

Minutes of the Colorado Securities Advisory Board Meeting Wednesday, September 6, 2023

The meeting was held in person at 1560 Broadway, Conference Room 100B. The meeting was called to order at 10:00 a.m. by Chairperson Keith Olivia by phone with a quorum present. Additional Board members in attendance were Nilsa Mahon, Elizabeth Karpinski Vonne and Gary DeWaal. Division of Securities staff members present in person were Securities Commissioner Tung Chan, Deputy Securities Commissioner Jeffrey Eaby, Chief Investigator Jonathan Block and Program Assistant Shiela Gowan. Senior Assistant Attorney General Janna Fischer also attended in person.

1. Roll Call

- Individuals introduced themselves. Chair Olivia asked for a motion to approve the minutes from the June 28, 2023, meeting. Elizabeth Karpinski Vonne moved to approve the minutes and Nilsa Mahon seconded the motion. Gary DeWaal abstained as this was his first board meeting and he did not attend the June meeting for which the minutes were submitted. The voting Board members unanimously approved the June 28, 2023, meeting minutes.

2. Introduction of New Board Member and reappointment of Board Member

- Commissioner Chan congratulated Elizabeth Karpinski Vonne for reappointment to the Securities Board as a member for a 3-year term until July 2026 and thanked her for her service. The Commissioner also introduced the new Board member Gary DeWaal who was appointed by the Governor with a term also running until July 2026. The Commissioner gave the Board a brief introduction of Gary's background and Gary addressed the Board.

3. Board annual election of Chair and Vice Chair

- Chair Olivia and Commissioner Chan gave a brief description of the Chair's responsibilities for the Board. Senior Attorney General Janna Fischer also gave a brief description of the Chair role as described in the bylaws. Chair Olivia nominated Elizabeth Karpinski Vonne as Chair. Elizabeth Karpinski Vonne accepted nomination for Chair. Gary DeWaal seconded.

Elizabeth Karpinski Vonne nominated Gary DeWaal as Vice Chair, Keith Olivia seconded. Board unanimously approved the motion to appoint the Chair and Vice Chair.

4. Report on Division activities:

The Commissioner provided her report:

- Commissioner Chan started with the North American Securities Administrators Association's (NASAA) Symposium that was held at the Denver Hilton in July. This meeting was attended by commissioners of the various states, Guam, provinces of Canada and other territories in North America. NASAA also held a Mountain Zone meeting in Denver that included the western states and representatives from the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). The meeting was held in our offices to meet with our enforcement counterparts from Wyoming, North Dakota, South Dakota, Montana, Utah and New Mexico.
- FINRA briefed the Division on FINRA's fairly new Crypto Hub, which is an organizational wide support for crypto matters with the purpose to coordinate crypto matters across FINRA.
- Review of the 2022 Legislative session: There was a bill that asked the Colorado Treasury to conduct a feasibility study on the issuance of tokens by the Treasury. The study was worked on over the spring and the Division has been helping with the continuing review of this matter. Another bill adopted a change in definition in the Uniform Commercial Code (UCC) to include crypto. There was a lot of misunderstanding of what the UCC does, and whether that change allows the state to issue its own crypto as a form of fiat. We are one of a number of states that have adopted the change to the UCC.
- The Division currently has four openings: Chief Examiner, Public Information Officer, Examiner and Investigator.
- New Investor Campaign: The Division worked with the University of Colorado on creating a campaign to reach out to the new, tech savvy investors who tend to be younger and less risk averse. There are billboards on the corner of Interstate 70 and 6th Avenue West as well as 21st and Champa. The new development is a TV ad placed on the Coach Prime show. The campaign is also on Instagram, Twitter and Facebook. The social media is in English and in Spanish. All the ads along with stickers include a QR code pointing to the Division's microsite on investor education tailored to these new investors. Commissioner Chan passed out the stickers to members.

Deputy Commissioner Jeffrey Eaby provided an update on the examination section:

- The Division currently has 10 Examiners. Seven are Field Examiners who spend most of their time examining state licensed investment advisement firms and two Licensing Examiners, one that handles applications from state investment advisers. The other handles Broker Dealers as well as representatives for licensing. The tenth Examiner handles registration matters. The Division currently has one open Examiner position.
- The industry trends from the licensees for this month compared to five years ago: Total Broker Dealers Licensed in Colorado are 1,970 which is a 1% increase or a total of 15 additional Broker Dealers. Federal covered advisers, those regulated by the SEC, notice filed in Colorado total 3,177. This group of firms who manage over a \$100 million has increased over 43% over the last five years, which is a stark increase compared to the more modest increase of numbers of Broker Dealers.

The state Licensed Investment Advisers, those that generally manage under \$100 million, total 793 firms with approximately 600 of those designating Colorado as its home state. That number has remained flat over the last five years with three additional firms. Sales Representative and Sale Agent population is now over 250,000 individuals licensed in Colorado. That is an increase of 20%, from five years ago. Investment Adviser Representatives total 16,384 which is an increase of 14% from five years ago.

