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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

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THE STATE OF UTAH, : **STATE'S PROPOSED JURY**  
 : **INSTRUCTIONS**  
 Plaintiff, :  
 vs. :  
 SHAWN H. MOORE, : Case No. 081908861FS  
 Defendant. : Judge Katie Bernards-Goodman

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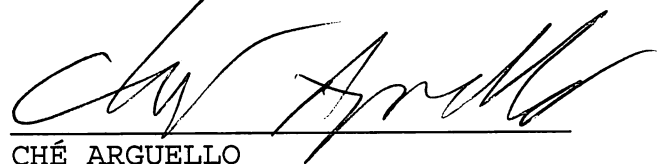
The State of Utah appears through its attorneys, John E. Swallow, Utah Attorney General, and Ché Arguello, Assistant Attorney General, and herewith submits the State's proposed jury instructions, with legal authority cited.

The State will submit jury instructions, without legal authority cited, for submission to the jury once the parties and the Court have agreed to a final set.

DATED this 17<sup>th</sup> day of January, 2013.

JOHN E. SWALLOW  
Utah Attorney General

By:




CHÉ ARGUELLO  
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of January,  
2013, I caused a true and correct copy of the foregoing "State's  
**Proposed Jury Instructions**" to be served by the method indicated  
below, upon the following:

Kenneth R. Brown  
Ann Marie Taliaferro  
Attorneys for Defendant  
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10 West Broadway, Suit 210  
Salt Lake City UT 84101

  
\_\_\_\_\_

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**JURY INSTRUCTIONS**

**SPECIFIC TO THE CHARGES FILED IN THIS CASE**

INSTRUCTION NO. \_\_\_\_\_

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of SECURITIES FRAUD as alleged in Count One of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. Commencing on or about March 2004, in the State of Utah, Shawn Moore, directly or indirectly;
2. To Allan Christmas;
3. A. Willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR  
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
4. In connection with the offer or sale of a security.
5. At the time, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000.00 or more.

If you believe that the evidence establishes each and every one of the above elements of the crime of securities fraud, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count One of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count One.

INSTRUCTION NO. \_\_\_\_\_

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of SECURITIES FRAUD as alleged in Count Two of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. Commencing on or about March 2003, in the State of Utah, Shawn Moore, directly or indirectly;
2. To John and LaRae Huber;
3. A. Willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR  
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
4. In connection with the offer or sale of a security.
5. At the time, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000.00 or more.

If you believe that the evidence establishes each and every one of the above elements of the crime of securities fraud, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Two of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Two.

INSTRUCTION NO. \_\_\_\_\_

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of SECURITIES FRAUD as alleged in Count Three of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. Commencing on or about December 2003, in the State of Utah, Shawn Moore, directly or indirectly;
2. To Michael LeDuc;
3. A. Willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR  
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
4. In connection with the offer or sale of a security.
5. At the time, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000.00 or more.

If you believe that the evidence establishes each and every one of the above elements of the crime of securities fraud, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Three of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Three.

INSTRUCTION NO. \_\_\_\_\_

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of SECURITIES FRAUD as alleged in Count Four of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. Commencing on or about October 2003, in the State of Utah, Shawn Moore, directly or indirectly;
2. To Kay and Linda Shumway;
3. A. Willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR  
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
4. In connection with the offer or sale of a security.
5. At the time, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000.00 or more.

If you believe that the evidence establishes each and every one of the above elements of the crime of securities fraud, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Four of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Four.



INSTRUCTION NO. \_\_\_\_\_

In order for you to find the defendant, SHAWN MOORE, guilty of the crime SALE BY AN UNLICENSED AGENT, as alleged in Count Five of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. From on or about March 2004, in the State of Utah, Shawn Moore;
2. To Allan Christmas;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every one of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Five of the First Amended Criminal Information. If you believe that the evidence has failed to establish one or more of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Five.

U.C.A. § 61-1-3(1)

INSTRUCTION NO. \_\_\_\_\_

In order for you to find the defendant, SHAWN MOORE, guilty of the crime SALE BY AN UNLICENSED AGENT, as alleged in Count Six of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. From on or about March 2003, in the State of Utah, Shawn Moore;
2. To John and LaRae Huber;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every one of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Six of the First Amended Criminal Information. If you believe that the evidence has failed to establish one or more of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Six.

U.C.A. § 61-1-3(1)

INSTRUCTION NO. \_\_\_\_\_

In order for you to find the defendant, SHAWN MOORE, guilty of the crime SALE BY AN UNLICENSED AGENT, as alleged in Count Seven of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. From on or about December 2003, in the State of Utah, Shawn Moore;
2. To Michael LeDuc;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every one of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Seven of the First Amended Criminal Information. If you believe that the evidence has failed to establish one or more of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Seven.

