



State and Provincial Regulatory Updates

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Chapter 1A

British Columbia Securities Commission Update

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BRITISH COLUMBIA SECURITIES COMMISSION UPDATE

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Paul Smith is a Manager of Litigation, in the Enforcement Division at the BCSC, since August 2022. The Enforcement Division includes about 80 people working on teams in Investigations, Criminal Investigations, Trading Unit, Technology and Evidence Control as well as Litigation. Uniquely focused groups within these teams include a Detection, Assessment and Disruption team as well as special project teams focused on Collections, the BCSC's new Whistleblower program and other initiatives such as Administrative Penalties Imposed by Notice (APIN) program. Paul is also a member of the Canadian Securities Administrators Enforcement Committee. He previously served as Senior Litigation Counsel at the BCSC from 2019 and as Senior Enforcement Counsel at the Investment Industry Regulatory Organization of Canada, as it was then known.

Outline

1. Introduction
2. Overview of the Canadian Regulatory Landscape
3. BC Capital Market Activity
4. Enforcement Update
5. New and Developing Enforcement Initiatives

1. Introduction

This is an update on recent trends or current topics relating to securities regulation in British Columbia (BC). I focus on BC, but much of the content applies across Canada. The opinions in this update are my own, and do not represent the policies or positions of the British Columbia Securities Commission ([BCSC](#)) or the Government of BC.

2. Overview of the Canadian Regulatory Landscape

In Canada, Securities Commissions such as the BCSC, the Alberta Securities Commission ([ASC](#)), or the Ontario Securities Commission ([OSC](#)), or departments within provincial or territorial government ministries, regulate the capital markets. Each province and territory has its own securities legislation, and most of it is uniform or harmonized across Canada.

The various regulators cooperate together as the Canadian Securities Administrators ([CSA](#)). The CSA's objective is to improve, coordinate and harmonize regulation of the Canadian capital

markets to ensure close collaboration in the delivery of regulatory programs and securities law enforcement.

The CSA's Policy Coordination Committee, consisting of the 8 principal regulators (BC, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and Nova Scotia) oversees and coordinates policy initiatives. Supporting CSA Committees, including Corporate Finance, Investment Funds, Registrant Compliance, Enforcement, Investor Education and others, develop policy and coordinate the jurisdictions' regulatory programs. Staff from the various Commissions are committee members.

The BCSC

The BCSC is a self-funded, independent provincial government agency responsible for administering the BC [Securities Act](#) (the Act) and reports to the BC Ministry of Finance. It consists of about 280 staff and [Commissioners](#) appointed by the provincial government, including seven independent Commissioners, a chair (Brenda M. Leong) and a vice-chair (Gordon Johnson). The Commissioners serve as the BCSC's board of directors and also sit as members of the Commission's administrative tribunal. The commissioners and staff are advised by Sarah Corrigan-Brown, the BCSC's General Counsel.

Our [Executive Director](#) (Peter Brady) is our Chief Administrative Officer, and oversees the HR department (Angela Chirinian – CHRO), the Office of Economic Analysis (Christina Wolf – Chief Economist), and staff in our operating divisions, each lead by a Director. The Divisions (Directors) are: Communications and Education (Pamela McDonald), Capital Markets Regulation (Mark Wang), Corporate Finance (John Hinze), Enforcement (Doug Muir), Technology and Project Services (Linda Cowan).

The BCSC coordinates with other Commissions to oversee the conduct of the TSX Venture Exchange ([TSXV](#)), Canadian Securities Exchange ([CSE](#)), [CDS](#) Clearing and Depository Services Inc., and the new investment industry self-regulatory organization (SRO) that launched in January 2023 under a temporary name, marking the completion of the CSA's plan to create a new single SRO and an integrated investor protection fund. [New SRO](#) is carrying out the regulatory functions of the Investment Industry Regulatory Organization of Canada ([IIROC](#)) and the Mutual Fund Dealers Association ([MFDA](#))¹. Coincident with the amalgamation of IIROC and the MFDA, the MFDA Investor Protection Fund and the former Canadian Investor Protection Fund merged into a single investor protection fund known as [CIPIF](#).

The BCSC is a signatory to the International Organization of Securities Commissions (IOSCO) [MMoU](#) and [EMMoU](#) and a member of the Committee on Enforcement and the Exchange of Information (Committee 4). The BCSC is also a signatory to several other information sharing and supervision memoranda of understanding.

¹ IIROC and MFDA are the Canadian equivalents of FINRA.

3. BC Capital Market Activity ([calendar 2021 report](#))

BC is a venture capital market from both a company and an investor point of view. Whether raising funds by prospectus or in the exempt market, BC has a large number of small companies raising small amounts of funds. Similarly, BC has a large number of investors that invest small amounts.

BC companies² and investment funds³ can distribute securities anywhere in the world, subject to also meeting local securities laws. Similarly, BC investors may purchase securities from any company, provided the distribution meets the requirements of BC securities law. So when BCSC tallies activity it includes activities that have a nexus to BC: capital-raising activities of BC companies and investment funds globally, and sales of non-BC companies and investment funds to BC investors.

Calendar 2021 represented the fifth consecutive year of growth in capital raised in BC. Issuers reported \$158.5B⁴ raised⁵, a 17% increase over the \$135.59B raised in 2020. Investment funds (\$88.56B) and finance companies (\$21.86B) accounted for about 70% of that activity which is consistent with the previous year.

Mining is a key capital raising sector in BC, and BC and Canada play leadership roles in public mining capital raising globally. In calendar 2021, 1,112 mining companies raised about \$10.82B, a 26% increase over the \$8.6B raised in 2020. These companies had a combined ending market capitalization of about \$190B.

The capital raised in the technology and communication sector increased 30% over the previous year. Companies raised a combined \$11.88B with Telus Corporation and Telus International (Cda) Inc. raising 38% of that amount. Other notable sectors include biotechnology where more companies (157 > 148) raised less capital (\$1.47B < \$2.62B) in 2021 compared to 2020 and cannabis which doubled the amount of capital raised in 2021 (\$1.19B > \$580M) after a 73% decrease in 2020.

BC is home to more public companies (1522) than any other province and almost half of Canada's total (3402). But BC companies only account for ~\$325B (~8%) of the ~\$4T market capitalization of public companies listed on Canadian exchanges. About 90% of BC companies are listed on the TSXV and CSE venture exchanges. Most BC listed companies are very small, with almost half having market capitalizations of less than \$10M.

² The term "companies" refers to all entities (e.g., companies, partnerships, trusts, etc.) other than investment funds.

³ Investment funds (like mutual funds, exchange traded funds, and private funds) pool money collected from their investors to invest in a wide range of assets including companies and other investment funds.

⁴ All amounts are in Canadian dollars. As of April 17, 2023, the CAD:US exchange rate was 0.7467 US cents.

⁵ This understates what was actually raised as not all prospectus exempt capital raising activities require reporting.

BC's largest public companies as of Dec 31, 2021 by market capitalization were:

- Lululemon (clothing) on the NASDAQ (~\$64.3B);
- Telus (communications) on the TSX (~\$40.8B);
- Wheaton Precious Metals (mining royalties) on the TSX (~\$24.5B);
- First Quantum Minerals (mining) on the TSX (~\$20.9B); and
- Teck Resources (mining) on the TSX (~\$19.4B).

4. Enforcement Update

Overview of BCSC enforcement

The BCSC can deal with misconduct in two ways: through an administrative proceeding or a criminal or quasi-criminal proceeding.

In an administrative proceeding, the Executive Director makes allegations of misconduct (typically contraventions of the *Securities Act*) and Commission tribunal panels, usually comprised of three Commissioners, hear the allegations (unless the respondent agrees to settle). Commission panels have broad powers to issue orders, including powers to:

- prohibit people from the capital markets: from trading securities, from being officers and directors, registrants, engaging in promotional activities, etc.
- order administrative penalties up to \$1 million per contravention.
- order persons to pay to the Commission amounts obtained as result of their contraventions (disgorgement).

A contravention of the *Securities Act* is not required before a panel can issue a prohibition order - the panel only needs to find, after a hearing, that it is in the public interest to issue an order. Most BCSC's proceedings are administrative proceedings, and Commission panels hear and rule on the allegations. Our administrative proceedings are run much like a trial, with some key differences. For example, the rules of evidence do not apply, so evidence entered that may not be admissible in court.

The BCSC can also refer quasi-criminal (contraventions of the *Securities Act*) and criminal charges (contraventions of the Criminal Code, a Federal statute) to Crown Counsel. If charges are approved, Crown Counsel prosecutes them in court, usually Provincial Court (our lowest Court). Quasi-criminal or criminal convictions can result in jail sentences.

Enforcement Activity

Highlights from the fiscal 2021/2022 CSA enforcement [report](#) include:

- 236 investor alerts issued;
- 61 interim cease-trade and asset freeze orders issued;
- 14 crypto-related matters where the CSA took action in pursuit of clarifying and enhancing regulation;
- 44 individuals and 13 companies banned from participating in Canada’s capital markets;
- Seven individuals received a combined total of 15.4 years of jail terms for criminal and quasi-criminal cases;
- \$16 million in sanctions imposed or obtained in administrative penalties and voluntary payments; and
- \$14.9 million in restitution, compensation and disgorgement penalties.

In calendar 2022, the BCSC concluded seventeen administrative enforcement matters (administrative [sanctions](#) or [settlement](#) agreements). These do not include decisions on findings where the sanction decision was delivered after January 1, 2023. Below is more information on some of the BCSC matters.

BCSC administrative decisions

- i.) In [ACIC and Bergman](#), which provided loans secured by mortgages on real estate properties, raised \$1.6 million from 56 investors through three offering memorandums that explained how the loans would be secured. A Commission panel found that (i) the company and its directing mind made false or misleading statements in the offering memorandums because some of the loans were not secured as promised and (ii) made misrepresentations to investors. The panel ordered permanent market prohibitions against the company and a 15-year market prohibition and \$130,000 administrative penalty against Bergman.
- ii.) In [Arian Resources Corp](#) the corporate respondent (i) failed to disclose material changes over a two year period that affected its only material asset, (ii) delivered financial statements and MD&As which omitted material information, (iii) made false and misleading statements about executive compensation. Two directors (Dhanani and Nasso) authorized, permitted or acquiesced in the company’s contraventions and therefore committed them as well. The company was permanently prohibited from trading securities and Dhanani and Nasso were each permanently banned from the markets and ordered to pay administrative penalties of \$200,000.

- iii.) In [Pegasus Pharmaceuticals](#) a Commission panel found that two corporate respondents (Pegasus and Careseng) illegally distributed securities totalling USD \$45 million and USD \$12.8 million respectively, and that Winter Huang, also known as, Dong Huang authorized the contraventions by both corporate respondents. The panel ordered 10 and 8 year trading and promotional activity bans for the respective corporate respondents and banned Huang from the markets for the later of 10 years or the date he pays his \$500,000 administrative penalty.
- iv.) In [QCX, Voisin and Archibald](#) a Commission panel found that a mining exploration company (i) filed a 43-101 technical report (the Report) that contained materially misleading information; (ii) failed to ensure that Archibald, the qualified person (QP) who certified the Report, was properly qualified, and failed to obtain a consenting statement from the consultant whose work was quoted in the Report; and (iii) failed to disclose two resource estimates from the consultant that both estimated significantly less resources than indicated in the Report. Voisin, the company's CEO directed the company's contraventions and further engaged in illegal insider trading by selling QcX shares in 130 transactions over 20 months while in a special relationship with QcX and with knowledge of undisclosed material information. Archibald, the geologist who certified the Report made false or misleading statements in the Report when he certified that he was properly qualified, was responsible for the preparation and content of the Report, and was not aware of any omission of a material fact that would make the Report misleading. The panel ordered a broad permanent market prohibition against Voisin and ordered him to pay a \$130,000 administrative penalty and \$36,790 disgorgement. It ordered a ten year broad market prohibition and a \$75,000 administrative penalty against Archibald. The Executive Director did not seek a sanction against the company because at the time of the hearing it was under entirely new management who had no associations with Voisin or Archibald and had switched focus. Sanctioning the company under such circumstances would only harm existing shareholders of the company.
- v.) [Sand, Achs and Gulston](#) perpetrated a fraud by inducing two investors to invest \$600,000 to build capacity to manufacture a new type of battery. The respondents lied about non-existent purchase orders for batteries, and manufactured documents to bolster these claims. They then used the money to pay off personal debts or to pay friends and related companies. Separately, Gulston, while engaged in investor relations activities, made false claims about a battery production facility, guaranteed profits and demand for orders. The Commission panel ordered permanent market prohibitions and administrative penalties of \$380,000 against each of three respondents and disgorged the amounts each respondent benefitted from contravening the Act; \$180,000 (Achs), \$120,000 (Sand), and \$100,000 (Gulston).

BCSC settlements

- i.) [Peterson Holdings](#) and [Peterson Investment Group](#) were related companies that engaged in the business of trading without registration by distributing units worth a combined

\$146 million. Holdings invested in and held title to income-producing real estate properties and development sites, while Investment Group pooled together money from investors to lend as mortgages. Neither company had any history of regulatory misconduct and only communicated the trading opportunities to a select group of investors, including certain directors, officers and employees of those companies and their families, and a small number of close friends of the owners and senior management of the Peterson companies. Holdings and Investment Group made voluntary payments on settlement of \$115,000 and \$90,000 respectively.

- ii.) In the [Chartwell Asset Management settlement](#) an investment fund manager (IFM) admitted that it failed to meet the standard of care for an IFM and three individuals admitted personal responsibility for permitting or acquiescing in the contravention.

Chartwell managed several funds including a high income fund. One of the assets in that fund was an illiquid \$5 million loan agreement with an arm's length company. When the debtor company stopped providing reporting documents, missed payments, and requested an extended or modified payment schedule, the IFM's duty required it to re-evaluate the net asset value of the fund based on the changing risk indicators for that specific asset. Chartwell admitted that it failed to do so and accepted a permanent prohibition from purchasing securities, acting as a registrant or engaging in promotional activities.

Greg Cameron, the President and CEO, paid \$100,000 and was prohibited for 15 years from acting as an officer or director of an issuer or registrant, or from being a registrant or promoter.

Chew, a director and former president who was an advising representative during the relevant period, paid \$70,000 and was prohibited for 10 years from acting as an officer or director of an issuer or registrant. He is subject to strict supervision for a minimum period of 4 years if registered in any category under the Act.

Matthew Cameron, the VP and Chief Compliance Officer (CCO), paid \$40,000, was prohibited for 4 years from acting as a CCO, and is subject to close supervision for a minimum period of 3 years if registered in any category under the Act.

- iii.) [Norman Wareham](#) was a director and CFO of a public company that in a news release misrepresented the amount of proceeds it raised in a share offering by omitting prepaid consulting fees that totaled approximately 55% of the announced proceeds. As part of the settlement, Wareham paid \$10,000 and accepted a three year prohibition from acting as a director, officer, registrant or promoter of any reporting issuer or from advising or acting in a management or consultative capacity in the securities or derivatives markets.

Wareham settled the allegations against him personally before the [recent New Point Exploration decision](#) which confirmed the same contravention against the company and another director. New Point may become a seminal case as there are two recent cases

([PreveCeutical and Van Deventer](#) as well as [Affinor Growers et al](#)) in the liability submissions phase and two more ([BLOK Technologies Inc. et al](#) as well as [G2 Energy Corp. et al](#)) set for hearing on the same subject matter.

- iv.) In the [Bank of Montreal \(BMO\)](#) settlement, the BCSC took action against one of Canada’s “Big Five” banks for conduct that did not violate a specific provision of the Act. In such cases a panel cannot order financial sanctions, but can make certain orders in the public interest.

The Executive Director reprimanded BMO after it admitted that it inadequately supervised an employee who facilitated the illegitimate transfer of securities by guaranteeing signatures on approximately 100 security transfer forms related to six small cap venture issuers, without ensuring that the signatures he was guaranteeing were authentic. The employee Medallion guaranteed the signatures without meeting the signors and requiring them to sign in his presence. He accepted assurances from the directors of the companies whose shares were being transferred that the signatures on the forms were authentic.

Affixing a Medallion to a securities transfer form is a guarantee to a transfer agent that the signatures on the form were properly obtained and the share transfer is authentic. The employee’s conduct therefore left the securities transfer system vulnerable to abuse by the company directors, who had issued the shares to nominees and wanted to transfer the shares back to themselves or others whenever it was convenient to do so. By not adequately supervising the employee, BMO permitted him to engage in conduct that was abusive to the capital markets and contrary to the public interest.

- v.) [Nelson Scott Blair](#) acted as an adviser without registration by performing the duties of a portfolio manager for four years before actually applying for registration in that category. For part of the relevant period, Blair’s duties included managing and selecting individual securities for the firm’s Canadian Equity Portfolio, overseeing research analysts and the firm’s investment processes, and chairing its investment committee. For a different period he also developed and administered the firm investment philosophy and asset allocation strategy, oversaw investment teams and mandates of the firm’s funds and client model portfolios and disseminated investment strategy to portfolio managers.

Blair’s early admissions and the fact that he applied for registration before the Commission raised his registrable activities with him and ceased those activities when told by the Commission were mitigating factors in the settlement. Blair paid \$30,000 as part of the settlement.

- vi.) [Hello Pal and Johnson](#), [Bearing Resources and Poirier](#), [Belfontaine](#), [McMillan](#), and [MGX Minerals and Lazerson](#) each settled the allegations brought against them before the [Stock Social](#) hearing proceeded against the remaining respondents. Each company paid \$25,000 and each individual paid \$10,000.

