

BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO

In the Matter of:

JD Cowan & Company, LLC

Respondent

Docket No. 2021-7-01

**ORDER OF SUMMARY
SUSPENSION OF INVESTMENT
ADVISER REGISTRATION**

The Securities Bureau staff (the “Securities Bureau”) of the Idaho Department of Finance (the “Department”) has been conducting an examination of the Respondent, pursuant to its examination authority in Section 30-14-411(d) of the Uniform Securities Act (2004), Idaho Code § 30-14-101, *et. seq.* (the “Act”). This examination has uncovered violation(s), and after several attempts at informal resolution, the Securities Bureau has recommended summary suspension until such violations are resolved. The Director of the Idaho Department of Finance (the “Director”) pursuant to the Act, in particular Idaho Code § 30-14-412, hereby accepts that recommendation and makes the following Findings of Facts and Findings of Violations and enters the following Order of Suspension, by summary process.

RESPONDENT

1. JD Cowan & Company, LLC (“Respondent”) is an Idaho limited liability company that was formed in October 2013 and has its principal place of business located at 802 W Bannock Street, Ste. 407, Boise, Idaho 83702. Respondent has been an Idaho-registered investment adviser firm since January 2014, with the CRD number #169539.

FINDINGS OF FACTS

BACKGROUND

2. J. Dana Cowan (Cowan) is the Owner, Chief Compliance Officer and Manager member of Respondent. Cowan has been an Idaho-registered investment adviser representative since 2014. Cowen was first registered in the securities industry in 1996 and has a CRD number #2723164.

3. This order of suspension, to a certain extent, arises out of Respondent's deficiencies that date back to its initial 2015 examination by the Department.

2015 Exam and Deficiencies

4. In February 2015, the Department conducted an initial examination of Respondent (the "2015 examination"). The Department noted several deficiencies, including a lack of written policies and procedures and client suitability documentation, as well as issues concerning the client contract advisory fee and financial statements.

5. More specifically, during (and resulting from) the 2015 examination:

- a. Respondent adopted written policies and procedures, including those related to suitability documentation, which required the Respondent to obtain and document background information about each client's financial circumstances, investment objectives, risk tolerance and other information;
- b. The Department advised Respondent that its clients' contracts were required to contain the amount of the advisory fee and the formula for computing the fee; and
- c. The Department advised Respondent of its obligation to maintain trial balances, financial statements, and internal audit working papers relating to the business of the investment adviser. Respondent then created and produced financial statements at the conclusion of the 2015 examination.

2018 Exam, On-Going Related Deficiencies, and Agreement and Undertaking

6. The Department conducted a subsequent examination of Respondent commencing in October 2018 (the “2018 examination”), which uncovered further related deficiencies:

- a. Contrary to its written procedures adopted after the 2015 examination, Respondent could not provide written documentation of the clients’ suitability information in a client profile, or alternative document, but rather Respondent disclosed that it relied on Cowan’s memory of verbal conversations with clients.
- b. Respondent had failed to make and maintain current financial statements related to its advisory business, as demonstrated by its inability to produce an income statement during the 2018 examination and for nine (9) subsequent months thereafter.
- c. Respondent’s contract with its clients did not disclose current formulas used to calculate the fee for client accounts including fees calculated on a daily moving average account value nor did it document the terms of reduced fee arrangements that Respondent was applying with certain clients.

7. The Department resolved these on-going deficiencies informally through an Agreement and Undertaking executed between Respondent and the Department on or about October 11, 2019 (the “2019 A&U”), wherein Respondent admitted the Findings of Violations.

