

# 2002 BCSECCOM 236

## Second Further Amended Notice of Hearing

**Foster First Financial Corporation,  
M.W. Foster & Associates Ltd. and Falconhouse Investments Inc.**

**and**

**Mark Webster Vaughan Foster  $\Delta$**

**and**

**Specialized Surgical Services Inc.,  
James Swanney, David Steinart, Wayne A. Hansen,  
Peter Hoogewerf, Barry Crocker, George Gow,  
and Robert B. Murray**

**(collectively, the Respondents)**

**Section 161 of the *Securities Act*, RSBC 1996, c.418**

[para 1]

TAKE NOTICE that a hearing will be held (the Hearing) to give the Respondents an opportunity to be heard before the British Columbia Securities Commission (the Commission) considers whether it is in the public interest to make the following orders:

1. pursuant to section 161(1)(b) of the *Securities Act*, RSBC 1996, c. 418, (the Act), that all persons cease trading in or purchasing the securities of Foster First Financial Corporation (Foster First), M.W. Foster & Associates Ltd. (M.W. Foster), Specialized Surgical Services Inc. (Specialized Surgical), and Falconhouse Investments Inc. (Falconhouse);
2. pursuant to section 161(1)(c) of the Act, that any or all of the exemptions described in sections 44 to 47, 74, 75, 98 or 99 of the Act do not apply to the Respondents;
3. pursuant to section 161(1)(d) of the Act, that James Swanney (Swanney), Mark Webster Vaughan Foster (Foster), Robert B. Murray (Murray), David Steinart (Steinart), Wayne A. Hansen (Hansen), Peter Hoogewerf (Hoogewerf), Barry Crocker (Crocker), and George Gow (Gow),  $\Delta$  be prohibited from becoming or acting as a director or officer of any issuer;

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4. pursuant to section 161(1)(d) of the Act, that the Respondents be prohibited from engaging in investor relations activities;
5. pursuant to section 161(1)(e) of the Act, that the Respondents are required to disseminate any orders or other records as required by the Commission to clients of Foster First;
6. pursuant to section 162 of the Act, that the Respondents each pay an administrative penalty;
7. pursuant to section 174 of the Act, that the Respondents pay prescribed fees or charges for the costs of or related to the Hearing; and
8. to make any other orders as may be appropriate in the circumstances.

[para 2]

AND TAKE NOTICE that the Commission will be asked to consider the following facts and allegations in making its determinations:

### **The Parties**

1. Foster First is a non-reporting issuer incorporated in British Columbia on September 15, 1997, and was registered under the Act as a securities dealer from December 18, 1997 to April 26, 2000, and as a mutual fund dealer from April 26, 2000 to August 19, 2000. Foster was the president and majority shareholder. Swanney, the president of Specialized Surgical, was a director and minority shareholder.
  2. Foster was registered as a mutual fund salesperson with various employers from November 13, 1990, to November 30, 1997, and with Foster First from December 22, 1997 to April 26, 2000. He was registered as a trading partner/director/officer with Foster First from April 26, 2000 until September 21, 2000.
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3. M.W. Foster is a non-reporting issuer incorporated in British Columbia on April 8, 1993. At all material times, the sole director and officer of M.W. Foster was Foster.
  4. Falconhouse is a non-reporting issuer incorporated in British Columbia on August 15, 1994. At all material times, the sole director, officer and shareholder of Falconhouse was Foster.

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5. Specialized Surgical is a non-reporting issuer incorporated in British Columbia on March 8, 1995. The directors and officers of Specialized Surgical from January, 1996, forward (the Relevant Period) included Swanney, Foster, Murray, Steinart, Hansen, Hoogewerf, Crocker and Gow (collectively, the Specialized Directors).

### **Sale and Distribution of Securities**

6. During the Relevant Period, investors in British Columbia were solicited by Swanney, Foster and Foster First to invest in securities of Specialized Surgical.
7. Royal Advent Securities Corporation (RASC) is a non-reporting issuer incorporated in British Columbia on August 3, 1994, and is a registered securities dealer under the Act. From November 13, 1996 to November 30, 1997 Foster was employed by RASC as a mutual fund salesperson.

