

# 2004 BCSECCOM 394

## Amended Notice of Hearing

**Richard John Smith and  
Synlan Securities Corporation**

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

¶ 1

A hearing will be held to give Richard John Smith and Synlan Securities Corporation (the Respondents) an opportunity to be heard, before the British Columbia Securities Commission (the Commission) determines 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 Synlan Securities Corporation (Synlan);
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 Richard John Smith (Smith) resign any position he may hold as a director or officer of any issuer and that he be prohibited from becoming or acting as a director or officer of any issuer;
4. pursuant to section 161(1)(d) of the Act, that Smith be prohibited from engaging in investor relations activities;
5. pursuant to section 162 of the Act that the Respondents pay an administrative penalty;
6. 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
7. such further and other relief as the Commission considers appropriate in the circumstances.

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

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### **Synlan and Smith**

1. Synlan is a company formed under the laws of Ontario, and has never been a reporting issuer under the Act.
2. Smith is the president of Synlan and has never been registered in any capacity under the Act.

### **Activities in British Columbia**

3. Synlan was both the promoter and the owner of the general partners of three limited partnerships formed under the laws of the province of Ontario, the Fairways (I) Limited Partnership (Fairways LP), the Valley of the Sun Limited Partnership (Valley of the Sun LP), and the West Valley of the Sun Limited Partnership (West Valley of the Sun LP).
4. Limited partnership units in the Fairways LP, the Valley of the Sun LP, and the West Valley of the Sun LP were each offered for sale to residents of British Columbia.
5. From around May 1996 to December 1997, residents of British Columbia purchased approximately: five limited partnership units of the Fairways LP; six Limited partnership units of the Valley of the Sun LP; and three limited partnership units of the West Valley of the Sun LP.
6. The Fairways LP filed an offering memorandum dated January 4, 1995, with the Commission on January 13, 1997.
7. The Valley of the Sun LP filed an offering memorandum dated January 24, 1997, with the Commission on January 12, 1998.
8. The West Valley of the Sun LP filed an offering memorandum dated September 30, 1996, with the Commission on January 13, 1997.

### **The Offering Memoranda**

9. The offering memoranda for the Fairways LP, the Valley of the Sun LP, and the West Valley of the Sun LP each offered for sale limited partnership units under substantially the same terms. The offering memoranda, among other things, each disclosed that:
  - (a) the limited partnerships gave investors the opportunity to acquire an interest in residential units in the United States of America;
  - (b) the residential units would form a rental pool that was to provide rental revenue income;

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- (c) the investments were offered as having the potential to provide tax deferrals and deductions, capital appreciation, and to earn income;
  - (d) the price for a limited partnership unit was approximately \$117,000 to \$135,000 (US), depending on the particular partnership;
  - (e) purchasers of limited partnership units were required to make a cash payment of approximately \$32,000 (US) and to provide a promissory note for the balance of the purchase price;
  - (f) Synlan assumed the responsibility for arranging financing for approved limited partners, whereby they could finance the payment of their respective promissory notes. The financing was to be secured by, among other things, a limited partner's interest in the residential units; and
  - (g) the financial projections for the partnerships indicated that the expected rental revenue from the residential units would generally be sufficient to pay all operating costs of the limited partnerships and all debt service payments related to the promissory notes.
  - (h) The offering memoranda for the Valley LP and the West Valley LP were not in the form of a disclosure statement or prospectus required under the *Real Estate Act* and by the Superintendent of Real Estate and did not include the specific statutory exemptions from the registration and prospectus requirements of the Former Act and Act that were to be relied on in distributing the securities.
10. The limited partnership units of the Fairways LP, and the West Valley of the Sun LP were distributed under section 55(2)(4) of the *Securities Act*, SBC 1985, c. 83 (the Former Act), according to the Report of Exempt Distribution, which the Respondents filed with the Commission on behalf of the limited partnerships.
11. The limited partnership units of the Valley of the Sun LP, were distributed under section 74(2)(4) of the Act, according to the Report of Exempt Distribution, which the Respondents filed with the Commission on behalf of the limited partnership.
12. Investors in the Fairways LP, The Valley of the Sun LP and the West Valley of the Sun LP were lead to believe by, among other things, the terms of the respective offering memoranda, that there would be no requirement to pay the remainder of the purchase price under the promissory notes, because revenues

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from the residential units were expected to be sufficient to cover any costs associated with that obligation.

13. When the Respondents were unable to secure financing, they demanded payment of the promissory note portion of the cost of the limited partnership units from some of the purchasers. These purchasers did not make payment. All of the purchasers lost the approximately \$32,000 (US) that they each had invested, that being the cash portion of the purchase price of the limited partnership units.

