

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: (801) 530-6600
Facsimile: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

DEVIN M. LARKINS, CRD#4930349

Respondent.

**AMENDED PETITION TO REVOKE
LICENSE, BAR LICENSEE AND
IMPOSE A FINE**

Docket No. SD-20-0039

Pursuant to the authority of the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-6 and Utah Administrative Code Rule R151-4-204(1)(a),¹ the Utah Division of Securities (“Division”) hereby files an Amended Petition to the Utah Securities Commission (“Commission”) seeking an Order revoking the license of and barring Respondent Devin M. Larkins (“Larkins”) and imposing a fine. In support of this Amended Petition, the Division alleges the following:

STATEMENT OF FACTS

1. Larkins is a Utah resident who has been licensed in Utah as an investment adviser representative of LifePro Asset Management, IARD#285252, since June 2017. Prior to that

¹ The Notice of Agency Action and initial Petition in this matter were sent to the Respondent and his legal counsel by certified mail and email on December 9, 2020 and were received. No responsive pleading has been served as of the date of this filing.

he was licensed as an investment adviser representative of Larkins Investment Management, LLC ("LIM"), IARD#159751, from August 2012 until June 2017. Larkins was the sole owner, designated official and chief compliance officer of LIM. From August 2005 until January 2007 Larkins was licensed as a broker-dealer agent of Fidelity Brokerage Services, LLC, CRD#7784.

2. Larkins has passed the FINRA Series 7, 63 and 65 examinations.

Related Entities

3. For the period relevant to this matter, 2012 through 2015, Larkins was also an independent insurance agent of Paramount Financial Services Inc., a Utah corporation, which is also known by its DBA, Live Abundant ("Live Abundant"). Live Abundant is an insurance agency that focuses on selling life insurance products as a retirement strategy.
4. Future Income Payments, LLC ("FIP") is a defunct Delaware limited liability company owned and controlled by Scott A. Kohn ("Kohn"). From 2011 through April 2018, FIP engaged in the business of purchasing portions of financially distressed individuals' pensions below value, giving a lump sum payment in exchange for the individual ("pensioner") agreeing to make repayments from their monthly pension payments. FIP charged pensioners usurious interest rates of up to 183%.
5. FIP used a nationwide network of insurance agents, including Larkins and other Live Abundant agents, to solicit investors to purchase portions of those pensions ("FIP investments") for a purported return between 6.5% and 8%. The FIP investments are investment contracts, which are defined as securities under the Utah Uniform Securities Act.

6. FIP operated as a Ponzi scheme,² which collapsed in April 2018 when it stopped making payments to investors in the investment contracts. FIP is currently the subject of multiple legal and regulatory actions, and its principal, Kohn, was federally indicted in March 2019³ and charged with conspiracy to commit mail and wire fraud in connection with FIP.

According to the indictment, investors are owed approximately \$300 million. A federal receiver was appointed for FIP in April 2019.⁴

7. Following FIP's collapse, the Division received three written complaints from Utah residents who made investments through Larkins. The Division's subsequent examination revealed that from 2013 through 2015, Larkins made thirty-two sales of FIP investments, totaling approximately \$4,738,324⁵ to twenty-seven investors, twenty-one of whom were Utah residents. A majority of those monies, \$3,095,276, came from qualified retirement funds such as IRAs. Larkins earned approximately \$110,629 in commissions for his FIP sales. The Larkins investors are still owed \$484,491 in principal. The Division's examination further revealed that Larkins misrepresented or omitted material facts in connection with the offer and sale of FIP, failed to report his activities with FIP as an outside business activity, and made false statements to the Division about those activities in a 2014 examination of LIM.

² A Ponzi scheme is an investment fraud where existing investors are paid purported returns with monies invested by later investors.

³ See *United States v. Kohn*, Case Number 6:19-cr-00239, filed in the District Court of the United States, South Carolina, Greenville Division.

⁴ See Order: <http://receiverkohnfip.com/content/pleadings/249/1--Order.pdf>

⁵ Including monies invested later by Larkins' clients directly through Live Abundant, investor totals were \$4,838,324.

FIP and Kohn – Background and History

8. FIP was initially established by Kohn in April 2011 as Pensions, Annuities and Settlements, LLC (“PAS”), a Delaware limited liability company. PAS changed its name to Future Income Payments in May 2014, two days before the State of Washington filed a regulatory action against PAS for unlicensed activity, deceptive lending, and obtaining property by misrepresentation. FIP was also referred to as “Structured Cash Flows” and had a web site using that name.⁶
9. Kohn is a convicted felon. In December 2006, he pled guilty in the United States District Court for the District of Columbia, to conspiracy, trafficking in counterfeit goods, and aiding and abetting trafficking, all federal felonies. He was sentenced to fifteen months in federal prison.
10. FIP promoted itself as a “factoring company” that specialized in “secondary structured cash flow” investment products. Those products were marketed as “structured cash flows.” According to an FIP brochure, “the secondary structured cash flow market allows an individual to sell an asset that pays over a period of time in exchange for a lump sum payment.” FIP claimed to be “America’s largest pension cash flow originator” and that from 2010 through 2015 it had “placed 1000 transactions representing \$150 million in purchase price.” It further touted “a perfect payment history.”
11. Using internet advertising or other marketing campaigns, FIP actively sought out pensioners, many of whom were military veterans, who were in dire financial conditions and needed immediate monies. FIP agreed to pay those individuals a below-value lump sum, in

⁶ For simplicity, as used in this Petition “FIP” includes PAS and “Structured Cash Flows” as well as “SCF” as it was also known.

exchange for the right to receive future pension payments to repay the lump sum at a predatory interest rate.