The [Stock Social decision subsequently released in 2023](#) confirmed the contravention against the remaining respondents that the others admitted in each settlement. In each case the respondents failed to ensure that advertorials and social media posts, disseminated as part of investor relations activities, disclosed clearly and conspicuously that they were issued on behalf companies.

- vii.) The [Geoffrey Rajay Sidhu](#) settlement is related to the [Bracetek hearing that was subsequently decided in 2023](#). Sidhu paid back the \$900,000 that his companies received from the \$1.75 million raised illegally by Bracetek. Sidhu admitted that he acted in furtherance of Bracetek's trades and therefore illegally distributed securities to an investor. The Executive Director ordered broad market prohibitions against Sidhu for 7 and ½ years and he paid an additional \$50,000 for a total payment of \$950,000. A sanction decision against Bracetek itself is expected later in 2023.

BCSC reciprocal orders

Section 161(6) of the Act permits the Commission to make an order under section 161(1) of the Act if the requirements of the section are met and it is in the public interest to do so. These secondary proceedings allow the Commission to use another jurisdiction's decisions without the need for inefficient parallel and duplicative proceedings in British Columbia or before the Commission. In 2022, Commission panel made orders:

- i.) in [Gozdek](#) based on his criminal conviction in the Provincial Court of British Columbia;
- ii.) in [Danforth](#) against Caroline Danforth also known as Caroline Winsor and Caroline Meyers based upon certain orders made by the Provincial Court of Alberta and the United States District Court, Eastern District of Pennsylvania;
- iii.) in [Vermeeren](#) based upon undertakings he gave to the Alberta Securities Commission in a settlement agreement; and
- iv.) in [Mulholand](#) based upon orders made in the United States in a criminal action, an SEC Civil Action and an SEC Administrative Action.

5. New and Developing Enforcement Initiatives

Collections

The BCSC continues to vigorously pursue sanctioned individuals for unpaid monetary orders. Recently Enforcement has been using tools in the 2020 amendments to the Act in those efforts.

The new [section 163.2 of the Act](#) empowers the executive director, after giving a person an opportunity to be heard, to notify ICBC, the provincial crown corporation that provides licensing services to individuals and motor vehicles, that the person is in default of an order to pay money to the Commission and the amount owing is \$3,000 or more. Upon receiving notice, ICBC must

refrain from issuing or renewing the drivers' license, or the license plates for any motor vehicle owned by that person, until otherwise notified by the executive director or the Commission.

To date the executive director has sent opportunity to be heard notices to 13 debtors. In [*Re Oei, 2022 BCSECCOM 225*](#) a debtor's application to vary or revoke the decision of the executive director to issue the notice to ICBC was dismissed. A Commission panel stated at paragraph 32 of its decision:

We are not aware of any compelling public interest reasons for us to not give effect to the subject provisions. To the contrary, we find that it is in the public interest to give effect to the scheme in section 163.2. The legislature has seen fit to give those powers to the executive director to aid in collection of amounts outstanding in circumstances such as the ones in the matter before us.

APINs

With the benefit of other 2020 amendments to the Act, the BCSC will be implementing a new enforcement mechanism that will enable the executive director to impose financial penalties for misconduct without a full enforcement hearing, subject to a right of review.

Administrative Penalties Imposed by Notice (APINs) are monetary sanctions that the executive director may impose for contraventions of:

- provisions of the regulations (which include BC and National Instruments);
- decisions of the commission or the executive director; or
- prescribed provisions of the Act (currently, there are no prescribed sections of the Act).

Unlike sanctions ordered by the Commission after a full hearing, staff seeks an APIN directly from the executive director, who makes the decision to issue a Notice of APIN without an initial opportunity to be heard.

APINs provide staff with an effective enforcement response for less serious contraventions that require more than a warning to deter future non-compliance, but do not warrant the pursuit of more significant sanctions after Commission hearing.

Whistleblower program

The BCSC is also working toward piloting a whistleblower program that is intended to provide the BCSC with more actionable intelligence about misconduct that would otherwise be difficult to obtain.

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Chapter 1B

Oregon Division of Financial Regulation

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Dorothy Bean, Chief of Enforcement

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Introduction and Overview

The Oregon Department of Consumer and Business Services (DCBS) has a dual mandate of protecting Oregon consumers and workers and supporting a positive business climate. The Division of Financial Regulation (DFR) is an agency within DCBS and its mission is to “protect Oregonians’ access to fair products and services through education, regulation, and consumer assistance.” DFR administers and enforces the following program areas:

- Securities (ORS Chapter 59)
- Insurance (ORS Chapters 731 to 752, 646A, 806, 819, 823, and 825)
- Pharmacy Benefit Managers (ORS 735.530-.552, OAR 836-200-0406, *et seq.*)
- Prescription Drug Price Transparency Reporting and Prescription Drug Affordability Board (ORS 646A.683, *et seq.*, OAR 836-200-0500, *et seq.*)
- Pharmaceutical Sales Representatives (Senate Bill 763, 2021)
- Banks and Trusts (ORS Chapters 705 to 716)
- Credit Unions (ORS Chapter 723)
- Mortgage Brokers and Mortgage Loan Originators (ORS Chapter 86A)
- Mortgage Loan Servicers (ORS 86A.300 to 86A.339)
- Student Loan Servicers (ORS 725A.500 to 725A.530)
- Commodities (ORS Chapter 645)
- Franchises (ORS Chapter 650)
- Manufactured Structure Dealers (ORS Chapter 446)
- Consumer Finance Lenders (ORS Chapter 725)
- Pawnbrokers (ORS Chapter 726)
- Payday and Title Lenders (ORS Chapter 725A)
- Collection Agencies (ORS 697.005 to 697.095)
- Debt Management Service Providers (ORS Chapter 697)
- Debt Buyers (ORS 646A.640 to 646A.673)
- Money Transmitters (ORS Chapter 717)
- Check Cashers (ORS 697.500 to 697.555)
- Pre-Need Funeral Services (ORS Chapter 97)
- Oregon Consumer Information Protection Act (ORS 646A.600 to 646A.628)

On May 2, 2022, DFR re-opened its Salem office to the public, which had been closed since March 8, 2020 when Governor Kate Brown declared a statewide state of emergency in response to the COVID-19 pandemic. Prior to the reopening, DFR staff primarily worked remotely, though some staff came into the office as business needs required. Following the reopening, while some DFR staff has returned to the Salem or Tigard office on a more regular basis, most of the staff continues to primarily work remotely.

While DFR expects that it will continue to use various virtual platforms for a number of business functions on a permanent basis, with the DCBS building reopening, some of those business

functions, including exams, interviews, and hearings, have transitioned back to in-person. However, many of the adaptive measure that were implemented in 2020 to address the changes brought about by the pandemic remain in place. As is discussed further below, in 2022 the securities examiners moved away from conducting solely virtual exams and are now conducting in-person exams if the broker dealer or advisory firm is open to the public. The Securities unit continues to accept filings and applications electronically and is exploring ways to expand the available options.

Similarly, the Enforcement unit, in certain circumstances, continues to conduct interviews of respondents, victims, witnesses and the like either telephonically or virtually using primarily the Microsoft Teams platform. Administrative hearings with the Oregon Office of Administrative Hearings (OAH) are once again being conducted in-person, though virtual hearing maybe permitted upon agreement by both of the parties. The virtual hearings, conducted initially through Skype for Business and currently through WebEx, have gone relatively smoothly and OAH has done an excellent job of ensuring all parties have access to and the ability to fully participate in all hearings or other administrative proceedings.

Enforcement Updates

Below are summaries of select administrative actions taken by DFR in 2022 and early 2023, as well as a few criminal and civil cases that DFR participated in or that are otherwise applicable to the work of DFR. All administrative orders issued by DFR are public and can be found on DFR's website at:

<https://dfr.oregon.gov/laws-rules/Pages/notices-orders.aspx>.

Additionally, DFR publishes summaries of its enforcement actions on a quarterly basis. Those summaries can be found on DFR's website at:

<https://dfr.oregon.gov/laws-rules/Pages/enforcement-summaries.aspx>

I. Recent Administrative Enforcement Cases of Interest:

Martin L. Hudler, [S-18-0049](#) – DFR issued a cease-and-desist order and fined Martin Hudler \$120,000 for making untrue statements of material fact and omitting to state material facts relating to securities transactions, selling unregistered securities, and transacting business as a securities salesperson without a license. Hudler raised money from investors in Oregon and elsewhere for a purported casino business venture in the Bahamas and a real estate venture in New York. Hudler misused investor funds, made a number of misrepresentations in the sale of the investments, improperly disbursed investor funds from an escrow account, and failed to record liens on properties as promised, among other instances of fraud or misconduct. In addition to the fine, DFR denied Hudler the ability to use any exemptions to the securities registration requirements in Oregon.

Emily and Randolph Phillips, [S-19-0002](#) – DFR issued a cease-and-desist order and fined Randolph "Stuart" Phillips and Emily L. Phillips \$55,000 for sales of unregistered securities, selling securities without a license, and making untrue statements of material fact and/or omitting to state material facts, in connection the sales of securities. The Phillips operated an ice cream business, Red Wagon Foods, Inc. and Eugene Artisan Foods, and raised approximately \$120,000 from 69 Oregon investors as part of an Oregon Intrastate Offering (OIO), which provides an exemption from the merit review process to issuers making an offering to investors within Oregon if certain requirements are met, including having individual investment limitations of between \$2,500 and \$10,000. The Phillips and their companies failed to timely file required reports regarding the OIO. Additionally, the Phillips raised funds prior to the OIO offering through an unregistered offering, and represented that the funds were to be used to expand their ice cream business. Instead, investor funds were used to repay prior investors, and used for various personal expenses. The Phillips are required to make restitution payments to the pre-OIO investors. DFR also took administrative action against Red Wagon Foods and Eugene Artisan Foods, but obtained defaults against such companies in 2019. See Red Wagon Foods, Inc., [S-19-0002](#).

Andrew M. Thomas, aka Andrew G. Klein, [INS-19-0140](#) – DFR issued a cease-and-desist order and revoked the insurance producer license of Andrew M. Thomas, aka Andrew G. Klein, for violations of the Oregon Securities Law and the Insurance Code. Thomas, a former investment adviser representative licensed in California, offered and sold securities to two elderly sisters, claiming he was raising money to develop a computer program he was creating to assist in trading stocks. He also induced one of the sisters to liquidate an annuity to give him the money for that investment. Thomas modified the investment checks he received to reflect different dates, payees, and memo lines on the checks. Thomas never created the computer program or otherwise invested the money he received from the sisters, which totaled more than \$140,000. Instead, he used their money for personal expenses. In addition to the cease-and-desist and license revocation, DFR fined Thomas \$208,050.

Abiodun Azeez Ogundipe, DBA Focus Automobile, [S-20-0031](#), Bunsunad LLC, [S-20-0031](#) and Ganiyu Alogba, [S-20-0031](#) — DFR issued a cease-and-desist order against Abiodun Ogundipe, DBA Focus Automobile, Bunsunad LLC, and Ganiyu Alogba for serving as intermediaries in a securities fraud case in which an elderly Oregon consumer was persuaded to invest \$126,000 in a purported mining operation in Turkey. Ogundipe and Bunsunad received a significant amount of money from a bank account belonging to the Oregon investor, who was recently widowed and lured into the investment through an online dating website. Ogundipe and Bunsunad acted as "money mules" in the fraudulent transactions by obscuring the flow of funds from the investor to the fraudster. Ogundipe used investor funds to purchase heavy construction equipment on behalf of a third party and shipped that equipment to Nigeria. Bunsunad used investor funds to purchase foreign currency. And Alogba arranged for the exchange of U.S. dollars for Nigerian naira by Ogundipe and Bunsunad. DFR fined Ogundipe, Bunsunad and Alogba each \$45,000 for their role in the fraud, but agreed to suspend a large portion of that amount if they each pay restitution to the investor victim.

David Douglas Swanson, Sr., Swanson Financial Services, Inc., and SF Commercial, LLC, [S-20-0033](#) – DFR issued a cease-and-desist order and revoked the investment adviser representative, insurance producer and insurance consultant licenses of David Douglas Swanson, Sr., for violations of both the Oregon Securities Law and the Insurance Code. The order also revoked the state investment adviser license of Swanson’s company, Swanson Financial Services, Inc. The order imposes a permanent industry bar against Swanson.

Swanson, while licensed as an investment adviser representative, borrowed funds totaling more than \$1.5 million from five clients of Swanson and Swanson Financial. Swanson offered and sold promissory notes to the clients, who ranged in age from 64 to 77 years old, promising to use the funds to purchase an office building for Swanson’s company, SF Commercial. Swanson failed to disclose to the clients important information about their investments, including the existence of two senior liens on the subject property that totaled more than \$2.5 million. Some of the clients purchased the promissory notes from Swanson because they had seen Swanson featured and interviewed on a local morning television program. In addition to the cease-and-desist, revocation of licenses, and the permanent industry bar, DFR fined Swanson and his companies \$160,000. DFR issued a press release regarding the Swanson case, which can be found at: <https://dfr.oregon.gov/news/news2023/Pages/20230202-investment-advisor-revoked.aspx>

Federal authorities are also seeking to seize Swanson’s office building, on the basis that it was obtained fraudulently, and therefore subject to civil forfeiture under federal law. <https://www.wweek.com/news/2023/02/15/feds-to-seize-the-lake-oswego-office-building-of-disgraced-wealth-adviser/>

Aaron L. Gillingham, [S-20-0089](#) – DFR issued a cease-and-desist order and fined Aaron Gillingham \$60,000 for violations of the Oregon Securities Law. Gillingham sold investments to no less than eight Oregon and Washington consumers, who invested almost \$4.5 million. Gillingham promised to pool their funds in order to acquire or originate mortgage loans for which investors would receive interest or distributions. Gillingham provided investors with a private placement memorandum (PPM) in which he made certain statements and promises that were untrue. Gillingham violated the Oregon Securities law by, among other things, using investor funds in ways contrary to the terms contained in the PPM, failing to disclose certain material facts to investors, and failing to follow corporate governance procedures. DFR also issued an order denying Gillingham the ability to use exemptions that would otherwise be available to him under the Oregon Securities Law.

ORAG, LLC, Stephen Caldwell, and Evan Pilavis, [S-21-0024](#) – DFR issued a cease-and-desist order and fined ORAG, LLC \$55,00 and Stephen Caldwell and Evan Pilavis \$60,000 each for selling unregistered securities without a license and engaging in securities fraud in connection with a marijuana grow investment scheme in Portland. The consumers included in the order invested almost \$225,000 in ORAG in exchange for membership interests in the company. Investors relied on fraudulent statements regarding how their funds would be used, financial projections for the company, expected harvests, and the company's status as a licensed marijuana grower. ORAG failed to adequately disclose the risks of the project, as well as Caldwell’s criminal conviction. The

order also denies Caldwell and Pilavis the ability to use exemptions that would otherwise be available to them under the Oregon Securities Law.

Lasting Connections, LLC, Lasting Connections Matchmaking App LLC, and Sameera Abdulaziz Sullivan, [S-21-0028](#) — DFR issued a cease-and-desist order and fined Sameera Abdulaziz Sullivan and her companies, Lasting Connections and Lasting Connections Matchmaking App, \$5,000 for selling unregistered securities, selling securities without a license, making untrue statements of material fact in connection with the sale of a security, and engaging in an act, practice, or course of business which operated as a fraud or deceit. Sullivan, through her companies, raised \$50,000 from investors, promising to use the funds to develop a dating app for wealthy individuals. Sullivan in fact used some of the investor funds for personal expenses. Additionally, Sullivan grossly over-inflated the purported valuation of the company, promised a false rate of return, and failed to disclose information regarding the financial situation of the company.

Jeremy W. Fortner, [S-21-0062](#) — DFR issued a cease-and-desist order and fined former investment adviser representative Jeremy W. Fortner \$20,000 for borrowing \$25,000 from his client for use in a short-term real estate investment. DFR also denied Fortner the use of exemptions to the registration requirements of the Oregon Securities Law.

Jesse A. Milich, [S-21-0067](#) — DFR issued a cease-and-desist order and fined Jesse Milich \$120,000 for making untrue statements of material fact and omitting to state material facts relating to securities transactions, selling unregistered securities, and transacting business as a securities salesperson without a license. Milich claimed to have invented a cement siding that his company would be manufacturing, and received at least \$90,000 in investment funds for the business. Milich failed to disclose that he was subject to a non-compete agreement with his former employer, which was in the same construction manufacturing business. Milich also represented that his company had other investors when it did not, and failed to disclose a prior failed business of his and a personal bankruptcy filing. In addition to the fine, DFR denied Milich the ability to use any exemptions to the securities registration requirements in Oregon.

BlockFi Lending, [S-22-0038](#) — DFR issued a cease-and-desist order and fined BlockFi Lending LLC \$943,396 for offering and selling unregistered securities in Oregon. BlockFi, a digital-asset financial services company, offered and sold unregistered securities in the form of interest-bearing digital asset deposit accounts called BlockFi Interest Accounts to Oregon residents. BlockFi promoted its accounts with promises of high returns for investors, however Blockfi made representations that mischaracterized the collateralization practices of the company. BlockFi took control of and pooled investors' loaned digital assets, and exercised sole discretion over how to use the digital assets to generate a return and pay investors their promised interest. DFR ordered BlockFi to stop offering or selling interest accounts or any security that is not registered, qualified, or exempt to new investors in Oregon, and to stop accepting further investments or funds in the existing accounts held by Oregon investors. DFR's order stems from a multi-jurisdiction settlement of \$100 million that followed investigations of BlockFi by the U.S. Securities and Exchange Commission and a multi-state investigation coordinated by the North American Securities Administrators Association.

