

# 2004 BCSECCOM 627

## Notice of Hearing

### Michael Ernst Ruge and Chivas Hedge Fund Ltd.

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

¶ 1 A hearing will be held to give Michael Ernst Ruge (Ruge) and Chivas Hedge Fund Ltd. (Chivas GP) (collectively the Respondents) an opportunity to be heard before the British Columbia Securities Commission considers whether it is in the public interest to make orders under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418.

¶ 2 The Executive Director alleges that:

#### **Background**

1. Ruge is a British Columbia resident.
2. Ruge was the sole shareholder, director and officer of the following British Columbia companies:
  - (a) Chivas GP;
  - (b) Cycle Safari Rentals Ltd. (Cycle);
  - (c) 653212 BC Ltd. (653212), which carried on business in Duncan, British Columbia under name Robins Donuts; and
  - (d) 653214 BC Ltd. (653214), which carried on business in Victoria, British Columbia under the name Robins Donuts.
3. Ruge's wife was the sole shareholder, director, and officer of Shawnigan Shores Holdings Ltd. (Bed and Breakfast), a British Columbia company.
4. Ruge's long time secretary and assistant was the sole shareholder, director, and officer of First Internet Holdings Ltd. (FIH), a British Columbia company.
5. Ruge, Ruge's secretary and assistant, and an employee of Ruge, were the directors of Oil Island and Gas BC Ltd. (Oil Island and Gas), a British Columbia company.

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6. Chivas Growth Fund Limited Partnership (Chivas LP) was a business name used by Ruge. It has never been incorporated or registered as an entity under applicable British Columbia statutes.
7. At all times, Ruge was the operating mind of or had a financial interest in:
  - (a) Chivas LP and Chivas GP; and
  - (b) Cycle, 653212, 653214, Bed and Breakfast, FIH, and Oil Island and Gas (the Ruge Businesses).
8. None of Ruge, Chivas LP, and Chivas GP have ever been registered under the Act.

### **Fraudulent Sale of Securities**

9. Chivas LP issued an offering memorandum (OM) dated October 1, 2001 for an exempt private offering of 400,000 Partnership Units at \$50 per unit to residents of British Columbia, Alberta, and Ontario.
10. The OM was prepared and issued under Ruge's direction.
11. Between December 18, 2001 and February 6, 2003, approximately 50 British Columbia, Alberta, and Ontario investors (the Investors) purchased approximately \$1,600,000 of Chivas LP units under the OM.
12. The OM falsely claimed that investor funds would be placed with advisors who, purportedly, would be professional traders registered in British Columbia under the Act, "who were at the top of their profession", and who would actively trade securities pursuant to specific enumerated "market neutral" and "hedged" trading strategies.
13. None of the Investor money was placed with professional traders who were "at the top of their profession" or, for that matter, even registered under the Act. Instead, some of the money was placed with unregistered and inexperienced individuals.
14. The rest of the money was placed with various businesses, the Ruge Businesses, and other companies and individuals affiliated with Ruge and, as well, applied to Ruge's personal use and that of his family and friends.
15. The OM misrepresented how the offering proceeds would be invested.

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16. The OM misrepresented Ruge's business and investment experience and qualifications.
17. The OM misrepresented that:
  - (a) Chivas LP was a limited partnership under the laws of British Columbia;
  - (b) Chivas GP would perform the usual functions of a general partner;
  - (c) audited and unaudited financial statements would be provided in a timely way;
  - (d) Chivas LP's auditor was Grant Thornton;
  - (e) advisors would share in the same investment risks faced by Investors;
  - (f) there would be between 8 and 20 different advisors;
  - (g) Ruge would select experienced advisors according to their proven ability to deliver superior returns with a minimum of risk; and
  - (h) Chivas GP would closely monitor the advisors' performance.
18. The cover page of the OM contained the logos of the Greater Victoria Chamber of Commerce, Grant Thornton LLP (Grant Thornton), the Better Business Bureau of Vancouver Island, TradeTrue Securities Inc. (TradeTrue), SwiftTRADE Securities Inc., and the Royal Bank Financial Group without the permission of those businesses and groups.
19. The cover page of the OM contained photographs of TradeTrue computer terminals and their traders. Chivas LP never had permission to use the photographs and TradeTrue was never used to trade Investor money.
20. The cover page of the OM misleadingly suggested that Chivas LP had a United States office with a Wall Street address.

### **Misrepresentations in Website**

21. Chivas LP maintained an extensive website. It contained numerous misrepresentations and false statements that were the same or similar to those contained in the OM.

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### **Misrepresentations by Ruge Personally**

22. Ruge personally induced a number of individuals to invest under the OM. In doing so, he misrepresented that:

- (a) Chivas LP was a hedge fund;
- (b) he would closely monitor advisor performance;
- (c) he had engaged top advisors in “the New York office”, which in fact did not exist;
- (d) a significant portion of the trading activity was taking place in the United States;
- (e) fifty percent of the money under investment was that of Ruge’s family and close friends;
- (f) participation in the “hedge fund” had nearly reached its “\$20 million cap”; and
- (g) investors could get their money back at any time.

23. Ruge also made misrepresentations to eventual investors about the rate of return they could expect from an investment in Chivas LP. At different times and to different individuals, Ruge made extravagant claims about returns that ranged from a low of approximately 26% to a high of 45%.

### **Investor Losses**

24. Investors have lost most if not all of their money. There are no reasonable prospects that any of these funds will ever be recovered.

### **Breaches of the Act, the Rules, and Conduct Contrary to the Public Interest**

25. The Respondents through the behavior and activity described in this Notice of Hearing:

- (a) made misrepresentations, contrary to section 50 of the Act;
- (b) perpetrated a fraud against the Investors, contrary to section 57.1 of the Act;
- (c) distributed securities without a prospectus, contrary to section 61 of the Act; and

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(d) traded in securities without being registered, contrary to section 34 of the Act.

26. Ruge acted as an Advisor and a Portfolio Manager, as defined under the Act, without being registered, contrary to section 34 of the Act.

### **Hearing Process**

- ¶ 3 At the Hearing, the Respondents may be represented by counsel, 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 Thursday, November 18, 2004, at 9:00 am if they wish to be heard before the Commission sets a date for the Hearing.
- ¶ 5 If the Respondents, or their counsel, do not appear at the Hearing determinations adverse to them may be made in their absence.
- ¶ 6 November 2, 2004
- ¶ 7 Brenda M. Leong  
Executive Director