# 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:

Matthew Kelleher; Wendi DuBois,

INTENT TO ENTER ORDER TO SUSPEND

REGISTRATIONS, IMPOSE FINES, AND CHARGE COSTS

Respondents.

THE STATE OF WASHINGTON TO:

Matthew Kelleher Wendi DuBois

Order No.: S-19-2770-21-SC01

STATEMENT OF CHARGES AND NOTICE OF

## STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondents Matthew Kelleher and Wendi DuBois (collectively, "the Respondents") have each violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order to suspend Matthew Kelleher and Wendi Dubois's securities salesperson and investment adviser representative registrations, to impose fines, and to charge costs, pursuant to RCW 21.20.110. The Securities Administrator finds as follows:

## TENTATIVE FINDINGS OF FACT

## Respondents

1. Matthew Kelleher ("Kelleher") is a resident of Seattle, Washington. He has been registered in the financial industry since October 2006, and is currently employed by Wedbush Securities Inc. as a registered securities salesperson and investment adviser representative. Kelleher's Central Registration Depository ("CRD") number is 714170.

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2. Wendi DuBois ("DuBois") is a resident of Redmond, Washington. She is a registered securities salesperson and investment adviser representative who serves primarily as the administrative manager for Kelleher's practice. DuBois' CRD number is 5240475.

### **Related Persons**

- 3. UBS Financial Services Inc. ("UBS") is a registered investment adviser and broker-dealer. Kelleher and DuBois worked for UBS from May 2014 to June 2019, when they resigned while Kelleher was under review for possible violations of UBS policy relating to inappropriate conduct toward a UBS colleague, T.S.
- 4. Morgan Stanley Smith Barney LLC ("Morgan Stanley") is a registered investment adviser and broker-dealer. Kelleher and DuBois worked at Morgan Stanley from June 2009 to May 2014.

#### **Nature of the Conduct**

#### Overview

5. From November 2015 to June 2017, Kelleher and DuBois engaged in a scheme to make underthe-table payments to T.S., a colleague at UBS who had joined Kelleher and DuBois from their previous firm. Kelleher and DuBois made these payments in cash, thereby concealing them from UBS. After T.S. reported this to UBS, Kelleher and DuBois resigned from the firm rather than be interviewed by internal investigators.

#### **Nature of the Conduct**

6. Kelleher is a longtime securities salesperson and investment adviser representative in the Seattle area, with a book of business over \$200 million at the time relevant to this conduct. In approximately May 2014, Kelleher was recruited from Morgan Stanley by UBS. In the move to UBS, Kelleher brought both his longtime assistant DuBois and an associate from Morgan Stanley, T.S. T.S. had formerly worked as a stock research analyst and had exchanged ideas with Kelleher; Kelleher contemplated T.S. would work with him on certain client accounts and continue discussing stock ideas with him.

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- 7. In late 2015, Kelleher began directing DuBois to make under-the-table cash payments to T.S., based on 10% of Kelleher's gross production at UBS. DuBois maintained a spreadsheet detailing the cash compensation paid to T.S., and effected the payments at Kelleher's direction using cash provided to her by Kelleher. In total, Kelleher and DuBois paid T.S. \$35,050 from November 2015 to June 2017.
- 8. At the time of Kelleher and DuBois' arrangement with T.S., UBS's policies prohibited underthe-table payments which were not processed through the firm's ordinary compensation structure. Specifically, UBS's Code of Conduct provided that "[i]n general, you may not, directly or indirectly, pay or receive any rebate, referral fee, finder's fee or any other sort of fee or compensation other than as permitted by and processed through the Firm's normal compensation structure or Firm-sanctioned policy or program."
- 9. Rather than disclosing these payments to UBS, Kelleher and DuBois concealed the payments by making them in cash and by lying on UBS's annual employee questionnaires on three separate occasions. During the period when Kelleher and DuBois were making payments to T.S., UBS's annual questionnaire asked whether the employee had "accepted or given any cash/gift/funds with a cumulative value over \$100 to and/or from a client, employee, client representative, mutual fund company, insurance company, or other financial institution (NOT including immediate family members)" (emphasis added). In January 2016, Kelleher and DuBois both falsely attested that they had not made such payments, when in fact they had paid a total of \$3,950 to T.S. in November and December 2015. In February 2017, Kelleher and DuBois again falsely attested that they had not made such payments, when in fact they had paid a total of \$22,300 to T.S. since the previous attestation. Finally, in February 2018, Kelleher and DuBois again falsely attested that they had not made such payments, when in fact they had paid a total of \$8,700 to T.S. since the previous attestation. Kelleher testified under oath before the Securities Division that he was aware that UBS's policies prohibited the types of cash payments described above.