12. The FIP investments sold to investors by Larkins and others were comprised of portions of different pensions that FIP purchased from different pensioners. FIP told investors that a rigorous “underwriting” process was used before pensioners were “approved.” Investors were typically presented several options: either a 3, 5 or 10-year term of investment, and a choice between federal, state or private pensions. Interest rates varied depending on the term and type of pension. Once an investment was made, FIP investors received a monthly check that included some principal and interest generally between 6.5% and 8%.
13. FIP failed to comply with state and federal fair lending and consumer lending laws and regulations. Those failures resulted in regulatory investigations, cease and desist orders and other legal actions by multiple states as well as the Consumer Financial Protection Bureau (“CFPB”).
14. As more states began to investigate FIP, in December 2015, Kohn registered another entity called “Future Income Payments, LLC” as a Nevada limited liability company. However, investor contracts continued to specify the Delaware FIP entity.
15. FIP stopped making payments to investors in April 2018. By that time, because of its unlawful lending practices, regulators had prohibited FIP from doing business in various states, pensioners were unable to continue to make exorbitant interest payments, and Kohn had diverted new investor monies to fund payments to earlier investors, operating FIP as a Ponzi scheme. Kohn also had misappropriated investor monies for personal use to fund a lavish lifestyle.

Live Abundant: Primary Sales Agents for FIP

16. Live Abundant was founded in 1974 by Douglas Andrew (“Andrew”), who is its CEO and owner. Andrew was a licensed insurance agent from 1974 to 2006. Neither Live Abundant nor Andrew have ever been licensed to provide investment advice or sell securities. Live Abundant primarily focuses on selling indexed universal life (“IUL”) insurance.⁷
17. Besides Andrew, the Live Abundant “executive team” includes his two sons, Aaron Andrew (“Aaron”) and Emron Andrew (“Emron”), both of whom are insurance licensed. Neither has ever been licensed to provide investment advice or sell securities.
18. Andrew is the author of several books and holds himself out as an expert on financial matters and retirement planning. The Live Abundant web site claims Live Abundant has been featured in Harvard Business Review, Forbes, The Huffington Post, Entrepreneur, ABC, PBS, U.S. News & World Report, Fox Business as well as local television and radio.
19. Live Abundant uses radio programs and mail advertisements to generate sales leads and attract customers to seminars, where Andrew discusses the benefits of life insurance policies as a superior retirement strategy.⁸ Much of the marketing materials focus on stock market

⁷ IUL insurance is a type of permanent life insurance that has a cash value component in addition to a death benefit. The money in a cash value account earns interest based on a stock market index such as the S&P 500. Funds do not earn a fixed rate of interest but typically come with a minimal interest rate guarantee. IUL policies renew annually and premiums increase substantially as the insured gets older. In addition, IUL policies have higher fees and costs than other life insurance.

⁸ Live Abundant seminars generally recommend investors roll over or withdraw from their 401k and IRA accounts to purchase insurance from its agents. Live Abundant encourages investors to pay taxes now on distributions from qualified funds and move those monies into “maximum funded” IUL insurance policies, from which tax-free withdrawals may be taken as loans.

anxiety, tax liabilities, the “downfalls” and “traps” or IRAs and 401k accounts and other fear-inducing strategies in order to sell insurance.

20. Most of Larkins’ investors first learned about Live Abundant through Andrew’s radio ads and programs, after which they attended a seminar.

21. From March 2012 through April 2018, Live Abundant promoted FIP in seminars. Live Abundant downplayed the risks and emphasized numerous “protections” built-in to FIP, including the use of escrow accounts to make it “Bernie Madoff-proof,”⁹ the use of both a “shortfall” account and a “reserve account” held in a “captive” insurance company – purportedly holding more than \$2.5 million – in the event that pensioners failed to make payments as agreed. In addition, Live Abundant told attendees if a pensioner were to die or stop payments, FIP would purchase the pension from the investor and pursue collections from the pensioner.¹⁰

22. After Andrew’s presentations, seminar attendees were “assigned” to meet with Live Abundant sales agents – referred to as “Wealth Architects” – for a one-on-one session to discuss FIP and insurance. “Wealth Architects” sold FIP investments, often in connection with the sale of IUL insurance, where FIP was pitched as a way to generate an income stream used to fund the client’s high insurance premiums. “Wealth Architects” were trained by Live Abundant to recommend funding FIP investments using retirement monies or even home equity.

