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## Texas State Securities Board

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E. WALLY KINNEY  
MEMBER

### SOAH DOCKET NO. 312-09-6218 SSB DOCKET NO. IC09-05

IN THE MATTER OF THE  
INVESTMENT ADVISER  
REPRESENTATIVE REGISTRATION  
OF JEREMY MCGILVREY AND  
THE INVESTMENT ADVISER  
REGISTRATION OF HCW ASSET  
MANAGEMENT, LLC

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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

#### NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will be held at the State Office of Administrative Hearings, in the William P. Clements Building, 300 W. 15th Street, 4th Floor, Austin, Texas 78701, before an Administrative Law Judge on **October 6, 2009 at 9:00 A.M. Central Time** for the purpose of determining whether the investment adviser representative registration of Jeremy McGilvrey ("Respondent McGilvrey") and the investment adviser registration of HCW Asset Management, LLC ("Respondent HCW")(collectively with Respondent McGilvrey, "Respondents") with the Securities Commissioner of Texas ("Securities Commissioner") should be REVOKED and whether Respondents should be ordered to CEASE AND DESIST from engaging in fraudulent conduct.

This hearing will be held pursuant to The Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 et seq. (Vernon 1964 & Supp. 2008) ("Texas Securities Act"); the Rules and Regulations of the Texas State Securities Board, 7 Tex. Admin. Code Chapter 101 et seq. (Supp. 2008)("Board Rules"); the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.001 et seq. (Vernon 2008); and the Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Tex. Admin. Code Chapter 155 (Supp. 2008) ("SOAH Rules").

**IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE**

**SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

**THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE STAFF OF THE STATE SECURITIES BOARD AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS.**

**IF YOU FAIL TO ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED, THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

CONTACT INFORMATION

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Inspections & Compliance Division  
Texas State Securities Board  
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Austin, Texas 78701  
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Docketing Office  
State Office of Administrative Hearings  
300 W. 15th Street, Suite 504  
Austin, Texas 78701  
Telephone: (512) 475-3445  
Facsimile: (512) 475-4994

Pursuant to § 105.9 of the Board Rules, all documents filed by any party, other than business records and transcripts, and all documents issued by the Administrative Law Judge must be contemporaneously served upon the Securities Commissioner's representative as identified below:

Sonia Ferguson  
Securities Commissioner's Representative  
Texas State Securities Board  
208 E. 10th Street, 5th Floor  
Austin, Texas 78701  
Telephone: (512) 305-8300  
Facsimile: (512) 305-8336

Legal authority and jurisdiction for this matter exist under Sections 14 and 23 of the Texas Securities Act, Section 2003.021(b) of the Texas Government Code, and Section 155.51 of the SOAH Rules.

The staff of the Texas State Securities Board ("the Staff") will present evidence in support of its request that the Respondents' registrations with the Securities Commissioner be REVOKED and Respondents be ordered to CEASE AND DESIST from engaging in fraudulent conduct. The evidence presented by the Staff will prove the following:

1. Respondent McGilvrey is a natural person whose last known personal address as filed with the Securities Commissioner is 20303 Messina, San Antonio, TX 78258.
2. Respondent HCW is a Texas corporation whose last know address as filed with the Securities Commissioner is 13409 NW Military Highway, #350, San Antonio, TX 78231.
3. On or about November 21, 2008, Respondent McGilvrey registered with the Securities Commissioner as an investment adviser representative of Respondent HCW. This registration is currently effective.
4. On or about November 21, 2008, Respondent HCW registered with the Securities Commissioner as an investment adviser. This registration is currently effective.

### **I. Relevant Background**

5. From on or about January 30, 2006 through on or about June 27, 2008, Respondent McGilvrey was registered as an agent and investment adviser representative of LPL Financial Corporation ("LPL").
6. From on or about June 18, 2008 through on or about May 29, 2009, Respondent McGilvrey was registered as an agent and investment adviser representative of Next Financial Group, Inc. ("Next")
7. During the time that Respondent McGilvrey was registered with LPL and Next, he operated as an independent contractor with both firms. To that end, Respondent McGilvrey used the name "Hill Country Wealth" in connection with his securities business.
8. On or about June 1, 2006, Hill Country Wealth, Inc. ("HCW Inc.") was established as a Texas corporation. Respondent McGilvrey is listed with the Secretary of State as a Director of HCW, Inc.