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10. T.S. formally reported Kelleher's conduct to UBS on May 10, 2019. Rather than face questioning from UBS staff, Kelleher resigned from the firm six days later. Kelleher did not have a position with a new firm lined up at the time, and lost, by his estimation, approximately 15 to 20 percent of his book of business and \$100,000 in annual income in the transition between firms. Kelleher also repaid UBS approximately \$1.87 million of a signing bonus which he had received for joining the firm.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

## **CONCLUSIONS OF LAW**

- 1. Matthew Kelleher, as described above, engaged in a dishonest and unethical practice in the securities business, as defined by WAC 460-22B-090 and WAC 460-24A-220, by directing off-the-books cash payments to another UBS employee with knowledge that this conduct violated UBS's policies. Such practice is grounds for the suspension of his securities salesperson and investment adviser representative registrations pursuant to RCW 21.20.110(1)(g).
- 2. Matthew Kelleher, as described above, engaged in a dishonest and unethical practice in the securities business, as defined by WAC 460-22B-090 and WAC 460-24A-220, by falsely attesting to UBS that he had not made cash payments over \$100 to another UBS employee. Such practice is grounds for the suspension of his securities salesperson and investment adviser representative registrations pursuant to RCW 21.20.110(1)(g).
- 3. Wendi DuBois, as described above, engaged in a dishonest and unethical practice in the securities business, as defined by WAC 460-22B-090 and WAC 460-24A-220, by making off-the-books cash payments to another UBS employee with knowledge that this conduct violated UBS's policies. Such practice is grounds for the suspension of her securities salesperson and investment adviser representative registrations pursuant to RCW 21.20.110(1)(g).

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4. Wendi DuBois, as described above, engaged in a dishonest and unethical practice in the securities business, as defined by WAC 460-22B-090 and WAC 460-24A-220, by falsely attesting to UBS that she had not made cash payments over \$100 to another UBS employee. Such practice is grounds for the suspension of her securities salesperson and investment adviser representative registrations pursuant to RCW 21.20.110(1)(g).

#### NOTICE OF INTENT TO SUSPEND REGISTRATIONS

Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order (a) that the securities salesperson and investment adviser representative registrations of Respondent Matthew Kelleher shall be suspended for a period of one year, and (b) that the securities salesperson and investment adviser representative registrations of Respondent Wendi DuBois shall be suspended for a period of one month.

#### NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.110(1) and RCW 21.20.395, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Matthew Kelleher shall be liable for and shall pay a fine of \$10,000, and that Respondent Wendi DuBois shall be liable for and shall pay a fine of \$2,500.

### NOTICE OF INTENT TO CHARGE COSTS

Pursuant to RCW 21.20.110(7) and RCW 21.20.390(5), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent Matthew Kelleher shall be liable for and shall pay investigative costs of \$5,000, and that Respondent Wendi DuBois shall be liable for and shall pay investigative costs of \$2,500.

### AUTHORITY AND PROCEDURE

360-902-8760

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This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. The Respondents, Matthew Kelleher and Wendi DuBois, may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY FOR HEARING accompanying this Order. If a Respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to revoke, deny, or suspend that Respondent's registrations as described above, to impose any fines sought against that Respondent, and to charge any costs sought against that Respondent.

Signed and Entered this <u>23rd</u> day of <u>May</u> , 2022.

Approved by:

Brian J. Guerard
Chief of Enforcement

Reviewed by:

Adam N. Yeaton

William M. Beatty Securities Administrator

Presented by:

Financial Legal Examiner

Holly Mack-Kretzler

Financial Legal Examiner Supervisor