⁹ Bernie Madoff ran the largest Ponzi scheme in history. *See* <https://www.investopedia.com/terms/b/bernard-madoff.asp>

¹⁰ Live Abundant and sales agent representations were very different from the written risk disclosures included in FIP contracts.

23. Live Abundant agents sold FIP investments totaling \$134,095,482.00 – approximately 80% of total FIP sales, according to Live Abundant – before FIP collapsed. FIP paid Live Abundant \$8,498,513 in commissions, of which Live Abundant then paid \$2,316,332 to its sales agents, including Larkins. Aaron and Emron supervised “Wealth Architects” selling FIP and also sold it themselves.

Larkins’ History with Live Abundant and as “Wealth Architect” and FIP Sales Agent

24. According to Central Registration Depository (“CRD”)¹¹ records, Larkins’ first association with Andrew and Live Abundant was from December 2006 through March 2008, where his activities were reported as “financial coaching/sales,” presumably as an insurance sales agent, as he was solely licensed in that capacity¹² during that time period.

25. Larkins associated again as an insurance agent with Live Abundant from 2012 through 2017, during the same time he owned and operated his investment advisory firm, LIM. Live Abundant provided him leads for both FIP investments and insurance sales during that time. Larkins attended seminars as well as sales and other meetings at Live Abundant. From 2013 to 2015, Larkins sold FIP to clients he was introduced to from Live Abundant seminars. His Live Abundant title was “Wealth Architect”.

26. Larkins met individually with attendees after seminars to discuss FIP in greater detail. He provided them FIP brochures and showed examples of projected returns based on amount invested, interest rates and time periods. Larkins provided the required investment

¹¹ CRD is an online registration and licensing system operated by the Financial Industry Regulatory Authority (“FINRA”) and used by members of the securities industry, including state and federal regulators and self-regulatory organizations. CRD contains administrative information, including personal, educational and employment history, as well as disclosure information such as regulatory and disciplinary actions.

¹² “Financial coaching” is not recognized in Utah as any type of professional service.

documents and assisted clients in completing and submitting that paperwork. Larkins' signature was included on the client documents as their "agent."

27. After an investment was finalized, FIP paid Live Abundant approximately 6%¹³ of the invested amount. Live Abundant then paid Larkins a "referral fee" ranging between 1.8% to 2.1% of the amount invested.

2014 Division Audit and Larkins' False Denials of Activities with Live Abundant

28. The Division conducted an announced field examination of Larkins and LIM on February 25, 2014. One of the concerns of the Division at that time was Larkins' use of the email address thelastchancemillionaire@gmail.com. That address was associated with Andrew¹⁴ and Live Abundant, where Larkins had previously worked between 2006 and 2008. Larkins told the Division that he only used the email address for receiving junk mail and a few personal emails.

29. In addition, the Division specifically asked in writing:

- a. Is there still an association, referral or otherwise, with Mr. Andrew's organization/entities?
- b. Does LIM, Devin Larkins, Strategic Design, Inc., KGAS Consulting, LLC, Gradient Insurance, LLC, or Gap Funding, LLC¹⁵ receive client referrals, direct compensation or indirect compensation from Doug Andrew or any of his affiliated entities?

¹³ The exact percentage paid to Live Abundant by FIP was not known to Larkins.

¹⁴ Andrew also had published a 2007 financial self-help book titled "The Last Chance Millionaire."

¹⁵ The listed entities were owned and controlled by Larkins and were registered with the Utah Division of Corporations.

- c. Does LIM or Devin Larkins in his insurance capacities recommend insurance policies to clients in a fashion/philosophy similar to those as outlined in The Last Chance Millionaire/Missed Fortune?

30. Larkins responded in writing to those questions in April 2014, stating:

Larkins does not have an agreement to receive referrals from Doug Andrew or his entities as he is no longer employed by Paramount Financial Services. However, Larkins would ensure that any such leads or referrals in the future, as an independent agent, would be for insurance where death benefit is the primary objective.

None of the following receive compensation from Doug Andrews or his affiliated entities: LIM, Strategic Design, Inc., Gradient Insurance, LLC, nor Gap Funding LLC.

31. Those responses were false and misleading statements about Larkins' activities with Doug Andrew and Paramount Financial Services/Live Abundant in connection with Larkins' offer and sale of FIP securities. In fact, at the time of the Division's exam in February 2014, Larkins was actively selling FIP. He had already made 12 sales of FIP to investors referred to him by Live Abundant and had received compensation for each of those sales from Live Abundant. During the course of the examination, Larkins made 3 additional FIP sales and was compensated by Live Abundant for those sales. He failed to disclose those activities to the Division.

32. Notably, in a February 2019 Division interview, Larkins admitted being directly compensated by Live Abundant for the FIP sales, which directly contradicts his written representations from 2014. He further falsely claimed in the interview that he "made it very clear" to the Division in the 2014 examination that he was still taking leads from Live Abundant and that he could "guarantee" the question of his affiliation with Live Abundant was "never brought up."