### **The Original Investment in Specialized Surgical:**

#### *(i) The RACC Distributions*

8. The initial solicitation of investment into Specialized Surgical was made on the basis that the individual investors would first purchase securities in Royal Advent Capital Corporation (RACC). Then, at some unspecified future time, these RACC securities were to be converted into an equivalent shareholding in Specialized Surgical or the Croft Clinic Limited Partnership.
9. During the period from December 1996, to May 1997, the sales agent for the distributions of securities of RACC, including the RACC shares, was RASC.
10. In or about March or April 1997, RASC, using the RACC OM, raised \$485,000 from 18 clients (collectively, the RACC Investors) who invested in the RACC shares for the eventual conversion into an equivalent shareholding in Specialized Surgical or the Croft Clinic Limited Partnership. \$300,000 of this amount was raised by Foster through his clients. Ten percent commissions were paid to agents of RASC, including Foster, and RASC was paid a 5% corporate finance fee.
11. The RACC shares were not qualified for distribution to the public under section 61 of the Act. Rather, the RACC shares were sold under the exemption from the prospectus requirements of section 61 of the Act contained in section 128 (b) of the *Securities Rules*, B.C. Reg. 194/97 (the Rules).

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12. Section 128(b) of the Rules requires that the purchaser individually purchase a minimum of \$25,000, that the purchaser be able to self-assess the investment risk based on their own financial business or investment experience, that the purchaser have a net worth of not less than \$400,000, and that an offering memorandum in the proper form be delivered to the purchaser before the agreement of purchase and sale is entered into.
13. Foster knew or ought to have known that many of his clients did not qualify for the section 128(b) exemption as they were unable to self-assess the investment risk and/or did not have a net worth of \$400,000. Accordingly, Foster participated in an illegal distribution of the RACC shares contrary to section 61 of the Act.
14. An offering memorandum dated December 11, 1996, was issued by RACC (the RACC OM). However, neither the RACC OM, nor the subscription agreement for the RACC shares, mentioned Specialized Surgical or the Croft Clinic LP, or of the possible exchange of the RACC shares for securities of either Specialized Surgical or the Croft Clinic LP.  
  
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15. The subscription documents for the RACC shares were accompanied by a Letter of Instruction (the Letter). Once signed by the RACC Investors, the Letter gave RACC authority, on behalf of the RACC Investors, to exercise an exchange option (the Option) attached to the RACC shares. The Option purported to convert the RACC shares into an equivalent number of securities of Specialized Surgical or the Croft Clinic LP. These securities of Specialized Surgical or the Croft Clinic LP were to be issued some time in the future, under the terms and conditions specified in a future offering memorandum of either Specialized Surgical or Croft Clinic LP. The terms of the Letter were intentionally left vague, as it had not been determined if Specialized Surgical, or Croft Clinic LP, would be a party to the Option.
16. The Option was not included in the terms set out in the RACC OM, and as a result the RACC Investors were not given full disclosure relating to the securities that they were actually purchasing or the use of the subscription proceeds.
17. Foster knew or reasonably ought to have known that the RACC OM was not in the required form to solicit investments due to its lack of disclosure relating to the Option and the securities actually being sold, as required by section 133 of the Rules. Foster traded in the RACC shares knowing of the deficiencies in the RACC OM.

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18. As a result of the deficiencies in the RACC OM, the RACC shares were issued without an exemption under the Act. As a consequence, Foster participated in an illegal distribution of the RACC shares, contrary to section 61 of the Act.