### **II. Clients A and B**

9. Clients A and B are a married couple. Client A, a 94 year old male, is a retired two-star Air Force General. He suffers from severe Alzheimer's disease and dementia. His wife, Client B, is 89 years old and is retired after serving as a Physical Therapist with the Air Force.
10. After the onset of Client A's Alzheimer's disease, Client B began trying to manage their assets. Client B was introduced to Respondent McGilvrey and Hill Country Wealth so that she could obtain financial advice from an investment professional.

11. In February 2008, securities belonging to Clients A and B were transferred to a brokerage account at LPL. Respondent McGilvrey was listed as the account representative for Clients A and B.

*A. First Investment in HCW, Inc.*

12. On or about June 27, 2008, a \$200,000 cashier's check was deposited into HCW, Inc.'s bank account. On or about July 9, 2008, a \$150,000 cashier's check was deposited into HCW, Inc.'s bank account. Both of these checks were from Client B.
13. Respondent McGilvrey represented to the Staff that the two checks totaling \$350,000 were in connection with a stock repurchase agreement between HCW, Inc. and Client B. Respondent McGilvrey solicited Client B for this investment.
14. Before Client B's \$200,000 was deposited on June 27, 2008, HCW, Inc.'s bank account balance was just over \$9,300. Payments from the HCW, Inc. account shortly after the deposit include:
  - a. Payments totaling approximately \$84,000 to Respondent McGilvrey's American Express card. The charges paid off by these payments included multiple personal, non-business related expenses; and
  - b. A \$28,500 check to a car dealership on or about July 7, 2008. This check was used to purchase a Mercedes Benz in Respondent McGilvrey's name.
15. Before Client B's \$150,000 check was deposited on July 9, 2008, HCW, Inc.'s bank account balance was approximately \$39,750.
16. On or about July 11, 2008, Respondent McGilvrey transferred \$100,000 from HCW, Inc.'s account to a bank account in his name. On the same day, Respondent McGilvrey wrote a check for \$100,000 from that personal bank account. Those funds were then deposited into a brokerage account at Next in Respondent McGilvrey's name.
17. This investment in HCW, Inc. was not suitable for Client B, and thus Respondent McGilvrey's sale of HCW, Inc. stock to Client B constitutes an inequitable practice in the sale of securities and/or a fraudulent business practice.
18. Respondent McGilvrey did not disclose to Client B that the funds invested by Client B in June/July 2008 could be used for personal/non-business related expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
19. Respondent McGilvrey's use for personal/non-business related expenses of funds invested by Client B in HCW, Inc. constitutes a fraudulent business practice.

*B. Second Investment in HCW, Inc.*

20. On or about October 21, 2008, a check for \$500,000 from Client B was deposited into HCW Inc.'s bank account. This transaction was documented by a stock repurchase agreement between HCW, Inc. and Client B. Respondent McGilvrey solicited Client B for this investment.
21. This document related to Client B's October 2008 investment is dated June 30, 2008 and titled "Stock Re-purchase Agreement". However, an officer of HCW, Inc., Lance Smith, represented to the Staff that the Stock Re-Purchase Agreement was actually signed by Client B after June 30, 2008 and in the fall of 2008. Key terms of this Stock Re-Purchase Agreement provide that:
  - a. In exchange for Client B's \$500,000, she would receive 100,000 Class B non-voting shares of stock in HCW, Inc.; and
  - b. After five years, Client B would transfer all 100,000 shares back to HCW, Inc. in exchange for a return of the principal investment plus a "guaranteed" 6.5% annual interest.
22. Before Client B's \$500,000 check was deposited on October 21, 2008, HCW, Inc.'s bank account balance was approximately \$100.
23. On October 24, 2008, Respondent McGilvrey transferred \$350,000 from the HCW, Inc. account to his personal bank account. On the same day, Respondent McGilvrey wrote a check for \$300,000 from that personal bank account, which was then deposited into a brokerage account at Next in Respondent McGilvrey's name.
24. This investment in HCW, Inc. was not suitable for Client B, and thus Respondent McGilvrey's sale of HCW, Inc. stock to Client B constitutes an inequitable practice in the sale of securities and/or a fraudulent business practice.
25. Respondent McGilvrey did not disclose to Client B that the funds invested by Client B in HCW, Inc. stock could be used for personal/non-business related expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
26. Respondent McGilvrey did not disclose to Client B that some of the funds that Client B had previously invested in HCW, Inc. were used for personal/non-business related expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
27. Respondent McGilvrey's use for personal/non-business related expenses of funds invested by Client B in HCW, Inc. constitutes a fraudulent business practice.

