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Further Amended Notice of Hearing

H & R Enterprises, Inc.

and

**Michael Lee Mitton, Charles Wiebe,
Anne Moxon, Leslie Ann Gmur, Katherine Nicole Burden,
Bradley Nixon Scharfe, Jacob Jackie Alter, David Scott Heredia,
Jerome Rosen, and Richard Harris
(collectively, the Individual Respondents)**

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

[para 1]

A temporary order and notice of hearing under s. 161 of the *Securities Act*, RSBC 1996, c. 418 (the Act) was issued on October 17, 1997 and amended on October 21, 1997 (the Temporary Order) ordering that all persons cease trading in the securities of H & R Enterprises, Inc. (H & R Enterprises). The Temporary Order remains in effect.

[para 2]

This Further Amended Notice of Hearing is issued to add the Individual Respondents as parties and to allege breaches of the Act and the Securities Rules (the Rules) against H & R Enterprises and the Individual Respondents (together the Respondents).

[para 3]

A hearing (the Hearing) will be held 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)(c) of the Act that any or all of the exemptions described in sections 44-47, 74, 75, 98 or 99 of the Act do not apply to the Individual Respondents;
2. pursuant to section 161(1)(b) of the Act that Michael Lee Mitton (Mitton), David Scott Heredia (Heredia), Jerome Rosen (Rosen) and Richard Harris (Harris) cease trading in or be prohibited from purchasing any securities;
3. pursuant to section 161(1)(b) of the Act that all persons cease trading in the securities of H & R Enterprises;

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4. pursuant to section 161(1)(d) of the Act that the Individual Respondents resign any position they hold as directors or officers of any issuer and are prohibited from becoming or acting as directors or officers of any issuer;
5. pursuant to section 161(1)(d) of the Act that the Individual Respondents be prohibited from engaging in investor relations activities;
6. pursuant to section 161(1)(f) of the Act that the registration of Bradley Nixon Scharfe (Scharfe) be suspended, cancelled, or restricted or that conditions be imposed on his registrations;
7. pursuant to section 161(2) of the Act that the Respondents pay an administrative penalty;
8. 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
9. to make any other orders as may be appropriate in the circumstances.

[para 4]

The Commission will be asked to consider the following facts and allegations in making its determinations:

The Parties

1. H & R Enterprises was incorporated in the State of Delaware on or about December 7, 1992 with its registered office in the State of Nevada. The securities of H & R Enterprises were traded through the facilities of the National Association of Securities Dealers (NASD) Over The Counter Bulletin Board in the United States. H & R Enterprises has never been a reporting issuer under the Act.
2. Mitton acted as a *de facto* officer and director of H & R Enterprises from on or about January 1997 to at least October 1997 (the Material Time). Mitton was, at the time, and continues to be, subject to orders issued by the Commission in 1988 prohibiting him from acting as a director or officer of any issuer or from trading in British Columbia for a period of 20 years (Mitton's Cease Trade Order).
3. On or about December 27, 2000, Mitton pled guilty to six counts of fraud in relation to frauds he perpetrated on brokerage firms and a charity. Mitton had been convicted previously by Canadian courts of numerous counts of fraud. In addition, Mitton is an undischarged bankrupt. Mitton has never been registered under the Act in any capacity.

