

Tung Chan, Securities Commissioner

## **Minutes of the Colorado Securities Advisory Board Meeting Wednesday, September 25, 2024**

The meeting was held in person at 1560 Broadway, Conference Room 1000, Denver, CO 80202. The meeting was called to order at 9:00 a.m. by Chairperson Elizabeth Karpinski Vonne with a quorum present. Additional Board members in attendance were Gary DeWaal and Philip McDermott by Google Meet, Nilsa Mahon and Nicolas Budor. Division of Securities staff members present on Google Meet included Securities Commissioner Tung Chan and Examiner Nhut Huynh, present in person were Deputy Securities Commissioner Jeffrey Eaby, Chief Investigator Jonathan Block, Chief Examiner Jason Gross, Investigator Jennifer Grounds, Investor Education and Public Outreach Coordinator Annelise Grygiel and Program Assistant Shiela Gowan. Division counsel included Attorney General II Sarah Donahue by Google Meet and in person Assistant Attorney General Graham Gerhart. Brian Tobias of the Colorado Office of Policy Research and Regulatory Reform also joined by Google Meet.

1. Chairperson Elizabeth Vonne asked for a motion to approve the minutes from the June 26, 2024, meeting. Gary DeWaal moved to approve the minutes and Nilsa Mahon seconded the motion. The voting Board members unanimously approved the June 26, 2024, meeting minutes.
2. Introduction of New Board Member and reappointment of Board Member. Commissioner Chan congratulated Nick Budor for reappointment to the Securities Board as a member for a 3-year term until July 2027 and thanked him for his service. The Commissioner also introduced the new Board member Philip McDermott who was appointed by the Governor with a term also running until July 2027. The Commissioner gave the Board a brief introduction of Philip McDermott's background and Mr. McDermott addressed the Board. Commissioner Chan introduced Examiner Nhut Huynh and Investigator Jennifer Grounds who each gave a brief introduction of their respective backgrounds.
3. Roll call.

#### 4. Report on Division activities

- The Commissioner provided her report:
  - Commissioner Chan stated that the Division started sending out a quarterly industry newsletter focusing on items our licensees are interested in including the new rule on Continuing Education for Investment Adviser Representatives. The Division put on three interactive webinars, where if you were on the webinar, you could live chat and interact with the staff. The Division was also approved as an Investment Advisor Representative Continuing Education (IAR CE) provider. Colorado is one of the first states in the country to be able to provide that continuing education training.
  - Commissioner Chan and Deputy Commissioner Eaby just returned from the North American Securities Administrators Association (NASAA) annual conference that was held in Vancouver, British Columbia. This is the first meeting Canada has hosted since 2000, 24 years ago. Commissioner Chan was asked to do one of the key panels on artificial intelligence. The moderator was the executive director of Strategy out of Morgan Stanley's London office. Commissioner Chan was joined with three other industry people from Accenture, Mackenzie, and a start-up. It was a lively AI discussion. Commissioner Chan is the co-chair of the Fintech committee at NASAA. NASAA will be having the Annual Fintech Symposium in the winter. This should be a public meeting and online and virtual. Commissioner Chan will be moderating a panel with the co-chair who is the Commissioner of Delaware, and the Commissioner of Idaho who is head of the cyber security committee. Commissioner Chan will let the board know of the date, if the symposium is public.
- Chief Investigator Jon Block provided an update on the Enforcement section:
  - Breonna Clark offered securities selling through an entity by the name of Venture Capital Investments, Ltd. Clark solicited 53 investors and raised \$500,000. Investors were led to believe that the funds would be traded on the foreign currency (forex) market and that they could expect monthly profits and generous returns over the life of the trading. All investor money was lost. Clark misrepresented their qualifications and the personnel employed by the company. Clark held herself out as a highly skilled licensed trader with 10 years of trading experience and over 400 clients.

What they did not disclose was that they would be issuing false performance reports and that they would be using their money for personal expenditures. Clark would pay fictitious returns to some investors. Clark told investors if they wanted to get out of the fund, they would not give them their money back. Clark was charged with eight counts of securities fraud. Clark pled guilty to one count and was sentenced in July to eight years of supervised probation and restitution of \$500,000.

- Deputy Commissioner Jeffrey Eaby provided an update on the McGehee case:
  - This case shows the benefits of our exam program collaboration with our enforcement program. The Division went out on a routine examination and the exam team looked at the trading blotter and identified a few clients who were placed in thousands and thousands of options trades within a two-year period resulting in a substantial loss, approximately eighty percent of investors' net worth. After the Division interviewed clients, it was discovered one of the clients was retired and he lost all of his savings. The exam section worked with the enforcement section who did some analysis on these trades and the amount of the losses. The division achieved a very favorable outcome. The firm gave up its license. They also admitted in a public document that they in fact engaged in securities fraud. That is something the division does not see that often in our negotiated stipulation and consent orders. They admitted that they placed the clients in unsuitable trades and that the firm did not disclose that strategy or the risk to investors. Unfortunately, as often is the case with small firms, there was really no money left to return to these senior clients.
- Commissioner Tung Chan presented more information on Saucy Bombay, a case that had been brought up from the last board meeting, regarding the statute of limitations:
  - The owners were trying to raise money and allegedly made misrepresentations and omissions about the business. Bombay owners allegedly said that they would franchise all over the country. Commissioner Chan stated she would give a summary and then hand it to Senior Assistant Attorney General Sarah Donahue. The court initially dismissed on a statute of limitations issue, but then issued a clarification that that statute of limitation applied to the statutory provision related to damages.