8. The 2019 A&U detailed Respondent’s violations of the Rules Pursuant to the Uniform Securities Act (2004), IDAPA 12.01.08 (the “IUSA Rules”), and the Investment Advisers Act of 1940 (the “Investment Advisers Act”) (as incorporated into the IUSA Rules):

- a. Violation of books and records requirements found in Rule 93 of the IUSA Rules, and the Investment Advisers Act, “by not making and keeping current books and records relating to 1) its financial statements, and 2) any record documenting the annual review of its policies and procedures”;

- b. Violation of suitability review and supervision requirements found in Rule 105 of the IUSA Rules, “in failing to establish and enforce reasonable procedures to review for unsuitable recommendations”;
 - c. Violation of client contract requirements found in Rule 94 of the IUSA Rules, “by not disclosing the formula for computing the fee in some client contracts and by failing to document the fee currently being applied to client accounts.”
9. The 2019 A&U also detailed the remedies to be implemented by the Respondent:
- a. “Respondent agrees to make and keep true, accurate and current financial statements related to its advisory business”;
 - b. “Respondent agrees to document its annual review of its policies and procedures”;
 - c. “Respondent agrees to comply with the requirements of Rule 93” of the IUSA Rules;
 - d. “Respondent agrees to review and update its client contracts to ensure compliance with Rule 94.02. Respondent agrees that the review and update of its client contracts shall be completed no later than December 31, 2019”; and
 - e. “Respondent has undertaken to provide a copy of the completed Client Profile and Suitability Form to the Department. Respondent agrees to establish and enforce reasonable procedures to review for unsuitable recommendations as required by Rule 105.04(b), which shall include the documentation of client suitability information that forms the basis for Respondent’s recommendations.”
10. Respondent also agreed, per the 2019 A&U, that “the Department will conduct a future, unannounced examination to review Respondent’s compliance with the Act and the

remedies set forth in this A&U” and “failure to comply with the A&U may result in the Department pursuing further proceedings against Respondent.”

2020 Compliance Follow Up by Department, Respondent Impeding the Inspection, and another Agreement and Undertaking

11. On November 5, 2020, the Department informed Respondent it would be conducting a focused investment advisory examination to review Respondent’s compliance with the remedies set forth in Respondent’s 2019 A&U.

12. Respondent failed to provide some of the information requested by the Department in connection with its focused investment advisory examination.

13. The Department again attempted to resolve the matter informally through an Agreement and Undertaking (the “2021 A&U”) that was executed between Respondent and the Department on or about April 8th and 14th, respectively.

14. In the 2021 A&U, the Respondent admitted the Findings of Violations: that “Respondent’s failure to provide the information requested pursuant to the Department’s focused investment advisory examination has impeded the Department’s audit or inspection conducted under the authority of Section § 30-14-411(d), Idaho Code.”

15. The 2021 A&U specifically listed (in paragraph 17) the documents that needed to be provided to the Department “by no later than April 8, 2021”:

- a. “Copy of the Respondent’s Balance Sheet as of October 31, 2020, as referenced in paragraph 18 of the 2019 A&U”;
- b. “Copy of the Respondent’s Income/Profit Loss Statement for the time period January 1, 2020-October 31, 2020, as referenced in paragraph 18 of the 2019 A&U”;
- c. “Copies of the documentation relating to the Respondent’s latest annual review of its policies and procedures, as referenced in paragraph 19 of the 2019 A&U”;

- d. “Copies of all current contracts that have been reviewed and amended to comply with the requirements of Rule 94.02, as referenced in paragraph 21 of the 2019 A&U”; and
- e. “Copies of Respondent’s Client Profile and Suitability Form for each current client, as referenced in paragraph 22 of the 2019 A&U.”

16. Per the 2021 A&U, Respondent agreed that if these documents were not provided by April 8th, then “Respondent agrees that Respondent’s investment adviser registration application shall be suspended until all conditions set forth in paragraphs 15, 16, and 17 above are confirmed by the Department.”

17. Respondent has failed to provide the information set forth in paragraph 17 of the 2021 A&U (and listed above in paragraph 15).

18. Even after the April 8th deadline, the Department attempted to get the Respondent to provide the required documents, in order to avoid suspension of Respondent’s investment adviser firm registration. However, Respondent has not provided the information required and which he agreed (in the 2021 A&U) to provide.

