

# SECURITIES COMMISSION MEETING MINUTES

July 19, 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  
Brandon Henrie, Examiner  
Max Starkie, Investigator  
Matt Edwards, Investigator  
Scott Davis, Division Attorney  
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**

Brad Bertoch  
Doug Griffith  
Paula Farber

**Minutes:** A motion was made and seconded to approve the May 31, 2012 minutes. The motion to approve the meeting minutes was passed unanimously.

**Director's Report:** Director Woodwell talked about several changes to the Division's organizational chart. The Division has hired two new investigators; Max Starkie and Matt Edwards as well as a new intern; Kristi Wilkinson. Kristi will be splitting her time between the Investor Education Section and Enforcement Section. The Licensing/Compliance Section is in the process of hiring one more examiner and then the Division should be fully staffed.

Director Woodwell updated the Commission on the budget. The Investor Education Fund has \$406,000.00 and is in healthy shape. There are still a few more fines anticipated.

Director Woodwell gave an update on the Michael Hines case. There was an article in yesterday's Salt Lake Tribune on the civil lawsuit that was filed against himself, the Department of Commerce, and Francine Gianini. The CSRO hearing on Mr. Hines termination is scheduled for August 8-10 and will hopefully resolve this issue. Director Woodwell is not sure what will happen with the civil lawsuit that Mr. Hines has filed.

**Investor Education Update:** Karen McMullin reported that from January to June, Division staff has participated in 22 events; 6 were expos and 16 were seminars. Over the next six months, 23 more events have already been booked; 6 expos and 17 seminars. Mrs. McMullin anticipates that there will be an additional 10-15 more events booked. Over the course of 2012, the Division will have participated in between 55-60 events. This exceeds the Division's goal of 48 events. Mrs. McMullin credits this increase to the networking that is taking place at these events and people wanting the Division to participate in additional events.

In November 2011, the Division started a new employee education project. This was to help new hires become more comfortable with doing investor education presentations as well as know more about the Division. The new Employee Education Guide will also help to incorporate training for new employees as well as cross training of the different sections. This guide will aide Division staff in being more comfortable in answering questions asked at the many events the Division attends.

At the March Securities Commission Meeting, the Commission gave approval for the Division to purchase a new expo display. While looking at the display options, suggestions and observations were made that indicated the new expo display needed to be more than just a pretty new picture. It was decided to coordinate the new expo display purchase with a new PR campaign which would enhance the Division's image and educate people while they are at events. The Division will pattern the new expo display after the DABC's display which has a built in iPad option. The iPad option will help people to understand the resources that the Division has available to them. The Division is also looking into some app development. These would be conversation starters which would allow family members to bring up the topic of money with loved ones. The Division will also coordinate with commercials and billboards. DABC also has .org website rather than a .gov website. Director Woodwell also stated that with the next public service campaign, they were going to go with a more positive message rather than a scary theme.

The Division is currently looking into PR firms to develop a theme and then brand it. Director Woodwell is not sure how much this will cost but anticipates it to cost between \$60,000.00-\$80,000.00 and an additional \$150,000.00 or so for the billboards and commercials.

**Licensing & Compliance Section Report:** Dave Hermansen reported that he is in the process of replacing Sharon Weinle's position.

The switch process from federal covered advisors to the state level should be complete by the end of the month.

The Licensing/Compliance Section has slowed down and the Section has a handle on the complaints coming in. Several of the complaints show possible criminal intentions on their part. Those cases will take longer. The Licensing/Compliance Section in conjunction with the Enforcement Section has referred 16 matters to the Attorney General's Office.

Mr. Hermansen reported that his section is conducting more audits. He currently has two staff members in St. George conducting five audits and doing two investor education presentations over a week's period of time.

Last month, Ken Barton and Jeff Draper, attended the NASAA Broker Dealer Training that was held in Ft. Lauderdale, Florida. Next month, Brandon Henrie and Darren Miller will attend the

NASAA Investment Advisor Training in Kansas City, Missouri.

On August 15<sup>th</sup>, FINRA will be in Salt Lake to give a compliance seminar. Three members of the Licensing/Compliance staff will be attending this seminar.