U.C.A. § 61-1-3(1)

INSTRUCTION NO. \_\_\_\_\_

In order for you to find the Defendant, SHAWN MOORE, guilty of the crime SALE BY AN UNLICENSED AGENT, as alleged in Count Eight of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. From on or about October 2003, in the State of Utah, Shawn Moore;
2. To Kay and Linda Shumway;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every one of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Eight of the First Amended Criminal Information. If you believe that the evidence has failed to establish one or more of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Eight.

U.C.A. § 61-1-3(1)

INSTRUCTION NO. \_\_\_\_\_

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of PATTERN OF UNLAWFUL ACTIVITY as alleged in Count Nine of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. From on or about August 2001, in the State of Utah;
2. Shawn Moore;
3. Intentionally, knowingly or recklessly;
4. Through a pattern of unlawful activity;
  - a. in which Shawn Moore participated as a principal;
    - i. received any proceeds directly or indirectly; AND
    - ii. used or invested, directly or indirectly, any part of the income or proceeds of the income, which he received from the specified unlawful activity to acquire, establish or operate an enterprise;
  - b. acquired or maintained, directly or indirectly, any interest in or control of an enterprise; OR,
  - c. was employed by or associated with any enterprise and conducted or participated, directly or indirectly, in the conducting of that enterprise's affairs; OR
  - d. conspired to violate any provision of subsections 4(a), 4(b), or 4(c).

If you believe that the evidence establishes each and every one of the above elements of the crime, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Nine of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Nine.

INSTRUCTION NO. \_\_\_\_\_

The State of Utah must prove that the defendant, SHAWN MOORE, acted willfully in committing the offenses set forth in Counts 1 through 8.

A defendant acts willfully if it was his conscious objective or desire to engage in the conduct or cause the result--not that it was the defendant's conscious desire or objective to violate the law, nor that the defendant knew that he was committing fraud in the sale of the security.

State v. Larsen, 828 P.2d 487 (Utah Ct. App), Affirmed 865 P.2d 1355 (1992)

State v. Harry, 873 P.2d 1149 (Utah Ct. App. 1994)  
Joseph C. Long, 12A Blue Sky Law, §8.04[3], 8-46

INSTRUCTION NO. \_\_\_\_\_

As to willful misstatements and omissions of material facts, it is not a defense that the defendant had an honest belief that an event would occur in the future or made a good faith effort to bring about the future event. If you find that the defendant committed the prohibited acts in connection with the offer or sale of securities, the extent to which the defendant believed that the securities would succeed or made good faith efforts to bring about their success is irrelevant.

Therefore, if you find that the defendant made willful misstatements or omissions of material fact in connection with the offer or sale of securities, it is not a defense that the defendant believed the securities would succeed or made good faith efforts to bring about their success.

State v. Larsen, 865 P.2d 1355 (Utah 1993)

State v. Wallace, 2005 UT App 434

Sparrow v. United States, 402 F.2d 826 (10<sup>th</sup> Cir. 1968)

Elbel v. United States, 364 F.2d 127 (10<sup>th</sup> Cir. 1966) cert denied, 285 U.S. 1014 (1967)

INSTRUCTION NO. \_\_\_\_\_

It is not a defense to Counts 1 through 8, that the defendant, SHAWN MOORE, did not know that the items sold were securities.

State v. Wallace, 2005 UT App 434



INSTRUCTION NO. \_\_\_\_\_

You are instructed that under the laws of the State of Utah, the following words have the following meanings:

1. "Sell" or "sale" includes every contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

2. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

3. A "Material fact" is something which a buyer of ordinary intelligence and prudence would think to be of importance in determining whether to buy a security.

4. "Buy" or "purchase" means every contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

5. "Fraud" is defined as any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or, engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

6. You are instructed that "course of business" means to engage in business activity.

UCA § 61-1-1(2); 61-1-13(1);

TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976)

Payable Accounting Corporation v. McKinley, 667 P.2d 15 (Utah 1983)

Capital General Corp. v. Utah Dept. of Business Regulation, Securities Division, 777 P.2d 494 (Utah App. 1989) cert denied 781 P.2d 878 (Utah 1989)

Levitz v. Warrington, 877 P.2d 1245 (Utah App. 1994)

State v. Larsen, 865 P.2d 1355 (Utah 1993)

State v. Swenson, 838 P.2d 1136 (Utah 1992)

State v. Tenney, 913 P.2d 750 (Utah App. 1996) cert denied 923 P.2d 693 (Utah 1996)

Technomedical Labs, Inc. v. Utah Securities Div., 744 P.2d 320 (Utah App. 1987)

INSTRUCTION NO. \_\_\_\_\_

One of the allegations against defendant, SHAWN MOORE, in each of the charges addressed in Counts 1, 2, 3 and 4, is that he, directly or indirectly, made an untrue statement of a material fact, or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Under this allegation, it is not necessary for the State to prove that the individual investors believed the statements to be true, nor that they relied upon the statements in their decision making process, so long as the statements made were such that a reasonable person in similar circumstances would have relied upon the statements in making an investment decision.

