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**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.

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**

THE STATE OF WASHINGTON TO:

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

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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1 made available for inspection as required by law. Phuong authorized any person having custody of his
2 books and records to make them available to federal and state regulatory representatives.

3 6. In 2012 and 2015, Phuong indicated on his Form ADVs filed with the CADBO that the
4 principal place of business for Fortpoint was located in Bellevue, Washington and that he kept regular
5 business hours at those locations from 8:00am to 5:00pm, Monday through Friday. The California
6 Corporations Code section 25241 requires every investment adviser registered with the CADBO to maintain
7 books and records, file reports with the Commissioner, and submit to examination by the Commissioner, as
8 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.

13 9. Phuong did not provide an alternative address on his 2012 Form ADV when he was requested
14 to provide his full residence address, if it was different from his principal office and place of business as he
15 stated earlier on the form.

16 10. In 2018, the CADBO Commissioner requested on five separate occasions that Phuong and
17 Fortpoint complete and submit an online examination form. On May 21, 2019, the CADBO issued an
18 "Order Levying Administrative Penalties" against Dai Lam Phuong, d.b.a. Fortpoint Investment
19 Management in the amount of \$5,000 for its failure to timely complete and submit an online examination
20 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
23

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

3 **CADBO Referral to Washington**

4 12. In August 2019 the CADBO sent a referral to the Washington Securities Division and
5 pointed out that it had summarily revoked the investment adviser registration of Dai Phuong d.b.a. Fortpoint
6 Investment Management and that Phuong may be acting as a possible unlicensed investment adviser in
7 Washington.

8 **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.

13 **Nature of the Conduct**

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

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

5
6 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

7 SIGNED and ENTERED this 26th day of March, 2020.

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10 _____
11 William M. Beatty
12 Securities Administrator

12 Approved by:

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14 _____
15 Suzanne Sarason
16 Chief of Enforcement

12 Presented by:

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14 _____
15 Martin Cordell
16 Financial Legal Examiner

17 Reviewed by:

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19 _____
20 Jack McClellan
21 Financial Legal Examiner Supervisor