FX Binary Option aka FxBot, [S-22-0041](#) – DFR issued a cease-and-desist order and fined FX Binary Options aka FxBot \$20,000 for selling unregistered securities without a license, and for making untrue statements of material fact, as part of a foreign currency investment scam. An Oregon consumer invested almost \$70,000, via cryptocurrency, relying on fraudulent statements about FxBot being a registered investment company with significant experience, that the investment was risk free, and the other investors earned significant returns. Following the Oregon consumer’s minimal initial investment, FxBot created fraudulent account statements purporting to show sizeable returns, thereby resulting in the consumer investing an additional amount exceeding \$69,000.

Shane D. Moore and Quantum Donovan, LLC, [S-22-0061](#) – DFR issued a cease-and-desist order and fined Shane D. Moore and Quantum Donovan, LLC \$60,000 for selling unregistered securities without a license and engaging in securities fraud in connection with a crypto currency mining investment scheme. An Oregon consumer invested over \$100,000 to fund the purchase of eight crypto-mining machines, which Moore promised to use to generate a profit of \$130 per day, per machine. DFR’s investigation revealed that Moore did not in fact purchase the machines, used investment funds for personal expenses, and used funds from new investors to make payments to prior investors. The order also denies Moore the ability to use exemptions that would otherwise be available to him under the Oregon Securities Law.

Hood River Electric Cooperative, [S-22-0056](#) – DFR issued a cease-and-desist order and fined Hood River Electric Cooperative \$4,500 for the sale of unregistered securities. Hood River had a two month lapse in registration, during which time 12 securities totaling almost \$550,000 were sold without being registered. The fine assessed equaled three times what Hood River should have paid as a registration fee.

Nexo Capital Inc., [S-23-0003](#)– DFR issued a cease-and-desist order and fined Nexo Capital Inc. \$425,528.30 for offering and selling unregistered securities in Oregon. Nexo offered and sold interest-bearing digital asset deposit accounts called Earn Interest Product accounts to more than 1,400 Oregon residents, who invested over \$11 million. Nexo promoted its accounts with promises of high returns for investors, however Nexo made representations that mischaracterized the regulatory compliance of the company and its financial condition. Nexo took control of and pooled investors’ loaned digital assets, and exercised sole discretion over how to use the digital assets to generate a return and pay investors their promised interest. DFR ordered Nexo to stop offering or selling interest accounts or any security that is not registered, qualified, or exempt to new investors in Oregon, and to stop accepting further investments or funds in the existing accounts held by Oregon investors. DFR’s order stems from a multi-jurisdiction settlement of \$25 million that followed investigations of Nexo by the U.S. Securities and Exchange Commission and a multi-state investigation coordinated by the North American Securities Administrators Association. DFR issued a press release regarding the Nexo case, which can be found at:

<https://dfr.oregon.gov/news/news2023/Pages/20230303-nexo-securities-settlement.aspx>

II. Recent Civil and Criminal Cases of Interest:

Commodity Futures Trading Comm’n, et al. v. Safeguard Metals LLC, et al. (civil)

In February 2022, the Commodities Futures Trading Commission (CFTC) filed a lawsuit in federal court for the Central District of California against Safeguard Metals LLC and its principal Jeffrey Santulan, aka Jeffrey Hill, alleging that the company defrauded senior citizens in multiple states into transferring their money from traditional retirement accounts to silver (or sometimes gold) as a purported safer asset alternative. The Defendants charged large markups and made a host of misrepresentations to persuade investors. The CFTC statute gives states (through either their AG or their securities regulatory agency) to also bring claims under the federal statutes. DCBS joined as a co-plaintiff in the original complaint, and Attorney General Rosenblum was added as an additional plaintiff for Oregon in an amended complaint. Defense counsel filed a motion to dismiss the amended complaint, raising a number of jurisdictional and technical legal requirements. On August 24, 2022, the court denied the Defendants’ motion to dismiss, allowing the case to proceed in full. Initial document discovery has been exchanged. The SEC has filed a parallel proceeding in the Central District of California based on substantially similar allegations. The case is currently scheduled to go to trial beginning in November 2023.

Sound Foundation v. SCI Fund II, LLC., February 17, 2023 (No. 3:20-cv-01190-HZ) (civil)

On February 17, 2023 United States District Judge Marco A. Hernandez granted defendants’ motion for summary judgment against allegations of securities violations under the Oregon Securities Law. The judge ruled that Oregon’s securities laws do not apply to the transactions involving an unpaid promissory note and amended note between the plaintiff and defendants.

A copy of that Opinion and Order can be found here:

<https://business.cch.com/srd/SoundFoundation.pdf>.

The modern version of the Oregon Securities Law was enacted in 1967 and is based in part on the Uniform Securities Act of 1956. Under ORS 59.335, the Oregon Securities Law applies to persons who sell or offer to sell a security either when “[a]n offer to sell is made in” in Oregon or “[a]n offer to buy is made and accepted” in Oregon. Under ORS 59.345, an offer to buy or sell is made in Oregon “whether or not either party is then present in [Oregon], when the offer: (a) [o]riginates from [Oregon]; or (b) [i]s directed by the offeror to [Oregon] and received at the place to which it is directed.”

In this case, the plaintiff agreed to make a short term loan to the defendant in January 2017 and that loan was represented by a promissory note. The plaintiff was living outside of the U.S. when he offered to buy the note and the terms of the note were negotiated between the plaintiff’s father, who lived in Oregon, and a managing director for the defendant. The defendant resided in Maryland and did not travel to Oregon to execute the note. The plaintiff intended to invest in Oregon companies; and the notes themselves contemplate existence in Oregon. The court

concluded that none of the Oregon connections was sufficient to show that the Oregon Securities Laws covered the transactions at issue.

James Woodworth Millegan (administrative and criminal)

On November 19, 2019, James Woodworth Millegan was indicted by the U.S. Attorney for the District of Oregon (Portland) on 12 counts of investment account churning and one count of tax evasion. On February 16, 2022, the U.S. Attorneys Office filed a superseding indictment against Millegan – replacing the 12 investment account churning charges with 12 counts of wire fraud, and leaving the wire fraud charge as-is. The indictment alleged that Millegan evaded \$2.5 million in income taxes between 2009 and 2016, hiding his income in multiple bank accounts. Further evidence offered at trial revealed that Millegan was living a lavish lifestyle involving multiple million dollar homes, three classic Rolls Royce cars, and plans to open an equestrian center. The indictment further alleged that Millegan charged over \$2.5 million in commissions to his clients between 2012 and 2017, and that these investors suffered \$4.3 million in losses during that timeframe.

The trial for the federal wire fraud and tax evasion charges were bifurcated. Millegan was found guilty of tax evasion after an eight-day trial that began on November 2, 2022. Following that conviction, Millegan entered into a plea and sentencing agreement on January 24, 2023, wherein Millegan agreed not to appeal the conviction and agreed to certain sentencing guidelines. In exchange for Millegan’s agreement to pay restitution to the wire fraud victims identified in the indictment, the U.S. Attorney’s Office agreed to dismiss the remaining 12 wire fraud charges. Millegan was sentenced on April 3, 2023 to spend 51 months in prison, three years on supervised release, and was ordered to pay almost \$1.5 million in restitution to victims and over \$2.5 million in restitution to the IRS. An article relating to the criminal proceeding and outcome can be found here: <https://www.oregonlive.com/crime/2023/04/tax-evader-who-failed-to-pay-25-million-owed-to-irs-gets-federal-prison-term.html>

Millegan and his company, J.W. Millegan, Inc., offered investment advisory services in the Portland and Salem areas, and held Oregon salesperson and broker-dealer licenses. FINRA suspended Millegan’s license in 2016 following an arbitration in which Millegan’s clients were awarded almost \$500,000 as part of a churning case. Millegan attempted to have the FINRA award overturned by FINRA, the Multnomah County Circuit Court, the Oregon Court of Appeals, and the Oregon Supreme Court, but none of these efforts were successful. DFR initiated an administrative action against Milligan and his company in December of 2016, alleging a number of violations under the Oregon Securities Law. Millegan and his company filed for Chapter 13 bankruptcy in or around February 2017.

Erik Hass (criminal)

On June 9, 2020, Erik Hass was indicted by the U.S. Attorney for the District of Oregon (Eugene) on five counts of wire fraud, two counts of mail fraud, and one count of money laundering. Hass allegedly raised more than \$2 million from investors (most of whom are Oregon residents) for investment in foreign currency (forex) trading through Hass’ company, Simply Gains Inc. DFR’s investigation revealed that the investors lost over \$1 million in the forex trading, that Hass

misappropriated at least \$415,000 for personal expenses (mortgage payments, credit card debt, a Caribbean cruise), that Hass fraudulently solicited prospective investors by misleading them about his experience as a forex investor, and that Hass presented investors with false account statements purporting to show non-existent profits. Hass entered a plea agreement on January 9, 2023, wherein Hass plead guilty to five counts of wire fraud and two counts of mail fraud, and agreed to restitution in the total amount of more than \$1.7 million. Sentencing has not yet occurred.

In addition to the federal criminal case, on June 11, 2020 the Commodity Futures Trading Commission (CFTC) filed a civil enforcement action against Hass and Simply Gains, seeking restitution, penalties, industry bans, and a permanent injunction. However the CFTC's case is currently stayed pending the outcome of the criminal case. See [CFTC Charges Forex Trading Firm and Its Principal with Fraud and Misappropriation | CFTC](#).

Seanna Struhar (criminal)

On September 22, 2020, Seanna Struhar was indicted in Clackamas County, Oregon, on two counts of aggravated theft in the first degree and one count of securities fraud. Struhar raised \$200,000 from a 90-year old Oregon resident to finance a 5 year lease on a property that would be used to grow and distribute marijuana, and to purchase related equipment. In return for that investment, Struhar allegedly promised to make three interest/profit payment totaling \$10,500 within 9 months of the investment. The purported business did not come to fruition, and DFR's investigation revealed alleged misuse of investment funds. Struhar plead guilty to two counts of theft in the first degree on March 1, 2023. She was sentenced to 24 months of supervised probation, and ordered to pay \$200,000 in restitution.

Raghu Malladi (criminal)

On June 15, 2021, Raghu Malladi was indicted by the U.S. Attorney for the District of Oregon (Portland) on one count of wire fraud as related to a proposed real estate development project in California to build townhouses under the name Diamond Villas. The indictment alleged that an Oregon resident invested \$450,000 in the project, relying on Malladi's representations that the funds would be used for advancement of the project, when in fact Malladi used over \$410,000 of the funds for personal expenses and to repay prior investors. The case is currently scheduled to go to trial beginning in June 2023.

Richard Ogden and Michael Mann (criminal)

On June 19, 2019, Richard Ogden and Michael Mann were indicted by the U.S. Attorney for the District of Oregon (Eugene) on one count of conspiracy to commit mail fraud, and one count of mail fraud, as related to a gold and silver coin investment scheme operating under the name Silver Cache Trading Corp. The indictment alleges that Ogden and Mann made material misrepresentations about the investment in order to induce prospective and existing clients to invest in the scheme. The defendants allegedly put on seminars throughout the United States to solicit clients for Silver Cache, at which they promoted investments of gold and silver coins as

safe options that would generate profits, in part because the defendants purchased the coins in bulk at a discount, and would pass those discounts along to their clients. The indictment further alleged that, once purchased, the coins were to be stored by Silver Cache on behalf of the clients at a highly secure business location, when in fact they were not, among other misrepresentations. The case is currently scheduled to go to trial beginning in August 2023.

Tyler Westby (criminal)

On April 6, 2018, Tyler Westby was indicted in Marion County, Oregon, on two counts of aggravated theft in the first degree, as related to a real estate development project in Oregon to purchase and either build or rehabilitate residential properties. Westby sold investments in the project to the clients in his mortgage loan origination business, and failed to pay returns as promised. Westby plead guilty to one count of theft one, and one count of theft two on September 8, 2021. Westby was sentenced on September 28, 2021 to 60 months of probation, and is required to pay over \$300,000 in restitution to his investor victims. Westby is also prohibited from engaging in the mortgage industry in Oregon.

III. Complaint and Enforcement Statistics (Securities cases, 2020-2022)

	<u>2020</u>	<u>2021</u>	<u>2022</u>
Suspected financial exploitation reports	43	74	99
Complaints/referrals	61	59	71
Investigations	18	19	17
Administrative actions	13	9	11
Criminal referrals	2	3	2

DFR's Enforcement and Investigation Unit generally investigates securities complaints that allege securities fraud, as well as complaints/reports that are required to be made by certain persons under Senate Bill 95 and ORS 59.480¹, labeled as Suspected financial exploitation reports in the chart above. The DFR Consumer Advocacy unit generally processes complaints that allege other potential violations of the Oregon Securities Law, or that relate to a customer dispute or customer service issue.

¹ Senate Bill 95 (2017), codified at ORS 59.480 to 59.505, effective January 1, 2018, requires broker-dealers and investment advisers to report suspected financial exploitation of vulnerable persons to DFR, which in turn must forward the report to the Oregon Department of Human Services. Persons may report suspected financial abuse using the following form on DFR's website:

<https://dfr.oregon.gov/business/licensing/financial/securities/Pages/suspected-financial-exploitation.aspx>

The issues and alleged violations in the 71 securities complaints that DFR received in 2022 were varied, and included the following:

- Allegations of misrepresentations, omissions, and/or fraud in connection with the purchase or sale of securities, including affinity fraud, misuse of funds, Ponzi activity, among others
- Cryptocurrency and precious metals investment scams
- Real estate investments
- Suitability issues
- Issues with the transfer of funds and/or trades (e.g., delays, issues with liquidation, documentation, communication)
- Unauthorized trading
- Sudden disruptions in monthly distributions without explanation
- Unauthorized fees or fees charged without prior notice
- Beneficiary issues (e.g., disputes relating to release of funds)
- Customer service delays/poor customer service
- Annuities disputes (e.g., replacements, fees, returns)
- Account performance issues
- Unsolicited mailings
- Rescission offer deficiencies

Rulemaking, Legislation, and Policy Initiatives

There were a number of changes to the Oregon Administrative Rules relating to securities regulation in 2022. Additionally, DFR has introduced a bill in the current legislative session which seeks some updates to the Oregon Securities Law, as described in more detail below.

I. Updates to Oregon Securities Law and Oregon Administrative Rules

Investment Adviser Continuing Education Rule

On December 22, 2022, DCBS adopted OAR 441-175-0190 and OAR 441-175-0195, which imposed continuing education requirements for investment adviser representatives. Those rules were effective as of January 1, 2023. Under those rules, investment adviser representatives that are licensed or required-to-be-licensed under Oregon law must, for each reporting period: (1) complete six credits of IAR regulatory and ethics content offered by an authorized provider, with at least three hours covering ethics; and (2) complete at least six credits of IAR products and practice content offered by an authorized provider. An “authorized provider” is a person NASAA approves to provide continuing education content.

Investment adviser representatives that are also registered as FINRA broker-dealer agents and who comply with FINRA's continuing education requirements are deemed in compliance with (2)

above for each applicable reporting period, so long as the FINRA continuing education content meets the following NASAA-determined baseline criteria: (A) it focuses on compliance, regulatory, ethical and sales practice standards; (B) it is derived from state and federal investment advisory statutes; rules and regulations; securities industry rules and regulations; and accepted financial service industry standards and practices; and (C) it requires participants to demonstrate proficiency in the education materials' subject matter. Other requirements and defined terms are provided.

A copy of those rules can be found here:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=297711>

and here: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=297713>.

Special Designation Rule

DFR is considering amending the special designation rules set forth in OAR 441-135-0020 to include a new provision recognizing faith-based investment goals and strategies and amending OAR 441-175-0120(6)(b) to include the “Certified Kingdom Advisor (CKA)” designation recognized by FINRA. An advisory committee meeting was held on March 21, 2023 to discuss the proposed changes, including any fiscal impact it would have on businesses with fewer than 50 employees and what, if any, impact the proposed changes would have on racial equity in the State.

Currently, many interdenominational investors view the management of their investments as an extension of their mission and as a powerful catalyst for social and environmental change. Many large financial institutions such as Merrill Lynch or Morgan Stanley, have advisors to help clients looking for faith-based investments. The CKA designation would assist in leveling the playing field by making it easier for Oregonians to identify and choose an adviser who offers similar faith-based investment advice and strategies.

HB 2274 – Enforcement Enhancements to the Oregon Securities Law

DFR introduced House Bill 2274 as part of the 2023 legislative session, and the bill is currently working its way through the legislative process. The bill is intended to provide the department with tools to better oversee and enforce the Oregon Securities Law, with the goal of increased protection for Oregon consumers and investors. HB 2274 consists of four provisions to clarify and enhance the department’s oversight and enforcement authorities in ORS Chapter 59:

- **Restitution** – The bill would provide the department with the ability to order, through an administrative proceeding, that restitution be paid to investors harmed by violations of the securities law. Currently DFR only has the authority to order the payment of civil penalties in an administrative proceeding.

- **Confidentiality** – The bill would create confidentiality protections to prevent the release of sensitive information contained within open complaint, investigation and enforcement files.
- **Enhanced Civil Penalties** – The bill would enhance civil penalties for violations of the securities laws, up to \$60,000 for each violation, if the injured investor is considered a vulnerable person as defined in ORS 59.480 – which includes elderly persons (65 years or older), and those that are financially incapable, incapacitated, or persons with certain disabilities.
- **Director's Inquiry** – The bill would give the department what is known as Director's Inquiry authority in the area of securities, which is currently the norm in the department's other areas of regulation such as insurance. This change would make it a violation for a licensee, or person required to be licensed under the Oregon Securities Law, to fail to provide prompt or truthful responses to an inquiry made by DFR.