### **Breaches of the Act**

14. The Respondents violated the Former Act and the Act and the *Securities Regulation*, BC Reg. 316/89 and the *Securities Rules*, BC Reg. 194/97 by:
- (a) trading in the securities of the Fairways LP, The Valley of the Sun LP and the West Valley of the Sun LP with individuals in British Columbia without an exemption from the registration requirements of the Former Act and the Act and without being registered to trade under the Former Act and Act, contrary to section 20 of the Former Act and section 34(1)(a) of the Act;
  - (b) distributing the securities of the Fairways LP, The Valley of the Sun LP and the West Valley of the Sun LP in British Columbia without filing and obtaining receipts for prospectuses, and without an applicable exemption from the prospectus requirements of the Former Act and the Act, contrary to section 42 of the Former Act and section 61(1) of the Act; and
  - (c) delivering offering memoranda to purchasers of the Valley of the Sun LP and the West Valley of the Sun LP, which were not in the prescribed form, contrary to section 126 of the *Securities Regulation* and section 133 of the *Securities Rules* and.

### **Other Enforcement Proceedings**

15. On January 7, 1997, Smith was charged with a total of 55 counts of fraud over \$5,000, criminal breach of trust and theft over \$5,000, contrary to the *Criminal Code of Canada*, RSC 1985, c. C-46 (the Charges). The Charges concerned Smith's involvement with Track Investment Corporation (Track) and in particular Track's attempt to acquire a property called 70 Richmond Street East (the Property).

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### **Track**

16. Track was incorporated on September 21, 1984. Smith was listed as the secretary of Track.
17. On March 10, 1988, an officer of Track signed an offer for the purchase of the Property. The Property was to be purchased by a nominee on behalf of Track.
18. Smith and another officer of Track subsequently created a limited partnership in order to finance the purchase.
19. The terms of the limited partnership were described in an offering memorandum. The offering memorandum, among other things, stated that all funds invested by subscribers were to be held in trust by Track until all conditions precedent to closing were satisfied, including the purchase and acquisition of title to the Property. If any of the conditions precedent to closing were not satisfied, the offering memorandum provided that all subscription funds were to be returned to investors.
20. Financial institutions forwarded funds on behalf of investors to the Track trust account. These funds were to be held in trust as required by the terms of the offering memorandum and the depository agreement. However, despite these terms, Track issued a number of cheques drawn on the account, thereby depleting the funds held in trust.
21. Track never acquired title to the Property and any claims to it were lost on or about December 29, 1989, when Track defaulted on the payment of a deposit.
22. Between December 29, 1989 and January 24, 1990, Smith and another officer of Track continued to sell units in the limited partnership, despite having lost all claim to the Property.

### **Criminal Sanctions**

23. On December 17, 1997, Smith pled guilty to some of the Charges and was convicted in the Ontario Court (Provincial Division) of 22 counts of theft ^ and 10 counts of fraud ^ (the Conviction).

### **Ontario Securities Commission (OSC) Sanctions**

24. In the 1980's, Smith through his involvement in Track and another company, was registered with the OSC.
25. On March 27, 1990, Smith through Synlan, applied to the OSC for registration as a Limited Market Dealer (Conditional). Subsequently, Smith was

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registered a Limited Market Dealer (Conditional) pursuant to section 26 of the *Securities Act*, RSO 1990, c. S.5, as amended (the Ontario Securities Act).

26. On or about June 8, 1998 staff of the Enforcement Branch of the OSC issued an Amended Statement of Allegations against Smith and Synlan. The Amended Statement of Allegations alleged, among other things, that:
- (a) in November of 1996, Smith made an application to the OSC to initiate the annual renewal of his registration. Smith's registration continued to be sponsored by Synlan. During the registration process, completed on February 3, 1997, Smith failed to disclose to the OSC that the Charges had been laid. Based on the application for renewal submitted by Smith, his registration was renewed and expired on January 8, 1998; and
  - (b) in November of 1997, Smith again made an application to the OSC to initiate the annual renewal of his registration, continuing to be sponsored by Synlan. During the registration process, completed on February 27, 1998, Smith not only failed to disclose to the OSC that the Charges had been laid, but he also failed to inform the OSC of the Conviction. Based on the application for renewal filed by Smith, his registration was renewed with an expiry date of January 8, 1999.
27. On or about June 11, 1998, the OSC issued a Temporary Order suspending Smith's registration.
28. On or about December 2, 1998, the OSC issued an Order terminating the registration granted to the Respondents under the *Ontario Securities Act*. The OSC further ordered that trading in any securities by each of the Respondents cease permanently and any exemptions available under Ontario securities law permanently did not apply to each of the Respondents.

### **The Public Interest**

29. It would be contrary to the public interest to allow the Respondents to continue to operate in the capital markets of British Columbia given Smith's Conviction, the OSC's sanctions against the Respondents and the conduct set out in this Notice of Hearing.

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The Respondents may be represented by counsel and may make representations and lead evidence at the Hearing. The Respondents are requested to advise the Commission of their intention to attend the Hearing by contacting the Secretary to the Commission at P.O. Box 10142, Pacific Centre, 701 West Georgia Street,

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Vancouver, BC, V7Y 1L2, by telephone at (604) 899-6500, or by email at 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 Monday, July 5, 2004 at 10:00 am, if they wish to appear at ^ the Hearing.

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

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June 24, 2004.

“S. Wilson”

Steve Wilson  
Executive Director