*C. Third Investment in HCW, Inc.*

28. In late January 2009, Respondent McGilvrey solicited Client B for another investment in HCW, Inc. This time Respondent McGilvrey sold Client B a \$500,000 promissory note issued by HCW, Inc. The maturity date for the promissory note is listed as February 2, 2011, and the annual interest rate is 8%.
29. To invest in this promissory note, Client B gave Respondent McGilvrey a \$500,000 check dated January 30, 2009. As described below, the investment moneys were split between HCW, Inc.'s bank account and Respondent McGilvrey's personal bank account.
30. In connection with Client B's investment in the promissory note, \$250,000 was deposited into HCW, Inc.'s bank account on January 30, 2009. Before this deposit, the bank account's balance was approximately \$5,000.
31. On or about February 20, 2009, Respondent McGilvrey wrote a check against HCW, Inc.'s bank account for \$25,000 payable to a casino-hotel in Las Vegas, NV.
32. On January 30, 2009, the other \$250,000 related to Client B's investment in the \$500,000 promissory note was deposited directly into Respondent McGilvrey's personal bank account. Prior to this deposit, this account's balance was approximately \$2,100.
33. On or about February 3, 2009, Respondent McGilvrey wired \$15,000 from this bank account to a casino-hotel in Las Vegas, NV.
34. This investment in HCW, Inc. was not suitable for Client B; and thus Respondent McGilvrey's sale of a promissory note issued by HCW, Inc. to Client B constitutes an inequitable practice in the sale of securities and/or a fraudulent business practice.
35. Respondent McGilvrey did not disclose that the funds invested by Client B in the promissory note could be used for personal/non-business related expenses such as gambling expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
36. Respondent McGilvrey did not disclose to Client B that some of the funds that Client B had previously invested in HCW, Inc. were used for personal/non-business related expenses. This failure to disclose is an intentional failure to disclose a material fact and constitutes a fraudulent business practice.
37. Respondent McGilvrey's use for personal/non-business related expenses of funds invested by Client B in HCW, Inc. constitutes a fraudulent business practice.

### **III. Client C**

38. Client C is an 85 year old retired teacher from Fredericksburg, TX.
39. On April 8, 2009, Respondent McGilvrey and HCW, Inc. entered into a settlement agreement in a civil litigation matter related to Clients A and B. As part of that settlement, Respondent McGilvrey and HCW, Inc. agreed to pay a total of \$1,000,000 to the estate for Clients A and B. The first payment in that settlement, for \$200,000, was due by April 15, 2009. The second payment, for \$25,000, was due by April 17, 2009.
40. On or about April 12, 2009, Respondent McGilvrey solicited Client C for an investment in HCW, Inc. Respondent McGilvrey could not clearly describe the type or terms of this investment to the Staff. Respondent McGilvrey told the Staff that it was either through a stock repurchase agreement or a promissory note.
41. In connection with this investment, on or about April 12, 2009, Client C provided Respondent McGilvrey a check for \$100,000 payable to HCW, Inc. Respondent McGilvrey filled out the key parts of the check before he asked Client C to sign the check.
42. Client C believed that this \$100,000 check was for the purchase of an annuity. But, on or about April 14, 2009, Respondent McGilvrey deposited Client C's \$100,000 check into HCW, Inc.'s bank account.
43. The next day, Respondent McGilvrey used \$225,000 from HCW, Inc.'s account to purchase a cashier's check payable to the estate for Clients A and B.
44. In connection with Client C's investment on April 12, 2009, Respondent McGilvrey did not disclose to Client C that HCW, Inc. and Respondent McGilvrey owed \$1,000,000 to other clients and that Client C's investment would be used to pay that settlement. Respondent McGilvrey's failures to disclose are intentional failures to disclose material facts and constitute a fraudulent business practice.
45. This investment in HCW, Inc. was not suitable for Client C, and thus Respondent McGilvrey's sale of an investment in HCW, Inc. to Client C constitutes an inequitable practice in the sale of securities and/or a fraudulent business practice.

### **IV. Attempts to Raise Additional Funds to Pay Settlement**

46. Respondent McGilvrey informed the Staff that in order to pay the settlement with Clients A and B, he offered investments in HCW, Inc. to people other than Client C.
47. Furthermore, Respondent McGilvrey admitted that in connection with the offering of those investments, he did not inform the investors of the \$1,000,000 settlement or that their investments would be used to pay that settlement.

