

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

BANKING AND SECURITIES COMMISSION MEETING 2017-4

WEDNESDAY, November 8, 2017

PUBLIC SESSION

The meeting of the Banking and Securities Commission was held on November 8, 2017 in the First Floor Hearing Room of the Department's offices at Market Square Plaza, 17 North Second Street, Harrisburg, PA 17101. The public session was called to order at 1:04 p.m. by Chairman Biery. The following were in attendance:

CHAIRMAN JAMES R. BIERY	
VICE-CHAIR ROBIN L. WIESSMANN	
COMMISSIONER VINCENT J. GASTGEB (via Phone)	JENNIFER COX, Non-Depository and Securities Compliance Examiner 1
GERARD MACKAREVICH, Commission Counsel	TIM ARTHUN, Policy Director
PAUL H. WENTZEL, JR., Senior Legislative and Policy Director	LINDA CARROLL, Senior Deputy Chief Counsel for Securities
EDWARD NOVAK, Director of Press and Communications	XINOMARA YEHUDA, Secretary's Office
SCOTT LANE, Senior Deputy Chief Counsel for Securities	NICOLE BAIR, Secretary's Office

CALL TO ORDER AND APPROVAL OF MINUTES FOR PREVIOUS MEETING

1. At 1:04 p.m. Chairman Biery called the meeting of the Banking and Securities Commission to order. It was noted that, pursuant to the requirement of Section 709 "Public Notice" of the Sunshine Act of 1998, a Sunshine Law meeting notice notifying the public of the November 8, 2017 commission meeting was (1) **PUBLISHED** in **THE PATRIOT-NEWS**, Harrisburg, PA, Tuesday, November 7, 2017 edition; and on the same date (2) **POSTED** in the lobby of Market Square Plaza, 17 N. Second Street, Harrisburg, PA 17101; and (3) in furtherance of government transparency, also **POSTED** on the Department's webpage.

2. The Chairman acknowledged that Commissioner Gastgeb was participating via phone conference. With three commissioners attending, a quorum was present for purposes of taking official action pursuant to Section 1121-A(f) of the Department of Banking and Securities Code. The Chairman further noted that there continues to be a vacancy on the commission, as well as a vacancy for the Governor's designee.

3. Jennifer Cox, Commission Recording Secretary will be taking the minutes of this meeting. All commission members had received copies of the minutes for the public commission meeting held on August 17, 2017 and no changes were made. Pursuant to a motion made by Vice-Chair Wiessmann and seconded by Commissioner Gastgeb, the commission unanimously agreed to adopt the minutes as final.

4. Chairman Biery congratulated the Department on a job well done at the Statewide Securities Compliance Conference held on October 26, 2017 at the Radisson Hotel Harrisburg, in Camp Hill.

5. At 1:09 p.m., the Chairman directed that the Commission would leave public session and enter executive session in order to discuss an item on the executive session agenda.

6. At 1:22 p.m., the Commission re-entered public session to discuss the matter of *John Frank Barnyak and Stonehouse Asset Management, Inc.* (Docket No. 160059). The following commissioners and staff remained in the meeting: Chairman Biery, Vice-Chair Wiessmann, Commission Counsel Gerard Mackarevich, and Jennifer Cox.

7. Vice-Chair Wiessmann requested an explanation from Senior Deputy Chief Counsel Scott Lane as to why the Department requested in its Brief on Exceptions that the Commission set at \$50,000 the administrative assessment that the hearing examiner proposed, but did not set, in addition to proposing a revocation, permanent bar, and payment of costs of investigation. Attorney Lane cited a 2014 case with similar violations in which the Commission imposed a \$50,000 administrative assessment. In addition, Attorney Lane explained that the respondents in the pending matter had only one Pennsylvania client.

8. At 1:35 p.m., Chairman Biery announced that the commission would re-enter executive session to consider an adjudication pursuant to Section 1112-A of the Department of Banking and Securities Code. He requested that all meeting participants but the

commissioners, Commission Counsel Mackarevich, and Jennifer Cox leave public session and re-enter executive session.

