STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS SECURITIES DIVISION

IN THE MATTER OF DETERMINING Whether there has been a violation of the Securities Act of Washington by:

Dai Lam Phuong, a.k.a. Dan Phuong, and d.b.a. Fortpoint Investment Management,

Respondent.

THE STATE OF WASHINGTON TO:

Order No. S-19-2762-20-FO01

ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL ORDER TO CEASE AND DESIST, TO IMPOSE FINES, AND TO CHARGE COSTS AS TO DAI LAM PHUONG, A.K.A. DAN PHUONG AND D.B.A. FORTPOINT INVESTMENT MANAGEMENT

> Dai Lam Phuong, a.k.a. Dan Phuong, and d.b.a. Fortpoint Investment Management

On February 26, 2020 the Securities Administrator of the state of Washington issued Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, To Impose Fines, and to Charge Costs, Order No. S-19-2762-20-SC01 ("Statement of Charges"). The Statement of Charges, together with a Notice of Opportunity for Hearing ("Notice") and an Application for Adjudicative Hearing ("Application"), were served on Respondent Dai Lam Phuong, a.k.a. Dan Phuong and d.b.a. Fortpoint Investment Management, on March 2, 2020. The Notice advised Respondent Dai Lam Phuong, a.k.a. Dan Phuong and d.b.a. Fortpoint Investment Management that the Application must be received within twenty days from the date of service.

On March 23, 2020, Respondent Dai Lam Phuong, a.k.a. Dan Phuong and d.b.a. Fortpoint Investment Management waived his right to a hearing and, in lieu of requesting a Hearing, submitted a written statement for consideration by the Agency Director or Securities Administrator. After considering the written statement, the Securities Administrator finds no material grounds for amendment of the Statement of Charges. Therefore, the Securities Administrator will adopt as final the following Findings of Fact and Conclusions of Law as set forth in the Statement of Charges, and will enter a final order against

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1	the Respondent to cease and desist from violations of the Securities Act, and to impose the fines and costs
2	sought in the Statement of Charges.
3	FINDINGS OF FACT
4	Respondent
5	1. Dai Lam Phuong, a.k.a. Dan Phuong ("Phuong") and d.b.a. Fortpoint Investment Management
6	("Fortpoint"), is a former resident of Washington and California. From approximately 2008 to 2019, Phuong
7	provided investment advisory services in California, Utah and Washington.
8	Background
9	2. From February 2005 to March 2006, Phuong was registered as a securities salesperson with
10	Morgan Stanley.
11	3. From March 2006 to January 2008, Phuong was registered as a securities salesperson with
12	Merrill Lynch. While working at Merrill Lynch and Morgan Stanley Phuong registered with the California
13	Department of Business Oversight ("CADBO") under CRD #4932241.
14	4. From 2008 to 2019, Phuong d.b.a. Fortpoint registered with the California Department of
15	Business Oversight as an investment advisor, IARD #146572. As a condition of his registration in
16	California, Phuong was required to file an updated "Uniform Application for Investment Adviser
17	Registration" (Form ADV) with the CADBO to reflect material changes in the operation of his advisory
18	business. The Form ADV enables the CADBO to determine what disclosures Phuong is making to investors
19	and to determine where he is keeping his required books and records.
20	5. In 2012 and 2015, Phuong submitted his Form ADVs ("Form ADV") to the CADBO and
21	certified under the penalty of perjury that the information and statements made in the 2012 and 2015 Form
22	ADVs were true and correct. Phuong further certified that his books and records would be preserved and
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made available for inspection as required by law. Phuong authorized any person having custody of his books and records to make them available to federal and state regulatory representatives.

- 6. In 2012 and 2015, Phuong indicated on his Form ADVs filed with the CADBO that the
 principal place of business for Fortpoint was located in Bellevue, Washington and that he kept regular
 business hours at those locations from 8:00am to 5:00pm, Monday through Friday. The California
 Corporations Code section 25241 requires every investment adviser registered with the CADBO to maintain
 books and records, file reports with the Commissioner, and submit to examination by the Commissioner, as
 the Commissioner deems necessary or appropriate in the public interest or for the protection of investors.
- 9 7. Phuong did not file an application to register in Washington as an investment adviser in 2012
 10 or thereafter.
- 11 8. Phuong indicated on his 2012 Form ADV that he had provided investment advisory services
 12 to approximately eleven to twenty five clients.
- 9. Phuong did not provide an alternative address on his 2012 Form ADV when he was requested
 to provide his full residence address, if it was different from his principal office and place of business as he
 stated earlier on the form.
- In 2018, the CADBO Commissioner requested on five separate occasions that Phuong and
 Fortpoint complete and submit an online examination form. On May 21, 2019, the CADBO issued an
 "Order Levying Administrative Penalties" against Dai Lam Phuong, d.b.a. Fortpoint Investment
 Management in the amount of \$5,000 for its failure to timely complete and submit an online examination
 form after repeated reminders to do so.
- 21 11. On June 18, 2019, the CADBO issued an "Order Summarily Revoking Investment Adviser
 22 Certificate" for Dai Lam Phuong, d.b.a. Fortpoint Investment Management" after providing him notice of its

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intent to do so for his failure to timely complete and submit an online examination form after repeated reminders to submit a form.

