



**COLORADO**

Department of  
Regulatory Agencies

Division of Securities

Tung Chan, Securities Commissioner

## **Minutes of the Meeting of the Colorado Securities Board Thursday, June 3, 2021**

Due to COVID-19, the meeting was held virtually through Google Meet. The meeting was called to order at 9:00 a.m. by Chairperson Thomas Kenning. Additional Board members in attendance were Nilsa Mahon, Keith Olivia, Lawrence Reifurth and Rikard Lundberg.

Division of Securities staff members present were Securities Commissioner Tung Chan, Deputy Commissioner David Cheval, Chief Investigator Jonathan Block, Chief Examiner Jeffrey Eaby and Program Assistant Shiela Gowan. Assistant Attorney General Janna Fischer and intern Elizabeth Truitt from the Attorney General's Office were also present.

Roll call was taken.

The Chair asked for a motion to approve the minutes from the March 25, 2021, meeting. Nilsa Mahon moved to approve the minutes. Lawrence Reifurth seconded the motion. The Board voted unanimously to approve the March 25, 2021, meeting minutes.

### **1. Report on Division Activities**

Commissioner Chan reported on recent Division activities:

- The Commissioner reported to the Board about the Senate Business committee meetings regarding the appointment of Rikard Lundberg and Lawrence Reifurth to the Board. The committee confirmed both as members of the Board.
- The Commissioner provided an update on *Lawrence v. People* (Case Number 19SC556) and *Chan v. HEI Resources* (Case Number 20SC595).

- The Division is promoting a 12-part Virtual Event Series entitled "Boomers to Zoomers" that was produced by the Investor Protection Trust, Detroit Public Television and PBS Books. The events have been livestreamed on the Division's Facebook page on the third Friday of each month and will continue to the end of the year. Each episode will be available for viewing on the Division's website following each event.
- The Colorado Department of Regulatory Agencies (DORA) is currently scheduled to return to the office sometime after July 12, 2021. The return will be gradual, possibly through to the end of the year.

## 2. Examination Update

Chief Examiner Jeffrey Eaby provided an update on recent examination staff activities:

- The Division posted an examiner position which will be open for three weeks.

Examination Statistics:

- Broker Dealer Representative Statistics
  - In 2020, there were 213,000 broker dealer representatives.
  - In 2021, there are 221,000 broker dealer representatives.
- Colorado Based Firms Statistics
  - In 2020, there were 64 Colorado based firms.
  - In 2021, there are 60 Colorado based firms.
- Investment Adviser Representatives Statistics
  - In 2020, there were 14,925 investment adviser representatives.
  - In 2021, there are 15,412 investment adviser representatives.
- Investment Adviser Firms
  - In 2020, there were 795 investment adviser firms.
  - In 2021, there are 801 investment adviser firms.
- Registrations: Municipal Special District Bonds
  - In 2019, there were 184 filings, \$2.6 billion.
  - In 2020, there were 274 filings, \$32 billion.
  - Year to date in 2021, there are 84 filings over \$1 billion.

- Top Exam deficiencies identified:
  - Most common were failure to maintain required books and records.
  - Failure to have written supervisory procedures. Most occurring in small and solo firms.
  - Having inadequate advisory contracts.
  - Inadequate cybersecurity policies and procedures.
  - Custody deficiencies.

### 3. Enforcement Update

Chief Investigator Jon Block provided an update on recent enforcement staff activities:

- Mr. Block briefed the Board on the Colorado Senior Safe Act which requires licensed securities entities to report suspected financial exploitation cases to the Division.
- In one case, the Division completed an investigation and referred the matter to the Attorney General for criminal prosecution. On May 13, 2021, a grand jury indicted the target of the investigation on one count of securities fraud.
- Two individuals Bridget Moreno and Ray Morales raised approximately \$140,000 from four Colorado investors. The funds were supposed to be used by Ride Guide Media to develop an app for motorcycle riders and provide motorcycle riders with easy access to services close to their location. The investigation revealed that a substantial amount of investor funds was used by Moreno and Morales for personal expenditures and cash withdrawals. The Jefferson County District Attorney's Office charged Moreno and Morales with four counts of securities fraud and one count of theft. Arrest warrants are currently active.
- Neil Maxwell is a former licensed individual who solicited investment funds from former clients, some of which are elderly, to invest in a hedge fund that he was going to create.

He told prospective investors that the hedge fund was going to invest in crypto currencies and block chain technology.

Maxwell raised a total of \$420,000 from Colorado investors. Maxwell never registered the offering with the U.S. Securities and Exchange Commission (SEC) and failed to claim an exemption from registration. In addition, he used most of the funds raised for his personal benefit and he failed to disclose material information to investors during the solicitation.

Maxwell was indicted on January 17, 2019, and charged with six counts of securities fraud, two counts of theft from an at-risk person and one count of theft. On April 26, 2021, Maxwell pleaded guilty on one count of securities fraud and was placed on economic crime probation for a period of 10 years, with a six-year suspended Department of Corrections sentence. In addition, Maxwell was also ordered to repay \$420,000 to the victims through minimum monthly payments of \$1,500. The economic crime probation prohibits Maxwell from employment in the securities industry or from soliciting any new investments.

- The Division currently has 111 investigation cases open.
- The Division will be posting two positions for investigators.

Deputy Commissioner David Cheval updated the Board on the GameStop and AMC stock volatility that has recently been in the news. AMC was at \$2.00 per share at the beginning of the year and currently at \$75. AMC recently filed a regulatory statement that it would sell 11.5 million shares, raising over \$700 million. The value of the company at the beginning of the year was \$400 million. In the disclosure, AMC cautioned investors against purchasing the stock unless they were prepared to incur the risk of losing all or some of the investment.

Rikard Lundberg noted that some investment activity has characteristics of gambling and asked if the Division is aware of any studies about this aspect of things, for example whether such securities offerings should have disclosure similar to what is common in the gambling context regarding gambling addiction. Deputy Commissioner David Cheval responded that during the offer or sale for any security, the issuer is required to make full and fair disclosure of all material facts.

He further stated that he is unaware of any requirement that there be a disclosure similar to the disclosures made regarding gambling addiction.


#### 4. Other Business

- Tom Kenning discussed Board transition as this will be his last Board meeting and Keith Olivia will be completing his first term. Keith Olivia said he will reapply.
- Commissioner Tung Chan presented Tom Kenning with a plaque thanking him for his work as chair, and for his service on the Board. Commissioner Chan wished him all the best.
- The meeting was turned over to Vice Chair Nilsa Mahon.

#### 5. Schedule Date and Time for Next Meeting

- The next meeting was scheduled for Thursday, September 9, 2021, at 9:00 a.m. virtually on Google Meet, with a possibility to change it to in person if COVID- 19 conditions permit.

The meeting adjourned at 10:00 a.m.

  
Chair \_\_\_\_\_ Date 09-09-2021