### *(ii) The RACC Rescission*

19. In the summer of 1997, RACC and RASC determined that the distribution under the RACC OM may have been a potential breach of the Act and took steps to unwind the transaction. RACC and RASC determined that the original arrangement to exercise the Option, exchanging RACC shares for securities of Specialized Surgical or the Croft Clinic LP, was unworkable.
20. On or about September 15, 1997, RACC delivered a Rescission Notice to the RACC Investors providing that they had the right of rescission relating to the RACC shares that could be exercised within 15 days of the notice date. Attached to the Rescission Notice was a Rescission Acceptance and Reinvestment Instruction (collectively, the Rescission Documents).
21. The Rescission Documents, once executed by the RACC Investors, would allow RACC to redirect funds made available through the rescission of the RACC shares to Specialized Surgical. Specialized Surgical was to then issue an equivalent number of securities of Specialized Surgical to the RACC Investors. In most cases, Foster assisted the RACC Investors in completing and returning the Rescission Documents to RACC. Eventually, all of the RACC Investors executed and returned the Rescission Documents.

### *(iii) The Specialized Surgical Distributions*

22. Foster further assisted the RACC Investors in completing the new subscription forms for the RACC Investors to obtain securities of Specialized Surgical. Shares issued by Specialized Surgical through the Rescission Documents were to be subject to the terms and conditions set out in an offering memorandum issued by Specialized Surgical on August 26, 1997 (the Transitional OM).
23. The securities of Specialized Surgical were not qualified for distribution to the public under section 61 of the Act. They were sold pursuant to the exemptions contained in section 74(2)(4) of the Act and section 128 (b) of the Rules.

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24. Foster knew or ought to have known that many of his clients did not qualify for the section 128(b) exemption as they were unable to self-assess the investment risk and/or did not have a net worth of \$400,000. Accordingly, Foster participated in an illegal distribution of the Specialized Surgical shares contrary to section 61 of the Act.

25. The Transitional OM indicated:

- (a) a maximum offering of \$2,500,100 in units of \$25,001 comprised of 1 Class A Voting share, and 25,000 Class B Non-voting shares;
- (b) Specialized Surgical intended to use the proceeds of the offering to repay “subscriptions” receivable of \$485,000, costs of the offering, and to cover part of the costs of renovating the Croft Clinic in the amount of \$1,700,000 A;
- (c) the total cost of the project was in excess of \$13,000,000;
- (d) the Croft Clinic would open in the third quarter of 1998; and
- (e) the directors and officers of Specialized Surgical included Foster.

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26. Section 133(c) of the Rules states that an offering memorandum must be in the required form, which includes being free from misrepresentations. The Transitional OM contained misrepresentations, in breach of section 133(c) of the Rules, including:

- (a) Specialized Surgical did not intend to repay subscription receivables of \$485,000;
- (b) it did not disclose that Specialized Surgical was paying commissions to the agents of RASC for the exercise of the rescission in favour of Specialized Surgical. The agents of RASC included Foster, who was also a director of Specialized Surgical;
- (c) it did not disclose the conflict of interest Foster had as an agent of RASC and as a director of Specialized Surgical; and
- (d) the Croft Clinic would not be open by the third quarter of 1998.

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27. Specialized Surgical, with the intention of effecting a trade in its securities, made the misrepresentations in the Transitional OM referred to in paragraph 2, item 26, contrary to section 50(1)(d) of the Act.
28. Foster, Swanney, Steinart, Hansen, Hoogewerf, Crocker and Gow (collectively, the Initial Specialized Directors), as directors of Specialized Surgical at the time of the Transitional OM, authorized, permitted or acquiesced in the misrepresentations made in the Transitional OM, contrary to section 50(1)(d) of the Act and the public interest.
29. There was no exemption available for the distribution of the securities under the Transitional OM, because investors were not given full disclosure about the use of the subscription proceeds and misrepresentations were made to them as set out in paragraph 2, item 26. Due to those misrepresentations and the lack of disclosure, the Transitional OM was not in the required form pursuant to section 133 of the Rules. As a result, the distribution of shares pursuant to the Transitional OM was an illegal distribution, in which Foster participated as a director and officer of Specialized Surgical, contrary to section 61 of the Act.

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30. The Form 20s that were filed with the Commission by Specialized Surgical contained misrepresentations that the distributions were made to sophisticated purchasers and failed to disclose the true nature of the distributions. The Initial Specialized Directors authorized, permitted or acquiesced in these misrepresentations, contrary to section 50(1)(d) of the Act, sections 135 and 139 of the Rules, and the public interest.
31. The Initial Specialized Directors, by means of the conduct described in paragraph 2, items 26 to 30, were in breach of their duties as directors of Specialized Surgical, contrary to section 118 of the *Company Act*, R.S.B.C. 1996, c. 62 (the Company Act).

