

SECURITIES COMMISSION MEETING MINUTES

March 22, 2012

Securities Staff Present

Keith Woodwell, Division Director
Benjamin Johnson, Director of Corporate Finance
Nadene Adams, Administrative Assistant
Thomas Brady, Acting Enforcement Director
Chip Lyons, Analyst
Karen McMullin, Investor Education Coordinator
Ann Skaggs, Examiner
Jennifer Bolton, Public Information Officer
Julie Price, Board Secretary

Commissioners Present

Jane Cameron, Zion's Bank
Laura Polacheck, AARP Utah
Tim Bangerter, Bangerter Financial Group
Erik Christiansen, Parsons Behle & Latimer

Minutes: A motion was made and seconded to approve the January 26, 2012 minutes. The motion to approve the meeting minutes was passed unanimously.

Director's Report: Director Woodwell reported that Brent Baker's name has been submitted to the governor's office for approval to replace Commissioner Jan Graham. Mr. Baker will be a big asset to the Commission. Director Woodwell believes that he will be confirmed by the next commission meeting.

The Education Fund balance now stands at about \$570,000.00 which includes the expenses associated with the television spots and billboards. Originally the Commission authorized about \$225,000.00 for this campaign. All of these funds have been committed through various television ads, billboards, and radio components. If there were additional funds left over, the Division was going to do bus and train wraps. The Division is seeing an impact with all the public service mediums that have been used. The television and billboard ads are expected to run about another two months.

In the Legislative session there was a one percent across the board increase passed for cost of living adjustment for all state agencies.

Michael Hines position has been kept open during some of the appeals process. This week the Division has advertised this position internally and will be permanently filled within two weeks. Director Woodwell explained that the Division is double booked on investigators. When the last investigator position was advertised, there was two good applicants that the Division ended up hiring. Once the enforcement director position is filled, then we will use one of those investigators to backfill that position.

Director Woodwell is extremely pleased with where our investor education efforts are going. He turned the time over to Karen McMullin, the Division's Investor Education Coordinator to give an update on investor education efforts.

Ms. McMullin has set the goal of the Division making at least 48 investor education presentations for this year. This includes 12 presentations for large groups (500 or more people), 24 presentations for medium groups (100 people), and 12 presentations for small groups (20 to 30 people). The Division is also sending educational materials to those that have filed complaints or phone calls that have been received. The Division has been able to send 27 individuals specific investor education materials in response to their complaints or phone calls.

In January-February, the Division was involved with ten investor education events. From March-May, 14 events have been scheduled. By the end of May, the Division will have participated in 24 events.

The Division is requesting some additional funding for their investor education efforts. FINRA supplies some of the education materials. It is estimated that so far they have supplied the Division with about \$30,000.00 worth of education materials. The Division also has a credit account with Investor Protection Trust which has supplied the Division with Financial Records cd's. The Division's printing costs are being used for the Red Flags flyers and Division-specific pamphlets based on NASAA investor alerts. The budget will also cover the costs associated for registering for events, travel costs, and updating our display banners which are dated and intimidating.

Tom Brady demonstrated the presentation display that the Division is considering. Both Mr. Brady and Ms. McMullin feel that our existing display banners are not current and some of the information is hard to see. The new presentation display will be much bigger and can accommodate interchangeable panels.

The Division is asking that the Commission authorize \$12,000.00 for a new presentation banner, and other investor education materials.

Compliance & Licensing Section Report: Chip Lyons expressed what a tremendous loss it is to the Compliance & Licensing Section with Sharon Weinle leaving the Division. Ms. Weinle led up a pretty significant investigation which is in the final stages.

The Compliance & Licensing section has one criminal action scheduled for a preliminary hearing. The preliminary hearing is scheduled for April 9th and will involve Richard Smith and Roger Taylor. The criminal action is for running a small Ponzi scheme.

Corporate Finance Section Report: Benjamin Johnson reported that it is looking like the House version of the Crowd Funding Provision is going to be fully implemented by the White House. This is going to be, from an investor protection standpoint, fairly catastrophic. The offer and sales will be federal covered securities. Issuers will be allowed to utilize general solicitation and advertising. Mr. Johnson expects to see internet, television, and other media as well.

It appears the cap will be \$10,000.00 per investor if they stay with the original House figure. The state securities regulator community is bracing for impact. The Division is

afraid of getting flooded with small complaints. Director Woodwell interjected that it is \$10,000.00 per investor up to a total of \$1,000,000.00 for the aggregate offering without audited financials or \$2,000,000.00 with audited financials.