CADBO Referral to Washington

In August 2019 the CADBO sent a referral to the Washington Securities Division and

pointed out that it had summarily revoked the investment adviser registration of Dai Phuong d.b.a. Fortpoint

Investment Management and that Phuong may be acting as a possible unlicensed investment adviser in

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Washington.

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Failure to Comply with Subpoena

9 13. In September 2019, the Securities Division issued a Subpoena Duces Tecum and To Testify
10 to Phuong. Phuong did not provide any of the records requested in the subpoena, including books and
11 records of his advisory business, and failed to appear for his testimony that was scheduled in November
12 2019.

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Nature of the Conduct

14. From at least 2012 to 2019, Phuong d.b.a. Fortpoint held himself out as offering services as 14 an investment manager located in Washington. Fortpoint maintained a website at www.fortpointim.com. On 15 the website, Phuong stated that "Fortpoint was formed to assist clients achieve more from their investment 16 17 portfolios. Phuong described Fortpoint as "an innovative, research-focused investment firm providing investment management to individuals, private foundations, endowments, and other institutions. The firm 18 19 has built a platform that offers a comprehensive range of investment services to effectively meet the 20 requirements of a diverse set of clients." Phuong stated that he offered institutional clients "separately managed accounts and investment consulting services." Phuong stated that "Whether the client is looking 21 22 for active or passive strategies, our experience will assist in making appropriate recommendations to meet 23 client requirements."

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15. The Fortpoint website contained a webpage called "Contact" that listed its address as 677 1 120th Avenue NE #2A-134, Bellevue WA 98005. A second address was also listed at 1000 Bristol Street 2 North Suite 17-144, Newport Beach CA 92660. In 2015, Phuong used 227 Bellevue Way, #215 Bellevue 3 WA 98004 as its address. 4 From 2012 to 2019, Phuong had several investment advisory clients whom he charged a 5 16. 6 management fee based on a percentage of the assets that he managed. From 2012 to 2019, Phuong is believed to have received management fee compensation of approximately \$76,600. 7 In 2016, Phuong published on the Fortpoint website that his "firm manages portfolios for a 17. 8 9 wide range of clients including individuals and various institutions." It is believed that Phuong did not manage portfolios for institutional investors. 10 **Registration Status** 11 18. Phuong is not currently registered as an investment adviser or investment adviser 12 representative in the state of Washington and has not previously been so registered. 13 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made: 14 **CONCLUSIONS OF LAW** 15 1. Phuong engaged in the business of advising others, for compensation, as to the value of 16 17 securities or as to the advisability of investing in, purchasing, or selling securities. 2. Phuong violated RCW 21.20.040 by engaging in the business of advising others, for 18 19 compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling 20 securities while not being registered as an investment adviser or investment adviser representative in Washington. 21 22 23 FINAL ORDER DEPARTMENT OF FINANCIAL INSTITUTIONS 3. Phuong violated RCW 21.20.010 by making untrue statements of material fact or omitting to state material facts necessary to make the statements made, in light of the circumstances in which they were made, not misleading with respect to his representations regarding institutional clients that he did not have.

4. Phuong violated WAC 460-24A-200(11) by failing to permit the Securities Division access to his books and records.

Based upon the foregoing and finding it in the public interest:

FINAL ORDER

IT IS HEREBY ORDERED that Respondent Dai Lam Phuong, a.k.a. Dan Phuong d.b.a. Fortpoint Investment Management, and his agents and employees, shall each cease and desist from violations of RCW 21.20.010, the anti-fraud section of the Securities Act of Washington.

IT IS FURTHER ORDERED that Respondent Dai Lam Phuong, a.k.a. Dan Phuong d.b.a. Fortpoint
Investment Management, and his agents and employees, shall each cease and desist from offering and/or
selling securities in any manner in violation of RCW 21.20.040, the registration section of the Securities Act
of Washington.

IT IS HEREBY ORDERED that Respondent Dai Lam Phuong, a.k.a. Dan Phuong and d.b.a. Fortpoint
 Investment Management shall be liable for and shall pay a fine of \$76,600;

IT IS HEREBY ORDERED that that Dai Lam Phuong, a.k.a. Dan Phuong and d.b.a. Fortpoint
Investment Management shall be liable for and for and shall pay the costs, fees, and other expenses incurred
in the administrative investigation and hearing of this matter, in an amount of \$7,000.

AUTHORITY AND PROCEDURE

This FINAL ORDER is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.110, and is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. Respondents have the right to petition the superior court for judicial review of this agency action under the provisions of Chapter 34.05

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RCW. For the requirements for judicial review, see RCW 34.05.510 and sections following. Pursuant to RCW 21.20.395, a certified copy of this Order may be filed in Superior Court. If so filed, the clerk shall treat the Order in the same manner as a Superior Court judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.

WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

SIGNED and ENTERED this <u>26th</u> day of March, 2020.

William M. Beatty Securities Administrator

Presented by:

Approved by:

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Suzanne Sarason Chief of Enforcement

Reviewed by:

Jack McClellan Financial Legal Examiner Supervisor

Martin Condell

Martin Cordell Financial Legal Examiner

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DEPARTMENT OF FINANCIAL INSTITUTIONS Securities Division PO Box 9033 Olympia, WA 98507-9033 360-902-8760