48. Respondent McGilvrey's failures to disclose are intentional failures to disclose material facts and constitute a fraudulent business practice.

#### **V. Misrepresentations in Sales of Annuities**

49. Respondent McGilvrey typically earned more in commissions for his the sale of a variable annuity than he did for other investments that he sold. As indicated by the examples below, Respondent McGilvrey engaged in numerous fraudulent practices in connection with the sale of variable annuities to investors in Texas.

##### *A. Client D*

50. Client D is a semi-retired 65 year old from San Antonio, TX. In January 2008, Client D went to Respondent McGilvrey to invest in a certificate of deposit (CD). Respondent McGilvrey told Client D that he could "guarantee" a 7% return for the investment. Client D gave Respondent McGilvrey a check for \$50,000 to purchase a CD. Instead, Respondent McGilvrey purchased an annuity for Client D. Respondent McGilvrey never informed Client D that he was going to purchase an annuity for Client D.

51. Respondent McGilvrey's conduct in connection with the sale of the annuity to Client D constitutes a fraudulent business practice.

##### *B. Client E*

52. Client E is a 66 year old male from San Antonio, TX. He became a client of Respondent McGilvrey in 2006 and purchased numerous investments from Respondent McGilvrey.

53. In September 2007, Client E decided to purchase a CD based on concerns over the risk of his investments. Similar to his representations to Client D, Respondent McGilvrey told Client E that he could get Client E a CD paying 7% interest. Client E then gave Respondent McGilvrey a check for \$100,000 to purchase a CD. Respondent McGilvrey purchased an annuity for Client E with this \$100,000. Respondent McGilvrey did not inform Client E that he was going to purchase an annuity for Client E.

54. Respondent McGilvrey's conduct in connection with the sale of the annuity to Client E constitutes a fraudulent business practice.

#### **VI. Respondent HCW Failed to Disclose Information**

55. The Form ADV is the application form required to be filed by investment advisers seeking registration with the Securities Commissioner. After an investment adviser is registered, § 116.9(a)(6) of the Rules and Regulations of the Texas State Securities Board ("Board Rules") requires the adviser to timely update any changes in information disclosed on the Form ADV.

56. Item 8.A(3) of the Form ADV requires the investment adviser to disclose if the adviser or any related person recommends securities (or other investment products) to advisory clients in which the adviser or any related person has some other proprietary (ownership) interest.
57. On or about November 21, 2008, Respondent HCW filed its Form ADV with the Securities Commissioner. On the November 21, 2008 Form ADV, Respondent HCW represented that it did "No" to Item 8.A(3) of the Form ADV. However, prior to this filing, several of Respondent HCW's clients had already invested in HCW, Inc. Therefore, Respondent HCW's representation of "No" in response to item 8.A(3) on its November 21, 2008 Form ADV constitutes a misrepresentation of a relevant fact and is a fraudulent business practice. In the alternative, Respondent HCW failed to update its Form ADV within thirty (30) days of the date that a person that invested in HCW, Inc. became a client of Respondent HCW. This failure to timely update is a violation of § 116.9(a)(6) of the Board Rules.
58. Item 11.H(1)(a) of the Form ADV requires the investment adviser to disclose if any domestic or foreign court has enjoined the adviser or any advisory affiliate in connection with any investment-related activity.
59. On or about March 19, 2009, a probate court in Bexar County, Texas entered a temporary restraining order (the "TRO") against Respondent McGilvrey and others, including Lance Smith. The TRO prohibited Respondent McGilvrey and Mr. Smith from receiving or disposing of, withdrawing or attempting to withdraw, removing, transferring or converting any funds belonging to Clients A and B. Furthermore, the TRO also specifically enjoined Respondent McGilvrey and Mr. Smith from making any sale, purchase, or withdrawals from the investment and other financial accounts belonging to Clients A and B.
60. Respondent HCW did not update its Form ADV to disclose the TRO within thirty (30) days after the TRO was entered. This failure to timely update the Form ADV is a violation of §116.9(a)(6) of the Board Rules.
61. On or about May 1, 2009, the probate court issued a temporary injunction against Respondent McGilvrey and Lance Smith. The temporary injunction enjoined Respondent McGilvrey and Mr. Smith from receiving or disposing of, withdrawing or attempting to withdraw, removing, transferring or converting any funds belonging to Clients A and B. Furthermore, the injunction also specifically enjoined Respondent McGilvrey and Mr. Smith from making any sale, purchase, or withdrawals from the investment and other financial accounts belonging to Clients A and B.
62. Respondent HCW did not update its Form ADV to disclose the injunction within thirty (30) days after the injunction was entered. This failure to timely update the Form ADV is a violation of § 116.9(a)(6) of the Board Rules.

