

SECURITIES COMMISSION MEETING MINUTES

May 31, 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
Chip Lyons, Analyst
Ann Skaggs, Analyst
Jeff Draper, Examiner
Doug Wawrzynski, Investigator
Scott Davis, Division Attorney
Tony Patterson, Attorney General's Office
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

Commissioners Absent

Jane Cameron, Zions Bank

Administration of Oath: Director Woodwell administered the Oath of Office to the Commission's newest member, Brent Baker.

Open and Public Meetings Act Training: Tony Patterson with the Attorney General's Office presented training on the Open and Public Meetings Act to Commission and Division Staff.

Minutes: A motion was made and seconded to approve the March 22, 2012 minutes. The motion to approve the meeting minutes was passed unanimously.

Director's Report: Director Woodwell reported that Salt Lake City will host the NASAA 2013 Fall Conference. This conference will be held at the Grand America hotel in September 2013 and will be a great opportunity for Utah.

The governor's office has switched how departments will file reports with their office. This will be done monthly instead of weekly.

There have been several changes to the Division's organizational chart. The Division has created a new Investor Education Section which will be managed by Dee Johnson. He comes from the Division of Real Estate and will also help with investigations in the

Enforcement Section. Tom Brady, who was the Acting Enforcement Director, will now take over as the permanent Director of this section. Ann Skaggs has moved from being a compliance examiner to an analyst for the Enforcement Section. She will split her time between the Enforcement and Corporate Finance Sections.

Sharon Weinle and Elton Wilcox, examiners with the Licensing & Compliance Section, have left the Division to take industry jobs.

The Division has just hired Jeff Draper to be an examiner in the Licensing & Compliance Section.

The Division is in the process of hiring a new examiner for the Licensing & Compliance Section and an investigator for the Enforcement Section. Hopefully these positions will be filled by the next Commission meeting.

Director Woodwell updated the Commission on the general budget. The Division is right on track for being in the black somewhere between \$50,000.00 and \$100,000.00 this fiscal year which ends at the end of June. The Investor Education Fund is just over \$500,000.00. The Division will be able to carry over this balance to the new fiscal year.

The Division does have a few more large settlements that will be coming in. Most of them will come in July. The Division will have a healthy balance when we start the new fiscal year.

The Division has been able to ramp up the Investor Education efforts with the addition of Dee Johnson and creation of the new Investor Education Section. The big focus is on how much more can be done on the front end to prevent fraud.

Licensing & Compliance Section Report: Dave Hermansen reported that several examiners will be attending NASAA trainings over the next few months. Jeff Draper and Ken Barton will be attending the NASAA Broker-Dealer Training in Ft. Lauderdale, Florida next week. Two more examiners will be attending the NASAA IA Training in Kansas City, Missouri in August.

The IA Switch of Federally Covered IA's is coming down to the state level. The Licensing & Compliance Section has received 30 applications; 15 have already been approved and the other 15 applications are still under review.

The Section is averaging two to three field audits per month. Mr. Hermansen would like to increase this but is unable to due to being understaffed.

Mr. Hermansen reported that the Section's investigative cases have slowed a little bit. There are 18 cases that are being investigated or are going to be investigated. Six of those cases are showing signs of possible criminal elements. One such case the Licensing & Compliance Section screened with the Enforcement Section was Dee Randall. The Enforcement Section is handling Dee Randall and the Licensing & Compliance Section is dealing with the 16 insurance agents that sold these securities to investors that should have been licensed with the Division. His section is looking into taking a variety of actions against them. The Attorney General's Office is also screening this case and will make a determination about criminally prosecuting any of these agents. His section will be doing administrative actions against these agents.

The Licensing & Compliance Section currently has four Order to Show Cause actions to be drafted, two Stipulations outstanding to be settled, and three global Stipulations that are being drafted.

Corporate Finance Section Report: Benjamin Johnson reported that looking back at the first five months compared to last year at this same time, filings have increased 4.5%. Mutual funds are up sharply; registrations are holding steady; while 506 Offerings are down slightly.