II. Errors and Omissions Insurance Coverage Bulletins

Starting in July 2018, certain broker-dealers and investment advisers that have a principal place of business in Oregon are required to obtain, and maintain, an errors and omissions insurance policy in an amount of at least \$1 million as a condition of state licensure. Broker-dealers that are covered by the federal Securities Exchange Act, and registered investment advisers with their principal office in another state are not required to obtain this E&O coverage. There are no other exemptions to the E&O coverage requirements, and failure to comply with the coverage requirements will result in cancellation of a license.

DFR received feedback from members of the Oregon State Bar that the E&O coverage requirements may not be operating as the law intended, which prompted DFR to look into this issue further. In August 2021, DFR sent an inquiry to the Securities Regulation section listserve of the Oregon State Bar, requesting comments on the E&O coverage requirements. DFR received responses from Oregon licensed attorneys that practice securities law and securities regulation. The attorneys expressed support for the E&O requirements, claiming that they provide vital protections for investors. Other comments included:

- Concerns that the E&O policies obtained by advisers contain exclusions for investment advice or high-risk products that are sold by such advisers, and therefore not in compliance with the coverage requirements;
- Recommendations that the coverage requirement be increased to \$2 million to reflect inflation, and expanded beyond advisers with their principal place of business in Oregon;

- Comments that it remains difficult to collect for clients and suggestions that DFR consider ways to ensure firms possess the required coverage; and
- A recommendation that a separate fiduciary bond (or a bond attached as a rider to the E&O policy) also be required.

On November 15, 2022, DFR issued a bulletin to all Oregon-based professional liability insurance producers (Bulletin No. DFR 2022-6) giving guidance to those producers regarding the errors and omissions insurance required for state investment advisers under Oregon Law. A copy of that bulletin can be found here:

<https://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2022-06.pdf>

Also on November 15, 2022, DFR issued a bulletin to all Oregon-based state investment adviser firms (Bulletin No. DFR 2022-7) that provided guidance on the insurance coverage requirements under Oregon Law. A copy of that bulletin can be found here:

<https://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2022-07.pdf>

Stakeholders are encouraged to continue reaching out to DFR to provide feedback in this area following issuance of these Bulletins.

III. SEC Investment Adviser Marketing Rule

On December 22, 2020, the Securities and Exchange Commission adopted amendments to Rule 206(4) under the Investment Advisers Act of 1940 to update rules that govern investment adviser marketing. The amendments created a single rule that replaced the current advertising and cash solicitation rules, Rule 206(4)-1 and Rule 206(4)-3. While the final rule went into effect on May 4, 2021, the rule provided an 18 month transition period between the effective date of the rule and the compliance date. The compliance date was November 4, 2022.

Oregon has not adopted those amendments and state licensed investment advisers must continue to comply with Oregon Administrative Rule 441-205-0200. The failure of an investment adviser to follow that rule could serve as the basis for DFR denying, conditioning, or revoking the investment adviser's license.

IV. Diversity, Equity and Inclusion Initiatives

DCBS is committed to providing Oregonians with equal access to its programs and services and fair and equal employment opportunities. The agency supports its workforce and communities to reach their full potential by continuing to embed Diversity, Equity and Inclusion (DEI) into every aspect of its policies, operations and services. The DCBS Diversity, Equity, and Inclusion Office, with its DEI Council, serves as an advisory body to help promote the agency's DEI initiative and business needs through effective culture change strategies. Among its actions, the DEI office

hosts diversity, equity, and inclusion events for employees, stakeholders, and agency and community partners.

DFR has formed a dedicated DEI team comprised of the entire management team and designated staff that created a division DEI plan over the course of the last year to address issues of systemic racism and bias. The plan provides for internal action items such as recruitment and retention and employee recognition, as well as external items such as information gathering about the DEI activities of our licensees. DFR is currently working to operationalize the plan and will continue to provide updates through usual communication channels with stakeholders and industry.

Securities Licensing and Examinations

I. Licensing Statistics

	<u>2021</u>	<u>2022</u>	<u>2023</u>
<i>Oregon Broker Dealer Salespersons</i>			
Oregon residents	4,611	4,496	4,446
Total	165,724	177,530	190,289
<i>Oregon Broker Dealer Firms</i>			
Oregon based	20	21	20
Total	1,510	1,522	1,541
<i>Investment Adviser Representatives</i>			
State Registered	608	557	564
Federally Registered Notice Filed	5,439	5,809	5,892
Total	6,047	6,366	6,456
<i>Registered Investment Advisers</i>			
State Registered in Oregon	272	263	268
State Registered outside of Oregon	121	120	129
Federal Registered (Notice Filed) in Oregon	1,792	1,916	1,969
Total	2,185	2,299	2,366

The total number of licensed broker dealer salespersons continued to rise in 2022, increasing by 7% to over 190,000. The number of licensed broker dealers remained steady in the last few years. Investment adviser representative and registered investment adviser firms also remained fairly steady over the last few years, with a slight decrease in Oregon-registered licensees, and slight increase in the federally-registered licensees.

II. Updates

Securities Team Operations

The Securities team continues to conduct field examinations of Registered Investment Advisers, as well as licensing of individuals, new Registered Investment Advisers, and Broker Dealers. They also provide support for securities investigations and enforcement efforts.

In 2019, DFR combined the Securities Registration Analysts, Securities Examiners, and Securities Licensing personnel, who were previously separated among three teams, into one unit. The newly formed unit then merged with DFR's Banking section to form the Banking and Securities Section. The Securities team consists of four examiners and one administrative support person.

Risk Analysis:

In 2019, DFR started using a new desk audit exam approach for select firms who operate with few deficiencies and use traditional strategies, and the DFR Examiners continue to incorporate this risk-based assessment of the Oregon investment adviser firms when conducting their exams. The desk exam is intended to resemble a field exam in the evaluation of the adviser firm, except that DFR staff do not visit the business location of the firm. A review of custodian information to verify the practices of the adviser is also completed. DFR Examiners use multiple factors to determine the appropriateness of a desk exam, including whether the firm is a new licensee, prior exam results and the time period since the most recent exam. This approach has been effective and has been well received by our stakeholders.

Common Examination Deficiencies:

- **Registration/disclosures** – Advisers not timely amending Form ADV and ADV Part 2; not timely sending to customers; inaccurate or out-of-date disclosures;
- **Suitability** – Insufficient or out-of-date documentation of suitability determinations;
- **Advisory Contracts** – Client contracts contain missing signatures, or are out of date;
- **Fees and compensation** – Advisers are assessing fees that are inconsistent with what is provided for in the client contract or ADV; and
- **Advertising materials** – Websites or social media sites do not include adequate disclosure or complete and accurate information.

Regulation Best Interest

Oregon has not amended any of its laws and rules in response to Regulation BI. Under current Oregon law, brokers cannot make recommendations that are not suitable for their customer based on information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such broker-dealer or associated person.

Securities Registrations

Securities Registration Staff:

Jason Ambers, Senior Securities Registration Analyst
Jason.e.ambers@dcbs.oregon.gov (503) 779-8294

Heather Chase, Securities Registration Analyst
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I. Registration Statistics (2020-2022)

	<u>2020</u>	<u>2021</u>	<u>2022</u>
<i>Registrations</i>			
New applications	19	21	28
Renewal Applications	101	84	71
Recession Applications	-	1	-
<i>Exemption Filings</i>			
Oregon Crowdfunding	-	-	-
SEC Rule 701	148	196	205
<i>Covered Securities Filings</i>			
Tier 1 – Regulation A	59	78	278
Mutual Funds	279	309	456
Unit Investment Trusts	982	1,016	893
Rule 506	1,242	2,186	2,208

Between 2021 and 2022, DFR saw a 33% increase in the number of new applications to register securities and a 15% decline in applications to renew existing securities registration orders. The total number of active registrations during that period increased by 14%. *Note: The data for 2020 and 2021 have been amended and restated from last year's materials.*

II. Updates

Excess Redemption Requests

DFR has noticed that, starting around October 2022, a number of private funds or non-traded REITs announced that they have received redemption requests that exceeded the issuer's pre-set limits. Those redemption requests are likely fueled by an increased need for liquidity by investors in the face of turmoil in other markets. Some issuers in response have chosen to honor the excess redemption requests and others have not. Some issuers have started charging fees for redemption requests. DFR is always concerned about the risks associated with highly illiquid investments, especially when those investments are not suitable for the purchaser, and DFR continues to monitor the situation.

Masterworks.io, LLC

Masterworks runs an online investment platform that allows investors to acquire ownership of an interest in special purpose companies that invest in distinct artworks or a collection of artworks. Each painting is held through a separate Delaware limited liability company that files its offering with the Securities and Exchange Commission to Reg A Tier 2.

Oregon requires that persons selling securities in reliance on Regulation A-Tier 2 file written notice of the offering, and pay a \$200 fee prior to the offer or sale of the security in Oregon. Notwithstanding that requirement, on or about January 12, 2022, Masterworks notified DFR that starting in May 20, 2019 through December 2021 its online platform made 73 offerings in Oregon to a total of 548 investors without making the required notice filing or fee payment, which totaled \$14,400.

DFR acknowledged that the filings and fees had been made and DFR's Enforcement section is exploring whether additional action is necessary. DFR urges persons selling securities in Oregon to be mindful of their registration or filing obligations as well as the timing of those obligations before offering or selling their securities in Oregon.

Electronic Submission of Securities Registration and other Materials

DFR accepts securities notice filings electronically through the NASAA Electronic Filing Depository System or through Blue Express. DFR also accepts the electronic submission of materials related to securities registrations through NASAA EFD, through BISCOM (DFR's secure portal), or by email to Securities.Registrations@DCBS.oregon.gov. Electronic payment can be made by credit card (no ACH payments).

Additional information regarding DFR's current policy can be found on DFR's website at: <https://dfr.oregon.gov/business/reg/Documents/20200430-securities-registration.pdf>.

Additional information regarding the EFD system can be found at: www.efdnasaa.org.

Oregon Innovation Hub

DFR has created a framework for helping insurance, financial, and technology companies bring innovative products, services, and tools that DFR regulates to Oregonians.

Insurance, financial, and technology companies are encouraged to connect with DFR to identify how new innovations can flourish within the state's regulatory guidelines.

Information and resources: <https://dfr.oregon.gov/innovation>

I. Oregon Innovation Forum:

DFR engaged in its first outreach event relating to the Oregon Innovation Hub on June 7, 2019 in Salem, Oregon. The event was titled The Future of Finance, Insurance and Collaboration, and featured presentations from DFR staff and industry professionals on topics including blockchain technology, innovation through collaboration, innovation and economic competitiveness. DFR held its second Innovation event on January 11, 2021, the Innovation Fireside. Due to the pandemic, DFR hosted a scaled down version of the forum. The Innovation Fireside was a virtual discussion about the benefits and pitfalls of AI in insurance. DFR is planning to hold more innovation forum meetings in the future. Additional information about the Oregon Innovation Hub and upcoming events can be found on the DFR website at:

<https://dfr.oregon.gov/innovation/Pages/index.aspx>

Education and Outreach

DFR has a four-member outreach team that provides outreach and education to Oregonians on all services and programs regulated by DFR, including investments and securities. DFR also provides continuing education classes and other trainings to professionals on current laws and regulatory matters. For example, every year DFR leads trainings with Oregon's National Association of Insurance and Financial Advisors (NAIFA) on Oregon laws and DFR regulations as well as current scams that may be facing their clients. DFR welcomes opportunities to train professionals and to build strong collaborative relationships with those providing services to the public. For more information on the education and outreach resources available through DFR, visit DFR's website at: <https://dfr.oregon.gov/help/outreach-education/Pages/index.aspx>

I. Recent Press Releases:

DFR issues press releases to educate and inform Oregonians about financial products and services. Press releases are also used as a means to warn consumers about potential scams or to widely publicize an enforcement case brought by DFR. A few of the recent press releases issued by DFR include:

- 03/28/2023 - [State issues a warning on the risks of self-directed IRAs](#)
- 03/03/2023 - [Oregon to receive more than \\$420,000 from Nexo securities settlement](#)
- 02/16/2023 - [State warns of risks for buy now, pay later](#)
- 02/02/2023 - [State issues order to revoke licenses of Lake Oswego investment adviser](#)
- 12/27/2022 - [Oregon Division of Financial Regulation warns of fake crypto apps, websites that will steal your money](#)
- 11/22/2022 - [DFR advises residents to be informed and cautious when investing in crypto platforms](#)
- 11/10/2022 - [The number of households with bank and credit union accounts continues to rise in Oregon](#)
- 10/19/2022 - [DFR warns investors to not chase crypto, market losses through online scams and 'finfluencers'](#)

II. Recent and Upcoming Events:

Senior Safe: In June and July 2021, DFR facilitated two Senior Safe presentations for the Oregon Chapter of NAIFA. Panelists included representatives from The Oregon Department of Human Services, Oregon Department of Justice, Federal Trade Commission, Federal Bureau of Investigation, a local bank, and DFR investigation staff. In October of 2022, DFR facilitated a Senior Safe presentation for the IPA Wealth Management Association. Panelists included representatives from the Oregon Department of Human Services, and DFR investigation staff. The focus of the Senior Safe presentations was on spotting the red flags and how to report suspected financial elder abuse. Much of the training provided continuing education credits to the attendees.

Scam Jam: Oregon AARP, the Oregon Department of Justice, and DFR continued their annual collaboration to present a series of events about common scams and to offer practical advice about avoiding and fighting fraud. The event spotlights schemes that target older Oregonians.

Each session focused on different topics, including why people get scammed, protecting your finances and personal information, scams during natural disasters, romance scams, and tips and resources to help fight fraud. Attendees learned about scams related to COVID-19, robocalls, crypto scams and catfishing. The presenters included Oregon Attorney General Ellen Rosenblum as well as representatives from the Federal Trade Commission, Adult Protective Services, AARP, Oregon Construction Contractors Board, and DFR. Due to the pandemic, DFR participated in two virtual Scam Jams on April 27 and June 23, 2022. DFR also participated at the 2022 AARP Fraud Fighters Conference on September 29, 2022. The events were publicized on Facebook and Instagram; mailers were also sent out to Oregon AARP members statewide. DFR presented on AARP's Watch Dog Wednesday in May 2022 – the topic was cryptocurrency and NFT's. For 2023, there will be a Scam Jam event on April 25th at Portland OMSI, and there are two additional Scam Jam events tentatively planned for June and September 2023.

Consumer education presentations: Due to the surge in scams and fraud related to Covid-19 and cryptocurrency, the outreach staff wove the topic of fraud and scams into multiple presentations and platforms, including twitter sessions with the Oregon DOJ, lunch-and-learns with statewide non-profits, and panel sessions with networks of service providers. Spanish speaking consumers were able to access the information from DFR staff via Spanish based presentations hosted by AARP, Proud Ground, Univision TV, and events held by the Consulate of Mexico. In March of 2022, DFR staff worked with Financial Beginnings of Oregon to conduct a series of presentations on savings and investments through a non-profit partner that serves immigrants and refugees communities through Immigrant and Refugee Community Organization (IRCO) African House. DFR also published a press release around cryptocurrency in January of 2022 and participated in a Facebook Live series with AARP for Watchdog Wednesday's throughout the year.

DFR Social Media Campaigns: DFR participated in a series of social media campaigns in late 2021 and 2022, including:

- June 15, 2022 – World Elder Abuse Awareness Day, keep seniors safe from financial exploitation;
- May 15, 2022 – Senior Fraud Awareness Day, fraud prevention;
- May 2, 2022 – Older Americans Month, tips for keeping seniors safe from fraud;
- January 21, 2022 – Press Release on NASAA's list of investor threats and cryptocurrency risks; and
- November 19, 2021 – Making sure your financial professional is licensed in Oregon.

Consumer guide: DFR has partnered with the Oregon Construction Contractors Board and the Oregon Department of Justice to develop a consumer guide to avoiding scams after disasters. It is available as an e-publication, in English and Spanish.

Ongoing DFR Committees: DFR participates in a number of committees on an ongoing basis, including:

- Bank On Oregon
- Financial Empowerment Advisory Committee
- Consumer Protection Roundtable
- National Adult Protective Services Association (NAPSA)
- North American Securities Association (NASAA)

Financial Empowerment Partner Sponsorship Program: DFR started an initiative in 2022 aimed at supporting financial empowerment for Oregon residents. DFR will be partnering with, and providing sponsorship funds, to nonprofit organizations that focus on financial empowerment, particularly in underserved communities. The goal of the program is increased awareness of DFR's services and resources and developing the capacity of underserved communities to make good decisions about insurance and financial services products. This initiative will expand DFR's network of partner organizations to better reach Black, Indigenous, and People of Color (BIPOC), youth, seniors, migrants, immigrants, people with disabilities, and other underserved communities. This initiative took effect January 1, 2023. In early 2023, DFR selected five organizations, which will each receive \$25,000 in sponsorship funds. A list of the partner programs can be found on DFR's website at: <https://dfr.oregon.gov/help/outreach-education/pages/index.aspx>

Chapter 1C

Washington Securities Developments

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43rd ANNUAL NORTHWEST SECURITIES INSTITUTE

WASHINGTON SECURITIES DEVELOPMENTS

May 5, 2023

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William M. Beatty was appointed Securities Administrator of the Washington Securities Division in July 2010. His career at the Division began in 1986, and he has served stints as a staff attorney, general counsel, and program manager. He is past president of the North American Securities Administrators Association (NASAA) and has participated on various NASAA project groups, task forces, and committees since 1990. Mr. Beatty currently serves as the chair of the NASAA Corporation Finance Section.

