

2004 BCSECCOM 591

COR#04/124

Variation Order

**Tri-West Investment Club, Haarlem Investment Corporation
and
Jason Kingsley, Mark Goldman, Alan Richards, Alex Haarlem and
John Byron
and
Alyn Richard Waage, Cary Alyn Waage and James Michael Webb**

Section 171 of the *Securities Act*, RSBC 1996, c. 418

Background

- ¶ 1 On November 19, 2001, the Commission issued a decision that made orders against individuals holding themselves out as Jason Kingsley, Mark Goldman, Alan Richards and Alex Haarlem, among others associated with Tri-West Investment Club (see *Re Triwest Investment Club et al.*, 2001 BCSECCOM 1091). The orders arose from the Commission's findings in the same matter, issued October 23, 2001 (see 2001 BCSECCOM 1013).
- ¶ 2 In its decision and findings, the Commission noted that, other than the references on the Tri-West website, there was no evidence that Kingsley, Goldman, Richards and Haarlem existed or, if so, whether the website references to their names and functions were accurate. The Commission went on to say that the Tri-West program was carried out by an individual or individuals who may or may not be named Kingsley, Goldman, Richards and Haarlem.
- ¶ 3 On this basis, the Commission made findings and issued orders against "the individuals holding themselves out as Kingsley, Goldman, Richards and Haarlem."
- ¶ 4 It turns out that the individuals behind Tri-West included Alyn Richard Waage, Cary Alyn Waage and James Michael Webb, all of whom are currently incarcerated in California. In their separate plea agreements, they all admitted to participation in the Tri-West scheme to defraud investors. The plea agreements of Alyn Waage and Cary Waage also state that the names "Jason Kingsley", "Mark Goldman", "Alan Richards" and "Alex Haarlem" were fictitious names used to effect the Tri-West scheme. None of the Waages nor Webb has ever been registered under the Act.

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- ¶ 5 The Executive Director applied to the Commission under section 161 of the Act for new orders against the two Waages and Webb, on terms identical to those the Commission made in November 2001. Notice of that hearing was served on the three at their respective jails and a hearing was held on October 12, 2004. None of the three respondents appeared or was represented.
- ¶ 6 At the hearing, the Executive Director entered new evidence, including the plea agreements referred to above. In our view, it is not necessary to issue new orders under section 161. The significance of the new evidence is that it establishes the identities of at least some of those that the Commission referred to in its findings and decision as the “individuals holding themselves out as Kingsley, Goldman, Richards and Haarlem.” The Commission has already made orders against these individuals in its November 2001 decision, so all that is necessary is to vary the existing orders under section 171 of the Act to reflect this new evidence.
- ¶ 7 The Executive Director also invited us to make additional findings against the two Waages and Webb. However, as counsel for the Executive Director acknowledged, those findings, if made, would have no effect on the orders, which already represent the maximum allowed under the Act at the time. Accordingly, we did not deal with this issue.

Order

- ¶ 8 Accordingly, considering that it would not be prejudicial to the public interest to do so, we order that the Commission’s orders dated November 19, 2001 issued in connection with the Tri-West matter under sections 161, 162 and 174 of the Act, be varied to read as follows:
1. In paragraph 8 of the decision, orders 2 through 6 are replaced by:
 2. under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 of the Act do not apply to Tri-West, Haarlem Universal, Alyn Richard Waage, Cary Alyn Waage, James Michael Webb and any other individuals holding themselves out as Kingsley, Goldman, Richards and Haarlem;
 3. under section 161(1)(d)(i) of the Act that Alyn Richard Waage, Cary Alyn Waage, James Michael Webb and any other individuals holding themselves out as Kingsley, Goldman, Richards and Haarlem resign any position that any of them holds as a director or officer of any issuer;
 4. under section 161(1)(d)(ii) of the Act that Alyn Richard Waage, Cary Alyn Waage, James Michael Webb and any other individuals holding

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themselves out as Kingsley, Goldman, Richards and Haarlem are prohibited from acting as a director or officer of any issuer;

5. under section 161(1)(d)(iii) of the Act that Tri-West, Haarlem Universal, Alyn Richard Waage, Cary Alyn Waage, James Michael Webb and any other individuals holding themselves out as Kingsley, Goldman, Richards and Haarlem are prohibited from engaging in investor relations activities; and

6. under section 162 of the Act that Tri-West, Haarlem Universal, Alyn Richard Waage, Cary Alyn Waage, James Michael Webb and any other individuals holding themselves out as Kingsley, Goldman, Richards and Haarlem each pay an administrative penalty of \$100,000.

2. Paragraph 13 of the decision is replaced by:

Accordingly, we order under section 174 of the Act that Byron, Tri-West, Haarlem Universal, Alyn Richard Waage, Cary Alyn Waage, James Michael Webb and any other individuals holding themselves out as Kingsley, Goldman, Richards and Haarlem pay on a joint and several basis costs of or related to the hearing in the amount of \$33,803, provided that Byron's portion does not exceed \$8,000.

October 18, 2004

Brent W. Aitken
Vice Chair

Marc A. Foreman
Commissioner

Robert J. Milbourne
Commissioner