**Corporate Finance Section Report:** Benjamin Johnson reported that over the last six months, 506 offerings are down slightly compared to the increases it had experienced over the last two years. Registrations are up slightly. The Division has received four Registrations by Qualification requests. The quality of three of the four registrations is not very good.

Mr. Johnson is waiting on the SEC rules on crowd funding. He is also waiting for the rules that will govern the general solicitation of 506 Offerings.

**Enforcement Section Report:** Tom Brady reported over the last fiscal year, that administrative actions have gone down from 74 to 57 actions. His section closed 80 cases which are up from the 67 cases that were closed the previous fiscal year. Criminal referrals are down from 34 to 18. Complaints received by the Division have gone up from 202 to 226. Mr. Brady states that the Division is getting more complaints but the severity is not as high as they used to be which explains why there are fewer criminal actions.

Currently the Enforcement Section has 44 open investigations. Mr. Brady has four full-time investigators. Ann Skaggs, Kristi Wilkinson, and himself are carrying light caseloads.

**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:** Brent Baker made a motion to approve the Education Fund Expenditure Report. The motion was seconded and carried.

### **Consideration of Grant Request**

**Utah Jumpstart Coalition:** Director Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

**Action:** Jane Cameron recused herself. Brent Baker made a motion to approve the grant. The motion was seconded and carried.

**Wayne Brown Institute:** Brad Bertoch from the Wayne Brown Institute 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 approve the grant. The motion was seconded and carried.

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

**Tyler D. Archuleta dba Archuleta Trucking, LLC:** Tom Brady reported that on March 22, 2012, the Division issued an Order to Show Cause against the Respondent. 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

Respondent 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 Respondent made false statements, directly or indirectly, in connection with the offer and sale of securities to investors. The Respondent 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 Respondent will cease and desist from engaging in any Act or practice constituting a violation of Utah Code Annotated, Title 61, Chapter 1 and Utah Administrative Code R164. The Respondent is also ordered to pay a \$230,000.00 fine.

**Action:** Laura Polacheck made a motion to approve the Final Order by Default as to Tyler D. Archuleta dba. Archuleta Trucking, LLC only. The motion was seconded and carried.

**Carlos Gregory Gayton & Pacific Investors, Inc.:** Tom Brady asked that this be tabled until the next commission meeting.

**Nathan Andrew Arnell:** Tom Brady reported that from October 2007 – April 2008, the Respondent offered securities to investors, in or from Utah and collected \$1,049,000.00. The Respondent, 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 a security. The investors lost all \$1,049,000.00.

The Respondent shall cease and desist from violating the Utah Uniform Securities Act and to be barred from the securities industry in Utah.

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

**Capital Concepts, LLC. and Blair Steven Arnell:** Tom Brady reported Tom Brady reported that from October 2007 – April 2008, the Respondents offered securities to investors, in or from Utah and collected \$1,049,000.00. The Respondents, 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 a security. The investors lost all \$1,049,000.00.

The Respondents shall cease and desist from violating the Utah Uniform Securities Act. Mr. Arnell agrees to pay restitution as ordered in the criminal case and be barred from the securities industry in Utah.

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

**Enrique David Sosa dba Sun Haven Metals:** Tom Brady reported that on May 15, 2012, the Division issued an Order to Show Cause against the Respondent. The Notice of Agency Action accompanying the Order to Show Cause set a hearing for July 3, 2012. At the hearing, the Division was represented by the Office of Attorney General and Division staff. The Respondent 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 Respondent made false statements, directly or indirectly, in connection with the offer and

sale of securities to investors. The Respondent 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 Respondent will cease and desist from engaging in any Act or practice constituting a violation of Utah Code Annotated, Title 61, Chapter 1 and Utah Administrative Code R164. The Respondent is also ordered to pay a \$5,000.00 fine.

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

**Bankers Life and Casualty Company & BLC Financial Services, Inc.:** Dave Hermansen reported that Bankers Life is a life insurance company located in Illinois and has never been registered as a broker-dealer or investment adviser. BLCFS is a wholly-owned subsidiary of Bankers Life and is registered as a broker-dealer only in Illinois. Effective January 1, 2005, Bankers Life entered into a Financial Services Agreement with UVEST Financial Inc., under which insurance agents of Bankers Life who became licensed as registered representatives and/or investment adviser representatives of UVEST would provide brokerage and investment advisory services out of Bankers Life branch office locations.