Patrick Stickney is a Financial Legal Examiner in the Registration and Regulatory Affairs Unit of the Securities Division of the Washington State Department of Financial Institutions. Before he joined the unit, Patrick served in the Securities Division's Enforcement Unit, where he investigated and helped bring enforcement actions against violations of the state's securities, franchise, commodities, and business opportunity laws. He is the industry working group lead for the North American Securities Administrators

Association (NASAA)’s Diversity, Equity and Inclusion Committee, and was recently appointed to serve on NASAA’s ESG Project Group. Patrick holds a B.A. in Interdisciplinary Studies (Law, Diversity, and Justice) and Political Science from Western Washington University and a J.D., *cum laude*, from Penn State Law.

Michelle Webster — Michelle Webster serves as a Financial Legal Examiner in the Registration & Regulatory Affairs Unit. She chairs the Business Organizations and Accounting Project Group of the North American Securities Administrators Association, Inc. (“NASAA”), and serves on various NASAA project groups, including the Small Business/Limited Offerings Project Group, the Direct Participation Programs Policy Project Group, and the Franchise and Business Opportunities Project Group. She has spoken on various topics related to franchise law at programs sponsored by the American Bar Association Forum on Franchising and the International Franchise Association. She earned her B.A. in Political Science and her J.D. from the University of Washington.

WASHINGTON SECURITIES DEVELOPMENTS¹

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¹ The Department of Financial Institutions, as a matter of policy, disclaims responsibility for the private publications of its staff. The views herein are those of the authors and are not necessarily those of the Department or its staff.

I. SELECTED RECENT SECURITIES ENFORCEMENT CASES

The following represent some of the larger, more significant or representative enforcement cases brought by or involving the Securities Division in 2022 and early 2023. PDF versions of these and other enforcement actions are available at:

<https://dfi.wa.gov/securities-enforcement-actions/securities2022> and <https://dfi.wa.gov/securities-enforcement-actions/securities2023>.

A. Cases Relating to Industry Professionals

Vita Intellectus Institutional, Inc. – S-19-2806-21-SC01 – Statement of Charges

On March 13, 2022, the Securities Division entered a Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Impose a Fine, and to Charge Costs (“Statement of Charges”) against Moghis Uddin Mohammad (CRD # 4912020) (“Uddin”), Joshua Michael Label (CRD # 5032599) (“Label”), Vita Intellectus, LLC (CRD # 159164) (“Vita”), Bryton Shaun Stephens (CRD # 5957183) (“Stephens”), and Vita Intellectus Institutional, LLC (CRD # 306427) (“VI Institutional”) (collectively, “Respondents”). The Securities Division alleged that Respondents Uddin, Label, and Vita violated the Securities Act of Washington, including by breaching their fiduciary duties to their clients, engaging in acts, practices, or courses of business which operate as a fraud or deceit upon any person, and by making untrue or misleading statements or omissions when they traded their clients’ assets using high risk and unsuitable trading strategies, covered up that they were or became banned from using two different investment management platforms, and deflected the blame for client losses away from their trading strategies.

The Securities Division also alleged that, in the aftermath of this scheme, Respondents Label, Stephens, and VI Institutional did the same by failing to disclose the investment management platform ban to clients and holding themselves out as investment advisers or investment adviser representatives to the public through their website and other communication channels, including by stating that they were state-registered investment advisers. Further, the Securities Division alleged that Respondents Label, Stephens, and VI Institutional transacted business in this state as an investment adviser or investment adviser representative without registration.

Respondents managed the assets of a mostly-Washington state-based clientele concentrated in King and Snohomish counties. Their clients ranged from early career investors to those in or near retirement. Respondents Uddin, Label, and Vita caused millions of dollars in client losses through risky, high frequency trading strategies and holding their clients assets in leveraged ETFs for extended periods of time. Respondents, Uddin, Label, and Vita did so regardless of their clients’ risk profiles, and used this strategy across client assets without disclosing the risks to their clients and while telling clients that their individual investment strategies were tailored to their specific needs. As clients began to complain about the losses in their accounts, Respondents Uddin, Label, and Vita blamed political or macroeconomic events for these losses despite the fact that their clients’ losses were at a multiple to that the market experienced as a whole. During this period,

Respondents were also banned from using two investment platforms on which they managed client assets, did not disclose these bans, and communicated their subsequent actions as planned business decisions rather than as a result of these bans.

The Securities Division intends to order Respondents to cease and desist from violating the Securities Act of Washington, that Respondents Uddin, Label, and Vita to pay a fine of \$720,000.00, and that Respondents Stephens and VI Institutional to pay a fine of \$20,000.00. Additionally, the Securities Division intends to order Respondents Uddin, Label, and Vita to pay investigative costs of at least \$109,250.00 and Respondents Stephens and VI Institutional to pay investigative costs of at least \$500.00. The Securities Division also intends to deny any future investment adviser, broker-dealer, investment adviser representative, or securities salesperson applications for registration filed by Respondents Label and/or Uddin.

Respondents have requested an administrative hearing on the Statement of Charges, and this matter has not yet reached a final disposition.

Pinnacle Opportunity Team, LLC and Ryan A. Purdie – S-19-2652-22-CO01 – Consent Order

On September 6, 2022, the Securities Division entered into a Consent Order with Pinnacle Opportunity Team, LLC (“Pinnacle”), a Washington LLC, and its managing member, Ryan A. Purdie (“Purdie”) (collectively, “Respondents”). Purdie is a California-registered investment adviser representative. The Securities Division alleged that during 2019, Purdie offered and sold membership interests in Pinnacle totaling at least \$70,000 to at least four New York investors. Pinnacle has never been registered to sell its securities in Washington. The Securities Division alleged that the Respondents misrepresented the likely return on the investment and failed to disclose material information regarding the investment. The Securities Division alleged that Respondents offered and sold unregistered securities and violated the anti-fraud provision of the Securities Act of Washington. Without admitting or denying the Securities Division’s allegations, the Respondents agreed to cease and desist from violations of RCW 21.20.140, the securities registration section of the Securities Act and RCW 21.20.010, the anti-fraud section. The Securities Division imposed a fine of \$2,500. The Respondents each waived their right to a hearing and judicial review of the matter.

John Winslow – S-21-3243-22-CO02 – Consent Order

On December 8, 2022, the Securities Division entered into a Consent Order with John Winslow, (“Respondent”) of Fox Island, Washington. The Securities Division previously entered a Statement of Charges against Winslow on September 27, 2022. The Securities Division alleged the following: Between approximately 2011 and 2021, Winslow was a securities salesperson and investment adviser representative for a retired senior citizen (hereinafter “senior client”). The senior client (now age 78) is a widow whose husband died in 2011. In 2013, Winslow began working for Edward Jones, and the senior client opened new accounts at Edward Jones. The senior client’s annual income was

approximately \$23,000. During much of the relevant time period, the senior client did not own a car and resided alone. Winslow visited the senior client at her home on multiple occasions and drove her to stores and appointments. As an investment adviser representative, Winslow had a fiduciary duty to act primarily for the benefit of his client. Winslow breached his fiduciary duty and engaged in deceptive, dishonest, and unethical business practices by borrowing hundreds of thousands of dollars from the senior client, failing to repay her, and failing to disclose the loan to his firm. In settling the matter, the Respondent neither admitted nor denied the allegations, but agreed to cease and desist from violating the Securities Act. The Respondent further agreed to pay a fine of \$75,000 and reimburse the Securities Division \$15,000 for its costs of investigation. The Respondent waived his right to a hearing and to judicial review of the matter.

Edward D. Jones & Co., L.P. – S-21-3242-22-CO01 – Consent Order

On November 11, 2022, the Securities Division entered into a Consent Order with Edward D. Jones & Co., L.P. (“Edward Jones”). The Consent Order alleges that Edward Jones failed to adequately supervise John Winslow, who was formerly a securities salesperson and investment adviser representative at the firm. In settling the matter, Edward Jones neither admitted nor denied the allegations, but agreed to cease and desist from violating the Securities Act. Edward Jones further agreed to pay a fine of \$150,000 and reimburse the Securities Division \$25,000 for its costs of investigation. Edward Jones waived its right to a hearing and to judicial review of the matter.

Viet-An Hoan Ly; TangleTrade Management; Inception Capital Management – S-18-2423-20-CO01 – Consent Order

On November 1, 2022, the Securities Division entered into a Consent Order with Respondents Viet-An Hoan Ly (“Ly”), TangleTrade Management, and Inception Capital Management (collectively “the Respondents”). The Securities Division had previously issued a Statement of Charges against the Respondents alleging violations of the Securities Act of Washington’s investment adviser registration provision, securities registration provisions, performance fee regulations, and multiple antifraud provisions. The Securities Division alleged that, since 2011, Viet-An Hoan Ly raised approximately \$13,000,000 through TangleTrade Management and Inception Capital Management for four private investment funds that he managed. In the Consent Order, the Respondents neither admitted nor denied the Securities Division’s Findings of Fact and Conclusions of Law, but agreed to cease and desist from violating the charged provisions of the Securities Act of Washington. The Respondents further agreed that any application for registration with the Securities Division would be denied for two years from the date of entry of the order. The Respondents agreed to pay a fine of \$10,000 and investigative costs of \$40,000, and waived their right to a hearing and to judicial review of this matter.

B. Cases Relating to Offerings**Voyager Digital LLC – S-21-3218-22-SC01 – Statement of Charges**

On March 29, 2022, the Securities Division entered a Statement of Charges and Notice of Intent to Issue an Order to Cease and Desist, Impose Fines, and Charge Costs against Voyager Digital LLC (“Voyager”), a cryptocurrency trading company. The Securities Division alleged that, since October 2019, Voyager has offered and sold unregistered securities in the form of the Voyager Earn program, which was marketed as providing a passive return to users who “stake” their cryptocurrency using a Voyager account. As of September 2021, approximately 28,000 Washington residents had staked \$199 million of cryptocurrency through Voyager. The Securities Division alleged that the Respondents sold unregistered securities. The Securities Division gave notice of its intent to issue an order to Respondents to permanently cease and desist from violating the Securities Act of Washington, to collect fines, and to charge costs. The Respondents have requested an administrative hearing on the Statement of Charges, and this matter has not yet reached a final disposition.

Northlake Capital & Development LLC; 183rd Shoreline Apartments, LLC; James W. Thorpe; Seth T. Heck; Shu-Mei Wang – S-20-2995-22-SC01 – Statement of Charges

On June 1, 2022, the Securities Division entered a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Impose Fines, and Charge Costs against Northlake Capital & Development LLC; 183rd Shoreline Apartments, LLC; James W. Thorpe; Seth T. Heck; and Shu-Mei Wang. Respondents did business in Seattle, Washington. During 2018, the Respondents offered and sold at least \$1.1 million worth of investments in 183rd Shoreline Apartments, LLC to at least five investors. In addition, between 2018 and 2020, Respondents offered and sold a total of more than \$15 million worth of real estate promissory note investments to at least 28 investors. The Respondents offered and sold the investments without disclosing material risks of the investments, including the failure to secure the investments; the commingling of investor funds; the failure of prior real estate development projects; and the prior bankruptcy of Thorpe. The Securities Division ordered the Respondents to cease and desist from violating the Securities Act of Washington. The Securities Division gave notice of its intent to collect fines and charge costs.

On December 5, 2022, the Division entered into a consent order with Respondent Shu-Mei Wang to settle the charges on a neither-admit-nor-deny basis. The Securities Division ordered Wang to cease and desist from violating the Securities Act of Washington. The Securities Division also imposed a fine of \$10,000 against Wang. Wang waived her right to a hearing and judicial review of this matter.

On December 6, 2022, the Securities Division entered into a Consent Order with Respondents Northlake Capital & Development LLC; 183rd Shoreline Apartments, LLC; James W. Thorpe; and Seth T. Heck to settle the charges on a neither-admit-nor-deny basis.

The Securities Division ordered the Respondents to cease and desist from violating the Securities Act of Washington. The Securities Division imposed a fine of \$5,000 against Heck; a fine of \$25,000 against Thorpe; and \$10,000 in costs. The Respondents each waived their right to a hearing and judicial review of this matter.

Plutus Enterprises LLC d/b/a OPM Wealth; Floyd Scott Agee, Jr.; Stefan Dessalines; Jeremy Miner – S-21-3186-22-SC01 – Statement of Charges

On June 29, 2022, the Securities Division entered a Statement of Charges and Notice of Intent to Issue an Order to Cease and Desist, Impose Fines, and Charge Costs against Plutus Enterprises LLC d/b/a OPM Wealth, Floyd Scott Agee, Jr., Stefan Dessalines, and Jeremy Miner (collectively the “Respondents”). OPM Wealth was an internet-based company that sold an investment opportunity called The Plutus Plan. Between February of 2020 and September of 2021, at least 3 Washington residents invested approximately \$97,000 in The Plutus Plan. The Securities Division alleged that the Respondents sold unregistered securities and that Floyd Scott Agee, Jr., Stefan Dessalines, and Jeremy Miner acted as unregistered securities salespersons. In offering and selling securities, the Division alleged that the Respondents failed to disclose material information, including information about the health or solvency of the company, the risks surrounding investing, the professional background and performance history of the company’s directors, and any reasonable basis for specific income projections. The Securities Division gave notice of its intent to issue an order to Respondents to permanently cease and desist from violating the Securities Act of Washington, to collect fines, and to charge costs.

On February 22, 2023, the Securities Division entered into a Consent Order with Respondent Jeremy Miner to settle the charges on a neither-admit-nor-deny basis. The Securities Division order Miner to cease and desist from violating the Securities Act of Washington. The Securities Division imposed a fine of \$4,000 fine, and \$1,000 in costs. Miner waived his right to a hearing and to judicial review on the matter. The remaining respondents requested an administrative hearing on the Statement of Charges, and this matter has not yet reached a final disposition.

American Alternative Investments, LLC; Rob Whitlow – S-19-2672-21-CO03 – Consent Order

On July 11, 2022, the Securities Division entered into a Consent Order with Robyn D. Whitlow (“Whitlow”) and American Alternative Investments, LLC (“AAI”) (collectively, “Respondents”). The Securities Division previously entered a [Statement of Charges](#) and Notice of Intent to Enter an Order to Cease and Desist, Impose Fines, and Charge Costs against Whitlow, AAI, and others on September 28, 2021.

The Securities Division alleged in the Consent Order that Respondents offered and sold unregistered securities in Washington using a nationwide network of unregistered sales agents, including bad actors. The securities offered and sold by Respondent AAI included those offered by 1 Global Capital, LLC and entities affiliated with Resolute Capital Partners, Ltd., LLC. Respondents were not registered as broker-dealers or securities

salespersons, and Respondents failed to ensure their agents were registered as they made offers and sales of these securities in this state. The Consent Order further alleged that Respondents made false or misleading statements or did not provide material information necessary to make the offer and sale of these securities not misleading over the course of these solicitations. Without admitting or denying the Securities Division's allegations, Respondents agreed to cease and desist from violations of RCW 21.20.040, the securities salesperson and broker-dealer registration section of the Securities Act of Washington. Respondent also agreed to cease and desist from violations of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington. In light of the financial disclosures as part of Respondent Whitlow's bankruptcy, the Securities Division determined to waive the collection of \$50,000.00 in fines and \$16,868.00 in costs. Respondents waived their rights to a hearing and judicial review of the matter.

VBit Technologies Inc. – S-20-3010-21-CO01 – Consent Order

On July 12, 2022, the Securities Division ("the Division") entered a Consent Order with Respondent VBit Technologies Inc. ("VBit"). In the Consent Order, the Division alleged that VBit violated the registration provisions of the Securities Act of Washington by selling Bitcoin mining packages, which included both specialized Bitcoin mining hardware and a contract for VBit to place and maintain the hardware, and promoting the packages as offering a passive return to investors primarily through VBit's efforts. Without admitting or denying the Division's allegations, VBit agreed to cease and desist from violating the Securities Act of Washington, and to issue refunds to each Washington resident who purchased a Bitcoin mining package. VBit also agreed to pay a fine of \$10,000 and investigative costs of \$5,000, with payment to be deferred until after completion of the refund process to Washington residents.

AltoTerra Capital Partners Ltd.; Leah Kincaid; Viktor Lawryniuk – S-20-2978-22-SC01 – Statement of Charges

On August 29, 2022, the Securities Division entered a Statement of Charges and Notice of Intent to Issue an Order to Cease and Desist, Impose Fines, and Charge Costs against AltoTerra Capital Partners Ltd., Leah A. Kincaid, and Viktor Lawryniuk (collectively, the "Respondents"). Respondents offered and sold unregistered stock in AltoTerra Capital Partners Ltd., a company located in Burlington, Washington, that leased equipment and real estate to cannabis companies in Oregon and Washington. From July of 2018 and August of 2019, 39 U.S. investors purchased 1,442,286 shares of AltoTerra stock. Thirty-eight of these investors were Washington residents, and they purchased \$707,893 of stock. The Securities Division alleged that Respondents sold unregistered securities and that Leah Kincaid and Viktor Lawryniuk acted as unregistered securities salespersons. Moreover, the Securities Division alleged that Respondents violated the anti-fraud provision of the Securities Act of Washington. The Securities Division gave notice of its intent to order Respondents to cease and desist from violating the Securities Act of Washington and its intent to collect fines and charge costs.

On January 24, 2023, the Securities Division entered into a Consent Order with Respondent Viktor Lawryniuk to settle the charges on a neither-admit-nor-deny basis. The Securities Division ordered Lawryniuk to cease and desist from violating the Securities Act of Washington. Lawryniuk waived his right to a hearing and to judicial review on the matter. The remaining respondents requested an administrative hearing on the Statement of Charges, and this matter has not yet reached a final disposition.