- The Division is currently considering avenues to address Colorado's new Investment Adviser Representative Continuing Education (IAR CE) requirement which takes effect in 2024. The Division has begun to prepare outreach materials.
- The Division will be running a series of webinars directed towards the Investment Adviser Representatives going over requirement basics. The North American Securities Administrators Association (NASAA) is providing continuing education content and there has been a steady increase in the number of courses that the representatives will have available for them. On the licensing side, the Division receives over 4,000 to 5,000 applications a month from Sales Representatives.
- Approximately 700 to 1,600 individual sales and investment adviser representatives are reviewed every month. On state Investment Adviser applications, Colorado is the sole regulator, and the Division spends a significant amount of time on those applications.

The Division has approved 78 new adviser firms over the last year and all of those firms have received detailed reviews that look at their ADV, their brochure, and their investment adviser contracts, among other things.

- On the registration side, the majority are exempt offering notice filings, with Regulation D being the most common. Over the last year the Division has received over 4,000 notice filings with issuers seeking to raise more than \$230 billion. This has been a steady increase in use of Regulation D over the last year.
- Turning to Registration by Coordination, these are active through Colorado after receiving approval through the Securities and Exchange Commission (SEC), commonly made up of Regulation A type offerings. The Division has approved over 300 of these offerings within the last year with issuers raising over \$174 billion.
- The final category is Registration by Qualification. The Division had approximately 12 issuers who submit those filings in Colorado. Colorado is registering and reviewing these offerings under a disclosure standard.
- The Division has conducted over 115 examinations over the past year, largely focused on state licensed firms, with a mix of sales representatives or broker dealers. The Division conducted exams of Broker dealers that were focused on the firms' compliance with Regulation Best Interest (REG BI) over the past year.
- Colorado adopted Reg BI by rule, effective March 30, 2023. Colorado's Reg BI rule tracks the Reg BI adopted by the SEC.
- The Division put out an Industry Alert of the transition of TD Ameritrade to Schwab. Effective this week, TD Ameritrade no longer exists. Many of our investment advisers use TD as their custodian, for their clients' assets, so, the industry alert focused on best practice recommendations that firms should immediately adopt in reviewing their business. For example, executed contracts that contain TD Ameritrade as a designated custodian and TD Ameritrade account numbers should be revised.

Chief Investigator Jon Block provided an update on the Enforcement section:

- The Enforcement section is made up of seven investigators and three auditors and has a new investigator who started with the division in June. The Division receives cases from the exam side, from complaints that come into the Division, from the Attorney General's office, from prosecutors' offices and from other states, the Federal Bureau of Investigation (FBI) or the SEC. The Division has a Lead Investigator who helps train the newer investigators.

- NASAA conducted a multi-state investigation of Raymond James and Associates, Inc and Raymond James Financial Services Inc involving allegations against the company for charging unreasonable commissions on small dollar transactions. Colorado participated in the \$13 million settlement. Colorado entered a stipulation with Raymond James.
- The Division's matter against Graco recently went to trial. GrowCo, Inc., a marijuana related company, raised money through a number of offerings through the years. We are waiting for the trial judge's holding to come out. Two individuals involved in GrowCo, George and Jan McCaffrey, settled with the Division and stipulated to an injunction. They are now restrained from acting without a license.
- A licensing matter was referred to the Enforcement section by one of the Examiners: Freehold Projects, LLC and David Post. David Post was licensed with a California entity but relocated to Colorado.
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- A licensing matter was referred to the Enforcement section by one of the Examiners: Freehold Projects, LLC and David Post. David Post was licensed with a California entity but relocated to Colorado.

While he was licensed with the other firm, it appeared he started reaching out to his clients and other people to raise money for an entity that would be a feeder fund to a larger entity. His California entity terminated him for not disclosing his other work. A stipulation was agreed and the Commissioner issued an order on the matter.

- Accelerated Harvest: Greg Swan case, criminal case, has been slow to progress due to the pandemic. Courts were closed, Grand Jury was closed and there were a number of continuances. Greg Swan allegedly went out and solicited individuals to invest in Accelerated Harvest and allegedly made untrue statements including that investor funds would only be used for investment purposes, that the investment was low risk and that the investment was guaranteed to be profitable. This did not happen as planned. In 2022, Greg Swan was charged with 16 counts of securities fraud. He recently pleaded guilty to a class three felony fraud.

5. New Board and Continuing Board Member Training

- Executive Session with the Board and Senior Assistant Attorney General Janna Fischer was scheduled to be held in executive session. 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 11:04 a.m. Nilsa Mahon, Elizabeth Karpinski Vonne and Gary DeWaal Board members were present. Keith Olivia was present by phone. First Assistant Attorney General Janna Fischer will contact Nickolas Budor for training. Return to Board Meeting was at 11:33 am.

6. Other Business

- None

7. Schedule date and time for next meeting

- The next meeting was scheduled to be Wednesday, December 13, 2023, at 10:00 a.m. to 11:00 a.m. The meeting will be in person at 1560 Broadway, Suite 100D at the Department of Regulatory Agencies (DORA) Welcome Center conference room.

The meeting was adjourned at 11:35 a.m.


Chair

12/13/23
Date