### **Additional Specialized Surgical Distributions**

32. During the period from December 12, 1997, forward, Foster First was the sales agent for the distributions of securities of Specialized Surgical. These further distributions were solicited by Foster First, Foster, Swanney and Crocker.

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33. Foster First received a 10% commission for each subscription, plus an additional 5% corporate finance fee from Specialized Surgical. In addition, Foster First received a payment of 2% of gross proceeds from Specialized Surgical for any subscriptions for securities effected by any party other than Foster First.
34. The securities of Specialized Surgical were not qualified for distribution to the public under section 61 of the Act. Rather, the securities of Specialized Surgical were sold under an exemption from the  $\Lambda$  prospectus requirements of section  $\Lambda$  61 of the Act pursuant to the exemption contained in section 128(b) of the Rules  $\Lambda$ .
35. Foster knew or ought to have known that many of his clients did not qualify for the section 128(b) exemption as they were unable to self-assess the investment risk and/or did not have a net worth of \$400,000. Accordingly, Foster participated in an illegal distribution of the Specialized Surgical shares contrary to section 61 of the Act.
36. Foster knew that one client had pooled his money with other investors to achieve the minimum \$25,000 subscription and therefore did not qualify for the section 128(b) exemption for that reason as well as being unable to self-assess the investment risk and not having a net worth of \$400,000. With respect to this client Foster also knew or ought to have known that the prospectus exemption contained in section 128(h) of the Rules could not apply because Specialized Surgical was not an exchange issuer. Accordingly, Foster participated in an illegal distribution of Specialized Surgical shares contrary to section 61 of the Act.
37. An offering memorandum dated November 12, 1997, was issued by Specialized Surgical (the Specialized Surgical OM) that contained misrepresentations and was therefore not in the required form contrary to section 133(c) of the Rules, including:
  - (a) it did not disclose the conflict of interest between Foster, Foster First and Specialized Surgical; and
  - (b) it did not disclose that Specialized Surgical was paying commissions to the Foster First Agents, including Foster, a director of Specialized Surgical, for the sale of its securities.

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38. From about November 1997, to January 1999, using the Specialized Surgical OM, Foster and Foster First raised in excess of \$500,000 from more than 20 clients and others (collectively, the Specialized Surgical Investors) for investment in the securities of Specialized Surgical. Foster effected most of the distributions of the Specialized Surgical shares during that period.

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39. No amendments were made to the Specialized Surgical OM to disclose material facts or matters that arose subsequent to November 12, 1997, including:
- (a) the terms of the contract between Specialized Surgical and Foster First as its marketing agent entered into January 2, 1998;
  - (b) the terms of the contract between Specialized Surgical and Foster First as its administrative agent entered into June 1, 1998;
  - (c) the potential conflict of interest between the Foster First Agents and Specialized Surgical;
  - (d) that a judgement and a certificate of pending litigation had been registered against the Croft Clinic and that foreclosure proceedings had been instituted by one or more of the mortgage holders in 1998 and 1999;
  - (e) that the Croft Clinic would not be open for business by the third quarter of 1998;
  - (f) the changes in directors and officers of Specialized Surgical to include Robert Murray, an employee of Foster First;
  - (g) that the financial statements were out of date and the financial information and condition of Specialized Surgical were not up-dated; and
  - (h) the change of auditors.
40. Specialized Surgical, with the intention of effecting a trade in its securities, made the misrepresentations in the Specialized Surgical OM referred to in paragraph 2, item 39, contrary to section 50(1)(d) of the Act.