SFA Commercial LLC – S-20-2952-21-CO01 – Consent Order

On December 5, 2022, the Securities Division entered a Consent Order against SFA Commercial LLC (“SFAC”). In the Consent Order, the Securities Division alleged that SFAC offered and sold at least \$38 million in investment certificates to at least 292 investors from February 2013 to at least January 2022. At least 20 of these investors were Washington residents who collectively invested over \$2.4 million. In offering and selling these investments, the Division alleged that SFAC failed to disclose certain financial information to potential investors, including the existence of owner distributions and management fees totaling over \$8.5 million that SFAC paid to related-party entities. SFAC also allegedly failed to disclose nearly \$2 million that it had borrowed from certain co-owners of SFAC. The Division alleged in the Consent Order that SFAC’s omission of the above material information to potential investors violated the anti-fraud section of the Securities Act of Washington (“Securities Act”). By entering into the Consent Order, SFAC neither admitted nor denied the Division’s allegations contained in the Consent Order. SFAC further agreed to cease and desist from violating the Securities Act, and to pay an administrative fine of \$15,000 and investigative costs of \$5,000. SFAC also waived its right to an administrative hearing on and judicial review of this matter.

Nexo Capital Inc. – S-21-3225-23-CO01 – Consent Order

On February 13, 2023, the Securities Division entered into a Consent Order with Nexo Capital Inc. (“Nexo”), to settle a [Statement of Charges](#) and Notice of Intent to Issue an Order to Cease and Desist, Impose Fines, and Charge Costs that the Securities Division entered against Nexo Inc., Nexo Capital Inc., and Antoni Trenchev. In the Statement of Charges, the Securities Division alleged that, beginning in June 2020, Nexo offered and sold unregistered securities in the form of the Nexo Earn Interest Product (“EIP”) to at least 2,368 Washington residents. The EIP was a vehicle through which an investor could deposit fiat currency or cryptocurrency into a Nexo “wallet” and be entitled to receive an interest rate return on the assets invested. To pay returns to investors, Nexo would generate revenue from the invested assets by staking them, using them to provide liquidity on decentralized finance platforms, engaging in arbitrage opportunities, and lending them to retail and institutional borrowers.

Without admitting or denying the allegations, Nexo agreed to cease and desist from violating the Securities Act, to end the unregistered EIP program, and to pay an administrative fine of \$424,528.30. Nexo waived its right to a hearing and to judicial review of the matter.

C. Criminal Cases

Charles Richard Burgess, a/k/a Dick Burgess

On January 6, 2023, Charles Richard “Dick” Burgess (Burgess) was sentenced to 75 months in prison, 3 years of supervision upon release, and \$4,383,617.98 in restitution to 32 investors. On August 11, 2022, Burgess pleaded guilty in Federal Court to one count of mail fraud in violation of USC § 1341. Between October 2013 and April 2021, Burgess offered and sold approximately \$6.3 million of investments in a pooled investment vehicle to 40 investors, most of whom were Washington residents. Burgess offered and sold participation in the pool to friends, family, and to friends or family of existing pool participants. Burgess sent monthly statements to investors that falsely represented that the pool was successful, and that investors were making a consistent profit. Further, Burgess used funds from the pool to pay himself excessive fees, to pay his own personal expenses, and to make Ponzi payments to investors. The case was investigated by the Securities Division and the FBI and prosecuted by the U.S. Attorney’s Office Western District of Washington.

Scot Reynolds

On February 17, 2023, Scot Reynolds (“Reynolds”) was sentenced in King County Superior Court to 36 months in prison and ordered to pay restitution totaling \$1.88 million to the victims of his crimes. On December 19, 2022, Reynolds pleaded guilty to seven counts of securities fraud and one count of theft in the first degree. Between 2010 and 2015, Reynolds raised more than \$2.7 million through the sale of investments in three schemes to at least 46 investors. Reynolds solicited members of his local Mormon ward, as well as family, friends, business acquaintances, and people referred by investors. Reynolds sold a variety of different investments, including penny stocks and oil and gas investments. In the fashion of a Ponzi scheme, Reynolds repeatedly used funds from new investors to repay prior investors. The case was investigated by the Securities Division and prosecuted by the King County Prosecuting Attorney’s Office.

Daniel G. Langley

On March 3, 2023, Daniel Langley (“Langley”) was sentenced to 12 months community custody (as part of a First Time Offender Waiver) and was ordered to pay restitution totaling \$705,900 to the victims of his crimes. On January 11, 2023, Langley pleaded guilty in King County Superior Court to one count of securities fraud and six counts of theft in the first degree. Between 2015 and 2018, Langley raised nearly \$700,000 from a dozen investors. Langley sold “Pre IPO” stock in his business, CarBids.com, which was supposed to be developing an online auto auction website. After depositing investor funds, Langley withdrew hundreds of thousands of dollars in cash and spent tens of thousands of dollars at casinos. After DFI issued a Statement of Charges against Langley in February 2018 for securities violations, he continued to solicit and defraud new investors. In April 2018, Langley raised \$275,000 from three new investors. In a Ponzi-like scheme, Langley used more than \$50,000 from these new investors to make payments

to eight prior investors. Langley also spent more than \$70,000 to purchase two automobiles. The case was investigated by the Securities Division and prosecuted by the King County Prosecuting Attorney's Office.

Gregory Lone

On March 20, 2023, Gregory Lone ("Lone") was sentenced in Douglas County Superior Court to 96 months in prison and ordered to pay restitution of \$480,000 to the victims of his crimes. Lone pleaded guilty on January 12, 2023 to five counts of first-degree theft. Although the prosecution and defense had agreed to a 36-month sentencing recommendation, the Court imposed a 96-month exceptional sentence after hearing the testimony of Lone's victims, including Lone's parents and sister, who were victims of a previous uncharged scheme by Lone. In the instant case, from December 2016 to May 2019, Lone offered and sold fictitious investments to seven Wenatchee-area residents, generally former clients of a Wenatchee-area insurance agent whose business Lone had purchased shortly before beginning his fraud. Lone used the funds received from victims to pay his personal expenses or repay earlier victims in the style of a Ponzi scheme. Five of Lone's victims were in their eighties or nineties. This case was investigated by the Securities Division and the East Wenatchee Police Department and prosecuted by the Douglas County Prosecuting Attorney's Office.

II. RECENT RULE-MAKING AND OTHER REGULATORY INITIATIVES

Recent rule-making and other regulatory initiatives undertaken by the Securities Division are summarized below. Rule-making documents may be found on the Division's website at: <https://dfi.wa.gov/securities/rulemaking>, and Securities Act Interpretive and Policy Statements may be found at: <https://dfi.wa.gov/industry/securities-act-interpretive-policy-statements>.

Rulemaking

A. Repeal of Mortgage Paper Securities Rules

On October 12, 2022, the Securities Division repealed 460-33A WAC, which provided an optional method of registration for mortgage paper securities. The last issuer to register an offering of mortgage paper securities in Washington under 460-33A WAC was in 2012.

Changes in federal law over the past ten years, in particular, the Jumpstart Our Business Startups (JOBS) Act, diminished the usefulness of the mortgage paper securities rules. The JOBS Act, which was signed into law in 2012, required the Securities and Exchange Commission (SEC) to expand its exemptions from registration in two key ways. The first took the form of what is now Rule 506(c), which allows issuers to offer and sell securities through general solicitation so long as the investors in the offering are accredited and the issuer takes reasonable steps to verify their accreditation status. The second took the form of what is now Regulation A, Tier 2, which provides an exemption from registration for securities offerings of up to \$75,000,000 in a 12-month period.

Along with the expanded exemptions from registration available to issuers, the Securities Division determined that the registration of these offerings in the state is unlikely because federal requirements would likely require the borrower to register with the SEC as a co-registrant. In the event an issuer of mortgage paper securities seeks to register such an offering in Washington in the future, the Securities Division will review the application as part of its standard registration processes.

B. Amendments to Broker-Dealer Rules

On April 3, 2023, the Securities Division filed a CR-101 Preproposal Statement of Inquiry regarding potential amendments to its rules concerning broker-dealers and salespersons of broker-dealers in Chapters 460-20B WAC, 460-21B WAC, and 460-22B WAC. Many of the rules contained in these chapters have not been substantively amended since the 1990s. Potential amendments include those that would reflect intervening changes to federal rules, incorporate NASAA model rules, and describe application filing procedures and requirements for broker-dealers and salespersons.

The Securities Division is seeking public comment from interested persons regarding potential areas of amendment. Before proposing any rule amendments, the

Securities Division will conduct a small business survey and prepare a small business economic impact statement. The Securities Division will adopt rules only after considering public comment on proposed rules.

Interpretive and Policy Statements

C. Amendments to Securities Act Interpretive Statement – 06

On February 11, 2022, the Securities Division (“Division”) adopted amendments to Securities Act Interpretive Statement – 06 (the “Interpretive Statement”). The amendments address inquiries the Division has received regarding whether the Division interprets the exemption contained in RCW 21.20.310(10) consistent with federal Rule 701 under the Securities Act of 1933, whether the exemption covers omnibus plans, and whether a new notice filing is required for amended plans.

The Division amended the Interpretive Statement to clarify that it interprets RCW 21.20.310(10) consistent with federal Rule 701(c), which exempts certain securities issued under a written compensatory benefit plan to certain persons. The Division noted, however, that issuers may be required to make notice filings in Washington to claim the exemption. The Division further amended the Interpretive Statement to state that the exemption at RCW 21.20.310(10) is available for an omnibus employee benefit plan that provides for the issuance of qualified incentive stock options and non-qualified restricted stock units, performance share units, restricted stock, or other forms of securities. Issuers must make a notice filing with the Division for these plans.

The Division also amended the Interpretive Statement to clarify that issuers that previously filed notice under RCW 21.20.310(10) should file an updated copy of the employee benefit plan if the issuer makes any material changes to the plan. These amended plans should be submitted to the Division with a cover letter identifying the existing file number. Finally, the Division updated the Interpretive Statement to reflect changes in federal law and to remove outdated information.

Legislation

D. H.B. 1370, Whistleblower Award and Protection Act

For the 2023 Regular Session of the Washington State Legislature, the Securities Division and the Department of Financial Institutions requested the introduction of House Bill 1370, the Whistleblower Award and Protection Act. At the time this report was prepared, the bill had passed both the House of Representatives and the Senate, and is awaiting action by the Governor.

The bill was patterned off of NASAA’s Model Whistleblower Award and Protection Act, which was developed by a working group of the NASAA State Legislation Committee under the leadership of the Securities Division’s Chief of Registration and Regulatory Affairs, Faith Anderson. The Model Act was informed by existing state

whistleblower laws in Indiana and Utah, Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the SEC's related rules in Reg. 21F, as well as input by industry and the public. Washington would be the third state to adopt the Model Act, after Montana and Vermont.

Eligibility

The Whistleblower Award and Protection Act authorizes the Securities Administrator to award between 10-30% of the monetary sanctions imposed and collected in a successful administrative or judicial action under RCW 21.20 by the Securities Division to one or multiple whistleblowers who voluntarily provide “original information” in writing that leads to that successful action.

“Original information” is information that is:

- Derived from the independent knowledge or analysis of a whistleblower;
- Not already known to the Securities Administrator or the Securities Division from any other source, unless the whistleblower is the original source of the information;
- Not exclusively derived from an allegation made in an administrative or judicial hearing, in a government report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the source of the information; and
- Provided to the Securities Division for the first time after the effective date of the Act.

The whistleblower may identify themselves when making a claim or submit information anonymously through counsel, but, prior to receiving the award, the whistleblower must disclose their identity and provide other information as is required by the Securities Division. The amount of the award shall be based on the Securities Administrator's determination of:

- The significance of the original information provided by the whistleblower to the success of the administrative or judicial action;
- The degree of assistance provided by the whistleblower in connection with the administrative or judicial action;
- The programmatic interest of the Securities Administrator in deterring violations of the securities laws by making awards to whistleblowers who provide original information that leads to the successful enforcement of such laws; and
- Any other relevant factors.

Whistleblowers are barred from receiving an award if they:

- Have been convicted of a felony in connection with the administrative or judicial action for which they otherwise could receive an award;

- Acquire the information by performing an audit on the company's financial statements and the provision of that information violates 15 U.S. Code § 78j-1;
- Fail to submit the information to the Securities Division in the proper form;
- Knowingly or recklessly make a false, fictitious, or fraudulent statement or misrepresentation in connection with the whistleblower's provision of the information, the administrative or judicial action, or in connection with the whistleblower's other dealings with the Securities Division or any other authority regarding a related action, or
- Knowingly use a false writing or document with intent to mislead or otherwise hinder the Securities Administrator or another authority.

Whistleblowers are also barred from receiving an award if they:

- Know or have a reckless disregard as to whether the information they provide is false, fictitious, or fraudulent;
- Have a legal duty to provide the information to the Securities Division;
- Are currently, or were at the time they acquired the information, a member, officer, or employee of the Department of Financial Institutions, the Securities and Exchange Commission, another state securities regulator, a self-regulatory organization, the Public Company Accounting Oversight Board, or any law enforcement organization; or
- Are currently, or were at the time they acquired the information, a member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of that government, or any other foreign financial regulatory authority as defined in 15 U.S.C. 78c(a)(52).

Anyone who is a spouse, parent, child, sibling, or resident of the same household as the Securities Administrator or any employee of the Department of Financial Institutions is also prohibited from receiving an award, as well as anyone who directly or indirectly acquires the information from a person prohibited by reason of their employment or their role as an auditor for a company, or who acquires it from a person with the intent to evade any provision of the statute.

Protection from Retaliation

Further, the Act protects whistleblowers and internal reporters from direct or indirect termination, discharge, demotion, suspension, threats, harassment, or retaliation in any other manner as a consequence of the provision of information to the Securities Division or any other law enforcement agency about any potential violations of state or federal securities laws or regulations that have or are about to occur, or are ongoing. This protection from retaliation extends to the initiation of, cooperation with, or testimony in any investigation or administrative or judicial action of the Securities Administrator, Securities Division, or any other law enforcement agency that is based on or related to the information provided by the whistleblower, or their making of any disclosure protected or required under RCW 21.20 or a related rule or under Sarbanes-Oxley, the Securities Act of

1933, the Securities Exchange Act of 1934, or any other law, rule or regulation under the SEC's jurisdiction.

Under the Act, individuals are not protected from retaliation if they knowingly or recklessly make a false, fictitious, or fraudulent statement or misrepresentation; use a false writing or document knowing or with reckless disregard as to whether the writing or document contains false, fictitious, or fraudulent information; or if they know or have reckless disregard as to whether the information is false or frivolous.

The Act provides a cause of action to individuals who were retaliated against in violation of the Act. The statute of limitations for such action is six years after the date on which the violation occurred or three years after the date on when facts material to the action are known or reasonably should have been known by the individual if the action is brought within ten years after the date of the violation. An individual who successfully brings an action under the Act can receive any combination of reinstatement with the same pay, benefits, and seniority status they would have had but for the retaliation, two times back pay plus interest, compensation for litigation costs and fees, actual damages, or injunctive relief to restrain violations.

Additionally, the Act prohibits any person from impeding an individual from communicating with the Securities Division about a possible securities law violation, including by enforcing or threatening to enforce a confidentiality agreement. The Act exempts from this prohibition confidentiality agreements concerning communications covered by attorney-client privilege as well as any information obtained in connection with an individual or their firm's legal representation of a client where the individual is seeking to make a self-benefiting whistleblower submission, unless permissive disclosure by an attorney is allowed under the applicable rules of conduct or other regulation.

To protect the identity of whistleblowers, the Act amends the Public Records Act to exempt from disclosure any information that would be expected to reveal their identity.

Administration of the Act

In order to administer the requirements of the Act, the Act accords authority to the Securities Division to adopt all rules and regulations necessary to implement its provisions. The Act also increases the maximum amount that can be held in the Securities Division's securities prosecution fund to \$1 million, and directs that whistleblower awards shall be made from the fund.

If signed into law, the Whistleblower Award and Protection Act is expected to become effective on July 23, 2023.

III. SECURITIES CASES OF 2022 AND EARLY 2023

The following cases from 2022 and early 2023 arose under or significantly reference the Securities Act of Washington, chapter 21.20 RCW:

A. Dekrypt Capital, LLC v. Uphold Ltd.

In *Dekrypt Capital, LLC v. Uphold Ltd.*, 2022 WL 97233 (Wash. Ct. App. Jan. 10, 2022) (unpublished), the Court of Appeals of Washington, Division I considered whether a proxy signatory and non-signatories to a token sales agreement could invoke an arbitration clause contained therein.

The case arose out of Token Sale Agreements that Dekrypt Capital LLC (“Dekrypt”) and other buyers (collectively, “Buyers”) entered into for the purchase of cryptocurrency tokens. Each Token Sale Agreement identified the parties to the agreement to be a Buyer and “Vendor,” which was defined to mean a yet-to-be-formed company incorporated in Singapore. The Token Sale Agreements further provided that Uphold Ltd. (“Uphold”) was entering into the agreements as a proxy for Vendor prior to Vendor’s incorporation, with the intention that the agreements would be ratified by Vendor after its incorporation.

Buyers filed a lawsuit against Uphold, officers and directors of Uphold, and affiliated entities (collectively, “Appellants”), alleging that these tokens were “securities” under the Securities Act of Washington (“Securities Act”) and that Appellants violated the Securities Act by selling unregistered securities and making materially false representations in connection therewith. Buyers sought to rescind the Token Sale Agreements and recover damages. Appellants moved to compel arbitration of Buyers’ claims, based on a section of the Token Sale Agreement that required the parties to the agreement to settle disputes by arbitration. In response, Buyers argued that only Vendor – and not its proxy, Uphold, nor any of the other appellants - could invoke the arbitration provision. The trial court denied Appellant’s motion to compel arbitration.