FINDINGS OF VIOLATIONS

19. Idaho Code § 30-14-412(b) provides, in relevant part:

(b) Disciplinary conditions – Registrants. If the [Director] finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this chapter may revoke, suspend, condition or limit the registration of a registrant”

20. Idaho Code § 30-14-412(d) provides, in relevant part:

(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) of this section if the person: ... Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 30-14-411(d), Idaho Code, or refuses access to a registrant's office to conduct an audit or inspection under section 30-14-411(d), Idaho Code;

21. Respondent's repeated failure to provide the information requested pursuant to the Department's focused investment adviser examination has impeded the Department's audit or inspection conducted under the authority of Idaho Code § 30-14-411(d).

22. In addition, Respondent previously agreed, in a signed Agreement and Undertaking, that failure to comply by April 8th with the written requirements of the 2021 A&U would result in a suspension of its registration.

23. The Securities Bureau recommends, and the Director concludes, that the above violations of Idaho Code § 30-14-412(d)(8) constitute grounds for discipline under Idaho Code § 30-14-412(d), and further concludes that such grounds authorize the suspension of Respondent's application for registration as an investment adviser, pursuant Idaho Code § 30-14-412(b), until all conditions set forth in paragraphs 15, 16, and 17 of the 2021 A&U are confirmed by the Department.

24. Idaho Code § 30-14-412(f) provides, in relevant part:

(f) Summary process. The [Director] may ... restrict, condition, limit or suspend a registration ... before final determination of an administrative proceeding. Upon the issuance of an order, the [Director] shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the [Director] within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the [Director], after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

ORDER

NOW, THEREFORE, pursuant to Idaho Code § 30-14-412 and the terms of the 2021 Agreement and Undertaking, the Respondent's investment adviser registration is HEREBY SUSPENDED by summary process, effective immediately, until all conditions set forth in paragraphs 15, 16, and 17 of the 2021 A&U are completed.

The Director finds the immediate and summary suspension of the Respondent's registration is in the public interest, furthers the goals of investor protection, and is consistent with the purposes of the Idaho Uniform Securities Act.

Dated: April 15, 2021

Patricia Highley by VS

PATRICIA HIGHLEY, Securities Bureau Chief
Idaho Department of Finance

IT IS SO ORDERED

THIS ORDER IS EFFECTIVE UPON ITS ISSUANCE:

DATED this 15th day of April, 2021



STATE OF IDAHO
DEPARTMENT OF FINANCE

Patricia R. Perkins

PATRICIA R. PERKINS, Director

NOTICE AND OPPORTUNITY FOR A HEARING

The Respondent shall take notice that if the Respondent wishes to contest the foregoing ORDER OF SUMMARY SUSPENSION OF INVESTMENT ADVISER REGISTRATION (“Order”), the Respondent shall file a request for hearing pursuant to Idaho Code § 30-14-412(f) within thirty (30) days after the service of this Order. If the Respondent does not timely request a hearing and none is ordered by the Director within that time period, the Order becomes final as to the Respondent by operation of law. If a hearing is timely requested or ordered, the Director, after notice of and opportunity for a hearing, may modify or vacate the Order or extend it until final determination.

A request for a hearing must be made in writing and addressed to:

Patricia Highley
Securities Bureau Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

A copy of such request must also be served upon the Department's counsel, Loren Messerly, Deputy Attorney General, at the same address.

If a hearing is requested or ordered pursuant to Idaho Code § 30-14-412(f), a hearing will be set by the Director within fifteen (15) days after receipt of a timely written request, and such hearing will be conducted pursuant to Chapter 52, Title 67, Idaho Code. A final order may not be issued unless the Director makes findings of fact and conclusions of law in a record pursuant to Chapter 52, Title 67, Idaho Code. The final order by the hearing officer may make final, vacate, or modify the Order.

If the Respondent requires any assistance of the kind the Department provides under the Americans with Disabilities Act (e.g. sign language interpreters, Braille copies of documents) in order to participate in or understand these proceedings, the Department will supply such reasonable assistance upon an advance request.

Should this order become a final order by operation of law, as discussed above, then any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days

of its receipt, or the petition will be considered denied by operation of law. *See* Section 67-5246(4), Idaho Code.

Should this order become a final order by operation of law, as discussed above, then pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which a hearing was held, the final agency action was taken, the party seeking review of the order resides, or operates its principal place of business in Idaho, or the real property or personal property that was the subject of the agency action is located. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.