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4. Charles Wiebe (Wiebe) acted as a *de facto* officer and director of H & R Enterprises during the Material Time. Wiebe has never been registered under the Act in any capacity.
5. Anne Moxon (Moxon), Leslie Ann Gmur (Gmur) and Katherine Nicole Burden, formerly Katherine Nicole Hanna (Burden), were all employees of H & R Enterprises, or of Capital Hill Ventures Ltd. (Capital Hill), a wholly owned subsidiary of H & R Enterprises. None of Moxon, Gmur or Burden have ever been registered under the Act in any capacity.
6. Scharfe has been registered as an investment adviser in British Columbia from on or about December 1987. At the Material Time, Scharfe was registered as an investment adviser with Canaccord Capital Corporation (Canaccord).
7. Jacob Jackie Alter (Alter) was registered as an investment adviser in British Columbia from on or about November 1982 until January 2000. At the Material Time, Alter was registered as an investment adviser with Wolverton Securities Ltd. (Wolverton). Alter is not currently registered under the Act.
8. At the Material Time, Heredia was the president of Alexander Troy Consultants, Ltd. (Alexander Troy) of Orlando, Florida, an investor relations firm. On July 10, 1996, the State of Georgia revoked the registration of Heredia as a securities salesman in that state. By order, on consent, dated March 9, 2000, the United States Securities & Exchange Commission permanently enjoined Heredia from being involved in any stock promotion or trading activity. The order did not arise from Heredia's involvement with H & R Enterprises. Heredia has never been registered under the Act in any capacity.
9. At the Material Time, Rosen was registered to trade securities with J. Alexander Securities, Ltd. (J. Alexander), a registered broker-dealer and member of the NASD, with its principal place of business in Los Angeles, California. Rosen had trading authority over brokerage accounts in British Columbia. Rosen has never been registered under the Act in any capacity.
10. Harris is believed to be a resident of Costa Rica. Harris was, at the Material Time, a principal of Harris McLean Financial Group Ltd. (Harris McLean), which was an investment firm operating out of the Cayman Islands but which has since been liquidated. Harris McLean has never been registered in British Columbia in any capacity.
11. On June 27, 2000, Harris settled with the Commission for misrepresentations he made to the Commission in an attempt to have varied orders freezing certain accounts in the name of Harris McLean at a brokerage house in British Columbia. As part of the settlement, Harris agreed that, for a period of ten years:

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- (a) the exemptions described in sections 44 - 47, 74, 75, 98 or 99 of the Act would not apply to him;
- (b) he be prohibited from becoming or acting as a director or officer of any issuer; and
- (c) he be prohibited from engaging in investor relations activities.

Manipulation of the Share Price of H & R Enterprises

12. At the end of January 1997, Wiebe, acting as agent for and on the instructions of Mitton, acquired approximately 3,728,000 of the 4,000,000 issued and outstanding shares of H & R Enterprises. At the time, Wiebe was aware of Mitton's Cease Trade Order but was informed by Mitton that it prohibited Mitton from trading on the VSE only.
13. From the time of the acquisition of the shares of H & R Enterprises, Wiebe and Mitton acted as *de facto* directors and officers of H & R Enterprises, which operated out of offices in Abbotsford, British Columbia. The directors and officers of record for H & R Enterprises at the Material Time had no involvement in, or knowledge of, the day to day affairs of H & R Enterprises and such information was purposely withheld from them.
14. Mitton, directly or indirectly, distributed the majority of the approximately 3,728,000 shares acquired as follows:
 - (a) 3,052,000 shares to Harris McLean;
 - (b) approximately 400,000 shares to promoters and public relations firms; and
 - (c) 144,000 to Wiebe who deposited the shares at an account with Tim Chamberlain (Chamberlain), a trader and registered representative at Equitrade Securities Corporation (Equitrade) of Lake Forest, California.
15. Moxon deposited the shares she received into an existing account at Canaccord and into accounts she opened at two other brokerage houses in British Columbia. Scharfe was the investment adviser responsible for the account at Canaccord.
16. In July 1997, H & R Enterprises hired Alexander Troy to perform investor relations activities on its behalf. At the time, Harris McLean transferred 1,744,000 shares of H & R Enterprises to Alexander Troy. Rosen and Chamberlain were hired as market makers.
17. Between April 1997 and August 1997, H & R Enterprises issued press releases which contained false and misleading information including the following:

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- (a) naming the directors as directors and officers of H & R Enterprises, when the *de facto* directors and officers were Mitton and Wiebe;
 - (b) announcing a private placement that did not take place;
 - (c) overstating the value of companies acquired; and
 - (d) announcing acquisitions that had not occurred.
18. In July through September 1997, Wiebe, Moxon, Gmur and Burden, on the instructions of Mitton, opened a number of brokerage accounts.
19. Wiebe opened, and had trading authority over, accounts in the name of Key West Realty Ltd. (Key West) at Wolverton and in the names of 1194710 Ontario Inc. (1194710) and Inland Ranch Company Inc. (Inland Ranch) at another brokerage house in British Columbia. Wiebe also commenced using an account that had previously been opened at the latter brokerage house in the name of 512617 B.C. Ltd. (512617). Alter was the investment adviser responsible for the Key West account at Wolverton.
20. Moxon, in addition to the accounts she already had at Canaccord and the two other brokerage houses, opened an account at Wolverton. Alter was not the investment adviser for the Wolverton account.
21. Gmur and Burden opened accounts at Canaccord and at Wolverton. Scharfe was the investment adviser responsible for the accounts at Canaccord. Alter was the investment adviser responsible for the accounts at Wolverton. The account of Burden at Canaccord was inactive.
22. All of the accounts of Wiebe, Key West, 1194710, Inland Ranch, 512617, Moxon, Gmur and Burden were nominee accounts (the Nominee Accounts), with the beneficial owner being Mitton.
23. Scharfe regularly discussed the accounts of Gmur and Moxon at Canaccord directly with Mitton.
24. Alter took instructions for the accounts of Gmur and Burden at Wolverton directly from Wiebe who did not have trading authorization over the accounts. Alter knew that Wiebe was receiving instructions from Mitton.
25. During August and September 1997, 2,455,000 shares of H & R Enterprises were issued from treasury to Moxon, Gmur, Burden, Key West, 512617, Inland Ranch and 1194710 and deposited into the Nominee Accounts. No money was paid by any of Moxon, Gmur, Burden, Key West, 512617, Inland Ranch or 1194710 for these shares. One million-six hundred and fifty-five thousand of these shares

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- (23.7% of the issued and outstanding shares of H & R Enterprises) were deposited into accounts at Wolverton.
26. In August and September 1997, a series of transactions (the Scheme) was created by Mitton, Harris, Heredia, Rosen, Chamberlain and the Nominee Accounts in which the shares of H & R Enterprises were traded in a circular fashion at ever increasing prices. Through the use of the Scheme, the price of the shares of H & R Enterprises was manipulated from approximately \$2.00 US to a peak of \$6.75 US on September 25, 1997.
 27. During August and September 1997, over \$3 million US was withdrawn from the Nominee Accounts from which shares had been sold at the manipulated prices. Gmur, Moxon, Wiebe and Burden transferred the money they received from the trading activity in the Nominee Accounts to Mitton or to third parties on Mitton's instructions.
 28. When the Scheme collapsed, Saperston Financial Incorporated (Saperston), a broker dealer in the United States, was left in possession of 1.7 million shares of H & R Enterprises that it had purchased on the instructions of Heredia who had advised Saperston that the shares were to be sold to Wolverton. As a result, Saperston suffered a net loss of \$9 million US.
 29. By September 30, 1997, the price of the shares of H & R Enterprises had fallen to \$1.50 US.
 30. The Nominee Accounts were frozen by the Commission on October 1, 1997 and October 6, 1997. At the time the Nominee Accounts were frozen there remained at least an additional \$1 million US in credit balances.
 31. On October 17, 1997, the Commission issued the Temporary Order that cease traded the securities of H & R Enterprises. The Temporary Order has been extended to March 27, 2002.
 32. On August 24, 2001, NASD issued a disciplinary complaint against Rosen, J. Alexander, Chamberlain, Robert Prager of Saperston, and others with respect to the Scheme.

Breaches of the Act and acts Contrary to the Public Interest

33. As a result of the foregoing,

(a) Mitton:

- breached s. 34 of the Act and s. 20 of the *Securities Act*, S.B.C. 1985, c.83, as amended (the Former Act), by trading through Wiebe, Moxon, Gmur and Burden in the Nominee Accounts,

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- breached s. 57 of the Act and s. 41.1 of the Former Act, by participating in transactions that he knew or ought to have known would contribute to a misleading appearance of trading activity or artificial price for the shares of H & R Enterprises,
- breached s. 61 of the Act and s. 42 of the Former Act, by trading the shares of H & R Enterprises without a prospectus or a prospectus exemption under circumstances where the trades were deemed distributions pursuant to s. 140 of the Rules, and
- should be, in the public interest as set out in s. 161 of the Act, prohibited from operating in the capital markets of British Columbia because of the following:
 - his activities related to his December 27, 2000 criminal conviction,
 - his involvement with H & R Enterprises, and
 - his breach of Mitton's Cease Trade Order.

(b) Wiebe:

- breached s. 57 of the Act and s. 41.1 of the Former Act, by participating in transactions that he knew or ought to have known would contribute to a misleading appearance of trading activity or artificial price for the shares of H & R Enterprises, and
- breached s. 61 of the Act and s. 42 of the Former Act, by trading the shares of H & R Enterprises without a prospectus or a prospectus exemption under circumstances where the trades were deemed distributions pursuant to s. 140 of the Rules.