33. Larkins had also told the Division in 2014 that he only recommended life insurance if the primary objective was a death benefit. That representation was also false. Most of Larkins' FIP investors in fact purchased "maximum funded" life insurance as a means to receive tax-free income in retirement, consistent with the content presented at Live Abundant seminars.¹⁶

Additional False Statements to the Division

34. Despite soliciting investors and selling FIP investments while he was the principal of LIM and licensed as an investment adviser representative, Larkins filed false documents with the Division – Form U4 and Form ADV – by failing to disclose his activities with Live Abundant and FIP.
35. Form U4, the Uniform Application for Securities Registration or Transfer, is filed with the Division in order for an individual to become licensed as an investment adviser representative in Utah. Form U4 requires the disclosure of all business activities conducted by licensed individuals. It is the individual's responsibility to ensure the Form is accurate and complete, and promptly updated as necessary. At no time did Larkins disclose his business activities with Live Abundant and Andrew,¹⁷ or that he was selling FIP.
36. Form ADV is a document used by investment advisers to license with state securities regulators. Form ADV Part 2 requires investment advisers to prepare narrative brochures written in plain English that contain information such as the types of advisory services offered, a fee schedule, conflicts of interest and the business background of key personnel of the adviser. It further requires disclosure of any business activities apart from the advisory

¹⁶ Most investors were retired and living on limited incomes.

¹⁷ The omission is particularly telling, given that Larkins had previously disclosed his prior association with Live Abundant as described in paragraph 24.

business, and particularly those from which a person receives substantial income, as Larkins did from FIP.

37. When interviewed by the Division in 2019, Larkins made the claim that “a compliance firm” told him since FIP was a fixed product it was “under the insurance outside business activity,” which is a clearly unreasonable conclusion to reach based on the plain language of the instructions for Forms U4 and ADV.¹⁸ Moreover, FIP investments were clearly not insurance, and FIP was not an insurance company.

Larkins’ “Due Diligence” on FIP

38. Larkins told the Division he learned about FIP from Live Abundant in 2012 and that Live Abundant had been selling it for about a year at that time. He said that FIP was presented as “an insurance product” even though it was not sold by or through an insurance company and no one ever told him he needed an insurance license to sell it. At the same time, Larkins said FIP was “definitely a risk product” that was not guaranteed.
39. Larkins acknowledged it was always his job “to do suitability” and claimed to have conducted a year of due diligence to “vet the product” before selling it.¹⁹ However, his primary due diligence consisted of believing, without any verification, what he was told by individuals who all had a significant financial interest in selling FIP: Andrew and his sons, as well as an FIP insider, Joseph Hipp (“Hipp”).²⁰ Among other things, Larkins was told

¹⁸ Regardless, Larkins’ activities and time spent with Live Abundant and FIP presented conflicts of interest to his investment advisory clients and were required to be disclosed.

¹⁹ Prior to a Division interview, Larkins provided a letter detailing numerous actions he claimed to have taken as part of his due diligence on FIP. During the interview it became apparent that some of those events did not happen, were factually incorrect, or unsupported by any evidence.

²⁰ In a superseding indictment filed on July 9, 2019, Hipp was added as a defendant to the criminal case against Kohn described in n.1, and was charged with conspiracy to commit mail and wire fraud.’

Andrew and his sons met personally with Kohn. Hipp was described as a “wholesaler” of FIP and was the only FIP person Larkins actually spoke with. Larkins said Hipp played a “big part” as a source about FIP, who regularly sent information by email to Larkins and other Live Abundant agents. Larkins met Hipp twice in person, including once when Hipp traveled to Utah, which Larkins also considered part of his due diligence.

40. However, Larkins did not independently verify statements made by Live Abundant or Hipp, or any of the information in FIP brochures or other marketing materials. He did not request audited financial statements for the company or otherwise attempt to verify claims about the company’s purported success. Significantly, Larkins never verified the existence or financial condition of a “captive” insurance company which purportedly held millions of dollars in “shortfall” and “reserve” funds to be used in the event of a pensioner defaulting on payments, which was pitched to investors as a huge risk mitigation measure.

41. Although he was allegedly told by Live Abundant and Hipp that FIP was not a security, Larkins never called the Division to ask that question.²¹ Neither Live Abundant nor Hipp ever provided Larkins with any evidence or documentation that FIP was not a security. Likewise, Larkins never sought a legal opinion about whether FIP was a security.

42. Of the outside sources of information Larkins said he reviewed, the conclusions he reached were unreasonable, particularly for a fiduciary and principal of an investment advisory firm. For example, Larkins claimed to have relied on a May 2013 SEC Investor Bulletin (“SEC Bulletin”) that stated “Pensions and structured settlement income-stream products **may or**

²¹ During an interview with the Division, Larkins claimed the Division “knew” Live Abundant was selling FIP because he was told by someone at Live Abundant that there was a brochure on a table during a prior Division examination. Larkins was not present and had no firsthand knowledge of that or who from Live Abundant made that claim.

may not be securities and likely are not registered with the SEC. As such, reliable information about these products may be difficult to find...” (emphasis added). The SEC Bulletin urged potential investors to “proceed with caution” in considering investing in such products. The Bulletin further advised:

Before You Invest

Given these risks and complexities, ask the following questions before you invest:

- **Is the financial professional selling the product registered with a state or federal regulator or with FINRA?** Use the resources below to check the registration state of the salesperson.
 - Visit the SEC’s Investment Adviser Public Disclosure (IAPD) website.
 - Visit FINRA BrokerCheck or call FINRA toll-free at (800) 289-9999
 - Contact your state securities regulator.
 - Contact your state’s insurance commission by visiting the website of the National Association of Insurance Commissioners or calling toll-free (866) 470-6242.

