

SECURITIES COMMISSION MEETING MINUTES

October 29, 2012

Securities Staff Present

Keith Woodwell, Division Director
Benjamin Johnson, Corporate Finance Director
Dave Hermansen, Licensing & Compliance Director
Dee Johnson, Investor Education Director
Thomas Brady, Enforcement Director
Scott Davis, Assistant Attorney General
Jennie Jonsson, Administrative Law Judge
Heidie George, Securities Examiner
Kristi Wilkinson, Securities Investigator
Nadene Adams, Administrative Assistant
Julie Price, Board Secretary

Commissioners Present

Laura Polacheck, AARP Utah
Tim Bangerter, Bangerter Financial Group
Erik Christiansen, Parsons Behle & Latimer
Brent Baker, Clyde Snow & Sessions
Jane Cameron, Zions Bank

Public Present

Preston Cochrane
Rose Poulsen
Ray Martinez

Minutes: A motion was made and seconded to approve the July 19, 2012 minutes. The motion to approve the meeting minutes was passed unanimously.

Director's Report: Director Woodwell gave an update on the Investor Education Fund. The balance is down to \$350,000.00. The balance decrease is due to the ARS Settlements that were paid out last fiscal year. The Division will reduce in some of their expenses to compensate for the decreasing fine revenues coming into the education fund. This includes moving some employees paid that are currently being paid out of this fund to the general fund and finding room in the general budget to reduce some of the expenses coming out of the Investor Education Fund. This might have an impact on the amount of grant requests that the Division can make going forward. Director Woodwell indicated that there are still some other fines that should be coming in during the coming months, but nothing of the magnitude of the ARS fines the Division was getting over the last several years.

The Division is now fully staffed. Kristi Wilkinson has filled the investigator position in the Enforcement Section and Heidie George filled the examiner position in the Licensing/Compliance Section.

Director Woodwell addressed a question that came up in the last commission meeting in

regards to the number of people visiting the Securities website. The Division of Securities website averages about 9,000 – 10,000 visits per month. This shows that the Red Flags campaign has made a difference. The Division has determined that the home page is visited the most often with U4 Form, Form D, and Online Database pages rounding out the top four. There has been some discussion of creating our own investor education website. This has been put on hold until the Division can determine if there will be enough left over in the Investor Education fund to do a series of television and billboards ads. The Division is in the process of determining its next public service campaign. The overall theme connecting all of the Division's investor education campaigns will be: "Check Before you Invest". This theme will be tied to a new logo and our expo displays will carry the same theme.

The Division has received a request from the Legislative's Administrative Rules Review Committee. The request stems from a case settled by the Division several years ago. The individual who was the subject of the action has recently complained to the Division that when people Google his name, the pleadings in the Division's administrative action come up as one of the first things in the Google search. The Administrative Rules Review Committee wanted the Division to address three issues; whether or not the Division should make the pleadings from our administrative cases inaccessible in general internet searches; whether or not there should be some sort of expungement process for administrative proceedings; whether or not modification is needed to the administrative rule that addresses the factors the Division considers when determining the amount of an administrative fine. Commissioner Polacheck commented that it would be a disservice if this information isn't available to the public. Commissioner Cameron said that it is up to the investor to check things out but that this information needs to be available; Commissioner Christiansen said that it is poor policy to leave people in the dark and it's better to error on the side of public disclosure. There was unanimous support by the Commission to continue to make these documents searchable.

Director Woodwell addressed the third issue brought up by the Legislative Administrative Rules Committee in regards to administrative fines. The Division has prepared a modified draft of Administrative Rule R164-31-1. The Division added language to the rule that would more directly link the size of fines to the investor losses including any restitution. The rule amendment also lists the costs that the Division incurred during the investigation or proceeding as a factor to be considered in determining the amount of a fine. Director Woodwell is in agreement with the Administrative Rules Review Committee on these revisions.

Action: Laura Polacheck made a motion to approve the proposed amendment to R164-31-1 to Administrative Rule Fine Amounts. The motion was seconded and carried.

Investor Education Update: Karen McMullin indicated that since August 1st of this year, the Division has done 24 events in which there were 3,000 in attendance. This is up 30% from last year. The Division has done a total of 61 presentations compared to 40 last year. Mrs. McMullin gave an update on the new expo display that has been ordered. It will include three reversible double-sided aluminum stands with two replacement skins and two iPad kiosks. The iPads purchased for these displays will also be used by Division staff members on audits that are conducted. Mrs. McMullin has provided training to staff members on how to use the new iPads.

Ms. McMullin spoke of future events that the Division has coming up as well as several agencies that the Division will be partnering with to do investor education events. The Division is also looking into combing investor education alerts into a booklet instead of handing out flyers and also customizing jump drives with this information.

Licensing & Compliance Section Report: Dave Hermansen indicated the Licensing & Compliance section has increased the number of field audits to five. Two or three of them had significant problems which his staff is looking into. There are three cases where an Order Show Cause has been issued and several that still need to be drafted. There are two cases that involve criminal activity on licensees. One has been referred to the Attorney General's Office while the other is with Salt Lake County.

