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FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. DALE C. HATCH, Defendant.	Civil No. **COMPLAINT** Judge Paul G. Cassell DECK TYPE: Civil DATE STAMP: 08/04/2005 @ 08:38:47 CASE NUMBER: 2:05CV00654 PGC

Plaintiff, Securities and Exchange Commission ("Commission") for its complaint against Dale C. Hatch ("Hatch"), alleges as follows:

INTRODUCTION

1. The Utah Educational Savings Plan Trust ("UESP") is an agency of the State of Utah that provides individuals who are saving for college education the ability to invest funds in a state-sponsored plan that offers tax-advantaged investment options. The UESP offers an educational savings plan qualified under Section 529 of the United States Internal Revenue Code ("529 Plan").

2. Individuals invest in the UESP's 529 Plan by entering into an agreement with the UESP and depositing money in an account established with the UESP. The UESP then pools investor funds and invests the pooled money with designated fund managers.

3. From in or about 1996 through July 6, 2004, Hatch was the Deputy Executive Director for College Savings of the UESP and directed its affairs. Hatch was also referred to as the director of the UESP.

4. From in or about 2002 through June 2004, while acting as director of the UESP, Hatch misappropriated over $500,000 from UESP accounts and transferred the funds into UESP accounts secretly controlled by him.

5. In 2004 Hatch withdrew approximately $85,500 from those accounts for his personal use. Hatch also attempted to withdraw over $200,000 from those accounts but was prevented from doing so by the UESP staff.

STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED

6. Hatch has engaged and, unless enjoined, will continue to engage, directly or indirectly, in transactions, acts practices, and courses of business which constitute violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

7. Hatch's conduct occurred in connection with the offer, purchase and sale of UESP's securities.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)] and Sections 21(d)(3), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(e) and 78aa].

9. Hatch, directly or indirectly, has made use of the mails, means or instruments of transportation or communication in interstate commerce, or means or instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business described in this Complaint.

10. Venue over this action is proper pursuant to Section 22(a) of the Securities Act, Section 27 of the Exchange Act [15 U.S.C. §§ 77v(a) and 78aa], Section 214 of the Advisers Act [15 U.S.C. § 80b-14], and Section 44 of the Company Act [15 U.S.C. § 80a-44].

11. Certain of the transactions, acts, practices and courses of business constituting violations alleged herein occurred within the state of Utah. Hatch is a Utah resident. The UESP's offices are located in Salt Lake City, Utah. Hatch engaged and transacted business within the state of Utah during the time he misappropriated investor funds and misrepresented to investors that all earnings from their investments would be credited to their accounts.

DEFENDANT

12. Dale C. Hatch, age 55, is a resident of Kearns, Utah. Hatch is an attorney, an active member of the Utah State Bar and is a certified public accountant. Hatch served as director of the UESP from 1996 through July 6, 2004, when his employment was terminated for certain of the conduct set forth in this complaint.

BACKGROUND

13. In 1996, the State of Utah established UESP to provide residents of any state the ability to invest funds to pay for higher education expenses through an educational

savings plan qualified under Section 529 of the United States Internal Revenue Code. These investments would be tax-advantaged to encourage education savings.

14. The UESP is administered by the Utah State Board of Regents acting in its capacity as the Utah Higher Education Assistance Authority ("UHEAA"), which is the trustee of the UESP.

15. The 529 Plan offered by the UESP enables persons to invest money in tax-advantaged accounts maintained by the UESP. Income generated from the funds invested in the UESP accounts can be used for the qualified educational expenses of a designated beneficiary of the UESP account at a tax-advantaged rate.

16. The UESP provides 529 Plan services to persons who enter into agreements with the UESP and establish accounts with the UESP pursuant to its requirements. Those agreements are called "participation agreements" and are securities.

17. Persons who enter into participation agreements and invest money with the UESP are called "participants."

18. The UESP provides services to its participants, which include establishing and maintaining participant accounts, taking receipt of participant funds, and investing and making distributions of participant funds at the direction of participants.

19. The UESP's 529 Plan offers participants the ability to select among several investment options for the investment of their participant funds. Participants select the investment options according to personal preference, and the UESP effects investments on behalf of the participants in accordance with their selections.

20. The UESP invests participant funds by pooling those funds in omnibus accounts the UESP has established with outside fund managers ("Fund Managers"). The

UESP invests pooled participant funds in various investment funds managed by the Fund Managers, according to the direction of the participants.