Congress passed the JOBS Act and it was signed by the President. Mr. Johnson passed out a summary and state impact analysis of this to the Commission and Division staff. He addressed some of the IPO changes, Crowd Funding Provisions, and Modification of Exemption changes to the General Solicitation section.

Enforcement Section Report: Tom Brady reported that his section is growing in work and shrinking in numbers. His section has lost two investigators; Joe Beatty and Jeff Nielsen.

The Enforcement Section has 64 open investigations. All of the investigators are doing double duty. Mr. Brady is investigating seven cases on his own.

There are several big cases that have advanced criminally. In the Kenny North cases there were several respondents that are close to negotiating settlements. Blair Arnell is one of those respondents and pled guilty to two counts of securities fraud. The Division has three bind-overs on criminal cases.

Investor Education Report: Dee Johnson complimented Karen McMullin and the Division staff on planning and carrying out of the investor education programs.

During the months of March, April, and May, 18 events were carried out; 17 different members of Division staff were involved in these presentations; and it is estimated that between 8,000 – 10,000 people attended these events. There are also six new publications out with six more planned before the end of the year.

The Division has talked to two different companies about the new investor education display. According to Director Woodwell, the Division has expanded on the wish list for these displays. The Division is looking into more interactive and engaging displays that could possibly include the use of iPads.

Between now and September, there are another 12 events lined up and an additional seven that are in the planning process.

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, investor education outreach, furniture, and remodeling expenses.

Action: Laura Polacheck made a motion to approve the Education Fund Expenditure

Report. The motion was seconded and carried.

Approval of Stipulation and Consent Orders

Burnham Hill Partners, LLC. and Daniel Schneiderman: Dave Hermansen reported that Burnham Hill Partners (BHP) was licensed as a broker dealer in Utah from February 11, 2009 until December 22, 2010 when it requested the withdrawal of its license. This was granted by the Division on January 2, 2011. Mr. Schneiderman is a broker-dealer agent of BHP. He was licensed with BHP in Utah from February 2009 until he terminated his license in December 2010.

On July 11, 2011, the Division received a Form D Rule 506 notice filing for a private placement offering by FluoroPharma Medical, Inc. The Form D identified BHP as a recipient of sales compensation for selling the offering, and identified Utah as a state in which sales of the offering were being made. The issuer was unaware that BHP had terminated its license in Utah prior to selling the offering in Utah. The Issuer indicated that in June 2011 BHP made sales of the offering to two Utah residents and received a commission in the amount of \$4,000.00 for one of the sales. The sale which paid a commission was made by Mr. Schneiderman, who was not licensed in Utah at the time of sale. Mr. Schneiderman also made a sale of another private placement to the same Utah investor following a solicitation made in New York. The second transaction was later rescinded and no commissions were retained by BHP or paid to Mr. Schneiderman, and the investor's money was returned to her. After the Division's inquiry, in July 2011 BHP filed an application to become licensed in Utah. On December 12, 2011, it requested to withdraw the application. The request for withdrawal is currently pending.

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. BHP shall pay a \$6,500.00 fine to the Division within 30 days of the Order.

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

Securities America, Inc. and Gary L. Barker: Dave Hermansen reported that Securities America, Inc. (SAI) is a broker-dealer that has been licensed in Utah since 1985. Mr. Barker is a licensed broker-dealer agent of SAI and is also the president, chief compliance officer, and owner of PFG Advisors Inc. (PFG), a Utah licensed investment adviser. Mr. Barker is licensed as an investment adviser representative of PFG.

Mr. Barker conducts SAI and PFG business from an office in Salt Lake City, Utah, which is designated as an Office of Supervisory Jurisdiction of SAI. Craig L Niebuhr is a licensed broker-dealer agent of SAI and investment adviser representative of PFG. Mr. Niebuhr is the owner of an insurance agency, CN Insurance Associates, Inc. (CN), which is located in Salt Lake City, Utah.