## **VII. Legal Authority**

63. Section 4.F of the Texas Securities Act states:

The terms “fraud” or “fraudulent practice” shall include any misrepresentations, in any manner, of a relevant fact; any promise or representation or prediction as to the future not made honestly and in good faith, or an intentional failure to disclose a material fact; the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; any scheme, device or other artifice to obtain such profit, fee or commission; provided, that nothing herein shall limit or diminish the full meaning of the terms “fraud,” “fraudulent,” and “fraudulent practice” as applied or accepted in courts of law or equity.

64. Section 14 of the Texas Securities Act states in part:

(A) The Commissioner may ... revoke a registration issued under this Act, ... if the person:

...

(3) has engaged in any inequitable practice in the sale of securities ... or in any fraudulent business practice;

...

(6) has violated any provisions of this Act or a rule of the Board.

65. Section 23.A of the Texas Securities Act states in part:

If it appears to the Commissioner at any time that the sale or ... method of sale of any securities, whether exempt or not, is a fraudulent practice...the Commissioner may issue a written cease and desist order, ... prohibiting the fraudulent conduct..

66. Section 23.B of the Texas Securities Act states in part that the Securities Commissioner may issue a Cease and Desist Order:

If it appears to the Commissioner at any time that an investment adviser or investment adviser representative is engaging or is likely to engage in fraud or a fraudulent practice with respect to rendering services as an investment adviser or investment adviser representative...An order issued under this subsection must: (1) require the investment adviser or investment adviser representative to immediately cease and desist from the fraudulent conduct.

67. Pursuant to Section 14.A(3) of the Texas Securities Act, Respondents' inequitable practices in the sale of securities and fraudulent business practices are bases for the revocation of Respondents' registrations with the Securities Commissioner.
68. Pursuant to Section 14.A(6) of the Texas Securities Act, Respondent HCW's violations of §116.9(a)(6) of the Board Rules are bases for the revocation of Respondents' registrations with the Securities Commissioner.
69. Furthermore, pursuant to Sections 23.A and 23.B of the Texas Securities Act, Respondents' actions are bases for the issuance of an Order requiring Respondents to cease and desist from engaging in fraudulent conduct.

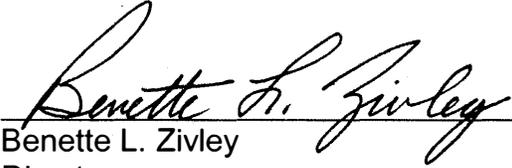
**Relief Requested**

Based on the foregoing allegations, the Staff requests that the Securities Commissioner issue an Order REVOKING Respondents' registrations with the Securities Commissioner and ordering that Respondents CEASE AND DESIST from engaging in the fraudulent conduct described in this Notice of Hearing.

Pursuant to § 105.14 of the Board Rules, the Staff respectfully requests that the State Office of Administrative Hearings order that all costs charged to the Texas State Securities Board by any court reporting service involved in this matter be assessed against Respondents.

You are invited to appear personally, with, without, or through counsel, and to present any and all evidence relating to the matters set forth in this Notice.

Signed this 27<sup>th</sup> day of August, 2009.

  
Benette L. Zivley  
Director  
Inspections & Compliance Division

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been personally served on Jeremy McGilvrey and HCW Asset Management LLC, and to the Securities Commissioner's Representative by hand-delivery, done on this, the 27<sup>th</sup> day of August, 2009.

Jeremy McGilvrey  
20303 Messina  
San Antonio, TX 78258

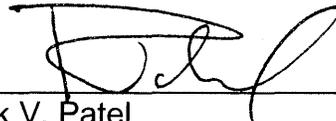
VIA PERSONAL SERVICE

Jeremy McGilvrey, Manager  
HCW Asset Management, LLC  
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VIA PERSONAL SERVICE

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VIA HAND DELIVERY



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Ronak V. Patel  
Attorney  
Inspections & Compliance Division