

SECURITIES COMMISSION MEETING
MINUTES

January 20, 2011

Securities Staff

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
Darren Miller, Examiner
Julie Price, Board Secretary
Jeff Buckner, Division Counsel

Commission Staff

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

Minutes: A motion was made seconded to approve the October 28, 2010 minutes. The motion was passed unanimously.

Director's Report: Director Woodwell reported that yesterday the administrative law judge continued the Nutorque Engine Corporation and Amos R. Mansfield hearing. Discussion was held as to when to reschedule this hearing. This hearing has been rescheduled for March 17, 2011 at 9:00 AM at which time the Commission will also hold its next Securities Commission meeting.

Mr. Woodwell gave an update on the current budget situation. As a result of the Dodd/Frank Act, our staff will see an increased workload as far as the number of investment advisors licensing with our Division. Our request for additional staff was included in the governor's base budget but this was not included in the legislative budget. The legislative base budget has a 7% cut for the Department of Commerce. They made a suggestion on how they were going to implement that. It may cost the Division one staffing position. Mr. Woodwell asked if one or two Commissioners would be interested in testifying before the Appropriations Committee as to our budget and would keep them updated on this issue.

The Education Fund still has a healthy balance. We do have a few more auction rate securities settlements that are coming in and that should raise the balance.

Mr. Woodwell gave an update on investor education. He has asked Karen McMullin and Julie Price to go through all the investor education materials that the Division has and sort it out to determine what programs we can be doing in which we are not doing now. The Division is hoping to run some type of public service announcement similar to the previous year's campaign sometime in the summer months.

There has been some changes in Division staff. Gary Bowen in the licensing/compliance section recently retired on December 31st. He had a very storied career and will be missed.

Mr. Woodwell passed out final versions of the bills sponsored by Senator McAdams. There are three bills that have been numbered. He went briefly through each bill and answered the

Commissions questions. Senate Bill 98, Security Related Amendments, was at the request by the Division in order to clean up and clarify a few items. Senate Bill 100, Securities Whistleblower Program Act, gives an incentive to people who bring cases to the Division through our Education Fund. Senate Bill 101, Utah Uniform Securities Act Enforcement, defines affinity fraud and enhances the penalties associated with it.

Commissioner Bangarter asked Mr. Woodwell to give the Commission an update on the tenant in common and variable annuity issues. Mr. Woodwell reported that the insurance department has adopted a new rule that states if an insurance agent makes any type of recommendation as to variable annuities that they must have a securities license. Mr. Woodwell is meeting with Senator McAdams today to discuss the tenant in common issue. He would like to run a bill that is a simple repeal.

Action: Erik Christiansen made a motion to support the securities legislation proposed by Senator McAdams; Senate Bills 98, 100, and 101. The motion was seconded and carried.

Compliance & Licensing Section Report: Dave Hermansen reported that prior to Gary Bowen's retirement; the Division hired one other examiner, Darren Miller. He has been working in the industry for 15 years and will be taking over Gary's workload for the time being.

With the retirement of Gary Bowen, the compliance/licensing section has had to re-screen complaints due to the lack of staff. Mr. Hermansen said that it was unfortunate that the Division has had to do this. His section has also had to terminate the review of licensing issues associated with 506 offerings that come into the Division for approval. Mr. Hermansen has also had to reduce the audit schedule until they can hire more people.

Mr. Hermansen said that Investment Adviser renewals will be coming in and he expects that this will bottle neck in the next few months.

The local office of the SEC will be coming to the Division on Monday to conduct some training. They will be training our examiners on issues that they have run into with federally covered advisers. They will make staff aware of the firms that they have had problems with.

Mr. Hermansen commented on one item not on the agenda; Christopher Zockoll. This was scheduled for next week as a three day hearing. He settled this with the Division this morning. The stipulation will be emailed to the Commission on Monday for their review and Julie Price will come around the middle of next week for their signatures.

Corporate Finance Section Report: Benjamin Johnson reported that he has received the updated filing figures for 2010 as compared to the previous year. It looks like there have been some healthy increases. Security registrations have gone up by 17%; 506 filings have increased by 12%; and in-state exemption requests are up by 50%. Mr. Johnson commented that it looked like things had bottomed out in 2009 and are getting some healthy gains in filings.