Enforcement Section Report: Tom Brady reported that with Michael Hines gone, Director Woodwell has asked him to step in as acting enforcement director.

Mr. Brady reported that his section has 43 open cases. Each investigator is handling about 10 cases each. For this fiscal year, the enforcement section has opened 48 cases and closed 48 cases.

Mr. Brady expects that a hearing will take place in either May or July. The administrative law judge has granted two days for this trial. The Commission and Division scheduled July 19th and 20th as the dates for this trial.

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 expert witness support expenses, investor education outreach expenses, and the Utah Public Radio and MountainWest Capital grant requests.

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

The Division requested that the budget for investor education events and materials be raised from \$6,000.00 to \$12,000.00 due to the increase in investor education presentations.

Action: Tim Bangerter made a motion to approve the increase for investor education events and materials. The motion was seconded and carried.

Consideration of Grant Request

Utah Public Radio: Director Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

Action: Laura Polacheck made a motion to approve the grant. The motion of \$5,000.00 was seconded and carried. The Commission approved a lesser amount with some additional requirements.

MountainWest Capital Network: Benjamin Johnson 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. The motion was seconded and carried.

Approval of Stipulation and Consent Orders

Northstar Energy Inc., Larry M. Koonce, and Paul M. Esposito: Benjamin Johnson

reported that on July 14, 2005, the Division received a Form D notice of exempt offering of securities in connection with Northstar's limited offering of equity for the Northstar Las Raices Multiwell Prospect Joint Venture. According to its Form D filing, the respondents made a federal covered security notice filing and sold interests to one one-accredited Utah investor for \$14,355.00. The Division reviewed Northstar's website and determined that the statements which appeared on its website, constitute general advertising of its limited offering. On or about August 1, 2005, the Division contacted the respondent's attorney and requested that the website be shut down. The website remained accessible to the public via the internet.

The securities sold by the respondents were not registered for sale in Utah, and do not qualify for any exemptions under the Act. Although the respondents properly filed a Form D with the Division giving notice of their intent to rely on Rule 506 for a limited offering exemption, the respondents disqualified the offering from exemption by advertising the offering on Northstar's website.

The action against respondents Larry M Koonce and Paul M. Esposito are hereby dismissed. The Division imposes a fine against respondent Northstar Energy in the amount of \$15,000.00. The 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.

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

Goldman, Sachs, & Co.: Chip Lyons reported that the respondent participated in the marketing and sale of auction rate securities (ARS). The respondent acted as an underwriter and as the auction broker-dealer for certain issues of auction rate securities. When acting as sole manager, the respondent was the only firm that could submit bids into the auction on behalf of its clients and/or other broker-dealers who wanted to buy and/or sell any auction rate securities in such auctions. When acting as lead manager, the respondent was the primary firm that could submit bids into the action, but other auction broker-dealers were able to submit orders on behalf of their clients as well. The respondent received revenue in connection with auction rate securities, including an underwriting fee representing a percentage of total issuance and a fee for managing the auctions.

The respondent conveyed to certain clients that ARS were secure liquid securities that were a suitable alternative for cash management purposes. It did so through its sales force, some of whom represented to certain investors that auction rate securities were highly liquid, safe investments for cash management purposes. These representations were misleading as to certain investors.

The respondent shall cease and desist from violating the Act and will not engage in the conduct described in the Act in connection with the marketing and sale of ARS. The respondent shall pay a fine of \$88,007.05 to the Division and comply with all other terms as set forth in the Stipulation and Consent Order.

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

G Fund Management, LLC. & Darin Layne Kraci: Chip Lyons reported that from June 2010 through 2011, G Fund associated with an unlicensed investment adviser representative. The respondents failed to file an investment adviser representative application for Kevin M. Hurley with the Division. As a result, Mr. Hurley never became licensed as an investment adviser representative of G Fund.

Believing he was properly licensed with G Fund, Mr. Hurley transacted business as an investment adviser representative of G Fund for approximately 15 months and received approximately \$33,590.00 in compensation from G Fund.

The respondent 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. The respondent shall pay the division a \$2,500.00 fine.

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

Next Meeting: May 31, 2012.

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

Approved: _____


Erik Christiansen, Chairman

Date: _____

5/31/12