THE UESP'S OPERATING AND ACCOUNTING SYSTEM

21. In or after 1996, the UESP developed a system to record and account for individual participant account transactions within the UESP's database systems ("UESP System"). The UESP System was originally designed by Hatch, but was revised by other personnel to handle the growth in the number of participants and participant accounts, and in the size of the assets managed by the UESP.

22. Until 2005, the UESP System contained errors in how it recorded and accounted for participant transactions, and debited or credited participant accounts with the earnings and losses of the omnibus accounts maintained by the Fund Managers.

23. The errors in the manner by which the UESP accounted for participant transactions, and debited or credited participant accounts with the earnings and losses of the omnibus accounts, resulted in an aggregate balance in the omnibus accounts that was different from month-to-month than the aggregate balance of the participant accounts. The cumulative result of the monthly imbalance between the aggregate of the participant accounts and the omnibus accounts was a surplus in the omnibus accounts which was not allocated to participant accounts.

24. The aggregate unallocated surplus between 2002 and 2004 was an accumulation of approximately $505,976 (the "Unallocated Gains").

25. The UESP and the UHEAA did not discover the imbalance between the participant accounts and the omnibus accounts or the existence of the Unallocated Gains until its investigation of Hatch in 2004.

26. After discovering the errors in the UESP System in 2004, the UESP developed and implemented a new system in 2005 to record and account for participant and UESP transactions which is designed to eliminate the errors in the UESP System, including the imbalance referenced in paragraph 23 above.

HATCH'S FRAUDULENT CONDUCT

27. At least by 2002, as a result of his position as UESP director, Hatch became aware of the errors in the UESP System that resulted in the imbalance between the participant accounts and the omnibus accounts of the Fund Managers, referenced in paragraph 23 above.

28. Hatch never disclosed the errors in the UESP System or the existence of Unallocated Gains in the omnibus accounts to the UESP, the UHEA, participants or offerees of participant agreements.

29. In or about 1996 through 2004, the UESP disseminated a "Fact Book", which was the UESP's primary disclosure document for its 529 Plan. That Fact Book was reviewed and approved by Hatch as the director of the UESP.

30. The Fact Book stated, among other things, that "One-hundred percent of the earnings earned by the [participants' investment] pool will be credited to individual participant accounts." The Unallocated Gains are "earnings earned by the pool."

31. From in or about 2002 through 2004, Hatch effected transactions in participant accounts in which he had no direct or beneficial interest or legal authority to control. Those transactions included transferring participant funds among the participant accounts without the authorization of the owners of the participant accounts.

32. From in or about 2002 through in or about 2004, Hatch established participant accounts with the UESP that were not in his name, and for which Hatch did not provide any information reflecting his ownership interest and control, but which he directly and secretly owned and controlled (the "Secret Accounts").

33. From in or about 2002 through in or about July 2004, Hatch transferred at least $505,976 in Unallocated Gains from the omnibus accounts into the Secret Accounts. Hatch then disbursed approximately $85,500 to bank accounts he owned or controlled from the Secret Accounts.

34. Hatch had no direct or beneficial ownership or interest in the Unallocated Gains he misappropriated into the Secret Accounts and to his personal bank accounts.

35. In or about May and June 2004, the UESP staff observed irregularities in Hatch's conduct related to participant accounts and reported it to supervisory staff with the UESP and the UHEAA.

36. In or about May or June 2004, the UHEAA commenced an investigation into Hatch's conduct at the UESP.

37. In or about June 2004, Hatch attempted to withdraw over $200,000 from the Secret Accounts, but was prevented from doing so by the UESP staff.

38. When the UHEAA discovered certain of Hatch's activities, Hatch's employment with the UESP was terminated on July 6, 2004.

HATCH ABUSED HIS POSITION OF TRUST

39. As director of UESP, Hatch designed and implemented the UESP's System. Among other things, the UESP System was supposed to protect the integrity of participant accounts and to accurately credit and debit participant accounts and transactions.

40. However, as referenced above, the UESP System contained weaknesses. Those weaknesses included the following:

(1) Hatch had unrestricted access to most functions on the UESP System;

(2) there was an inadequate separation of duties among personnel with access to the UESP System;

(3) there was an inadequate review of entries in the UESP System; and

(4) Hatch had the ability to alter prior entries and transactions in the UESP System without an audit trail, and to characterize transactions in the UESP System in a manner inconsistent with their actual nature.

41. Hatch never disclosed that, as a result of the errors in the UESP System, referenced above, Unallocated Gains were being generated in the omnibus accounts that were not being credited to the participant accounts.