(c) Moxon:

- breached s. 57 of the Act and s. 41.1 of the Former Act, by participating in transactions that she knew or ought to have known would contribute to a misleading appearance of trading activity or artificial price for the shares of H & R Enterprises, and
- breached s. 61 of the Act and s. 42 of the Former Act, by trading the shares of H & R Enterprises without a prospectus or a prospectus exemption under circumstances where the trades were deemed distributions pursuant to s. 140 of the Rules.

(d) Gmur and Burden:

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- breached s. 57 of the Act, by participating in transactions that they knew or ought to have known would contribute to a misleading appearance of trading activity or artificial price for the shares of H & R Enterprises, and
- breached s. 61 of the Act, by trading the shares of H & R Enterprises without a prospectus or a prospectus exemption under circumstances where the trades were deemed distributions pursuant to s. 140 of the Rules.

(e) Scharfe:

- breached s. 48 of the Rules, the Know Your Client Rule, by failing to learn the essential facts about the clients that held the Nominee Accounts, and
- should be, in the public interest as set out in s. 161 of the Act, prohibited from operating in the capital markets of British Columbia because of his breach of, or participation with Mitton in the breach of, Mitton's Cease Trade Order.

(f) Alter:

- breached s. 61 of the Act, by trading the shares of H & R Enterprises without a prospectus or a prospectus exemption under circumstances where the trades were deemed distributions pursuant to s. 140 of the Rules,
- breached s. 48 of the Rules, the Know Your Client Rule, by failing to learn the essential facts about his clients that held the Nominee Accounts, including failing to investigate the control position of his clients,
- should be, in the public interest as set out in s. 161 of the Act, prohibited from operating in the capital markets of British Columbia because of the following:
 - taking instructions on his clients' accounts from a third party without written authorization to do so, and
 - his breach of, or participation with Mitton in the breach of, Mitton's Cease Trade Order.

(g) Heredia:

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- breached s. 57 of the Act, by participating in transactions that he knew or ought to have known would contribute to a misleading appearance of trading activity or artificial price for the shares of H & R Enterprises, and
- should be, in the public interest as set out in s. 161 of the Act, prohibited from operating in the capital markets of British Columbia because of the following:
 - the orders against him in the United States,
 - his involvement with H & R Enterprises, and
 - his breach of, or participation with Mitton in the breach of, Mitton's Cease Trade Order.

(h) Rosen:

- breached s. 57 of the Act, by participating in transactions that he knew or ought to have known would contribute to a misleading appearance of trading activity or artificial price for the shares of H & R Enterprises, and
- should be, in the public interest as set out in s. 161 of the Act, prohibited from operating in the capital markets of British Columbia because of the following:
 - his involvement with H & R Enterprises, and
 - his breach of, or participation with Mitton in breaching, Mitton's Cease Trade Order.

(i) Harris:

- breached s. 57 of the Act and s. 41.1 of the Former Act, by participating in transactions that he knew or ought to have known would contribute to a misleading appearance of trading activity or artificial price for the shares of H & R Enterprises,
- breached s. 34 of the Act by acting as an unregistered dealer when distributing shares without being registered to do so, and
- should be, in the public interest as set out in s. 161 of the Act, prohibited from operating in the capital markets of British Columbia because of the following:
 - his involvement with H & R Enterprises, and

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- his breach of, or participation with Mitton in breaching, Mitton's Cease Trade Order.

(j) H & R Enterprises:

- breached s. 61 of the Act and s. 42 of the Former Act by distributing its shares in British Columbia without a prospectus or a prospectus exemption, and
- should, in the public interest as set out in s. 161 of the Act, have its shares cease traded because it issued false and misleading press releases.

[para 5]

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 by contacting the Commission Secretary at PO Box 10142, 5th Floor, 701 West Georgia Street, Vancouver, BC, telephone: (604) 899-6500; or by email at: commsec@bcsc.bc.ca.

[para 6]

The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on Wednesday, April 24, 2002, at 9:00 am if they wish to be heard before the Commission sets a date for the Hearing.

[para 7]

Determinations may be made in this matter if the Respondents or their counsel do not appear at the Hearing.

April 3, 2002

Martin Eady
A/Executive Director