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41. The Specialized Directors authorized, permitted or acquiesced in the misrepresentations made in the Specialized Surgical OM, contrary to section 50(1)(d) of the Act and the public interest.
42. There was no exemption available for the distribution of the securities under the Specialized Surgical OM, because of the misrepresentations that were made to the investors as set out in paragraph 2, item 36 and the failure to disclose material facts as set out in paragraph 2, item 39. Due to those misrepresentations and the lack of proper disclosure, the Specialized Surgical OM was not in the required form pursuant to section 133 of the Rules. As a result, the distribution of shares under the Specialized Surgical OM was an illegal distribution, in which the Specialized Directors participated, contrary to section 61 of the Act.

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43. The Form 20s that were filed with the Commission by Specialized Surgical contained misrepresentations that the distributions were made to sophisticated purchasers and failed to disclose the true nature of the distributions. The Specialized Directors authorized, permitted or acquiesced in these misrepresentations, contrary to section 50(1)(d) of the Act, sections 135 and 139 of the Rules, and the public interest.
44. The Specialized Directors, by means of the conduct described in paragraph 2, items 36 and 39, were in breach of their respective duties as directors of Specialized Surgical, contrary to section 118 of the Company Act.

### Λ Private Distributions of Specialized Surgical

45. Foster acted as agent and assisted in the distribution of Specialized Surgical shares that were not qualified for distribution to the public under section 61 of the Act, and that had no exemption from the registration requirements of the Act, on the following occasions:
  - (a) On or about December 1, 1997, there was a distribution of at least 6,135 shares of Specialized Surgical from a director/officer of Specialized Surgical, to a client of Foster.

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(b) On or about April 6, 1998, there was a distribution of 50,000 shares of Specialized Surgical from Steinart, a director of Specialized Surgical, to a second client of Foster, for \$50,000. Unbeknownst to the client, Foster beneficially received, through his company Falconhouse, an additional 300,000 shares of Specialized Surgical from Steinart. Swanney facilitated the transaction through the company lawyer for Specialized Surgical.

46. Foster, by reason of his participation in the illegal distributions of Specialized Surgical securities as set out in paragraph 2, item 45, and due to his position as a director and officer of Specialized Surgical and as a registrant under the Act, acted contrary to section 61 of the Act.

47. Foster and Swanney by reason of their participation in the distribution set out in paragraph 2, item 45(b), perpetrated a fraud on the client of Foster, contrary to section 57(b) of the Act.

48. Foster did not disclose to his client, the 300,000 shares he beneficially received on the distribution set out in paragraph 2, item 45(b), contrary to sections 14 and 36 of the Rules.

### **Distributions of Foster First and M.W. Foster**

49. Between September 1997 and October 2000, while a director of Foster First, Foster effected at least fifteen (15) distributions of shares of Foster First to his clients. The shares of Foster First were not qualified for distribution to the public under section 61 of the Act and no exemption from the prospectus requirement of the Act was available.

50. Foster, by reason of his participation in the illegal distributions of Foster First securities as set out in paragraph 2, item 49, acted contrary to section 61 of the Act. As a director and officer of Foster First, Foster knew or ought to have known that the illegal distributions set out in paragraph 2, item 49, were contrary to the Act.

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51. Between March 1998 and June 2000, while the sole director and officer of M.W. Foster, Foster effected at least thirteen (13) distributions of shares of M.W. Foster to his clients. The shares of M.W. Foster were not qualified for distribution to the public under section 61 of the Act and no exemption from the registration and prospectus requirement of the Act was available.

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52. Foster, by reason of his participation in the illegal distributions of M.W. Foster securities as set out in paragraph 2, item 51, and as a registrant under the Act, acted contrary to section A 61 of the Act. As a director and officer of M.W. Foster, Foster knew or ought to have known of the illegal distributions set out in paragraph 2, item 51, and that the distributions were contrary to the Act.