42. Hatch did not disclose his misappropriation of the Unallocated Gains to the UESP, the UHEAA, participants, or offerees of the participation agreements.

43. Hatch did not disclose to the UESP, the UHEAA, participants or offerees of participant agreements that certain of the statements in the Fact Book should not be relied upon, and that he was acting contrary to the representations made in the Fact Book.

44. In the offer, purchase and sale of interests in its 529 Plan, and to provide information to participants in its 529 Plan, Hatch made statements of material fact to participants and prospective participants in the 529 Plan. These representations were made directly by Hatch in face-to-face meetings with potential 529 Plan participants, and by Hatch through the UESP's offering materials and on the UESP's Internet website.

45. While making statements described above, Hatch made false statements of material fact and omitted to state material facts. Those false statements and omissions include:

1. A failure to disclose that Hatch was misappropriating participant funds into the Secret Accounts and transferring some of those funds to his bank accounts;
2. A failure to disclose that defects in the UESP System existed which resulted in an imbalance between the participant accounts and the omnibus accounts maintained by the Fund Managers;
3. A failure to disclose the risks to funds in participant accounts posed by the defects in the UESP System;
4. A failure to disclose that the UESP System contained internal control weaknesses that Hatch exploited to misappropriate participant funds;
5. A representation that one hundred percent of the earnings earned by the UESP's investment pools would be credited to individual participant accounts;
6. A failure to disclose that he was effecting transactions among participant accounts without the authorization of the owners of the participant accounts; and
7. A failure to disclose that he had established Secret Accounts with the UESP.

46. Those misrepresentations were material to an investment decision.

HATCH KNEW HIS CONDUCT WAS FRAUDULENT

47. Hatch knew, or was reckless in not knowing, that the misrepresentations and omissions alleged above were false and misleading.

48. Hatch knew that the funds he transferred into his personal accounts belonged to UESP participants.

49. As UESP's director, Hatch knew that defects existed in the UESP system which he exploited for his own gain.

50. As UESP's director and having prepared and reviewed UESP's promotional materials. Hatch knew that one hundred percent of UESP's investment pool earnings should be credited to participants.

51. Hatch transferred funds to Secret Accounts and to himself over many months. This was not an inadvertent single error.

52. As part of this scheme, Hatch deleted incrementally prior transactions to impede UESP auditors in tracing participant funds.

53. After UESP instituted an investigation of Hatch's suspicious transactions, Hatch attempted to tamper with the computer system to delete incriminating evidence. Hatch also attempted to shred some of the documents he utilized to carry out his transactions.

FIRST CAUSE OF ACTION

FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES

Violations of Section 10 (b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

The allegations contained in paragraphs 1 through 53 are realleged and incorporated herein by reference.

54. Defendants, by engaging in the conduct described in paragraphs 1 through 53 above, directly or indirectly, in connection with the purchase and sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly, with scienter: (1) employed devices, schemes or artifices to defraud; (2) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons.

55. By reason of the foregoing, defendants, directly or indirectly, violated, and unless restrained and enjoined, will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CAUSE OF ACTION

EMPLOYMENT OF DEVICE, SCHEME, OR ARTIFICE TO DEFRAUD

Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)]

The allegations contained in paragraphs 1 through 53 are realleged and incorporated herein by reference.

56. Defendant, by engaging in the conduct described in paragraphs 1 through 53 above, directly and indirectly in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or of the mails, with scienter, employed devices, schemes, or artifices to defraud.

57. By reason of the foregoing, defendant, directly or indirectly, violated, and unless restrained and enjoined will continue to violate 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CAUSE OF ACTION

FRAUD IN THE OFFER AND SALE OF SECURITIES

Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q (a)(2) and 77q(a)(3)]

The allegations contained in paragraphs 1 through 53 are realleged and incorporated herein by reference.

58. Defendant, by engaging in the conduct described in paragraphs 1 through 53, directly and indirectly, in the offer and sale of securities of the UESP, by the use of means or instruments of transportation or communication in interstate commerce or of the mails, obtained money or property by means of untrue statements of material fact or by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of such securities.

59. By reason of the forgoing, defendant, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and 77q(a)(3)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that the defendant committed the violations charged and alleged herein.

II.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, an order permanently enjoining defendant Hatch and his agents, servants, employees, and those persons in active concert or participation with him, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in the transactions, acts, practices and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

III.

Enter an order directing defendant Hatch to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

IV.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Dated this 4th day of August, 2005.

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