UCA, §61-1-1(2)

State v. Johnson, 2009 UT App 382

State v. Facer, 552 P.2d 110 (Utah 1976)

United States v. Amick, 439 F.2d 351 (7th Cir. 1971)

Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128, (1972)

Gohler v. Wood, 919 P.2d 561 (Utah 1996)

Dinco v. Dylex Ltd., 111 F.3d 964 (1<sup>st</sup> Cir. 1997)

INSTRUCTION NO. \_\_\_\_\_

You are instructed that while a number of material misrepresentations and omissions are alleged as the basis for the charges of securities fraud, the State is not required to prove each and every one of them. It is enough that the State prove to your satisfaction and beyond a reasonable doubt with regard to each individual count of securities fraud, that one material false statement or material omission was made in connection with that count.

A material fact is defined in Instruction No. \_\_\_\_\_.

U.C.A. 61-1-1(2)

INSTRUCTION NO. \_\_\_\_\_

You are instructed that under the laws of the State of Utah a person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation or association to the same extent as if such conduct were performed in his own name or behalf.

UCA § 76-2-205

State v. Tenney, 913 P.2d 750 (Utah Ct. App. 1996) cert denied  
923 P.2d 693 (Utah 1996)

INSTRUCTION NO. \_\_\_\_\_

In securities law, salespeople are under a duty to investigate, and their violation of that duty brings them within the term "willful" in the securities law.

A salesperson cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant. A salesperson cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation.

Where the salesperson lacks essential information about a security, he should disclose this as well as the risks which arise from his lack of information. A salesperson may not rely blindly upon the issuer of the security for information concerning a company.

Hanly v. S.E.C., 415 F.2d 589, 595-597 (2d Cir. 1969)

S.E.C. v. Kenton Capital, Ltd., 69 F.Supp.2d 1, 9 (D.D.C. 1998)

INSTRUCTION NO. \_\_\_\_\_

The State must prove beyond a reasonable doubt that the instruments offered or sold in Counts 1 through 8 were Securities. A "Security" includes, but is not limited to, a note or investment contract.

The following instructions number \_\_\_\_ and number \_\_\_\_ will define note and investment contract. These definitions will provide rules and guidelines which you will use in deciding whether there is a note or investment contract which meets the definition of a security. It will be the responsibility of the jury to decide if there were securities in this case.

INSTRUCTION NO. \_\_\_\_\_

You are instructed that an "investment contract" security is defined as:

- (1) a contract, transaction or scheme;
- (2) whereby a person invests his money in a common enterprise; and
- (3) is led to expect profits from the significant efforts of the promoter or a third party which affect the failure or success of the enterprise;

OR, any investment by which:

- (1) an offeree furnishes initial value to an offerer;
- (2) a portion of this initial value is subjected to the risks of the enterprise;
- (3) the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operations of the enterprise; and,
- (4) the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.

The State need only prove that the transactions fit one of the above tests, not both.

U.C.A. § 61-1-13(1)(s)

SEC v. W. J. Howey Co., 328 U.S. 293 (1946)

Payable Accounting Corporation v. McKinley, 667 P.2d 15 (Utah 1983)

Utah Administrative Rule #164-13-1(B)(1), Division of Securities

INSTRUCTION NO. \_\_\_\_\_

"Notes" are listed as securities under Utah law. However, not all notes are securities. The following are some examples of notes which are not securities.

1. the note delivered in consumer financing,
2. the note secured by a mortgage on a home,
3. the short-term note secured by a lien on a small business or some of its assets,
4. the note evidencing a 'character' loan to a bank customer, and
5. short-term notes secured by an assignment of accounts receivable.

The State must prove beyond a reasonable doubt that the notes in question are securities. In determining whether a "note" is a security, you must:

1. examine the transaction to assess the motivations that would prompt a reasonable seller and buyer to enter into it. If the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a "security,"
2. examine the "plan of distribution" of the instrument to determine whether it is an instrument in which there is common trading for speculation or investment. If the note were offered and/or sold to a broad segment of the public, the instrument is more likely to be a security.
3. examine the reasonable expectations of the investing public. If a reasonable person in the investing public would characterize the note as an "investment" the instrument is more likely to be a security.