Corporate Finance Section Report: Benjamin Johnson reported that there has been a significant decrease over the past two years in three categories; registrations, 506 filings, and state-level exemptions. Registrations are down 2.5%; state-level exemptions are down 38%; and 506 filings are down 13.5%. On the 506 front, after their last meeting in July, the SEC put out its initial release on rules relating to the JOBS Act. The Commission laid out areas where they wanted comments and are hoping to build an effective rules structure with the comments that come in.

Enforcement Section Report: Tom Brady reported his section is back on track. His section is fully staffed. Kristi Wilkinson is now a full-time investigator in the Enforcement Section. Matt Edwards, another new investigator in the Enforcement Section is also doing a great job.

The Enforcement Section has 56 open investigations and has 6 to 7 closed investigations with actions. There is a back log of ten administrative actions that need to be prepared and filed.

The Division is trying to create better relationships with other agencies; mostly federal. There is more joint investigative work being done. There is also an increase in communication and involvement in the local securities task force.

Education Fund Expenditure Report: Benjamin Johnson reviewed the updated expenditure report for the Education and Training Fund and discussed line items that were being requested by the Division for Commission approval. This included expert witness support expenses, furniture and office remodeling expenses, and invoices from the PSA campaign.

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

Consideration of Grant Request

Working in Support of Education (WISE): Director Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

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

Junior Achievement: Director Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

Action: Jane Cameron recused herself. Laura Polacheck made a motion to deny the grant. The motion was seconded and carried.

EverFi/AAA Credit Foundation: Ray Martinez from EverFi presented this grant request. The

Commission reviewed this grant and put it to a vote.

Action: Jane Cameron recused herself. Tim Bangerter made a motion to approve the grant. The motion was seconded and carried.

Approval of Stipulation and Consent Orders

DJW Investments, LLC and Darren Dennis White: Tom Brady reported that on June 6, 2008, the Division issued an Order to Show Cause and Notice of Agency Action against the Respondent. A prehearing conference was held on August 4, 2008, in which Mr. White appeared on behalf of both Respondents. Mr. White requested additional time to obtain legal counsel and certain records before being required to respond. The Division stipulated to a September 8, 2008, deadline for a response. The Respondents failed to file their response as required. Therefore, the presiding officer finds that proper factual and legal bases exist for entering a default order against the Respondents.

The Respondents, directly or indirectly, made false statements to investors. The Respondents also directly or indirectly, failed to disclose material information that was necessary in order to make representations made not misleading, in connection with the offer and sale of securities.

The respondents are to cease and desist from engaging in any further conduct in violation of Utah Code and pay a \$750,000.00 fine

Action: Tim Bangerter made a motion to approve the Order on Motion for Default. The motion was seconded and carried.

Colby J. Sanders: Tom Brady reported that from September 2006 to December 2007, the Respondent offered and sold securities to investors, in or from Utah, and collected \$1,549,457.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investors. The investors lost \$1,510,532.00 in principal alone.

The Respondent will cease and desist from violating the Utah Uniform Securities Act, be barred from associating with any broker-dealer or investment adviser licensed in Utah, barred from acting as an agent for any issuer soliciting investor funds in Utah, pay a \$30,000.00 fine, and cooperate with the Division in future investigations.

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

Fruitland Development Group, LLC. And Derrick S. Betts: Tom Brady reported that between November 2006 and January 2007, the Respondents solicited investments in Fruitland Development Group, LLC totaling \$800,000.00 from at least five Investors. The Respondents told investors their money would be used to purchase a subdivision in Duchesne County, Utah, which would later be developed and sold. The Respondents told investors they would become a member of Fruitland and received their principal investment within a few months, in addition to a return on their funds in anywhere from 60 days to two years. The investors lost all of their money. The Respondents made misstatements of material facts and by omitting to state material facts in connection with the offer and sale of a security.

The Respondents will cease and desist from violating the Utah Uniform Securities Act, Mr. Betts will be barred from the securities industry in Utah, cooperate with the Division in any future investigations, and agrees to pay restitution if ordered in the criminal case.

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

Fortius Group, LLC, Fortius Fund, LLC, Powder Ridge Land, LLC, Powder Ridge Developer I, Ltd., Powder Ridge Management, Inc., Chamonix Capital I, LLC, Amsterdam Capital XII, LLC, and David Ryan Barlow: Tom Brady reported that on May 9, 2012, the Division issued an Amended Order to Show Cause against the Respondents. The Notice of Agency Action accompanying the Order to Show Cause set a hearing for July 11, 2012. The hearing was continued to September 5, 2012 at 10:00 A.M. At the hearing, the Division was represented by the Office of Attorney General and Division staff. The Respondents failed to appear nor did any party or counsel appear on the Respondent's behalf. The Division moved for Entry of a Default Judgment.

The Respondents failed to disclose material information which was necessary in order to make statements made not misleading in connection with the offer and sale of securities to investors.

