

**UTAH SECURITIES COMMISSION**  
**MINUTES**

**March 17, 2011**

**Division Staff Present**

Keith Woodwell, Division Director  
Dave Hermansen, Director of Compliance  
Benjamin Johnson, Director of Corporate Finance  
Michael Hines, Director of Enforcement  
Nadene Adams, Administrative Assistant  
Thomas Brady, Analyst  
Chip Lyons, Analyst  
Ken Barton, Examiner  
Julie Price, Board Secretary  
Jeff Buckner, Division Counsel  
Steve Eklund, Administrative Law Judge  
Thad Levar, Commerce Deputy Director  
Francine Giani, Commerce Executive Director

**Securities Commissioner's Present**

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

**Administrative Hearing: ZCOM Networks, Inc., Matrix Management, Inc., and Alex R. Parsinia**

Steve Eklund, Administrative Law Judge  
Jeff Buckner, Division Counsel  
Diana Parrish, Division Witness  
Respondents not present  
Securities Commission  
Keith Woodwell, Division Director

**Action:** Erik Christiansen made a motion to deny the motion for continuance made by the respondents. The motion was seconded and carried.

**Action:** Erik Christiansen made a motion to approve the default order be entered and the respondent's answer be stricken from the record. The motion was seconded and carried.

**Action:** The State's Motion of Limine was determined to be unnecessary since a default order was granted.

**Administrative Hearing: Nutorque Engine Corporation & Amos R. Mansfield**

Steve Eklund, Administrative Law Judge  
Jeff Buckner, Division Counsel  
Amos R. Mansfield, Respondent  
Joseph Hepworth, Respondent's Counsel  
Matt Howell, Respondent's Counsel Associate

Jeff Nielsen, Division Witness  
Securities Commission  
Keith Woodwell, Division Director

**Action:** The State's Motion of Limine was determined to be mute.

**Action:** Erik Christiansen made a motion to permit the State to reopen its case in limited part to get the PPM into evidence. The motion was seconded and carried.

**Action:** A motion was made by the State to reopen the case to take judicial notice of the judgments. The motion was put to a vote with three commissioners in agreement to the motion and two commissioners opposed.

**Action:** Submission of material brief by Division's counsel and respondent's counsel to Judge Eklund within ten days. The Commission will then enter their decision.

**Minutes:** A motion was made and seconded to approve the January 20, 2011 minutes. The motion was passed unanimously.

**Director's Report:** Director Woodwell reported that it was a successful 2011 Legislative Session, with all four bills that were endorsed by the Commission passing. SB 98 addressed correcting technical issues to the Utah Securities Act. SB 100 addressed the whistle-blower program which went through some amendments. The main change was that if there is an employee of an SEC registered firm, they are exempt from the state whistle-blower program because they are subject to the SEC whistle-blower rule. This bill creates incentive awards for individuals who bring original information to the Division which results in a fine. A victim can then make an application to the Commission for an award up to thirty percent of the amount that was collected. SB 101 addressed affinity fraud and creates enhanced penalties for securities fraud that exploits vulnerable adults or affinity fraud networks. SB 151 addressed the tenant in common exclusion. The bill still has the exclusion in place but it is more narrowly focused. The bill took out the catch all language which was causing problems with criminal cases and took out the catch all language at the end.

The Division's budget request to fund four additional positions was approved. The Division is in the process of hiring two examiners at this time and one or two additional positions after the starting of the new fiscal year. One of those positions will be split between the licensing/compliance and corporate finance sections.

Mr. Woodwell discussed a new single portal to check any professional license. This was the governor's initiative in which he wanted one portal to check any type of professional license in the State of Utah. The website is [safetynet.utah.gov](http://safetynet.utah.gov). The Department of Commerce is in the process of coming up with an advertising campaign to let the public know of this new resource available to them.

**Compliance & Licensing Section Report:** Dave Hermansen reported that his section is still in the process of training their two newest staff members. That is going very well. They have also stepped up their audit program in anticipation of the applications for new investment advisers.

During the month of March, his section has completed three audits and has scheduled four additional audits for the following month. There are several outstanding orders to show cause that haven't been settled but he suspects that they will be settled soon. Several of them are very large.

Mr. Hermansen gave an update on the concern the Division had with PFS Investments. A letter of caution was sent to them and examiner Ken Barton will give an outlined response later in this meeting.

**Corporate Finance Section Report:** Benjamin Johnson reported that his section is in the process of sending out a stop order on a 506 Offering. This is for Harmonic Energy, Inc. who has worked solely through their CEO/President Dan Forgio. The Division has been in contact with Mr. Forgio on several occasions trying to get him to correct the numerous representations in which he will not comply with completing the filing. This includes insufficient filing fees and no disclosure of the date of the first sale in Utah. Mr. Johnson's section will be filing a petition to impose a stop order and a companion order to show cause for violation of the state notice filing requirement.

**Enforcement Section Report:** Michael Hines gave an update on the William Hammons trial that was held several weeks ago in St. George, Utah. It started with two days of jury selection followed by six days in which the State presented their evidence. The State called seven witnesses and introduced 99 exhibits. The defenses case was rather sort in which they narrowed the number of witnesses they called to two. The jury deliberated for only four hours and convicted Mr. Hammons on seven of the nine felony counts. Mr. Hammons will be sentenced on April 15, 2011.

**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 grant requests by Mountain West Capital Network and AARP, Division operating costs, and some holdover invoices from the last public service campaign. Darren Miller, who is currently paid out of this fund, will be switched to be paid out of the base budget. The receptionist will be the only staff member that will continue to be paid from this fund.