...

- **Is the sales person authorized to sell this product?** If registered, ask if the salesperson’s compliance department has reviewed the product and allows it to be sold. (emphasis in original).

43. Other information known to Larkins about FIP should have raised red flags. For example, Larkins told the Division that one of his clients who was considering investing in FIP in 2012 called the Division and was told that Live Abundant was under Division investigation and

advised the client to “proceed with caution” in considering making an investment. Yet knowing this, Larkins took no further action and did not contact the Division.

44. Other information Larkins pointed to in terms of his “due diligence” either did not support or contradicted Larkins’ purported conclusions, including:

- a. Being told a broker-dealer firm had approved the sale of FIP. However, he never contacted the broker-dealer to verify that representation. Moreover, had that been the case, it would have confirmed FIP to be a securities product.
- b. Being told by another FIP sales agent who also had an investment advisory firm that that individual had contacted the Division to confirm his disclosure of FIP in the firm’s ADV.²² If true, it again raises the question why Larkins did not contact the Division or disclose FIP in LIM’s ADV.
- c. Calling the custodian of FIP investor accounts, a non-securities licensed entity, and allegedly being told he did not need a securities license to sell FIP.
- d. Hipp telling him FIP had been “reviewed” favorably by over 15 states. Larkins never asked for any documentation of those “reviews” but knew that FIP could not be sold in certain states due to the reviews.²³

Larkins’ Sales of FIP to Investors

45. Larkins met individually with investors after Live Abundant seminars. He told most investors, among other things:

- a. their monies would be placed with a well-established company;

²² That individual in fact did no such thing and did not disclose FIP on Form ADV or elsewhere.

²³ During his interview, Larkins also told the Division he was unaware of regulatory actions against FIP taken during the time he was selling it, despite knowing there was a growing list of states where the product could no longer be sold.

- b. their monies would be used for loans to pensioners, many of whom were retired military veterans;
- c. FIP was a “safe” investment that provided a reliable and predictable stream of income;
- d. investor funds would generate sufficient income to pay investors’ high insurance premiums;
- e. FIP was an appropriate investment for retired senior citizens;
- f. FIP was an appropriate investment for retirement monies;
- g. FIP was especially safe because governments that owed pensions would not default on pension payments;
- h. investment monies were pooled among numerous pensioners which would protect against default by a single pensioner; and
- i. a substantially funded reserve account would protect investors against default by pensioners.

Those statements were false.

Investor F.D.

46. In August 2013, after hearing Andrew infomercials on the radio, F.D. attended a Live Abundant seminar in California and was assigned to Larkins as his “Wealth Architect.” At the time, F.D. was 67 years old and retired. He was impressed with Larkins, who provided him a “pretty nice brochure” and described FIP to him in “a lot more detail” and thereafter “helped shepherd” F.D. through the process of investing.

47. Among other things, Larkins prepared projections for various investment amounts, interest rates, and time frames. Larkins did not explain in any detail how F.D.'s monies would be used to produce a return.
48. In connection with the offer and sale of FIP, Larkins directly or indirectly misrepresented material facts, including but not limited to the following:
- a. FIP was a safe investment with manageable risk;
 - b. FIP provided predictable income paid by governments and corporations;
 - c. FIP was appropriate for F.D. to invest the entirety of his retirement funds;
 - d. FIP was appropriate to rely on for living expenses;
 - e. His monies would be used to help pensioners open up businesses; and
 - f. any risks were mitigated by the large pool of money in the reserve fund.

Those statements were false.

49. In October 2013, F.D. invested approximately \$411,300 in FIP, comprised of qualified retirement funds, in a 10-year contract paying interest of 8%. In December 2013, he invested an additional \$104,000 of retirement funds in a 5-year contract at 8%.
50. Larkins also sold F.D. a \$750,000 insurance policy, which was to be funded by F.D. liquidating four REITs, which Larkins assisted him in doing.²⁴ F.D. indicated after the first year the policy premiums skyrocketed and he was not in a position to continue to pay into it. Larkins failed to disclose to him that the policy was renewable annually and that the premium was recalculated and increased every year.

²⁴ Larkins' activities in assisting in the liquidation of securities in order to buy insurance is investment advisory activity under Utah Admin. Code Rule R164-4-2(G)(3)(c) which should have been recorded on the books and records of LIM.

51. Larkins knew that F.D. was funding the investments with pension monies that he had been living off of, and knew F.D. would be living off the FIP income stream.