NASAA reports that they are making good progress with the electronic 506 filing system that will be a companion to the SEC Edgar filing system for 506 filings. NASAA has requested each states requirements and Mr. Johnson is optimistic that a beta version of the system will be available to start testing in April or May. He is hoping that the system will be in place some time this summer.

Enforcement Section Report: Michael Hines reported that since the last commission meeting, his section has filed six criminal charges; had eight criminal convictions; settled ten administrative actions; and filed seven additional criminal actions.

Mr. Hines commented on the fact that they are getting some good incarcerations. The reason is because they have judges that are putting offenders in prison and stacking their sentences.

The Attorney General's office has recently replaced Charlene Barlow with Che Arguello. He is coming up to speed very quickly on securities issues. His first major case will be the prosecution of Bill Hammons in St. George, Utah.

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 request by KUED, Division operating costs, and some holdover invoices from the last public service campaign.

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

Consideration of Grant Requests

KUED: Keith 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 for \$15,000.00. The motion was seconded and carried.

Approval of Stipulation and Consent Orders

Rick Lawrence Brown: Tom Brady reported that Mr. Brown made material misrepresentation and omissions with regard to the \$7,000.00 collected from investors. The investors received no return on their investment and lost \$5,000.00 in principal alone. Mr. Brown stipulated to cease and desist from violating the Utah Uniform Securities Act, pay a \$10,000.00 fine, and 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.

Frank J. Gillen (SD-06-0072): Tom Brady reported that from June 2004 to February 2005, Mr. Gillen, directly or indirectly, solicited a total of \$454,000.00 in investments from three different investors. Mr. Gillen, directly or indirectly, made false statements and failed to disclose material information, in connection with the offer and sale of a security to investors. Mr. Gillen stipulated to cease and desist from violating the Utah Uniform Securities Act and pay a \$175,584.00 fine.

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

Frank J. Gillen (SD-07-0009): Tom Brady reported that Mr. Gillen made misrepresentations of material fact and failed to disclose material information to investors in connection with the offer and sale of securities. Mr. Gillen stipulated to cease and desist from violating the Utah Uniform Securities Act and pay a \$37,637.00 fine.

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

Mark A. Meiling: Tom Brady reported that from approximately January 2006 to November 2006, Mr. Meiling offered and sold securities to a group of investors, in or from Utah,

and collected a total of at least \$60,000.00 of which investors lost \$46,000.00 in principal alone. Mr. Meiling, directly or indirectly, in connection with the offer and sale of a security, made false statements and failed to disclose material information necessary in order to make the representations not misleading. Mr. Meiling stipulated to cease and desist from violating the Utah Uniform Securities Act, pay a \$51,000.00 fine, and cooperate with the Division in any future investigations.

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

Northridge, Inc, Eastgate Capital, LLC, Clyne Willis Long, Joshua Scott Lindsay, Aaron Bruce Sharp, Bretton Royce Lind: Tom Brady reported that from October 2005 to June 2007, the respondents offered and sold investment contracts to investors and collected a total of \$344,046 in which investors lost \$324,626.94 in principal. The respondents, directly or indirectly, in connection with the offer and sale of a security, made false statements and failed to disclose material information necessary in order to make the representations not misleading. The respondents stipulated to cease and desist from violating the Utah Uniform Securities Act, pay a \$50,000.00 fine, 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.

Our Unsung Heroes & Paul Winston McSweeney: Tom Brady reported that in 2006, Mr. McSweeney and others collected an investment of \$15,000.00 from a Utah couple, in Our Unsung Heroes. Investors were told their money would be used to purchase an airplane on eBay, and the airplane would be used for flying lessons. In exchange for their investment, Mr. McSweeney and others gave the investors a promissory note to be paid out monthly for a term of three years. Mr. McSweeney made misrepresentations of material fact and omitting to state material facts in connection with the offer and sale of a security. The respondents stipulated to cease and desist from engaging in any further conduct in violation of the Utah Securities Act, are permanently 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.