- Senior Assistant Attorney General Sarah Donahue gave the board the overview of the different statutes and distinction between the Commissioner's remedies under 602 as opposed to a private remedy under 604. The court's clarifications made clear that we can still move under 602 for those types of damages. However, under 604, the court has ruled that those violations are time barred. There are a couple of cases that are going through at a higher court level looking at this issue. The Division is proceeding with the Bombay case under a 602 claim. The Division asked for an injunction and the Division is going to keep our claims for restitution.
- Commissioner Chan was asked for an update about the Regalado case. Currently, the Division is just moving forward with discovery with them. There has been a couple of defendants that have come back and claimed there was a mistake, and they have been able to prove it. The Division has been able to settle with those defendants and take those defendants out of the case. Attorney General Sarah Donahue stated that there is a trial date of May 5 and the Attorney General's office has asked for a four-day trial that is subject to contraction or expansion. The Division's civil matters are referred to the Attorney General's office's civil attorneys. The Division also refers cases and works with criminal District Attorneys and Criminal Attorneys General as well.
- Chief Examiner Jason Gross provided an update on examinations:
  - The Division has a good relationship generally with most investment advisers and the advisers seem aware that there is a new continuing education requirement. During each of our exams, the Division has been notifying the examinee of this new requirement that just started January 1<sup>st</sup>.
  - A trend we have noticed around advisory fees, kind of a shift, is the advisers placing the responsibility of the accuracy of the fees onto the client. The contract says that you the client are responsible for verifying the amount that you were charged.
- Director of the Colorado Office of Policy Research and Regulatory Reform (COPRRR) Brian Tobias:
  - COPRRR conducts all the Sunset reviews in Colorado, State Government. We are a Division of DORA. Director Tobias reports to the Executive Director and is part of the Executive Director's office.

A Sunset review is really to see whether the Division, and the board should continue. Somewhere in the statute that created both of those is a clause that says something to the effect, this article is repealed effective September 1, 2026.

Prior to such time, it shall be reviewed in accordance and then there is a reference to the Sunset statute, which means unless the general assembly affirmatively, reenacts the Division and the board, they will sunset. Obviously, a lot happens before we get to that point. The General Assembly has given us 14 criteria, against which we measure the programs. The questions asked are, is this program necessary to protect the health, safety and welfare of the public and does it represent the least restricted form of government consistent with the public interest. That forces us into that very classical balancing act with consumer protection on one hand with over regulation, on the other. To answer that, we engage in research; it is literature-based research, internet research, legal research, a great deal of stakeholder engagement. Our whole philosophy is the more diversity of input there is at the beginning, the better the public policy is at the end. So, we really do try to solicit as much diverse input as practicable, all the while recognizing that there is a whole universe of people out there who have thoughts and ideas on the subject and they know who they are, but we don't. So, I never pass up the opportunity to let people know you never have to wait for us to reach out to you to participate in any of our reviews. That goes for all of you and your professional lives, your personal lives outside of securities.

If you are ever aware of anything that we are reviewing that you have an interest in, please feel free to reach out directly to me and I will get you in touch with the right person on my team who can help you out or take your input. We do maintain a page on our website so that anybody can submit comments online if they do not feel like they are comfortable meeting with us. They can do that anonymously. They can identify themselves. So, we do make that available as well. All the research will culminate in a report that comes out by October 15th, 2025. That report will first recommend whether to continue or Sunset the Division and the board. Then if we recommend continuation, we can then make additional recommendations to the General Assembly as to how we think they should amend the statutes based on research tying back to the 14 criteria.

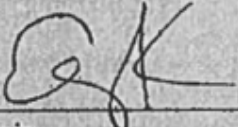
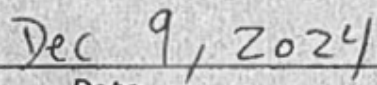
Those recommendations will then be put into the form of a draft Bill that we will present to the General Assembly when they convene for the beginning of the 2026 legislative session.

- Commissioner Chan returned the meeting to Chair Elizabeth Karpinski Vonne, for the annual election for the board voting for Chair and Vice Chair. Nilsa Mahon motioned to keep the same people as Chair Elizabeth Karpinski Vonne and Vice Chair Gary DeWaal. Philip McDermott seconded the motion. Chair Elizabeth Karpinski Vonne put it to a vote and board members unanimously agreed.
- Executive Session New Board and Continuing Board Member training: Assistant Attorneys General Sarah Donahue and Graham Gerhart set up the training on screen. A motion to enter Executive Session was made by Nilsa Mahon and seconded by Gary DeWaal. The Board voted unanimously to move to Executive Session. The Board entered Executive Session at 10:04 a.m. Board members were present Elizabeth Karpinski Vonne and Philip McDermott. Board members were present by phone Nilsa Mahon, Gary DeWaal and Nicolas Budor. Senior Assistant Attorney General Sarah Donahue conduct the training. Return to Securities Board Meeting was at 11:33 am.

5. Other Business

- Deputy Commissioner Eaby will need to schedule a hearing date for October 22<sup>nd</sup>, 23<sup>rd</sup> or 24<sup>th</sup>. Gary Dewall would be remote, Nilsa Mahon unavailable. Quorum for October 24<sup>th</sup>, 2024, at 9 a.m. Members available: Vice Chair Gary Dewall remote, Chair Elizabeth Karpinski Vonne in person, Philip McDermott in person and Nicolas Budor remote alternate. Please check your board emails.
- Schedule date and time for next meeting: The next meeting was scheduled to be Monday, December 9, 2024, at 10 a.m. to 11 a.m. The meeting will be in person at 1560 Broadway, Suite 100D at the DORA Welcome Center Conference room.

The meeting was adjourned at 11:47 a.m.

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