52. F.D.'s monthly FIP payments ceased at the end of the first quarter of 2018. He called Larkins, who told him there were problems with FIP in New York, but that it would be worked out. Several months later he called Larkins again, who told him nothing had changed, but that F.D. should be fairly satisfied as his principal had been repaid. That did not make F.D. feel any better, because that was five years of interest he could have earned elsewhere.

Investor L.G.

53. L.G. met Larkins after attending a Live Abundant seminar, when Larkins was assigned as his "Wealth Architect." The opportunity was presented as purchasing an "investment grade insurance policy" that would be funded from the FIP investment.

54. At the time of the investment, L.G. was 70 years old and retired. His sole income at the time was from social security, investment interest and a small pension. He was a novice investor with a conservative risk tolerance.

55. Larkins was the primary source of information about FIP. Among other things, he told L.G.:

- a. FIP would provide a stream of money to fund the insurance policy;
- b. FIP was a secure investment that involved government pensions, which the government would not allow to default;
- c. the investment would pay interest of 6.5%.
- d. the company was successful and never defaulted on a payment;
- e. FIP had a substantial reserve to cover any default; and
- f. the reserve would more or less guarantee the investment.

Those representations were false.

56. L.G. told the Division he trusted Larkins' statements and judgment, and that as an experienced securities broker, as L.G. understood Larkins to be, Larkins was acting on L.G.'s behalf and would have vetted FIP and "done the homework" to not recommend a risky investment.
57. In October 2013, based on Larkins' recommendations, L.G. liquidated stock in an IRA account order to make his first investment of \$322,800 in FIP.²⁵ He also purchased a \$500,000 life insurance policy on his wife, to be funded by the FIP income stream. L.G. incurred tax consequences for the IRA distributions. After receiving payments on the first investment for several years, in August 2015 L.G. made a second investment of \$100,000.
58. In 2018, several months before payments ceased in their entirety, Larkins emailed L.G. and told him there would be a delay in the monthly payment – due to rescheduling from the beginning of the month to the end of the month – and not to worry. Shortly after that, the payments stopped. L.G. is still owed principal of \$20,783.

Investors D.G. and S.G.

59. In August 2014, after hearing radio ads from Live Abundant, a married couple, D.G. and S.G. ("Couple") attended a Live Abundant seminar. They were retired seniors who had inherited some money and were looking for ways to invest. Larkins was assigned as their "Wealth Architect" and sold them FIP and a life insurance policy. Consistent with Live Abundant's sales pitch for "maximum funded indexed universal life," Larkins told them that

²⁵ Larkins' recommendation to liquidate stock in order to purchase an FIP investment constitutes investment advisory activity and should have been recorded on the books and records of LIM as Larkins' investment advisory firm. Likewise, Larkins owed L.G. a fiduciary duty in making that recommendation.

after paying the high annual premiums for five years, the policy value would continue to grow and any funds needed during retirement could be withdrawn tax-free. Rather than putting remaining inheritance money in a bank account or the stock market, Larkins recommended an FIP investment. Among other things, Larkins told Couple:

- a. their money would be used to fund loans to retired military members;
- b. they would receive 6.5% interest, which was much better than a savings account;
- c. an FIP investment was “much more secure” than the stock market;
- d. FIP monthly payments would be sent to Couple to pay the high insurance premiums;
- e. from inception through 2014, FIP had funded over 1700 sellers through 640 transactions representing \$100 million;
- f. FIP offered risk mitigation by proprietary underwriting, diversification of each purchase, short and long term reserves, and seasoned collection abilities;
- g. in response to Couple’s concern that the FIP contract said FIP would not guarantee receiving all payments, Larkins said there was an escrow account available just in case there was a problem with any pensioner who went bankrupt or had personal problems who failed to honor their contract; and
- h. there had never been any issues with FIP;

Those representations were false.

60. In December 2014, Couple invested \$353,000 in FIP. Their payments stopped in April 2018, and they are still owed principal of \$76,927.

Investor J.R.

61. J.R. also first heard Doug Andrew on the radio discussing “the problem with IRAs.” He and his wife attended a Live Abundant seminar, after which Larkins was assigned as his “Wealth Architect.” At that time, J.R. was 70 and a half years old, retired, and living on social security and accrued retirement benefits. He was a novice investor.

62. After meeting one-on-one with Larkins, in October 2013, J.R. invested approximately \$290,600 in FIP using IRA monies and also purchased an IUL insurance policy. J.R. did not even know he was investing in FIP. Rather, his understanding from Larkins was that he was investing in insurance.

63. Larkins told J.R.:

- a. the investment was in a maximum funded insurance policy;
- b. the policy would slowly be funded from “a holding fund” over 5 years;
- c. J.R. could then take money out tax-free.

Those statements were false.

64. Larkins did not disclose the risks of FIP to J.R. and did not disclose that he would receive a commission for the FIP sale.

65. In June 2015, J.R. made an additional investment of \$39,097 of retirement monies in FIP. In October 2015, he made another investment of \$70,000 of non-qualified monies.

