

2009 BCSECCOM 728

Amended Notice of Hearing

**Steven Peter Kylo, Mercury Capital S.A., Moenkopi Resources Inc.,
Frey Mining Company Ltd., Glen Matthew, David Malcolm Ruthven
and Cheryl Anne Kylo
(collectively, the Respondents)**

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

- ¶ 1 The Commission will hold a hearing at which the Executive Director will tender evidence, make submissions and apply for orders against the Respondents under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418, based on the following facts:

Background

1. Mercury Capital S.A. (Mercury) was incorporated in Turks and Caicos Islands.
2. Moenkopi Resources Inc. (Moenkopi) was incorporated in Nevada on September 29, 1998.
3. Frey Mining Company Ltd. (Frey Mining) was incorporated in Nevada on May 4, 2001.
4. Steven Peter Kylo (Steve Kylo) was a resident of British Columbia for at least 10 years prior to May 2007. He was the authorized representative of Mercury and sole director and officer of Moenkopi and Frey Mining. He had control over two Moenkopi bank accounts at the Bank of America where investors sent funds.
5. Glen Matthew (Matthew) is a resident of British Columbia.
6. David Malcolm Ruthven, also known as Mal Ruthven (Ruthven) is a resident of British Columbia.
7. Cheryl Anne Kylo (Cheryl Kylo) is a resident of British Columbia and a daughter-in-law of Steve Kylo. Cheryl Kylo was registered under the *Act* from 1993 to 2007 as a salesperson restricted to mutual fund securities. She became registered to trade securities as a salesperson with an investment dealer in 2008.
8. Steve Kylo, Matthew and Ruthven were never registered under the *Act*.

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Misconduct

Illegal trading and distribution of securities

9. Frey Mining offered for sale a security that promised to give investors a percentage of the future sale proceeds of gold and precious metals from a Utah mine (the Frey Mining Security).
10. Moenkopi offered for sale a security that purported to allow investors to receive ten times their initial investment upon Moenkopi receiving its first payment from a high-yield private placement program (the Moenkopi Security).
11. Mercury offered for sale a security that purported to allow investors to participate in a high-yield non solicitation feeder program. Mercury promised to pay investors 25% per month for four months with the return of all principal at the end of the fourth month (the Mercury Security).
12. Between 2004 and 2006, Frey Mining, Steve Kylo, Matthew and Ruthven sold Frey Mining Securities.
13. Between September 2002 and November 2004, Moenkopi, Steve Kylo, Matthew and Ruthven sold Moenkopi Securities.
14. Between June and August 2005, Mercury, Steve Kylo, Matthew, Ruthven and Cheryl Kylo sold Mercury Securities.
15. The Respondents traded and distributed at least USD \$1,081,572 of Frey Mining, Moenkopi and Mercury Securities to at least 33 investors, including at least 13 residents of British Columbia.
16. Mercury, Moenkopi and Frey Mining did not file a prospectus under the *Act* for the sale of their securities.
17. By trading and distributing securities without being registered or having filed a prospectus, Steve Kylo, Matthew, Ruthven, Frey Mining, Moenkopi and Mercury contravened sections 34 and 61 of the *Act*.
18. By trading and distributing the Mercury Security while being restricted to trading mutual funds, Cheryl Kylo contravened sections 34 and 61 of the *Act*.
19. Steve Kylo as an authorized representative of Mercury, and officer and director of Moenkopi and Frey Mining, authorized, permitted or acquiesced in their contraventions of sections 34 and 61 of the *Act*, and, therefore, he also contravened the same provisions under section 168.2 of the *Act*.

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Misrepresentations

Moenkopi and Mercury Securities (collectively, the High-Yield Securities)

20. Upon Steve Kylo's instructions, Mercury, Moenkopi, Matthew, and Ruthven made the following statements to investors in the High-Yield Securities (the Promises):
- (a) Investors' money would be invested with traders dealing in large private high-yield trading programs;
 - (b) Investors' funds would not be put at risk;
 - (c) Investors in Moenkopi Securities would receive returns of ten times their initial investment; and
 - (d) Investors in Mercury Securities would receive returns of 25% per month for four months and the return of their principal at the end of four months.
21. Cheryl Kylo made the same Promises to investors in Mercury Securities only.
22. The Promises were untrue, false, or misleading.
23. Mercury, Moenkopi, Steve Kylo, Matthew, Ruthven and Cheryl Kylo knew or ought to have known that the Promises were untrue, false or misleading because:
- (a) private high-yield trading programs as described in the Promises did not exist; and
 - (b) profits of 25% per month or "10 times the amount initially invested" with little or no risk through a securities investment are impossible.
24. In addition, Steve Kylo knew or ought to have known that the Promises to the investors in the High-Yield Securities were untrue, false or misleading because:
- (a) he never invested the proceeds of the sale of Moenkopi Securities into a high-yield private placement program but instead commingled them with the funds from the Frey Mining Securities investors;
 - (b) he only invested \$93,000 USD of the sale of Mercury Securities into a so-called high-yield trading program, from which he received no returns;

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- (c) he only paid six investors in Mercury Securities approximately USD \$43,535, ^ which came from other investors' money, and
 - (d) he transferred the rest of the Mercury Securities investor funds to himself, his wife, Moenkopi, Matthew and Cheryl Kylo.
25. In making the untrue, false or misleading Promises, Mercury, Moenkopi, Steve Kylo, Matthew, Ruthven and Cheryl Kylo made misrepresentations contrary to section 50(1)(d) of the *Act*.
26. Steve Kylo as an authorized representative of Mercury, and officer and director of Moenkopi, authorized, permitted or acquiesced in their contraventions of section 50(1)(d) of the Act, and, therefore, he also contravened the same provision under section 168.2 of the Act.

Fraud

The Mercury Securities

27. After informing the investors that he had cancelled the Mercury Securities investment program as of October 19, 2005, Steve Kylo continued to promise investors until at least the end of 2006 that the returns on their funds would come imminently. In fact, by February 2006 he had already transferred the rest of the money to himself, his wife, Moenkopi, Matthew and Cheryl Kylo and had no other source of income.
28. By misdirecting investors' funds, and making the above false statements and the Promises while trading and distributing the Mercury Securities, Steve Kylo perpetrated a fraud contrary to sections 57(b) and 57.1(b) of the *Act*.

Hearing Process

- ¶ 2 On June 24, 2009, the Commission set hearing dates for this matter for March 1 to March 19, 2010. The Hearing will be held at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia.
- ¶ 3 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Secretary to the Commission 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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¶ 4 ^^

¶ 5 If the Respondents or their counsel do not appear at the Hearing, ^^
determinations adverse to the Respondents may be made in their absence.

¶ 6 December 1, 2009

“L.E. Evans:

¶ 7 Langley E. Evans
Acting Executive Director