### Undisclosed Conflicts of Interest

53. Specialized Surgical, Foster and Foster First were connected parties within the meaning of section 75 of the Rules, which states, among other things, that a registrant and a person that has any relationship with the registrant are connected parties if such a relationship leads a reasonable prospective purchaser of securities to question whether the registrant and the person are independent of each other. In particular:
- (a) Foster was a director of Foster First during the Relevant Period, and was a director and officer of Specialized Surgical from or about June 1997 until December 31, 1997;
  - (b) Foster was an officer of Specialized Surgical from January 1998, to June 1999;
  - (c) Robert Murray, an employee of Foster First, replaced Foster as a director of Specialized Surgical and acted in such a capacity from May 21, 1998, to May 31, 1999;
  - (d) Foster purchased 25,001 shares of Specialized Surgical on or about September 30, 1997;
  - (e) Foster received a transfer of 100,000 shares of Specialized Surgical from Swanney on or about March 27, 1998, and a further 100,000 shares of Specialized Surgical from treasury on October 8, 1999, as partial compensation for past services rendered to Specialized Surgical;
  - (f) Foster received a transfer of 300,000 shares of Specialized Surgical from Steinart, a director of Specialized Surgical on or about April 6, 1998;
  - (g) on or about June 1, 1998, Foster First entered into a contract with Specialized Surgical to provide administrative services to Specialized Surgical and those services were provided by Foster, Foster First, M.W. Foster, and its employees until about June 1999;

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- (h) on or about September 23, 1997, a Subordination Agreement was executed by Swanney with respect to a loan by Swanney to Foster First of \$100,000 that represented the working capital requirement for Foster First as a securities dealer;
  - (i) Swanney was a director and shareholder of Foster First from September 15, 1997, until some time in the spring or summer of 1999;
  - (j) On or about January 2, 1998, Foster First entered into a contract with Specialized Surgical in which Foster First agreed to provide marketing and sales services and in return receive commissions and finance fees;
  - (k) Foster First took steps to set up a branch office at the offices of Specialized Surgical; and
  - (l) the investor relations person for Specialized Surgical worked out of the Foster First office, and upon the departure of the investor relations person, Robert Murray was hired by Foster First to perform investor relations for Specialized Surgical as well as marketing for Foster First.
- (m)
54. Foster First and Foster traded in securities of Specialized Surgical, a connected party, in the course of an initial distribution.

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- 55. Foster First and Foster did not file a conflict of interest rules statement in the required form, contrary to section 77(1) of the Rules.
- 56. Foster First and Foster did not provide to persons, upon them becoming clients, a copy of the current conflict of interest rules statement, contrary to section 77(2) of the Rules.
- 57. Foster First and Foster did not file and provide to their clients, a revised conflict of interest rules statement upon significant changes occurring, contrary to section 77(3)(a) and (b) of the Rules.
- 58. Foster First and Foster did not deliver a current conflict of interest rules statement or the equivalent information to their clients prior to entering into the agreement of purchase and sale of Specialized Surgical shares contrary to section 79(1)(c) of the Rules.

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59. Foster First and Foster did not promptly send written confirmation to clients after their purchase of Specialized Surgical that Foster First, Foster and Specialized Surgical were connected parties, contrary to section 79(1)(d) of the Rules.
60. Foster First and Foster advised their clients with respect to Specialized Surgical without first advising their clients of their relationship to Specialized Surgical contrary to section 81(1)(a) of the Rules.

### **Know Your Client**

61. Foster, on numerous occasions, did not complete, completed improperly, or did not forward Know Your Client (KYC) documents for compliance review prior to investors purchasing shares of RACC or Specialized Surgical.
62. Foster did not make reasonable inquiries of his clients to determine and understand their essential and current financial and personal circumstances, financial sophistication and investment experience, investment objectives and risk tolerance.
63. Foster's behaviour described in paragraph 2, items 61 and 62 was contrary to section 14 and 48 of the Rules.

### **Λ Suitability Λ**

64. The securities of RACC and Specialized Surgical were risky, illiquid, and speculative. Foster did not understand the nature and risks of the investment or if he did understand, he did not convey this information to his clients, contrary to sections 14 and 48 of the Rules.
65. The securities of RACC and Specialized Surgical were unsuitable for any investor unless they had a high tolerance for risk, no need for short term income, and the securities represented only a reasonable percentage of their overall portfolio. Foster knew or should have known this and failed to convey this information to his clients, contrary to sections 14 and 48 of the Rules.
66. Some of Foster's clients were unsophisticated investors who relied heavily on the professional advice and judgment of Foster Λ. In some instances the clients, encouraged by Foster, transferred funds from money markets or T-bill accounts, and redeemed mutual funds, in order to complete purchases of RACC and Specialized Surgical, as recommended by Foster. Many of these clients had low risk tolerance, a need for short term income and an

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unsuitably high percentage of such holdings in their portfolio. Foster knew or should have known these investments were unsuitable and failed to convey this information to his clients, contrary to sections 14 and 48 of the Rules.