66. Several years later J.R. later received a letter from Larkins indicating there was a problem with the investment, but that everything was in place to fix it. Shortly after that, the Division contacted J.R., which he said was the first time he learned his monies had actually been invested in FIP. He is still owed \$27,116 in principal.

Omissions of Material Fact – All Clients

67. In connection with the offer and sale of FIP, Larkins directly or indirectly omitted material

facts to clients including but not limited to:

- a. Larkins was not licensed to offer or sell FIP securities;
- b. Larkins would receive a commission for FIP sales and the amount of that commission;
- c. Larkins' conflicts of interest, including that he would receive double compensation based on his sale of insurance and FIP.
- d. Larkins would be compensated through Live Abundant, which was not licensed as a broker-dealer, in violation of securities laws and industry rules;
- e. Live Abundant would also be compensated for the sale of FIP;
- f. relevant disclosures about FIP, including its financial condition and significant liabilities;
- g. Larkins conducted no reasonable due diligence on FIP;
- h. Larkins had not reviewed audited financial statements for FIP and did not know its financial condition;
- i. Larkins had no reasonable basis for the representations made to investors described above in paragraphs 44, 47, 54, 58, and 62.
- j. investors using qualified funds faced adverse and harmful tax consequences;
- k. failing to disclose red flags known by Larkins, such as a client telling him in 2012 they had contacted the Division to ask about FIP and were told that Live Abundant was under investigation and to "proceed with caution" regarding FIP;

- l. as a result of “state reviews” there was a growing list of states where FIP could not do business;
- m. Kohn, FIP’s owner, had been convicted of multiple federal felonies, including aiding and abetting trafficking, conspiracy, and trafficking in counterfeit goods;
- n. Some or all of the information typically provided in an offering circular or prospectus concerning FIP, such as:
 - i. business and operating history
 - ii. financial statements
 - iii. information about principals involved in the company;
 - iv. conflicts of interest; and
 - v. suitability factors for investment;
- o. for investments after May 7, 2014, that the State of Washington Department of Financial Institutions filed a Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist, Prohibit from Industry, Impose Fine, and Refund Fees and Interest against FIP, based on unlicensed activity, deceptive lending, and obtaining property by misrepresentation;
- p. for investments after January 21, 2015, that the State of Colorado entered an Assurance of Discontinuance and Final Agency Order against FIP for unlicensed lending and excessive finance and delinquency charges;
- q. for investments made after March 3, 2015, that the California Department of Business Oversight entered a Desist and Refrain Order against FIP and Kohn for unlicensed lending;

- r. investors' monies would be used to pay sales commissions, retained by FIP for other purposes unrelated to what investors were told at the time of solicitation, including making payments to earlier investors, or misappropriated for personal use by Kohn; and
- s. FIP investments were unregistered securities that did not qualify for an exemption from registration.

FIRST CAUSE OF ACTION
Securities Fraud under Section 61-1-1(2) of the Act

68. As described herein, in connection with the offer or sale of FIP securities, Larkins directly or indirectly misrepresented material facts or omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to both investors and the Division, in violation of Section 61-1-1(2) of the Act.
69. Larkins' misrepresentations to the Division include but are not limited to the following:
- a. telling the Division in 2014 that he had terminated his relationship with Andrew and Live Abundant;
 - b. telling the Division that he was no longer receiving leads or compensation from Andrew or his entities; and
 - c. claiming that – contrary to the Live Abundant sales pitch – he only sold IUL policies where the primary objective was a death benefit.

Those representations were false.

SECOND CAUSE OF ACTION
Securities Fraud under Section 61-1-1(3) of the Act

70. Larkins was the designated official of a licensed investment advisory firm, LIM, and was licensed as an investment adviser representative of LIM during the entire time he solicited

investors for FIP. Larkins actively concealed his FIP activities from the Division through his filing of false documents and making false statements to the Division, which constitute an act, practice or course of business operating as a fraud on the Division. His activities selling FIP securities, advising investors to purchase FIP securities, and advising investors to liquidate securities in order to purchase insurance from him were required to be fully disclosed and recorded on the books and records of LIM. By failing to do so, in connection with the offer or sale of FIP securities, Larkins engaged in an act, practice or course of business operating as a fraud on FIP investors, LIM clients, and the Division.

THIRD CAUSE OF ACTION
Unlicensed Agent under Section 61-1-3(1) of the Act

71. From 2013 through 2015, Larkins acted as an unlicensed agent by conducting securities transactions through and receiving transaction-based compensation from FIP and Live Abundant, in violation of Section 61-1-3(1) of the Act.

FOURTH CAUSE OF ACTION
Sale of Unregistered Securities under Section 61-1-7 of the Act

72. The FIP investments offered and sold by Larkins are securities as defined under Section 61-1-13 of the Act. They were not registered with the Division, do not qualify for any exemption from registration, and are not federal covered securities for which any notice filing was made, in violation of Section 61-1-7 of the Act.