The UVEST Agreement Provided for UVEST to pay Bankers Life “Revenue Sharing Payments” according to a schedule that varied from 82% to 85% of the gross commissions received by UVEST for the dual agents’ securities transactions. In March of 2005, Bankers Life determined that BLCFS should have been a party to the UVEST Agreement. As a result, the three firms agreed to a new first page of the UVEST Agreement that added BLCFS as a party and a new signature page, which was executed by the three parties.

Coincident with Bankers Life and UVEST terminating the UVEST Agreement, Bankers Life and BLCFS entered into a similar agreement with ProEquities, Inc. effective April 30, 2010. Under the ProEquities Agreement, ProEquities is required to pay PLCFS between 87% and 91% of revenue received by ProEquities for the securities business conducted by the dual agents. The involvement of Bankers in securities–related roles led to confusion in the reporting and responsibility hierarchies as between Bankers and the applicable broker-dealer. At no time were the dual agents licensed as agents or investment advisers representatives of Bankers Life or BLCFS. The agents were registered representatives and investment adviser representatives of UVEST or ProEquities.

Bankers Life shall cease and desist from acting as a broker-dealer or investment adviser in Utah unless and until registered to do so; employing or associating with agents or investment adviser representatives in Utah who are not registered on behalf of Bankers Life. Bankers Life and/or BLCFS shall pay a \$24,495.50 fine to the Division within ten days of the order, and comply with the terms set forth in the Order.

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

**UVEST Financial Services Group, Inc.:** Dave Hermansen reported that Bankers Life is a life insurance company located in Illinois and has never been registered as a broker-dealer or investment adviser. BLCFS is a wholly-owned subsidiary of Bankers Life and is registered as a broker-dealer only in Illinois. Effective January 1, 2005, Bankers Life entered into a Financial Services Agreement with UVEST Financial Inc., under which insurance agents of Bankers Life

who became licensed as registered representatives and/or investment adviser representatives of UVEST would provide brokerage and investment advisory services out of Bankers Life branch office locations.

The UVEST Agreement Provided for UVEST to pay Bankers Life "Revenue Sharing Payments" according to a schedule that varied from 82% to 85% of the gross commissions received by UVEST for the dual agents' securities transactions. In March of 2005, Bankers Life determined that BLCFS should have been a party to the UVEST Agreement. As a result, the three firms agreed to a new first page of the UVEST Agreement that added BLCFS as a party and a new signature page, which was executed by the three parties. Bankers and UVEST terminated the UVEST Agreement effective on or about April 29, 2010. At no time were the dual agents licensed as agents or investment advisers representatives of Bankers Life or BLCFS.

UVEST shall cease and desist from materially aiding Bankers in violating the Act, pay a \$14,150.94 fine to the Division within ten days, and fully cooperate with any investigation or proceeding related to the subject matter of this Consent Order.

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

**E\*Trade Securities LLC.:** Dave Hermansen reported that from 2003 to February 2008, the respondent acted as a downstream broker-dealer that relayed retail customer orders to Oppenheimer & Co. which was a wholesaler trading in an Auction Rate Preferred Securities ("ARPS"). Oppenheimer then transmitted Respondent's customer orders to auction dealers to complete the purchase or sale. Of the type of Auction Rate Securities ("ARS") that were available from 2003 through February 2008, the Respondent generally sold ARPS to its customers. The Respondent chose to offer for sale only those ARPS that carried an AAA credit rating. As of February 13, 2008, the Respondent's investors nationwide held a balance of approximately \$581 million in ARPS, and approximately \$870 million altogether in the ARS market, that had lost liquidity as the result of the collapse of the auction process.

