

# 2003 BCSECCOM 848

## Amended Notice of Hearing

**Michael Lee Mitton,  
Bradley Nixon Scharfe, and George Ronald Stephens  
(collectively the Respondents)**

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

- ¶ 1 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)(c) of the *Securities Act*, RSBC 1996, c. 418 (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 Respondents;
  2. pursuant to section 161(1)(b) of the Act that Michael Lee Mitton (Mitton) cease trading in or be prohibited from purchasing any securities;
  3. pursuant to section 161(1)(d) of the Act that the Respondents resign any position they hold as directors or officers of any issuer and be prohibited from becoming or acting as directors or officers of any issuer;
  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)(f) of the Act that the registration of Bradley Nixon Scharfe (Scharfe) be suspended, cancelled, or restricted or that conditions be imposed on his registration;
  6. pursuant to section 162 of the Act that the Respondents 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.
- ¶ 2 The Commission will be asked to consider the following facts and allegations in making its determination:

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### **The Parties**

1. Mitton has never been registered under the Act in any capacity.
2. On November 14, 1988, Mitton entered into an Agreement and Undertaking (the Agreement) with the Superintendent of Brokers. In the Agreement, Mitton admitted to several breaches of the *Securities Act*, SBC 1985, c. 83 (the Former Act) including: insider trading; market manipulation; and failure to meet continuous disclosure filing requirements.
3. On December 19, 1988, the Superintendent of Brokers issued an Order under sections 145 and 145.1 of the Former Act (the Order), which among other things, removed Mitton's exemptions under the Former Act and prohibited him from serving as an officer or director of any issuer from November 1, 1988 to October 31, 2008.
4. Mitton has been convicted by Canadian courts of numerous counts of fraud. Most recently on December 27, 2000, Mitton was convicted on six counts of fraud in relation to frauds he perpetrated on brokerage firms and a charity. Those convictions were based on many of the same facts that are the subject of this Notice of Hearing.
5. Scharfe has been registered as an investment adviser in British Columbia from on or about December 1987.
6. George Ronald Stephens (Stephens) has never been registered under the Act in any capacity.

### **Purchases of Shares**

7. Between March and August 1996 (the Relevant Period), Mitton and Stephens purchased shares, either directly or through nominees, that they did not pay for and for which they had no intention of paying (the Share Purchases). At all material times Mitton advised and directed Stephens and the nominees regarding the execution of the Share Purchases.

### **The Accounts**

8. Mitton and Stephens made the Share Purchases through a number of accounts at various brokerage firms in British Columbia, Alberta, the United States of America (U.S.A.) and the Isle of Man, including:
  - (a) An account opened in the name of Alfred Kaminsky at Canaccord Capital Corporation (Canaccord) in British Columbia (the Kaminsky Canaccord Account). Scharfe was the investment advisor responsible for the Kaminsky Canaccord Account.

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- (b) An account opened in the name of Harris McLean Financial Group Ltd. (Harris McLean) at Canaccord in British Columbia (the Harris McLean Canaccord Account). Harris McLean was a brokerage firm based in the Cayman Islands that was co-owned and operated by Richard Harris and Rod McLean. Scharfe was the investment advisor responsible for the Harris McLean Canaccord Account.
- (c) An account opened in the name of 512616 B.C. Ltd. at Yorkton Securities Inc. in British Columbia. 512616 B.C. Ltd. was a company formed under the laws of British Columbia; it changed its name to Mill Creek Capital Corp. (Mill Creek) on April 19, 1996. At all material times, Stephens was the president and secretary of 512616 B.C. Ltd. and Mill Creek.
- (d) An account opened in the name of Mill Creek at Coleman and Company Securities Inc. (Coleman) of Phoenix, Arizona, U.S.A. (the Mill Creek Coleman Account).
- (e) An account opened in the name of Mill Creek at RBC Dominion Securities Inc. (RBC) in Alberta (the Mill Creek RBC Account).
- (f) An account opened in the name of Mill Creek at C.M. Oliver & Company Limited in British Columbia.
- (g) An account opened in the name of Harris McLean at Midland Walwyn in British Columbia (the Harris Midland Walwyn Account).
- (h) An account opened in the name of Mill Creek at Midland Walwyn Capital Inc. (Midland Walwyn) in British Columbia (the Mill Creek Midland Walwyn Account).
- (i) An account opened in the name of Collegiate Investments Limited (Collegiate Investments) at Standard Bank Stockbrokers (Isle of Man) Limited, carrying on business as R.L. Stott & Co (the Collegiate Standard Bank Account). Collegiate Investments was a company formed under the laws of the Isle of Man. Mitton was listed as one of the advisers on the account opening form.