FIFTH CAUSE OF ACTION
False Statements to the Division under Section 61-1-16 of the Act

73. As described herein, Larkins made numerous false statements both in writing and in interviews with the Division, in violation of Section 61-1-16 of the Act. During the

Division's 2014 examination, Larkins represented that he had terminated his relationship with Andrew and Live Abundant and was no longer receiving leads or compensation from Andrew or his entities. Those representations were false.

74. Larkins further claimed that – contrary to the Live Abundant sales pitch – he only sold IUL policies where the primary objective was a death benefit, which was also false.
75. In addition, Larkins' Form U4 and LIM's Form ADV, documents filed with the Division, were false and materially misleading from 2013 throughout 2015 because they failed to disclose Larkins' activities with Live Abundant and FIP, and significantly, failed to disclose he was receiving substantial compensation from those entities for selling FIP during that time.
76. Finally, and directly contrary to his 2014 assertions, in his 2019 interview, Larkins admitted being directly compensated by Live Abundant for the FIP sales. He further claimed he "made it very clear" to the Division in 2014 that he was still taking leads from Live Abundant and that he could "guarantee" the question of his affiliation with Live Abundant was "never brought up," both of which statements are belied by his own prior written representations.

SIXTH THROUGH EIGHTH CAUSES OF ACTION
Dishonest or Unethical Practices under Section 61-1-6(2)(a)(ii)(G) of the Act

Unsuitable Recommendations

77. Investors F.D., L.G., Couple and J.R. and others who purchased FIP from Larkins share many common characteristics: they were retired, senior citizens who were unsophisticated investors with limited incomes and low risk tolerances. They all heard about Live Abundant from radio ads and attended seminars centered around a sales pitch to ditch their IRAs and

401k investments. A majority of clients' monies invested in FIP were qualified retirement funds.

78. As a licensed investment adviser representative and designated official of his own firm, Larkins is presumed to understand the importance of making recommendations that are suitable for clients, particularly more vulnerable clients as in this case. Based on information known by Larkins about his clients, and the fact that he failed to conduct due diligence or verify any of the claims he himself made to clients about FIP, there were no reasonable grounds to believe FIP was suitable in light of investor objectives, their financial situations and needs, which constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(1), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Breach of Fiduciary Duty

79. Larkins' numerous misrepresentations and omissions in connection with his sales of FIP – and particularly his failure to vet the product before selling it to numerous clients – demonstrate an especially egregious breach of fiduciary duty and complete failure to put the best interest of his clients ahead of his own, which is a dishonest or unethical practice under Utah Admin. Code Rule R164-6-1g(E), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act. In addition, Larkins' failure to disclose to LIM advisory clients his conflicts of interest, amount of time he spent and compensation he earned selling FIP failed to put those clients' interests first, which is a further breach of fiduciary duty.

Conflicts of Interest

80. Larkins failed to disclose in writing and before the rendering of advice the material conflicts of interest relating to Live Abundant and FIP which could reasonably be expected to impair the rendering of unbiased and objective advice, including the substantial compensation he

earned from selling FIP and IUL insurance, both individually and together. In addition, for LIM advisory clients, Larkins failed to disclose in writing and before the rendering of advice the conflicts of interest presented by Larkins' offering and selling FIP, the amount of time spent and the substantial income he was earning from those activities. Larkins' conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(11), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

REQUEST FOR RELIEF

The Division requests that, based upon Larkins' willful violations of the Act, pursuant to § 61-1-6 of the Act, the Commission enter an Order:

1. That Larkins cease and desist from violating the Utah Uniform Securities Act, § 61-1-1 et seq.;
2. Revoking Larkins' license;
3. Barring Larkins from associating with a broker-dealer or investment adviser licensed in Utah;
4. Imposing a fine of \$140,000.00;
5. any further relief as determined by the Commission.

Dated this 21 day of December, 2020.

Kenneth O. Barton

Kenneth O. Barton [Dec 21, 2020 15:35 MST]

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:

Paula Faerber

Paula Faerber
Assistant Attorney General

CERTIFICATE OF SERVICE

I certify that on the 21 day of December 2020, I provided a true and correct copy of the foregoing, Amended Petition to Revoke License, Bar Licensee and Impose a Fine, to be sent to the parties as follows:

Via standard and certified mail:

Devin M. Larkins

[REDACTED]

Respondent

Certified mail tracking no: [REDACTED]

Keith M. Woodwell

Clyde Snow & Sessions

201 South Main Street, Ste. 1300

Salt Lake City, UT 84111-2216

Counsel for respondent

Certified mail tracking no: 70183090000109325525

Via email:

Devin M. Larkins

[REDACTED] and [REDACTED]

Respondent

Keith M. Woodwell

Clyde Snow & Sessions

kmw@clydesnow.com

Counsel for respondent

Bruce Dibb, Administrative Law Judge

Department of Commerce

bdibb@utah.gov

Paula Faerber, Assistant Attorney General

Utah Attorney General's Office

pfaerber@agutah.gov

Kenneth O. Barton, Manager of Compliance

Utah Division of Securities

kbarton@utah.gov

Sabrina Afridi

Sabrina Afridi

Administrative Court Clerk

Utah Division of Securities

safриди@utah.gov