The Respondent had a policy of hiring experienced FAs who, presumably, had been trained by other employers with regard to the securities they handled. However, the Respondent provided no formal training to its FA with respect to ARPS. Even when the significant risk of auction failure with regard to other types of APRS became apparent, FAs were not instructed to provide any warning about the risk of ARPS illiquidity. The Respondent should have known that its FAs marketed ARS to customers as highly liquid and as an alternative to cash or money market funds without adequately disclosing that ARS are complex securities that may become illiquid. The Respondent failed to adopt policies and procedures reasonably designed to ensure that its FAs recommended ARS only to customers who had stated investment objectives that were consistent with their purchase of ARS.

The Respondent shall cease and desist from violating the Utah Uniform Securities Act, pay a \$39,051.87 Division fine, and comply with the terms as outlined.

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

**Proequities Inc.:** Dave Hermansen reported that reported that Bankers Life is a life insurance company located in Illinois and has never been registered as a broker-dealer or investment adviser. BLCFS is a wholly-owned subsidiary of Bankers Life and is registered as a broker-

dealer only in Illinois. ProEquities has been a broker-dealer registered in Utah and a federal covered investment adviser. Bankers Life and BLCFS entered into an agreement with ProEquities effective April 30, 2010. The ProEquities Agreement specifies that ProEquities would “exercise exclusive control” over the broker-dealer and investment advisory activities of ProEquities agents who were also insurance agents for Bankers Life.

Under the ProEquities Agreement, ProEquities was required to pay BLCFS between 87% and 91% of revenue received by ProEquities for the securities business conducted by the dual agents.

ProEquities shall cease and desist from engaging in conduct giving rise to liability under Utah Code Annotated 61-1-20, pay a \$8,207.55 fine to the Division within ten days, and fully cooperate with any investigation or proceeding related to the subject matter of this Consent Order.

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

**National Investment Advisors, Randy C. Norton, Matthew Smock, and National Capital Partners I, LLC.:** Dave Hermansen reported that the Respondents misrepresented or omitted material facts in connection with the offer or sale of NCPI Fund securities. NIA used investor funds to purchase real estate properties, prior to obtaining \$5,000,000.00 in capital commitments as required by the PPM. NIA falsely represented to the public that it was a member of FINRA and that it was an SEC-registered investment adviser. NIA disclosed on Form ADC Part II it did not and would not have custody of client funds. However, NIA deposited client funds in an account for its related entity, NCPI Fund. Those funds were later released and used for investing at the direction of NIA. Despite having custody and discretion over client funds, NIA failed to maintain bonds, as required.

The Respondents shall cease and desist from violating the Utah Uniform Securities Act, NIA will obtain a bond, comply with the terms set forth in the Order, Mr. Norton will pay \$7,500.00 Division fine and NIA, Mr. Smock, and NCPI Fund, jointly and severally pay \$17,500.00 Division fine.

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

**Sequest of Utah, LLC. & Mark Anthony Nunez:** Tom Brady reported that on May 16, 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 July 11, 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 Division moved for Entry of a Default Judgment.

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.

The Respondent will cease and desist from engaging in any act or practice constituting a violation of Utah Code Annotated, Title 61, Chapter 1 and Utah Administrative Code R164. The

Respondent is also ordered to pay a \$138,570.00 fine.

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

**Joshua Lehi Trent dba Acta Non Verba, LLS.:** Tom Brady reported that on May 24, 2012, the Division issued an Order to Show Cause against the Respondent. The Notice of Agency Action accompanying the Order to Show Cause set a hearing for July 11, 2012. At the hearing, the Division was represented by the Office of Attorney General and Division staff. The Respondent 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 Respondent made false statements, directly or indirectly, in connection with the offer and sale of securities to investors. The Respondent 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 Respondent will cease and desist from engaging in any act or practice constituting a violation of Utah Code Annotated, Title 61, Chapter 1 and Utah Administrative Code R164. The Respondent is also ordered to pay a \$25,000.00 fine.

**Action:** Brent Baker & Erik Christiansen recused themselves. Tim Bangerter made a motion to approve the Final Order by Default. The motion was seconded and carried.

**Next Meeting:** September 26<sup>th</sup> & 27<sup>th</sup>, 2012.

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

**Approved:** Erik Christiansen, Chairman

**Date:** October 19, 2012