(collectively, the Accounts)

9. On the vast majority of days, the Accounts were in a debit position with the brokerage firms at which they operated. Very little money was ever deposited into the Accounts.

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10. In certain instances, Mitton, Stephens or a nominee issued cheques to brokerage firms to create the appearance that some of the debits in the Accounts were being covered. However, the cheques were drawn on accounts with insufficient funds.

### **Mill Creek Midland Walwyn Account and the Harris McLean Midland Walwyn Account**

11. Midland Walwyn received two cheques: one for \$225,000.00, dated April 29, 1996; and the other for \$300,000.00, dated May 2, 1996, to cover part of the costs of shares purchased in the Mill Creek Midland Walwyn Account and the Harris McLean Midland Walwyn Account. Both cheques were drawn on a Harris McLean account at a financial institution in the Cayman Islands, British West Indies.
12. When Midland Walwyn learned that the two cheques would take several weeks to clear, it requested that it be provided with cheques drawn from a local financial institution. As a result, Midland Walwyn was provided with two cheques drawn from a financial institution based in British Columbia, one in the amount of \$305,853.00, the amount owing on the Mill Creek Midland Walwyn Account, and the other in the amount of \$594,123.00, the amount owing on the Harris Midland Walwyn Account (the Replacement Cheques). As Midland Walwyn had the Replacement Cheques, it consented to stop payments being placed on the original cheques drawn on the Cayman Islands financial institution.
13. A stop payment was subsequently placed on the Replacement Cheques. A representative of Midland Walwyn met with Mitton and he promised to deliver certified cheques to cover the debits in the Mill Creek Midland Walwyn Account and the Harris Midland Walwyn Account. Midland Walwyn never received payment for the debit in the accounts and it eventually sold them out.

### **Mill Creek Coleman Account**

14. Coleman received a cheque dated May 24, 1996 in the amount of \$26,463.70 (U.S.A. funds), to cover a portion of the cost of the shares that were purchased in the Coleman Account. A stop payment was placed on the cheque. Mitton and Stephens promised a Coleman representative that they would provide payment for the debits in the Mill Creek Coleman Account, but they did not. Coleman sold the shares in the Mill Creek Coleman Account at a loss of \$86,984.13 (U.S.A. funds).

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### **RBC Mill Creek Account**

15. RBC received a cheque dated June 3, 1996 in the amount of \$76,917.00, signed by Stephens. The cheque was drawn on a bank account that did not exist. Stephens promised a RBC representative that he would provide payment for the debits in the Mill Creek RBC Account, but he never did. RBC sold the shares in the Mill Creek RBC Account at a loss of \$251,475.26.

### **Collegiate Standard Bank Account**

16. On Mitton's instructions in June 1996, large purchases of shares were made through the Collegiate Standard Bank Account. Standard Bank received a cheque in the amount of \$600,000.00 that was not honoured due to insufficient funds. The Collegiate Standard Bank Account was eventually sold out at a loss of \$1,917,415.50.

### **Breaches of Alberta Securities Legislation**

17. The Accounts traded and purchased the securities of various issuers including Clay-Tech Industries Inc. (Clay-Tech), a company that, during the Relevant Period, was listed and traded on the Alberta Stock Exchange (now the Canadian Venture Exchange).
18. A substantial number of shares of Clay-Tech were deposited into certain of the Accounts. Further, during the period from March 18 to June 28, 1996, the Accounts were net purchasers of a substantial number of Clay-Tech shares in the market.
19. From March 18, 1996 to June 20, 1996, there were 7,440,000 shares of Clay-Tech outstanding.
20. From June 21, 1996 to August 31, 1996, there were 7,810,000 shares of Clay-Tech outstanding.
21. On May 30, 1996, the cumulative holdings in the Accounts exceeded 10% of the outstanding shares of Clay-Tech.
22. On June 12, 1996, the cumulative holdings of Clay-Tech in the Accounts exceeded 20% of the issued and outstanding shares of Clay-Tech. On this date, the Kaminsky Canaccord Account alone held more than 10% of the outstanding Clay-Tech shares.
23. From June 26, 1996 to July 1, 1996 the Kaminsky Canaccord Account and the Harris Canaccord Account together held more than 20% of the issued and outstanding shares of Clay-Tech.