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

Reliance Investments, LLC & Bryce Robert McBride: Tom Brady reported that from December 2007 to January 2008, the respondents offered and sold securities to an investor, in or from Utah, and collected a total of \$150,000.00 in which the investor lost \$150,000.00 in principal. The respondents, directly or indirectly, in connection with the offer and sale of a security, made false statements and failed to disclose material information necessary in order to make the representations not misleading. The respondents stipulated to cease and desist from violating the Utah Uniform Securities Act, pay a \$50,000.00 fine, cooperate with the Division in any future investigations, and Mr. McBride 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.

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

Scott Lamar Rhoads, Zacharia Lamar Rhoads, and Auto Rama, LLC: Tom Brady reported that the respondents, directly or indirectly, made false statements and failed to disclose material information necessary in order to make the representations not misleading in connection with the offer and sale of securities. Between February 2003 and November 2005, the respondents collected at least \$632,704.00 from nine Utah investors, providing a promissory note for each investment. All together, investors lost at least \$632,704.00 from their investments. The respondents stipulated to cease and desist from violating the Utah Uniform Securities Act,

pay a \$40,000.00 fine, 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 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.

Kevin Lawrence Wright: Tom Brady reported that Mr. Wright collected \$100,000.00 from one investor in order to purchase three different properties. The investor received \$25,000.00 from Mr. Wright but is still owed \$75,000.00 in principal alone. Mr. Wright, in connection with the offer and sale of a security, made false statements and directly or indirectly, failed to disclose material information which was necessary in order to make representations made not misleading. Mr. Wright stipulated to cease and desist from violating the Utah Uniform Securities Act, barred from associating with any broker-dealer or investment adviser licensed in Utah, 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.

Brendan Robert Murton: Dave Hermansen reported that Mr. Murton failed to conduct Leadership Visits required of him as an OSJ supervisor. He delegated the visits to unlicensed and unqualified individuals in contravention of firm policy and industry standards, permitted an unlicensed person to sign his name to the Leadership visit Forms, and otherwise failed reasonably to supervise as required as an OSJ supervisor. Mr. Murton stipulated to pay a \$10,000.00 fine, is suspended from acting as a securities agent in Utah for a period of five business days, suspended from acting in the capacity of a securities principal in Utah for a period of two years at which time may re-qualify for licensure by passing the Series 26 Exam, and cease and desist from violating the Utah Uniform Securities Act.

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

Andrew V. Payne: Dave Hermansen reported that Mr. Payne failed to protect an investors funds by holding a check, and/or failing to properly deposit the check for nearly one year; failing to properly account for receipt of the funds by recording the check receipt on the companies trade blotter; ultimately losing the customer's check. As the "Person in Charge", Mr. Payne failed to enforce and follow industry standards and firm procedures in handling customer funds and failed to ensure that other branch agents did so. Mr. Payne stipulated to cease and desist from violating the Utah Uniform Securities Act, pay a \$5,000.00 fine, and re-qualify by successfully passing the Series 26 Examination within 90 days of the Order.

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

Christopher H. Zockoll: Dave Hermansen reported that this was originally scheduled for a hearing next week but the matter has been settled. Mr. Zockoll conducted securities transactions through and was paid compensation by several companies in which he was not a licensed agent of the entity. Mr. Zockoll likewise received compensation directly from an entity with which he was not licensed as an issuer-agent. In connection with the offer or sale of securities, Mr. Zockoll misrepresented or omitted material facts necessary in order to make the statements made not misleading. He also engaged in acts, practices or a course of business which operated as a fraud. Mr. Zockoll stipulated to cease and desist from violating the Utah Uniform Securities Act, pay \$46,800.00 in restitution, not seek licensure or apply to be licensed in Utah as a broker-dealer, investment adviser, nor licensing as an agent for any issuer soliciting investor funds, nor licensing in any other capacity in the securities industry in the State of Utah at

any time in the future, and provide truthful testimony and cooperation with any state or federal investigation.

Action: Erik Christiansen recused himself. Upon review of the Stipulation and Consent Order, the Order was approved on February 2, 2011.

Next Meeting – March 17, 2011 at 9:00 am.

Erik Christiansen made a motion to adjourn the meeting. The motion was seconded and carried.

Approved: _____

Michael O'Brien
Chairman

Date: _____