On appeal, the Court concluded that either under the choice of law in the Token Sale Agreement (Singapore law) or the law of the forum state (Washington law), Uphold was a signatory and thus a party to the Token Sale Agreement. Therefore, Uphold was entitled to compel arbitration. In addition, the Court determined that the affiliated companies and Uphold’s officers and directors were entitled to invoke the arbitration provision under either Singapore’s third-party beneficiary statute or the Washington doctrine of equitable estoppel.

The Court also considered Buyers’ argument that Singapore law could not govern because the choice of law provision in the Token Sale Agreement was invalid under RCW 21.20.430(5). As neither party briefed the issue of whether digital currency sales are considered securities under Singapore law, the Court stated that it could not conclude that the choice of law provision constituted a waiver of compliance with the Securities Act in violation of RCW 21.20.430(5). Regardless, the Court stated its belief that Buyers

conflated the validity of a choice of law provision for interpreting an agreement with the validity of a choice of law provision that may result in waiver of a state statutory claim. The Court further noted that Buyers were free to argue to the arbitrator that any provision waiving compliance with the Securities Act was invalid.

Having determined the existence of a valid agreement to arbitrate under which Appellants could compel arbitration, the Court turned to an analysis of whether Buyers' claims were arbitrable. The Court concluded that under federal arbitration law, Buyers' claims were arbitrable. It rejected Buyers' argument that forcing them to resolve claims under the Securities Act via arbitration in Singapore violated Washington public policy, relying on federal precedent holding that claims under the Securities Act were arbitrable, and that it does not violate public policy to require litigation of such claims in an out-of-state forum. Further, the Court noted that nothing in the Token Sale Agreements required the seat of arbitration to be Singapore.

Accordingly, the Court concluded that the arbitration provision required Buyers to arbitrate their claims against Appellants, and remanded for entry of an order compelling arbitration.

B. Roupp v. Meredith

In *Roupp v. Meredith*, 2022 WL 593950 (Wash. Ct. App. Feb. 28, 2022) (unpublished), the Court of Appeals of Washington, Division I considered whether there was sufficient evidence that a token purchaser had agreed to arbitrate claims against a token seller.

In this case, Respondent and his associated business entities became a member of RChain Cooperative ("RChain"), a Washington cooperative association established to develop a blockchain platform for electronic transactions. In order to join, members were required to complete an application and affirm agreement with RChain's "Membership Agreement," which contained an arbitration provision.

To generate startup capital, RChain sold cryptocurrency tokens called "RHOCs," which would eventually be converted into tokens called "REVs." After Respondent became a member of RChain, he purchased RHOCs. He subsequently filed suit against RChain and affiliated individuals, alleging that RChain digitally tainted his RHOCs, making them ineligible for exchange to REVs when RChain's platform launched. The lawsuit included claims that RChain's activities violated the Securities Act of Washington.

At trial, Respondent moved for partial summary judgment declaring that the RHOCs were securities within the meaning of RCW 21.20.005(17), based on the conclusions of law set forth by the Securities Division in a Consent Order signed by RChain.² This motion was denied by the trial court.

² A copy of the Consent Order is available at: <https://dfi.wa.gov/documents/securities-orders/S-18-2463-20-CO01.pdf>.

RChain subsequently moved to compel arbitration based on the Membership Agreement, and argued that under its bylaws all members were required to sign the Membership Agreement, and this was legally sufficient to bind Respondent. Respondent argued that RChain failed to demonstrate that he had seen and agreed to the Membership Agreement and its terms. No copy of a signed agreement was produced, and the trial court denied RChain's motion, concluding that there was insufficient evidence of an agreement to arbitrate. RChain appealed.

In the interim, RChain continued to review discovery for the underlying action pending appeal of the denial. These efforts were complicated by Respondent's failure to produce metadata for the documents. Respondent eventually produced additional files, including a signed questionnaire. The questionnaire required an acknowledgment that the purchaser of RHOCs had reviewed a list of documents, including the Membership Agreement (although the Membership Agreement itself was not attached). RChain then presented the sequence of screens on its website, which indicated that in order to become a member and access the questionnaire, a purchaser would have been presented the Membership Agreement, clicked "I agree," and then be presented with an invoice. After paying the invoice, the purchaser could then access the questionnaire. Individuals could also access this questionnaire through RChain's legal depository on a third-party platform, a procedure that did not require assent to the Membership Agreement.

Citing this newly-discovered evidence, and Respondent's misconduct in failing to timely produce the questionnaire, RChain moved to vacate the order denying its motion to compel arbitration. The trial court denied the motion to vacate, reasoning that there was no evidence of bad faith or nefarious conduct by Respondent. In addition, the trial court determined that the evidence would not have changed the decision regarding arbitration, as RChain did not demonstrate that it was more likely that Respondent accessed the questionnaire through RChain's website than through the third-party platform.

RChain appealed, and this appeal was linked to the pending appeal of the trial court's order denying RChain's motion to compel arbitration, which was affirmed by the Court in *Roupp v. Meredith*, 2022 WL 594291 (Wash. Ct. App. Feb. 28, 2022) (unpublished).

With respect to the trial court's denial of RChain's motion to vacate, the Court held that the trial court abused its discretion in appearing not to have considered all of the evidence presented. In particular, the trial court did not address the sequence of screens presented to Respondent in the membership process, which demonstrated that in order for Respondent to receive a membership invoice, pay the fee, and receive an e-mail receipt (all of which occurred), he had to have been presented with the Membership Agreement and click the "I agree" box – regardless of how the questionnaire was accessed.

In addition, the Court determined that the trial court applied an incorrect standard to deny the motion to vacate. The Court noted that Respondent was in possession of the questionnaire, failed to produce it as initially requested, and then lacked a satisfactory explanation for this failure. This behavior amounted to a willful violation of discovery and

was misconduct. Further, the trial court did not address whether Respondent’s failure to produce the questionnaire substantially prejudiced RChain’s motion to compel arbitration. Accordingly, the Court remanded to the trial court to reconsider the motion to vacate, and to do so in light of the discovery misconduct.

C. Nguyen Family Trust v. Darlene Piper, et al.

In *Nguyen Family Trust v. Darlene Piper, et al.*, 22 Wash. App. 2d. 1051 (Wash. Ct. App. May 31, 2022) (unpublished), *review denied*, 200 Wash. 2d. 1020 (Wash. 2022), the Court of Appeals of Washington, Division I held that equitable relief was not available to recover money obtained as a result of securities fraud that was subsequently donated to a third-party nonprofit research hospital. The Court held that equitable relief was not available because the Court determined that plaintiffs had an adequate remedy at law.

Here, Darlene Piper, an attorney, was the personal representative for an individual’s estate, and invested funds from the estate and her personal funds into a mortgage-backed loan in Paraguay. She began discussing Paraguayan investment opportunities with her friend, Tina Chapman, and Chapman agreed to invest \$500,000 in Paraguayan bonds. Instead of being invested in bonds, as Chapman believed, the funds were either directed by Piper into a mortgage-backed loan offering or donated to St. Jude Children's Research Hospital to fulfill a bequest from the estate that Piper was representing.

Chapman filed suit in 2017 against Piper alleging securities fraud under RCW 21.20.010 and common law fraud, unjust enrichment, and negligent misrepresentation. Over the course of the litigation, Chapman was substituted as the plaintiff for the Nguyen Family Trust (referred to by the Court as “NFT”), because the investment came from NFT’s funds and it was the real party in interest. The complaint was also amended to add St. Jude Children’s Research Hospital (“STJ”) as a defendant and to replace the negligent misrepresentation claim with a claim for conversion. NFT alleged STJ was unjustly enriched by Piper’s act, and sought equitable relief from STJ, alleging that the funds STJ received from Piper were the funds that Chapman had transferred to Piper.

This case went to trial, where a jury found for NFT on the Securities Act and common law claims against Piper, and awarded damages to NFT. After trial, STJ moved for summary judgment, arguing that NFT’s equitable claim against it failed as a matter of law. The trial court agreed and dismissed the claim, and NFT appealed.

For this appeal, the Court focused on NFT’s claim for restitution against STJ, and decided solely whether NFT was entitled to restitution as a matter of equity. NFT sought this remedy against STJ because it argued the money judgment against Piper was an inadequate remedy at law, as Piper is unable to repay the judgment.

The Court, drawing on Washington Supreme Court precedent in *Sorenson v. Pyeatt*, 158 Wn.2d 523 (2006), found that the successful money judgment is sufficient evidence that an adequate remedy at law exists, regardless of “speculation” as to whether the defendant will be able to repay the judgment, and that there is a policy “that the person

against whom a legal and equitable remedy is sought should be the same.” It also differentiated the other cases cited by the plaintiffs because those cases involved successor liability and the conversion of real estate. Accordingly, the Court found that the trial court did not err in dismissing NFT’s equitable claim.

D. Zunum Aero, Inc. v. The Boeing Company, et al.

In *Zunum Aero, Inc. v. The Boeing Company, et al.*, 2022 WL 2116678 (W.D. Wash. June 13, 2022) (unpublished), the United States District Court for the Western District of Washington granted Boeing’s motion for partial judgment on the pleadings dismissing certain state claims with prejudice, including a claim under the Securities Act of Washington, and others without prejudice.

Zunum Aero, Inc. (“Zunum”) was an aerospace startup company devoted to developing the first hybrid-electric and all-electric regional aircraft for commercial use. In 2017, Zunum began identifying strategic partners for outside funding, and identified and approached Boeing regarding this possibility. Boeing was interested, conducted due diligence, and signed a “proprietary information agreement” (“PIA”) with Zunum in August 2016 that granted it access to the company’s internal documents. Boeing invested \$5 million into Zunum and received the right to appoint an observer to Zunum’s board of directors. Another group of companies that supply electrical parts to Boeing also showed interest in partnering with Zunum.

The plaintiff’s lawsuit alleged that in 2017 Boeing began to develop a hybrid aircraft that mimicked Zunum’s aircraft, and engaged its suppliers, including the electrical parts conglomerate that was conducting due diligence on Zunum, to develop parts for its own aircraft. Allegedly, Boeing’s influence caused this conglomerate to pull out of investing in Zunum, which Boeing then used as a justification to drop out of helping to lead Zunum’s financing. Zunum was unable to attract any other significant investment, and closed shop in 2019. Zunum sued Boeing for various common law and statutory claims, including under the Securities Act.

For its Securities Act claim, Zunum alleged that Boeing made untrue or misleading statements of fact or omissions in Boeing’s purchase of securities sold by Zunum in 2017 and 2018. Zunum alleged that Boeing told Zunum before investing that it would not compete with Zunum, but that, in reality, it intended to compete with Zunum, and, to the extent Boeing had evidenced this intent, it failed to provide enough material facts to make its statement not misleading. Zunum alleged it would not have entered into these agreements with Boeing if it knew that Boeing intended to directly compete with it.

The Court agreed with Boeing that the acknowledgements made by Zunum in the PIA and investor rights letters it signed in 2017 and 2018 meant that Zunum was not misled. The agreements included language that Boeing may possess or have developed products or services similar to or that compete with Zunum, that Boeing was not precluded from developing these products or services in the future, and that it may have operations that are deemed competitive to Zunum. The Court cited *Stewart v. Estate of Steiner*, 122

Wash.App. 258, a 2004 opinion by the Court of Appeals, Division I, to hold that Zunum could not disavow the acknowledgements it made in its agreements with Boeing and could not plausibly argue that Boeing misrepresented its intention to compete by failing to inform Zunum of its intentions to develop a hybrid-electric aircraft.

The Court also rejected Zunum's claim that it was misled by the alleged omission of Boeing's intention to compete with Zunum in Boeing's 2016 statement that it was focused on drones and military technology and a parallel NASA program for single-aisle aircraft. The Court stated that the agreements make clear that Boeing's interest may have extended to products that directly competed with Zunum. The Court stated that the omitted fact that Boeing intended to develop a hybrid aircraft would not have significantly altered the total mix of information already disclosed. The Court also found that Zunum's claim failed because Boeing statements were related to future conduct, not present facts. Accordingly, the Court dismissed Zunum's Securities Act claim with prejudice.

E. Xueji Tang, Et Ano. v. Zhong Xiang Ye, Et Ano.

In *Xueji Tang, Et Ano. v. Zhong Xiang Ye, Et Ano.*, 22 Wash. App. 2d. 1057 (Wash. Ct. App. July 25, 2022) (unpublished), the Court of Appeals of Washington, Division I held that a defendant's argument that the securities at issue were not tendered by the plaintiffs to the defendant failed because the defendant had previously acknowledged that the securities had been tendered. The Court also found that that the trial court's prejudgment interest and attorneys' fees calculations were sufficiently supported, and that the findings of facts entered by the trial court did not support entry of judgement against the co-defendant business entity.

This dispute arose from the sale by Zhong Xiang Ye of a 30% interest in Tiger Express Shipping Corporation ("Tiger"), a tour business serving tourists from China. Ye had represented to Xueji Tang and Liling Wang ("Plaintiffs") that Tiger owned six vehicles with a cost basis of \$425,082, and in May 2016, Plaintiffs paid \$127,000 for a 30% interest in the company. In September 2016, Plaintiffs invested an additional \$75,000 because Ye planned to purchase five more vehicles and told Plaintiffs the additional investment was needed to maintain their 30% interest in Tiger. Tiger ended its tour business in 2018, and, by September 2018, had sold 7 of its 11 vehicles. For their investment, Plaintiffs had received \$25,000 in distributions between 2016 and 2017, and \$10,500 from the \$143,000 in proceeds from the sale of the vehicles. Plaintiffs sued Ye and Tiger alleging breach of contract, intentional misrepresentation, negligent misrepresentation, and Securities Act violations. By the end of the bench trial, Plaintiffs chose to pursue only the Securities Act claim.

The trial court found that the sale of the 30% interest in Tiger was a security and that Ye had made misleading statements of material facts to Plaintiffs. The trial court entered a judgment against Ye and Tiger for damages of \$242,807.52, costs of \$3,286.58, and attorney fees of \$47,670.00.

Ye and Tiger appealed the trial court's calculation of damages. According to the defendants, Plaintiffs had agreed to liquidate the business and accepted the liquidation proceeds without tendering the security. Because of this, Ye argued, under RCW 21.20.430(1) Plaintiffs could only recover damages under its breach of contract claim, not the Securities Act claim. They also challenged the calculation of prejudgment interest, attorneys' fees, and Tiger's liability for the Securities Act claim.

The Court held that defense counsel's statement during argument at trial that "You can't recover on a securities claim until you tender it, and [Ye][*sic*] didn't tender it until, I guess, the day he submitted his proposed findings of fact and conclusions of law," was an acknowledgment that the security was tendered, although counsel had argued during appeal that the statement was not meant to be a concession. The Court also found that the trial court's findings were stated with enough specificity to support its calculation of prejudgment interest, and that, even if Ye could challenge the reasonableness of the hourly rate used to calculate attorneys' fees for the first time on appeal, he had invited this error by only challenging at the trial level the number of hours used in this calculation.

The Court found that the findings of fact showed Tiger did not share liability with Ye. The Court pointed to an agreement between the parties at trial that judgment would be entered only to Ye in his individual capacity, and to the subsequent refusal of Plaintiffs' counsel to admit that the joint liability for the parties was in error. The Court found that the findings of fact did not support the entry of judgment against Tiger, because they establish Ye as the seller of the security through the written agreements and the trial court had found that Ye made the misleading statements. The Court accordingly remanded this issue to the trial court to clarify or correct the findings and conclusions and the judgment to reflect the proper judgment debtor(s).

F. Joseph Golden v. ShootProof Holdings, LP, et al.

In *Joseph Golden v. ShootProof Holdings, LP, et al.*, 2023 WL 2255953 (Del. Ch. Feb. 28, 2023) (unpublished), the Delaware Court of Chancery dismissed the plaintiff Washington resident's claims under RCW 21.20 against the purchaser of his company and its affiliates and agents because the Court found that the plaintiff agreed to anti-reliance and integration provisions in his contract that precluded him under Washington law from relying on extra-contractual statements.

Joseph Golden, the Washington resident, is the co-founder and the former co-CEO of Collage.com, Inc., which offered customizable photo and home products. Golden and his co-founder and CEO met with one of the defendants, ShootProof, LLC, in 2020 to discuss the acquisition of Collage.com. In December 2020, the parties executed a letter of intent that outlined the basic terms of the acquisition, which, along with financial terms, reflected the belief of ShootProof, its holding company, and its private equity sponsor and affiliated entities that acquiring Collage.com was an opportunity to invest behind, and partner with, a "strong team."

Over the next few months, the parties negotiated the terms of the acquisition. Over the course of the negotiation, Golden discussed with Shootproof's CEO, Stephen Marshall, about developing a post-closing retention plan for Collage.com's continuing employees. Marshall agreed and suggested that Golden work with the private equity sponsor. The general counsel for Collage.com, who was Golden's spouse, also inquired about her role in the surviving entity, and during the negotiations the parties explored different titles for Golden and other officers of Collage.com. Later, Collage.com's lead banker asked the private entity sponsor to confirm that it did not intend to cut the compensation of the continuing employees, to which the private entity sponsor stated that it did not, but wanted to maintain flexibility in operating the company it was acquiring.

The transaction closed in March 2021. The day after the transaction closed, Golden sent an email to the continuing employees, which was approved by the defendants, that stated "[n]o one is losing their jobs as a result of the merger" and "[e]veryone on our team is staying." The email also stated that Golden would serve in a management role over an expanded research and analysis department, and take on additional leadership responsibilities as the defendants better understood the needs of the new organizational structure. A week later, Golden's spouse was fired as general counsel due to her marriage with Golden, and ShootProof withdrew its offer for Golden to sit on the compensation committee of the surviving entity.