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24. On July 4, 1996, the Collegiate Account held more than 10% of the issued and outstanding shares of Clay-Tech.
25. On a number of occasions, one or more of the Accounts sold shares of Clay-Tech to reduce their debit position at or about the same time that another one of the Accounts was purchasing Clay-Tech shares and increasing its debit position.
26. Between April 24, 1996 and June 28, 1996, there were 76 trades on the Alberta Stock Exchange in which one of the Accounts sold Clay-Tech shares to another one of the Accounts. Scharfe was the broker on one side of the transaction for all but nine of these trades. Further, Scharfe was the broker on both sides of the transaction for three of these trades.
27. Under Alberta securities legislation a number of regulatory obligations and restrictions arise as a result of the percentage of an issuer's shares that are subject to common ownership, direction or control. These regulatory obligations include the following:
  - (a) if a person owns or exercises control or direction over more than 10% of a reporting issuer's voting shares, the person is deemed to be an insider of the issuer and is, among other things, obliged to file with the Alberta Securities Commission (ASC) periodic insider reports disclosing their position in the shares and the trades they have made; and
  - (b) if a person, alone or in combination with others, holds 20% of the outstanding voting shares of an issuer, then the person is presumed to be a control person of the issuer and the person is, among other things, subject to restrictions on their ability to resell their shares to the public and must make certain control person filings with the ASC.
28. Similar regulatory obligations exist in British Columbia under the Former Act and the Act.
29. No insider reports, control person disclosure or other regulatory notices or filings were made with the ASC disclosing any of the trading activities or securities holdings in the Accounts.

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### **Alleged Breaches of the Former Act and acts Contrary to the Public Interest *Mitton***

30. Mitton did the following:

- (a) acted as an advisor in British Columbia without an exemption from the registration requirements of the Former Act, and without being registered to advise, contrary to section 20 of the Former Act; and
- (b) participated in a scheme that he knew or ought reasonably to have known perpetrated a fraud on persons in British Columbia, contrary to section 41.1 of the Former Act.

31. Further, it would be in the public interest, as set out in section 144 of the Former Act and section 161 of the Act, to prohibit Mitton from operating in the capital markets of British Columbia for the following reasons:

- (a) his December 27, 2000 criminal conviction; and
- (b) his breach of the Order.

### ***Scharfe***

32. Scharfe did the following:

- (a) failed to establish the identity and reputation of his clients as required by section 43 of the Securities Regulations, B.C. Reg. 270/86 (the Securities Rules) and the rules and by-laws of the Vancouver Stock Exchange (the VSE); and
- (b) breached the Securities Rules and the rules and by-laws of the VSE by allowing accounts to be operated as nominee accounts, accepting orders from a third party without written authorization to do so and by accepting orders from Mitton, when Mitton was prohibited from participating in the capital markets of British Columbia.

33. Further, it would be in the public interest, as set out in section 144 of the Former Act and section 161 of the Act, to prohibit Scharfe from operating in the capital markets of British Columbia because he failed to fulfil his gatekeeper responsibilities by not identifying and preventing improper trading schemes.

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### *Stephens*

34. Stephens participated in a scheme that he knew or ought reasonably to have known perpetrated a fraud on persons in British Columbia, contrary to section 41.1 of the Former Act.

35. Further, it would be in the public interest, as set out in section 144 of the Former Act and section 161 of the Act, to prohibit Stephens from operating in the capital markets of British Columbia because of his participation in the schemes to defraud Coleman, RBC, and Standard Bank.

- ¶ 3 The Respondents may be represented by counsel at the Hearing, and make representations and lead evidence. The Respondents 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.
- ¶ 4 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 9:30 am if they wish to be heard before the Commission sets a date for the Hearing.
- ¶ 5 Determinations may be made in this matter if the Respondents or their counsel do not appear at the Hearing.
- ¶ 6 December 17, 2003

Stephen J. Wilson  
Executive Director