The Respondents are ordered to cease and desist from engaging in any act or practice constituting a violation of any act and pay a \$377,000.00 fine.

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

Danielle L. Archuleta: Tom Brady reported that between June 2007 and August 2007, the Respondent offered and sold an investment contract in an investor and collected a total of \$300,000.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investor. The investor lost \$205,000.00 of her principal.

The Respondent is ordered to cease and desist from violating the Utah Uniform Securities Act, be barred from the securities industry in Utah, and pay a \$500.00 fine.

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

Insane Asylum Skateboards, Inc. and David Curtis Allen: Tom Brady reported that from December 2009 and March 2011, the Respondents offered and sold stock to investors and collected at least \$47,352.00. The Respondents made material misstatements and omissions in connection with the offer of securities to the investors. The investors lost \$45,852.00 of their principal.

The Respondents will cease and desist from violating the Utah Uniform Securities Act and Mr. Allen is barred from the securities industry in Utah.

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

Ronald Dean Udy: Tom Brady reported that on August 28, 2012, the Division issued a Notice of Agency Action. A response to the accompanying Order to Show Cause was due by October

2, 2012. A prehearing conference was held on October 4, 2012. At the hearing, the Division was represented by the Office of Attorney General and Division staff. The Respondent failed to file a response to the Division's Order to Show or make any effort to participate in the proceeding. The Division moved for Entry of a Default Judgment.

The Respondent directly or indirectly, failed to disclose material information that was necessary in order to make representations made not misleading, in connection with the offer and sale of securities. The Respondent also directly or indirectly, made false statements to investors in connection with the offer and sale of securities.

The Respondent is ordered to cease and desist from violating Utah Code Annotated 61-1 et seq. and pay a \$107,500.00 fine

Action: Tim Bangerter made a motion to approve the Order on Motion for Default. The motion was seconded and carried.

Maverick Mining Company, Inc. and Mark K. Bowman: Tom Brady reported that on August 3, 2012, the Division issued a Notice of Agency Action. A response to the accompanying Order to Show Cause was due by September 7, 2012. A prehearing conference was held on October 4, 2012. At the hearing, the Division was represented by the Office of Attorney General and Division staff. The Respondents failed to file a response to the Division's Order to Show or make any effort to participate in the proceeding. The Division moved for Entry of a Default Judgment.

The Respondents directly or indirectly, failed to disclose material information that was necessary in order to make representations made not misleading, in connection with the offer and sale of securities. The Respondents also directly or indirectly, made false statements to investors in connection with the offer and sale of securities.

The Respondents are ordered to cease and desist from violating Utah Code Annotated 61-1 et seq. and pay a \$156,250.00 fine.

Action: Laura Polacheck made a motion to approve the Order on Motion for Default. The motion was seconded and carried.

Joshua Lehi Trent dba, Acta Non Verba, LLC. Tom Brady reported that in or about February 2010, the Respondent offered and sold securities to investors and collected at least \$20,000.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to investors. The investors lost all \$20,000.00 of their investment funds.

The Respondent will cease and desist from violating the Utah Uniform Securities Act, be barred from the securities industry in Utah, cooperate in any future investigators and/or prosecutions relevant to this matter, and pay a \$25,000.00 fine.

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

The McKinley Fund, LLC, Altamont Global Partners, LLC, Philip Leon, and John G. Wilkins: Benjamin Johnson reported that on August 15, 2012, the Division issued a Notice of Agency Action. A response to the accompanying Order to Show Cause was due by September 19, 2012. A prehearing conference was held on October 4, 2012. At the hearing, the Division

was represented by the Office of Attorney General and Division staff. The Respondents failed to file a response to the Division's Order to Show or make any effort to participate in the proceeding. The Division moved for Entry of a Default Judgment.

The Respondents directly or indirectly, failed to disclose material information that was necessary in order to make representations made not misleading in connection with the offer and sale of securities.

The Respondents are ordered to cease and desist from violating Utah Code Annotated 61-1 et seq. and pay a \$5,000.00 fine.

Action: Laura Polacheck made a motion to approve the Order on Motion for Default. The motion was seconded and carried.

VYSN Capital, LLC. And Shawn Blaine Smart: Tom Brady reported that from February 2007 to April 2007, the Respondents participated in the offer and sale of securities to at least two investors and collected no less than \$200,000.00. The investors' \$200,000.00 in principal was used by the Respondents for purposes not disclosed to the investors. The Respondents made material misstatements and omissions in connection with the offer of securities to the investors. They made untrue statements of material fact and omitted to state material facts which were necessary in order to make representations made not misleading, in connection with the offer and sale of securities. VYSN also transacted business in Utah as an agent without a license.

The Respondents will 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. VYSN is order to pay a \$100,000.00 fine.

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

Scheduling of Upcoming Commission Meetings: Commissioner Christiansen spoke about scheduling upcoming meetings. They will continue to be scheduled the fourth Thursday of every other month.

Next Meeting: January 24, 2013

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

Approved: 
Erik Christiansen, Chairman

Date: 1/24/13