The next month, in April 2021, Golden requested that the defendants repurchase the rollover shares he received as part of the acquisition. They refused, and Golden met with Shootproof's CEO to negotiate a separation agreement. The terms included Golden relinquishing the board seat on ShootProof's holding company, to which Golden refused unless his rollover shares were bought. The parties were unable to agree on terms, and Golden was terminated from the surviving entity. He subsequently brought suit seeking recessionary damages. Golden's lawsuit alleged that the defendants violated the Securities Act by making untrue statements of material fact regarding the retention and involvement of Collage.com management and employees in connection with the sale of the rollover shares to Golden. He also alleged that the private equity sponsor, the general partner of the holding company, and ShootProof's management had controlling person liability for these violations. The defendants filed a motion to dismiss.

The Chancery Court first found that it lacked personal jurisdiction over the ShootProof managers named in the suit. Golden argued that Shootproof's management were intended third-party beneficiaries of, or closely related to, the merger agreement, which included a Delaware forum selection clause, because they became officers in the surviving entity. The Court found it lacked jurisdiction over these officers because they were not sufficiently close to the agreement, as the merger agreement did not list them as intended third-party beneficiaries while it had listed other intended third-party beneficiaries. The Court also found that it lacked jurisdiction because, while the Court had previously found in other matters that similar officers were closely related to the agreement in dispute, this case was distinguishable because the instant merger agreement did not itself appoint the officers to their positions.

The Court also found that it did not have specific or general jurisdiction over ShootProof's management on any other grounds. It found it did not have specific jurisdiction because the officer's causation of a merger that was governed by Delaware law was an insufficient contact to sustain jurisdiction, and that the participation in the creation of a Delaware entity, without more, does not create this jurisdiction. Instead, the formation of the entity itself must be central to the plaintiff's claims. Because Golden's claims were based on violations of securities laws, the formation of the entity was not integral to his claims. Further, the Court found that Golden's "Washington securities law claims hinge on his injury having taken place in Washington," and thus "[t]he injuries allegedly suffered have no nexus to Delaware."

The Court then found that Golden failed to state a claim against the remaining defendants because he failed to overcome the anti-reliance provision in the contribution and exchange agreement he signed and the integration provisions in that agreement and the merger agreement. The Court referenced the Western District of Washington's 2022 decision in *Zunum Aero, Inc.*, and the Washington appellate case it cited, to find that under Washington law these contractual provisions "can properly limit the universe of actionable misrepresentations without running afoul of the statutory prohibition against waiving compliance with securities law." The Court also found that, under Washington law, while "an integration clause alone may not bar a fraud claim law, [] it can when read together with an antireliance clause." Additionally, it found that the instant provisions "in the abstract" are governed by Delaware law, which holds that "contractual antireliance language is effective when it identifies the specific information on which a party has considered in entering the contract to the exclusion of other information." Thus, the Court held that Golden's Securities Act claims could not survive, and that there was no control person liability because there was no underlying violation of the Act that could be sustained.

IV. DIVISION OF SECURITIES STATISTICS

A. JURISDICTIONAL AREAS AND REGULATED ENTITIES (AS OF 12/31/2022 UNLESS OTHERWISE NOTED)

SECURITIES ACT - 21.20 RCW

\$242,065,345,799	Securities Permits, Notifications And Exemption Letters ³
1,742	Registered Securities Broker-Dealers
671	Registered Investment Advisers
2,553	SEC Registered Investment Adviser Notifications
141	Exempt Reporting Adviser Notifications
211,453	Registered Securities Salespersons
14,254	Registered Investment Adviser Representatives
3,472	Branch Offices Of Broker-Dealers
191	Complaints
125	Active Enforcement Cases
46	Statement of Charges/Orders

FRANCHISE ACT - 19.100 RCW

980	Registered Franchises as of 4/14/2023
312	Franchise Exemption Notifications as of 4/14/2023
539	Registered Franchise Brokers as of 4/14/2023
18	Complaints
16	Active Enforcement Cases
13	Statement of Charges/Orders

BUSINESS OPPORTUNITY ACT - 19.110 RCW

4	Registered Business Opportunities as of 4/14/2023
4	Complaints
0	Active Enforcement Cases
1	Statement of Charges/Orders

COMMODITIES ACT 21.30 RCW

N/A	Registered Commodities as of 4/14/2023
5	Complaints
0	Active Enforcement Cases
1	Statement of Charges/Orders

³ Figure represents the aggregate offering amount to be raised under currently effective registration or exemption filings as of April 14, 2023.

B. REGISTRATION AND LICENSING FILING ACTIVITY TOTALS FOR CALENDAR YEAR 2022

REGISTRATIONS, EXEMPTIONS & NOTIFICATIONS

	NEW	RENEW	AMEND	TOTAL
Investment Companies	2,134	22,863	9,433	34,430
S-1s	1	0	0	1
Reg A – Tier 1 Offerings	2	0	0	2
Other Coordination Filings	27	18	41	86
Qualifications	3	15	11	29
SCOR (Small Company Offering Reg.)	0	0	0	0
Reg A – Tier 2 Notices	275	22	18	315
Reg CF – Federal Crowdfunding Notices	3	0	0	3
Exemptions	6,203	4	1,319	7,526
Opinions	0	0	0	0
Franchise Applications	408	741	118	1,267
Franchise Exemptions	79	241	0	320
Business Opportunities	2	0	0	2
Small Business Retirement Marketplace	1	2	1	4
Total	9,138	23,906	10,941	43,985

FIRMS & ENTITIES

	NEW	RENEW	TOTAL
Securities Broker-Dealers	101	1,717	1,818
Intrastate Broker-Dealer	0	1	1
Investment Advisers	60	644	704
Franchise Brokers	247	412	659
SEC Investment Adviser Notices	247	2,550	2,797
ERA – Exempt Reporting Advisers	25	141	166
Total	680	5,465	6,145

REPRESENTATIVES & SALESPERSONS

	NEW	RENEW	TOTAL
Securities Salespersons	51,115	213,934	265,049
Salespersons w/ Disclosure History	4,517	0	4,517
Investment Adviser Representatives	2,684	14,443	17,127
Agents of Issuers	33	36	69
Total	58,349	228,413	286,762

Northwest Securities Institute

Bill Beatty

Washington Securities Division

May 5, 2023

Tigard, Oregon

Jurisdiction of the Securities Division

- ▶ Securities Act of Washington, chapter 21.20 RCW
- ▶ Franchise Investment Protection Act, chapter 19.100 RCW
- ▶ Business Opportunity Fraud Act, chapter 19.110 RCW
- ▶ Commodities Transactions Act, chapter 21.30 RCW
- ▶ Small Business Retirement Marketplace, RCW 43.330.735

Securities Act Snapshot (as of 12/31/22)

- ▶ \$242+ Billion - Securities Permits, Notifications And Exemption Letters
- ▶ 1,700+ Registered Securities Broker-Dealers
- ▶ 670+ Registered Investment Advisers
- ▶ 211,000+ Registered Securities Salespersons
- ▶ 14,000+ Registered Investment Adviser Representatives
- ▶ 3,400+ Branch Offices Of Broker-Dealers
- ▶ 288 Complaints
- ▶ 125 Active Enforcement Cases
- ▶ 46 Statements of Charges/Orders

Rulemaking

- Repeal of Mortgage Paper Securities Rules
 - WAC 460-33A
 - Provided a method to register fractionalized interests in deeds of trust
 - Approximately 10 WA companies registered at one point.
 - Last of them disappeared after last financial crisis
 - Enforce actions / Receiverships
 - 506(c) and Reg A

Rulemaking continued

- Broker-Dealer Rules
 - Preproposal filed April 3, 2023
 - WAC 460-20B, 21B, and 22B
 - Last updated in the 1990s
 - Changes to federal law
 - NASAA model rules
- Survey
- Small Business Economic Impact Statement

Securities Act Interpretive Stmt - 06

- Amended February 11, 2022
- Employee Benefit Plan Exemption-RCW 21.20.310(10)
- Clarifications:
 - Interpreted consistent with Rule 701(c)
 - Covers Omnibus Plans
 - Updates should be filed with the Division

Legislation - Whistleblower Award and Protection Act

- ▶ 2023 Session
- ▶ House Bill 1370
- ▶ Passed House and Senate - Awaiting Governor's signature

HB 1370 - Whistleblower Bill

- ▶ NASAA model - adopted in 2020
 - ▶ Drafting group led by Faith Anderson
 - ▶ Existing whistleblower laws in Utah and Indiana
 - ▶ Dodd-Frank section 922
 - ▶ WA would be 3rd state to adopt model (MT and VT)

HB 1370 - Whistleblower Bill

- ▶ Authorizes awards between 10% and 30% of monetary sanctions collected by the Division to whistleblowers that provide “original information”
- ▶ Anonymity. Information can be submitted anonymously through counsel.
 - ▶ Must disclose identity prior to receiving an award.
- ▶ Award amount based on:
 - ▶ Significance of the information provided
 - ▶ Degree of assistance provided by the whistleblower
 - ▶ Other factors

HB 1370 - Whistleblower Bill

- ▶ Certain whistleblowers disqualified:
 - ▶ Felons
 - ▶ Auditors
 - ▶ Knowing or reckless false statements
 - ▶ Have a legal duty to provide information to the Securities Division
 - ▶ Securities regulators
 - ▶ Family members of DFI employees

HB 1370 - Whistleblower Bill

- ▶ Protection from Retaliation
 - ▶ Termination, demotion, suspension, harassment, etc
 - ▶ Private cause of action
 - ▶ Exemption from Public Records Act to protect whistleblower identity

HB 1370 - Whistleblower Bill

- ▶ Administration
 - ▶ Rulemaking authority
 - ▶ Awards funded from Securities Prosecution Fund
 - ▶ Cap increased from \$350,000 to \$1 million
 - ▶ Projected effective date: July 23, 2023

Enforcement

- ▶ Crypto Earned Interest product (EIP) Cases
 - ▶ Washington has participated in several multistate cases
 - ▶ BlockFi, Voyager, Celsius, etc.
 - ▶ Lead state for Nexo Capital
 - ▶ Significant investments by many WA investors
 - ▶ Significant fines

Chapter 1D

Presentation Slides: IDOF Securities Bureau Update

JOHN YAROS

Idaho Department of Finance
Boise, Oregon

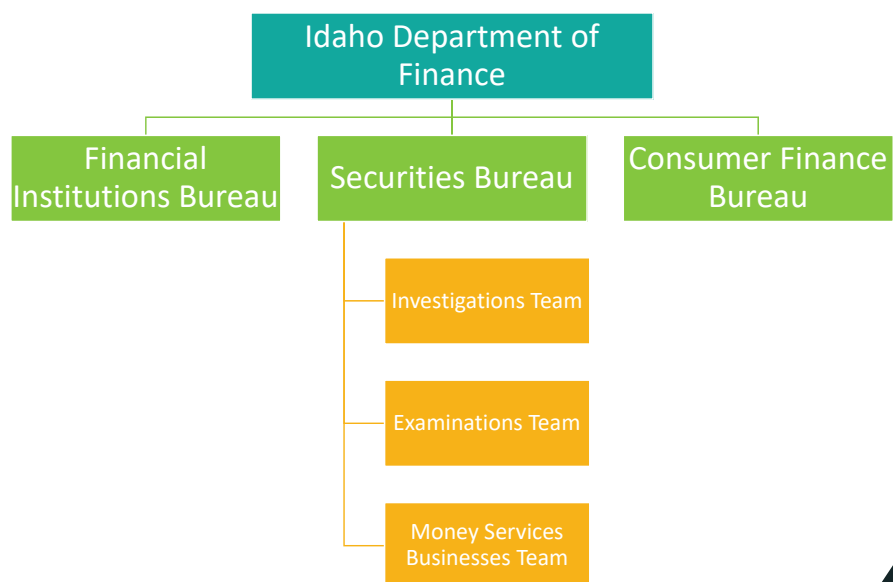
IDOF SECURITIES BUREAU UPDATE



IDAHO
DEPARTMENT OF FINANCE

PROPRIETARY & CONFIDENTIAL | 1

ORGANIZATIONAL CHART



PROPRIETARY & CONFIDENTIAL | 2

MISSION & VISION

Mission Statement

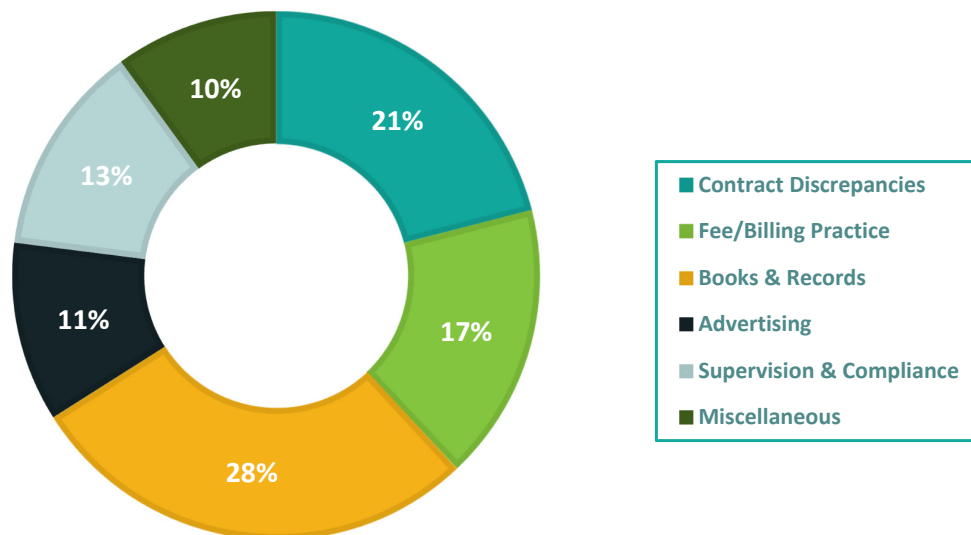
Safeguarding the financial health of Idahoans through the appropriate oversight of diverse financial institutions, the education and protection of consumers, and by fostering sensible innovation in the financial services market.

Vision Statement

Excelling in supervision, fostering innovation, protecting Idaho's financial health.

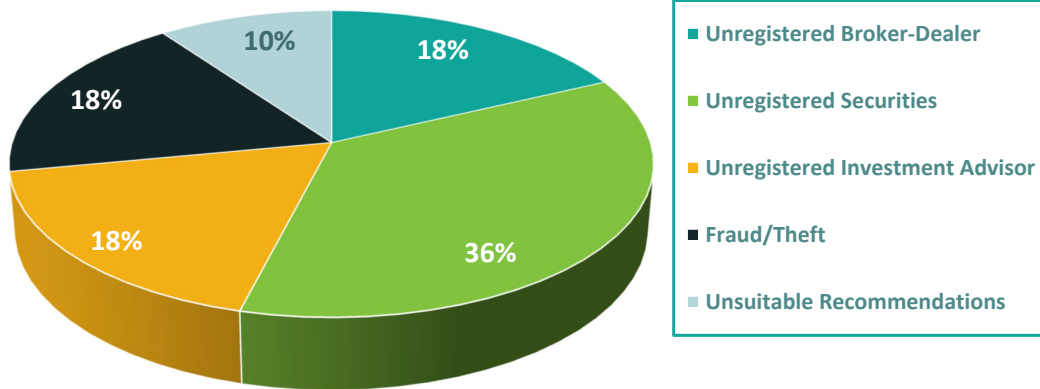
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EXAMINATIONS: ISSUES STATS



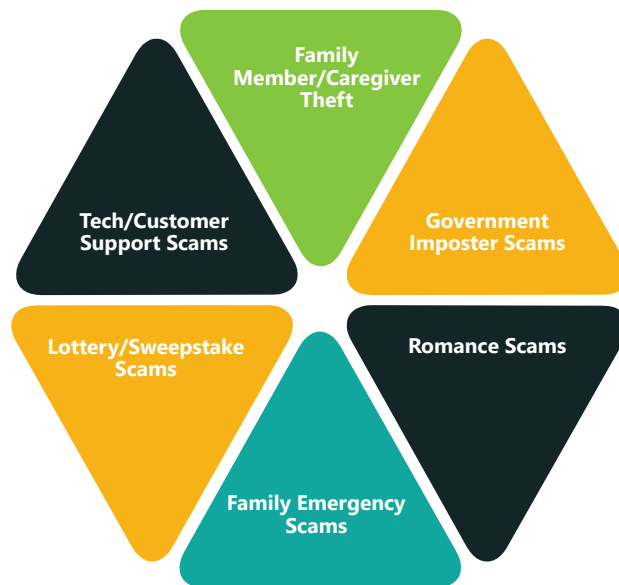
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INVESTIGATIONS: VIOLATION STATS



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FOCUS AREA 1: ELDER FINANCIAL EXPLOITATION



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FOCUS AREA 2: CYBERSECURITY

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FOCUS AREA 3: DIGITAL ASSET FRAUD/THEFT SCHEMES

High Yield Investment Program Scams

- *High Yield Consistent Returns*
- *Little to No Risk*
- *Unclear/Vague Investing Strategies*
- *Referral Bonuses*
- *Significant Social Media Promotion*
- *Identifiable Leadership*

Rug Pulls

- *Create Misleading Hype Websites*
- *Use of Social Media Bots*
- *False Partnerships & Leadership Team Claims*
- *Unfair Token Allocations*
- *Suspicious Trading Activity*
- *Smart Contract Exploits*

PROPRIETARY & CONFIDENTIAL | 8

QUESTIONS?

PROPRIETARY & CONFIDENTIAL | 9

