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Temporary Order and Notice of Hearing

Carl Glenn Anderson and Douglas Victor Montaldi

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

- ¶ 1 A hearing will be held (the Hearing) to give Carl Glenn Anderson (Anderson) and Douglas Victor Montaldi (Montaldi) an opportunity to be heard before the British Columbia Securities Commission considers whether it is in the public interest to make the following orders:
1. under section 161(1)(c) of the *Securities Act*, RSBC 1996, c. 418, 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 Anderson and Montaldi;
 2. under section 161(1)(d)(i) of the Act, that Anderson and Montaldi resign any position they hold as directors or officers of any issuer;
 3. under section 161(1)(d)(ii) of the Act, that Anderson and Montaldi are prohibited from becoming or acting as a director or officer of any issuer;
 4. under section 161(1)(d)(iii) of the Act that Anderson and Montaldi are prohibited from engaging in investor relations activities;
 5. under section 162 of the Act, that Anderson and Montaldi pay an administrative penalty;
 6. under section 174 of the Act, that Anderson and Montaldi pay the prescribed fees or charges of or related to the hearing; and
 7. any other orders as may be appropriate in the circumstances.
- ¶ 2 The Commission will be asked to consider the following facts and allegations in making its determination:

Anderson and Montaldi

1. Anderson is and has been a director, officer and the secretary of 439288 B.C. Ltd. (the Company) from January 1, 1996 to the present (the Relevant Period).
2. The Company was incorporated under the laws of British Columbia in 1993 and has never been registered in any capacity under the Act. The Company is not a reporting issuer under section 1 of the Act.

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3. Anderson has never been registered under the Act and is a senior officer of the Company under section 1 of the Act.
4. Montaldi is and has been a director, officer and the president of the Company throughout the Relevant Period.
5. Montaldi has never been registered under the Act and is a senior officer of the Company under section 1 of the Act.
6. Anderson and Montaldi are the sole shareholders of the Company.

Nature of the Company's Business

7. At all material times the Company carried on its business by receiving investments from investors in British Columbia to reinvest in small businesses, personal lending and investments generally, primarily in the Lakes District of British Columbia (Investors). In particular, the Company operated its business by the following means:
 - (a) the Company offered investment opportunities to Investors at higher than prevailing rates of interest offered by financial institutions;
 - (b) the Company primarily issued one-year promissory notes (Notes) to Investors to evidence the Company's indebtedness to Investors;
 - (c) the Company generally made loans to persons who would not be likely to receive loans from financial institutions;
 - (d) the spread between interest of between 16% and 18% paid to the Company by borrowers and the interest of between 10% and 12% paid by the Company to Investors was intended to provide income to the Company to conduct its business; and
 - (e) Anderson and Montaldi personally guaranteed the Company's obligations under the Notes to the Investors.

Conduct of the Company's Business

8. Anderson and Montaldi conducted the Company's business as follows:
 - (a) Anderson and Montaldi did not keep adequate records to allow the Company to keep track of payments due to it by borrowers;
 - (b) Anderson and Montaldi did not adequately supervise the collection of monies due to the Company by borrowers;

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- (c) Anderson and Montaldi did not adequately monitor the performance of the Company's business and its profitability;
- (d) Anderson and Montaldi, and parties associated with them as defined in section 1 of the Act:
 - (i) borrowed approximately \$8,000,000 from the Company, constituting approximately 20% of the Company's outstanding loan portfolio; and
 - (ii) failed to repay interest or principal on loans received from the Company;
- (e) Anderson and Montaldi through their roles as directors, senior officers and shareholders of the Company caused the Company to forgive repayment of interest due on some of the loans granted by the Company to them and parties related to them;
- (f) Anderson and Montaldi did not inform all Investors that they and parties associated with them had borrowed from the Company;
- (g) Anderson and Montaldi did not inform all Investors that the Company had forgiven the repayment of interest due to the Company by themselves and parties associated with them;
- (h) Anderson and Montaldi caused the Company to accept investments from some Investors when they were aware that the Company was not profitable and its liabilities exceeded its assets;
- (i) Anderson and Montaldi did not disclose to Investors that the funds that they invested in the Company might be used to pay interest and capital due to existing Investors; and
- (j) Anderson and Montaldi caused the Company to use an Investor's funds for purposes other than those designated by the Investor.

Breaches of the Act

9. During the Relevant Period, Anderson and Montaldi:

- (a) Traded in securities without registration and without an exemption from the registration requirements of the Act, contrary to section 34(1) of the Act.

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- (b) Distributed securities without filing a prospectus and without an exemption from the prospectus requirements of the Act, contrary to section 61(1) of the Act.
- (c) Made statements with the intention of effecting a trade in securities, which they knew or ought to have known were misrepresentations, contrary to section 50(1)(d) of the Act. In particular, they did not disclose to Investors that the funds that they invested in the Company might be used to pay interest and capital due to existing Investors.
- (d) Perpetrated a fraud on persons in British Columbia, contrary to section 57(b) of the Act when they:
 - (i) accepted investments from Investors:
 - (A) after they were aware that the Company was not profitable and that its liabilities exceeded its assets; and
 - (B) without disclosing to Investors the true state of the Company's affairs;thereby concealing from Investors the true risk of investing in the Company;
 - (ii) gave personal guarantees to Investors to encourage them to invest, when the aggregate value of the guarantees exceeded their combined net worth; and
 - (iii) did not disclose to Investors that they were using Investors' funds for their own purposes and not for the proper conduct of the Company's business.

Public Interest

10. Anderson and Montaldi acted contrary to the public interest:

- (a) by the conduct set out above; and
- (b) by failing to exercise the care diligence and skill of a reasonably prudent person, contrary to sections 118 and 135 of the *Company Act*, RSBC 1996, c. 62.

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Temporary Order

- ¶ 3 The Executive Director considers the length of time to hold a hearing under section 161(1) of the Act could be prejudicial to the public interest because Anderson and Montaldi are presently planning to begin operating a business similar to the one conducted by the Company and they are not suitable to do so until the Commission has considered these proceedings.
- ¶ 4 The Executive Director, considering that it would be in the public interest to do so, orders under section 161(2) of the Act (the Temporary Order) that Anderson and Montaldi:
1. cease trading in any securities, pursuant to section 161(1)(b);
 2. resign any position they hold as directors or officers of any issuer, pursuant to section 161(1)(d)(i) of the Act;
 3. are prohibited from becoming or acting as a director or officer of any issuer, pursuant to section 161(1)(d)(ii) of the Act; and
 4. are prohibited from engaging in investor relations activities, pursuant to section 161(1)(d)(iii) of the Act;
- for a period expiring on November 13, 2002.
- ¶ 5 The Hearing will be held at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, BC, on Wednesday, November 13, 2002, at 1:00 pm.
- ¶ 6 At the Hearing the staff of the Commission will bring the following applications:
1. that the matter be adjourned for 60 days to permit the conclusion of the investigation in this matter; and
 2. that the Temporary Order be extended until such time as the Hearing is completed and a decision rendered.
- ¶ 7 Anderson and Montaldi may be represented by counsel at the Hearing, and make representations and lead evidence. Anderson and Montaldi are requested to advise the Commission of their intention to attend the Hearing by informing the Commission Secretary at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2; phone: (604) 899-6500; email: commsec@bcsc.bc.ca.

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- ¶ 8 Determinations may be made in this matter if Anderson and Montaldi or their counsel, do not appear at the Hearing.
- ¶ 9 October 29, 2002

Stephen J. Wilson
Executive Director