ADOPTION OF PROPOSED ORDER

**IN THE MATTER OF JOHN FRANK BARNYAK AND STONEHOUSE ASSET
MANAGEMENT, INC.**

- 9.** At 1:38 p.m., the commission re-entered public session to act in the matter of *John Frank Barnyak and Stonehouse Asset Management, Inc.* (Docket No. 160059). The following commissioners and staff remained in the meeting: Chairman Biery, Vice-Chair Wiessmann, Commission Counsel Mackarevich, and Jennifer Cox.
- 10.** Vice-Chair Wiessman moved and Commissioner Gastgeb seconded a motion to adopt the recommendation of a \$50,000 administrative assessment made by the Department in its Brief on Exceptions in the matter of *John Frank Barnyak and Stonehouse Asset Management, Inc.* (Docket No. 160059).
- 11.** A motion having been made and seconded, a roll call was conducted to adopt the \$50,000 recommended administrative assessment in the matter of *John Frank Barnyak and Stonehouse Asset Management, Inc.* (Docket No. 160059). The commission unanimously agreed to the motion.
- 12.** Vice-Chair Wiessman moved and Commissioner Gastgeb seconded a motion to amend its previous order to make clear that the Commission was adopting as modified the hearing

examiner's proposed report, setting at \$50,000 the administrative assessment that the hearing examiner had proposed, but did not specifically determine.

13. A motion to amend having been made and seconded, a roll call was conducted to adopt the proposed report as modified in the matter of *John Frank Barnyak and Stonehouse Asset Management, Inc.* (Docket No. 160059), setting the administrative assessment at \$50,000. The commission unanimously adopted the amended order.

MOTION TO DISMISS

IN THE MATTER OF FUTURE INCOME PAYMENTS, LLC; F/K/A PENSIONS, ANNUITIES AND SETTLEMENT, LLC; AND SCOTT A. KOHN

14. Vice-Chair Wiessman moved and Commissioner Gastgeb seconded to deny the motion to dismiss filed by Scott A. Kohn in *Future Income Payments, LLC; f/k/a Pensions, Annuities and Settlement, LLC; and Scott A. Kohn*, Docket No. 170024.
15. A motion having been made and seconded, a roll call was conducted to deny the motion to dismiss in the matter of *Future Income Payments, LLC; f/k/a Pensions, Annuities and Settlement, LLC; and Scott A. Kohn*, (Docket No. 170024). The Commission unanimously denied the motion to dismiss and remanded the matter back to the hearing examiner to resume proceedings on the merits.

NEW BUSINESS

- 16.** Senior Deputy Chief Counsel Lane provided an update on the new securities regulations, which have not been amended since 2005. After three years of publications and review, the legislative committees and Independent Regulatory Review Committee (IRRC) approved the final amendments on October 12, 2017. The last stage before finalization requires approval from the Office of Attorney General (OAG); the new regulations were submitted to the OAG on October 19, 2017. If approval is not specifically filed by the OAG within 30 days of submission, the regulations will automatically be deemed approved. Once the approval is received from the OAG, the new regulations are submitted to the Legislative Review Bureau for publication in the Pennsylvania Bulletin.
- 17.** Senior Deputy Chief Counsel Lane also provided a summary of the amended regulations. Many of the regulatory amendments are stylistic in nature, such as creating a separate section for definitions at the beginning of the regulations.
- 18.** More substantive changes include a new exemption from registration for investment advisers who are only advising private funds (such as hedge funds) and a solicitor's exemption for advisers providing recommendations to clients or potential clients to use a specific investment adviser firm for a fee; both exemptions mirror the SEC rules.
- 19.** The new regulations also prohibit uses of senior-specific certifications and designations, which are misleading and have no basis or substance behind them. The example provided

by Deputy Chief Counsel Lane was the use of HSD (High School Diploma) by an individual providing investment advice. The national trend points to seniors being targeted by individuals using these types of certifications and designations.

20. The amended regulations also include a requirement for investment advisors to have business continuity, succession, and disaster recovery plans. Many of the Pennsylvania investment advisors are small firms with fewer than five employees and oftentimes only one employee has the knowledge required to continuing operating business efficiently and effectively. The NASAA has provided guidance on how to prepare these plans and Senior Deputy Chief Counsel Lane has recommended this guidance be available on the Department's website.
21. The custody rules have also been updated to mirror those of the SEC and NASAA. If investment advisers send statements to a client, and those statements are also sent from a custodial account, the investment advisor must provide notice to the client to compare the statement from them and the one from the custodian. This was a hole in regulations that allowed Bernie Madoff to send his own statements to clients.

CLOSING COMMENTS

22. Having no further business, Chairman Biery asked for a motion to adjourn the meeting. Pursuant to a motion made by Vice-Chair Wiessmann and seconded by Chairman Biery, the meeting was adjourned at 1:52 p.m.

Transcribed by:

JENNIFER E. COX, Secretary for
Commission

Reviewed and respectfully submitted by:

ROBIN L. WIESSMANN, Vice-Chair