the Series 39 Direct Participation Program Principal Examination. Mr. Jensen will not act as an investment adviser without first licensing in Utah. If Mr. Jensen violates this order a fine of \$2,500.00 will be imposed.

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

Proposed Rules: Chip Lyons reported on several changes to the Division's rules. R164-2-2 was changed to add custody requirements for investment advisers. NASD references were replaced with FINRA. R164-4 included the adopting of SEC Form ADV and required submissions to be electronic.

Smaller rule changes included: waiving bonding requirements for certain advisers, increasing the threshold for advisers who require pre-payment of advisory fees six months in advance from \$500 to \$1,200 per client, and increasing the time period in which you have to submit audited financial statements from 90 to 120 days.

The Commission approved the changes to the proposed rules.

Next Meeting – Thursday, December 16, 2010 at 2:00 p.m.

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

Approved: _____

Michael O'Brien
Chairman

Date: _____