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

#### **Consideration of Grant Requests**

**Mountain West Capital Network:** Keith Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

**Action:** Tim Bangerter made a motion to approve the grant for \$2,500. Jane Cameron recused herself. The motion was seconded and carried.

**AARP:** Laura Polacheck presented this grant request. The Commission reviewed this grant and put it to a vote.

**Action:** Erik Christiansen made a motion to approve the grant for \$20,000 to be made in two installments. Laura Polacheck recused herself. The motion was seconded and carried.

**PFS Investment Presentation:** Ken Barton gave an update on the Division's investigation of PFS Investments which was an extension of two investigations into a branch manager and OSJ supervisor (Payne & Murton). The Division wanted to see if there were any responsibilities that the firm had in preventing the types of problems that they had with Mr. Payne and Mr. Murton. In the Division's letter to PFS, they identified several concerns that they had with the supervisory structure: how well was the firm actually protecting investor's money and did the firm have a structure in place to effectively supervise their representatives in Utah.

There were three main issues that the Division had with PFS. The first was the sloppy way they were handling investor's money. There was significant concern with covering up the sloppiness

and failing to make the appropriate entries in the books and records in particular, the firm's trade blotters. When a piece of paperwork was not in good order, rather than taking some form of action, the paperwork was just left to age.

The second issue was that the supervisors in Utah had a tendency to over rely on the home office to provide supervision of its representatives. There was also a lack of discipline in having the supervisors effectively use individuals that didn't have a securities license to perform securities related supervisory activities.

The final issue was with the structure in the way PFS does business. They are set up as a multi-level marketing structure.

PFS Investments filed a response with the Division and outlined the steps that the company was going to take to resolve all of the Division's issues and concerns. They are in the process of making those changes. The Division is satisfied with the progress and changes that PFS has put into place and will continue to monitor their process over the coming years.

### **Approval of Stipulation and Consent Orders**

**Christopher C. Harris (SD-08-0054):** Tom Brady reported that Mr. Harris, directly or indirectly, made false statements in regard to oil sales in connection with the offer and sale of a security. Mr. Harris, directly or indirectly, failed to disclose material information which was necessary in order to make representations made not misleading, in connection with the offer and sale of a security. Mr. Harris stipulated to cease and desist from violating the Utah Uniform Securities Act, pay a \$25,000 fine, and cooperate with the Division in any future investigations.

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

**Christopher C. Harris, Douglas Eugene Kirgis, and Brian Grant Turley:** Tom Brady reported that the respondents together collected at least \$270,000 in investor funds for Resort Holding from at least four investors. The respondents, directly or indirectly, made false statements in connection with the offer and sale of a security. The respondents, directly or indirectly, failed to disclose material information which was necessary in order to make representations made not misleading, in connection with the offer and sale of a security. The respondents will each pay a fine, cease and desist from violating the Utah Uniform Securities Act, and cooperate with the Division in any future investigations.

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

**Burns & Burns Associates, Inc. and Anthony James Burns:** Tom Brady reported that from March 2006 to August 2006, the respondents offered and sold securities to investors, in or from Utah, and collected a total of \$95,000. Mr. Burns, made material misstatements and omissions in connection with the offer and sale of a security in which the investors lost \$83,600 in principal. The respondents, directly or indirectly, failed to disclose material information, which was necessary in order to make representations made not misleading, in connection with the offer and sale of securities to the investor. The respondents will cease and desist from violating the Utah Uniform Securities Act; Mr. Burns is barred from associating with any broker-dealer or investment adviser licensed in Utah and acting as an agent for any issuer soliciting investor funds in Utah, and will cooperate with the Division in any future investigations.

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

**Matrix Laser Technologies, LLC and Justin C. Williams:** Tom Brady reported that there was previously a default order taken on this case. From approximately January 2007 to February 2007, respondents offered securities, and in February 2007 sold securities to an investor, in or from Utah, pursuant to a promissory note between the respondents and the investor, and respondents collected a total of \$50,000. Mr. Williams made material omissions in connection with the offer and sale of securities. The investor was repaid \$7,500, but has not been repaid the remaining \$42,500 in principal. The respondents shall cease and desist from violating the Utah Uniform Securities Act, pay a \$50,000 fine, Mr. Williams is barred from associating with any broker-dealer or investment adviser licensed in Utah or acting as an agent for any issuer soliciting investor funds in Utah, and cooperate with the Division in any future investigations.

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

**Paragon Investments, Inc. and Steven E. Elmont:** Tom Brady reported that from approximately December 2005 to August 2007, the respondents offered and sold securities to investors, in or from Utah, and collected a total of at least \$6,010,000. The respondents made material misstatements and omissions regarding the \$6,010,000 invested by the investors at issue. The investors lost \$4,002,000 in principal. The respondents, directly or indirectly, failed to disclose material information which was necessary in order to make the statements made not misleading, in connection with the offer and sale of a security. The respondents will cease and desist from violating the Utah Uniform Securities Act; Mr. Elmont is barred from associating with any broker-dealer or investment adviser licensed in Utah or acting as an agent for any issuer soliciting investor funds in Utah, and cooperates with the Division in any future investigations.

**Action:** Tim Bangerter made a motion to approve the Stipulation and Consent Order as to Paragon Investments and Steven E. Elmont. The motion was seconded and carried.

**Next Meeting** – May 26, 2011 at 2:00 pm.

Michael O'Brien made a motion to adjourn the meeting. The motion was seconded and carried.

Approved: \_\_\_\_\_



Michael O'Brien  
Chairman

Date: \_\_\_\_\_

May 26, 2011