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Division of Securities

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January 12, 2010

Re: Private Cause of Action Remedies under the Utah Uniform Securities Act

Dear Broker-Dealer:

The Utah Securities Division ("Division") has been contacted by members of the Utah Securities Bar expressing concern that in some instances securities arbitration panels may not be properly considering and applying the remedies afforded to Utah citizens by the Utah Uniform Securities Act ("Act"). Accordingly, the Division provides its interpretation of the remedies contained in Section 61-1-22 of the Act and how those remedies should be applied in private litigation matters. We believe that both investors and members of the securities industry should be fully informed of their rights and responsibilities under the Act.

In light of the mandatory arbitration provisions imposed upon most investors through client account agreements, the Division further seeks to ensure that the principles of fairness and transparency govern all such proceedings. Indeed, we note that securities arbitration exists as a result of client agreements being adhesion contracts—containing terms making arbitration the exclusive forum for any disputes—to which an investor can "take it or leave it" with respect to opening a securities account. In signing the client agreement, investors forego their rights under the law. Accordingly, a level playing field in that process to reach a just result is essential. In this regard, it is of great importance that arbitration panel members understand and apply the Act.

In our interactions with the investing public as well as industry members, the Division emphasizes several aspects of the private cause of action statute:

Applicability:

The language of Section 61-1-22 manifests the intent of the Utah Legislature that the remedies provided therein apply to arbitration matters. An aggrieved party "may sue either at law or in equity"[1] to recover under the circumstances set forth in the statute. Arbitration is an action in equity, and the available relief is the same as that available in a civil action at law.

[1] Utah Code Ann. § 61-1-22(1)(b).

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Liability:

Liability attaches to any of the following violations[2]:

- the offer or sale of a security by an unlicensed broker-dealer or agent;
- the offer or sale of an unregistered, non-exempt security; or
- in connection with the offer, sale, or purchase of any security, for a person to directly or indirectly make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

Damages:

A liable party is responsible for all of the following damages:

- the consideration paid for the security;
- interest at 12% per year from the date of payment;
- costs;
- reasonable attorneys fees;
- less any income received on the security.

Treble Damages:

Upon a showing that a violation was reckless or intentional, an award of treble damages – three times the consideration paid for the security – can be made, plus interest, costs, and attorney fees, less any income received, as set forth above.

Control Persons:

Control persons and others[3] who materially aid in the sale or purchase are liable jointly and severally with the liable party, unless the nonseller/nonpurchaser sustains the burden of proof that the person did not know and in exercise of reasonable care could not have known the existence of the facts by which the liability is alleged to exist.

We hope this is helpful. From our perspective, as long as industry-run arbitration is the sole forum for investor claims to be heard, it is paramount that investors and arbitration panels fully comprehend available remedies under the Act. As you are aware, Utah and other state securities regulators have gathered and analyzed data from arbitration matters, from which we have shared ongoing concerns with the Financial Industry Regulatory Authority ("FINRA"). The North American Securities Administrators Association ("NASAA") continues to carefully

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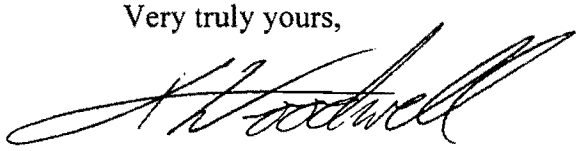
[2] These are the most common, but not the only bases for liability. See also § 61-1-22(1)(a)(i)(C)-(E).

[3] See § 61-1-22(4)(a).

study the arbitration process and available information about cases which go to a hearing, and maintains a dialogue with FINRA, so that while arbitration remains the exclusive forum for investor claims to be heard, investors will be treated fairly.

Please advise any attorneys who represent your firm in arbitration proceedings of this letter. If you have any questions, please feel free to contact me at 801-530-6600.

Very truly yours,



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