### Conditions of Exemption

67. Foster relied upon the exemption from the prospectus requirements found in sections 128(b) and (h) of the Rules. Foster was under a particular obligation pursuant to Rules 14 and 48 when dealing with an exempt product to ensure that each of his clients met all the conditions of these exemptions. With respect to section 128(b) these conditions included an accurate assessment of net worth and that the client was able to evaluate the risks and merits of the prospective investment because of their financial, business or investment experience. With respect to section 128(h) these conditions included that that the issuer was an exchange issuer and that the purchaser was a close personal friend of Foster. Foster failed to ensure his clients met all the conditions of the exemptions, contrary to sections 14 and 48 of the Rules.

### Improper Supervision

68. Staff of the Commission conducted an audit of the affairs of Foster First in January 1999 and made the following findings:
  - (a) A Foster A failed to comply with section 65 of the Rules that required him to ensure compliance with the Act and the regulations by Foster First and its employees. Foster A failed to ensure that new client accounts were approved and further failed to supervise the transactions of Foster First and its employees, contrary to section 47 of the Rules.
  - (b) Foster First, as a registrant, was required to establish and apply proper compliance and supervision procedures. With proper compliance procedures in place, and properly applied, Foster First should have detected the extent of the activity in the exempt market and the investor accounts and should have been able to detect the unsuitable nature of the investments for the investors. Foster First's failure to put in place proper compliance procedures in this regard allowed the sale of exempt product to continue unabated.

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- (c) Foster First's failure to establish and apply proper compliance and supervision procedures included the following:
  - (i) the blotter did not provide sufficient detail to perform a suitability review and the review was not done on a consistent basis, nor was any review documented as required;
  - (ii) Foster First did not maintain a complete and accurate set of records at its chief place of business, in breach of sections 26 to 42 of the Rules; and
  - (iii) the business procedures manual was not being followed.
- 69. Foster First acted in a manner contrary to sections 27 and 39 of the Rules when it failed to ensure books and records, and in particular, accounting records and blotters were complete and accurate.
- 70. As a result of the Audit, conditions were placed upon the registration of Foster First, by consent, effective April 22, 1999, including a condition that Foster First be restricted from trading in certain types of exempt securities.
- 71. The registration of Foster First lapsed on August 19, 2000, and has not since been renewed.

### **Misrepresentations**

- 72. Foster failed to disclose prior convictions on his Form 4, filed with the Commission on October 4, 1990, and failed to rectify the Form 4.
- 73. On or about October 31, 1997, Foster filed with the Commission a Form 7A Application for Transfer in order to effect a transfer of his registration from RASC to Foster First. Foster did not disclose changes to the information provided in his Form 4  $\Lambda$ , including the fact that he had been appointed a director of Specialized Surgical.
- 74. As a result of the failures to disclose accurately the required information in his Form 4 and Form 7A, Foster made misrepresentations in a record required to be filed under the Act, contrary to the public interest.

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75. The registration of Foster as a mutual fund salesperson lapsed on December 29, 2000, and has not since been renewed.

[para 3]

TAKE NOTICE that the Hearing will commence before the Commission, in the 12<sup>th</sup> Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on April 29, 2002, at 10:00 a.m.

[para 4]

AND TAKE NOTICE that the Respondents may be represented by counsel at the Hearing, and may make representations and lead evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by contacting the Commission Secretary at P.O. Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, British Columbia, V7Y 1L2, or by telephone to (604) 899-6500; email: [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca).

[para 5]

AND TAKE NOTICE that determinations may be made in this matter if the Respondents or their counsel do not appear at the Hearing.

[para 6]

March 7, 2002.

Steve Wilson  
Executive Director