Although the Respondents know Mr. Niebuhr was engaged in securities activities from the CN Insurance location, the Respondents failed to follow SAI's own policies and procedures and register that office as a branch office as required by FINRA rules and SAI's compliance manual.

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. SAI shall pay the Division a \$4,000.00 fine and Mr. Barker shall pay the Division a \$1,500.00 fine. Both of these fines are due within 30 days of the Order.

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

Dymund Capital, LLC and Joshua Edward Dyches: Tom Brady reported that between June and November 2007, the Respondents offered and sold promissory notes to three investors in or from Utah, and collected a total of \$174,500.00. The investors lost \$129,311.00 of their principal investment. The Respondents have never been licensed with the Division or securities industry in any capacity. 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 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. Dyches agrees to be permanently barred from the securities industry in Utah, and a fine of \$130,000.00 will be issued against the Respondent, with \$120,000.00 of the fine being waived contingent upon no future securities violations.

Action: The Commission rejected the Stipulation and Consent Order citing the inadequacy of the fine amount. The motion was seconded and carried.

Ridgeland Wyoming, Inc. and Bryan R. Farris: Tom Brady reported that from February 2007 to April 2007, the Respondents offered and sold securities to at least two investors, in or from Utah, and collected no less than \$200,000.00. A portion of the investors' principal was used by the Respondents for purposes not disclosed to the investors. The Respondents, directly or indirectly, failed to disclose material information which was necessary in order to make statements made not misleading in connection with the offer and sale of a security to investors. Ridgeland engaged and compensated another entity, VYSN, as an agent in the offering and/or sale of a security in Utah. VYSN was not licensed as an agent for the company issuing the securities.

The Respondents will cease and desist from violating the Utah Uniform Securities Act, pay a \$52,250.08 fine to the Division, not be licensed in any capacity in the securities industry in Utah, not solicit or participate in any transactions that involve "finders" or paying "finders' fees", and cooperate with the Division's action against the other respondents named in the action. Gary Frank Lawyer, who was named as a respondent in the Order to Show Cause is dismissed as a party to the proceeding with prejudice.

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

Action: Tim Bangerter made a motion to refer Mr. Farris to the Utah State Bar. The motion was seconded and carried. Erik Christiansen was the only objection.

Robert Aaron Breedlove: Tom Brady reported in April 2007, Mr. Breedlove offered and

sold promissory notes to at least two investors, in or from Utah, and collected a total of \$50,000.00. He directly or indirectly, made false statements in connection with the offer and sale of a security. Mr. Breedlove directly or indirectly, failed to disclose material information which was necessary in order to make the statements not misleading in connection with the offer and sale of a security. The investors lost approximately \$50,000.00 of their investment funds.

Mr. Breedlove will cease and desist from violating the Utah Uniform Securities Act, be barred from the securities industry in Utah, cooperate with the Division in any future investigations, and pay restitution as ordered in the criminal case.

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

H & H Services, Inc. and Steven Wayne Harker: Tom Brady reported that the respondents made false statements, directly or indirectly, in connection with the offer and sale of securities to investors. 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.

On March 28, 2012, the Division issued an Order to Show Cause against the respondents. The Notice of Agency Action accompanying the Order to Show Cause set a hearing for May 2, 2012. 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 Respondents will cease and desist from engaging in any act or practice constituting a violation of Utah Code Annotated and Utah Administrative Code. The Respondents are ordered to pay a \$120,000.00 fine.

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

Louis Dean Parrish d.b.a. J & L Mortgage and Investments: Tom Brady reported that from September 2005 to May 2007, Mr. Parrish offered and sold securities to an investor, in or from Utah, and collected a total of \$538,576.00. He, directly or indirectly, failed to disclose material information which was necessary in order to make statements not misleading in connection with the offer and sale of securities to the investor. The investor lost approximately \$230,748.00.

Mr. Parrish will cease and desist from violating the Utah Uniform Securities Act, be barred from the securities industry in Utah, and agrees to pay restitution as ordered in the criminal case.

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

Next Meeting: July 19, 2012.

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

Approved: Erik Christiansen, Chairman

Date: July 19, 2012