4. examine whether some factor such as the existence of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary. If there are no risk-reducing factors, the note is more likely to be a security.

Reves v. Ernst & Young, 494 U.S. 56, 110 S.Ct. 945, 108 L.Ed.2d 47 (1990)

Exchange Nat. Bank of Chicago v. Touch Ross & Co., 544 F.2d 1126, 1138 (2d Cir. 1976)

State v. Kelson, 2012 Ut App 217

State v. Burkinshaw, 2010 Ut App 245

INSTRUCTION NO. \_\_\_\_\_

Contracts may be oral or written; consequently, an investment contract as defined in these instructions does not need to be in writing. Securities laws apply regardless of whether the security is represented by any document.

Canadian Imperial Bank of Commerce Trust Co. v. Finland, 614 F.2d 465, 467 (7<sup>th</sup> Cir. 1980)  
S.E.C. v. Addison, 194 F.Supp. 709, 722 (N.D. Texas 1961)

INSTRUCTION NO. \_\_\_\_\_

You are instructed that under the laws of the State of Utah, the following words have the following meanings:

1. "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illegal as well as legal entities.

2 "Pattern of Unlawful Activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. The most recent act constituting part of a pattern of unlawful activity as defined shall have occurred within 5 years of the commission of the next preceding act alleged as part of the pattern.

3. "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

4. "Entity" includes a domestic and foreign corporation, a nonprofit corporation, a limited liability company, a profit or non-profit unincorporated association, a business trust, an estate, a partnership, a trust, two or more persons having a joint or common economic interest.

5. "Unlawful Activity" means to directly engage in conduct or to solicit, request, command, encourage or intentionally aid another person to engage in conduct which would constitute an act prohibited by the Utah Uniform Securities Act, including SECURITIES FRAUD and SALE BY AN UNLICENSED AGENT, or to attempt or conspire to engage in an act which would constitute such an offense, regardless of whether the act is in fact charged or indicted by any authority.

UCA § 76-10-1602 et seq (2004)

State of Utah v. Lloyd, Case No. 970304-CA (Utah App. 1997)

INSTRUCTION NO. \_\_\_\_\_

You are instructed that the following words have the following meanings:

Count 9, Pattern of Unlawful Activity, includes the terms "intentionally", "knowingly" and "recklessly". Each of these terms has a specific definition under the law, as follows:

A person engages in conduct "Intentionally" or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

A person engages in conduct "Knowingly" or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person engages in conduct "Recklessly" with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

U.C.A. § 76-2-103 et. seq.

INSTRUCTION NO. \_\_\_\_\_

Mental State, being a state of mind, is seldom susceptible of proof by direct and positive evidence and must ordinarily be inferred from acts, conduct, statements and circumstances.

State v. Eagle, 611 P.2d 1211 (Utah 1980);

Sandstrom v. Montana, 442 U.S. 510, 61 L.Ed.2d 39 (1979)

INSTRUCTION NO. \_\_\_\_\_

In Count Nine of the First Amended Criminal Information, the State has alleged the defendant, SHAWN MOORE, engaged in a pattern of unlawful activity. The unlawful activity which constitutes the pattern includes the activity alleged in counts one through eight. In addition to the activity alleged in counts one through eight, the State further alleges the activity associated with the investments of Brant and Elizabeth Seamons is also part of the pattern of unlawful activity. "Unlawful Activity" and "Pattern of Unlawful Activity" are defined in Instructions \_\_\_\_, \_\_\_\_ and \_\_\_\_\_. However, before you can consider the investments of Brant and Elizabeth Seamons as part of the pattern of unlawful activity, you must first find from the evidence that the investments constituted an act of SECURITIES FRAUD and/or SALE BY AN UNLICENSED AGENT. Therefore, before you can consider the investments of Brant and Elizabeth Seamons as part of the pattern of unlawful activity, you must first find from the evidence all of the following elements:

1. Commencing on or about August of 2001, in the State of Utah, Shawn Moore, directly or indirectly;
2. To Brant and Elizabeth Seamons;
3. A. Willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR  
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
4. In connection with the offer or sale of a security.

**AND/OR**

1. From on or about August 2001, in the State of Utah, Shawn Moore;
2. To Brant and Elizabeth Seamons;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every element of SECURITIES FRAUD and/or SALE BY AN UNLICENSED AGENT, then you may consider whether the investment of Brant and Elizabeth Seamons constitutes part of the alleged pattern of unlawful activity.

U.C.A. 61-1-1(2) & (3)

U.C.A. 61-1-3(1)

U.C.A. 76-10-1601 et. seq.

Joseph C. Long, 12A Blue Sky Law