

# 2010 BCSECCOM 665

## Notice of Hearing

### Randall George Kowalchuk

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

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

#### **Background**

1. Randall George Kowalchuk (Randall Kowalchuk) is a resident of Penticton, British Columbia.
2. Randall Kowalchuk is the brother of Richard Bruce Kowalchuk (Richard Kowalchuk), a broker in Alberta with CIBC World Markets Inc.
3. Eveready Inc. (Eveready) was a company incorporated in Alberta and listed on the Toronto Stock Exchange.

#### ***Material facts not generally disclosed***

4. In March 2009, Richard Kowalchuk received information from a director of Eveready that it would be acquired by another company (the Takeover).
5. The Takeover was a material fact.
6. In March 2009, Richard Kowalchuk informed Randall Kowalchuk about the Takeover.
7. The news of the Takeover was not generally disclosed until April 29, 2009.

#### ***Special relationship and knowledge of a material fact***

8. The circumstances under which Randall Kowalchuk learned of the Takeover put him in a special relationship with Eveready.

#### **Misconduct**

##### ***Trading Eveready securities with undisclosed material information***

9. On the Relevant Days, Randall Kowalchuk conducted the following transactions in Eveready securities (the Trades):

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- (a) On April 13, 2009, he purchased 2,000 shares of Eveready in his wife's tax-free savings account at \$2.35 per share;
  - (b) On April 14, 2009, he purchased 2,200 shares of Eveready in his wife's RRSP account at \$2.12 per share; and
  - (c) On April 15, 2009, he purchased 2,800 shares of Eveready in his wife's RRSP account at \$2.35 per share.
10. Eveready's trading prices before and after the time that the news of the Takeover became generally disclosed were as follows:
- (a) Between April 20 and 28, 2009, Eveready's closing prices were between \$2.79 and \$3.95 per share.
  - (b) On April 28, 2009, Eveready's closing price was \$3.47 per share.
  - (c) On April 29, 2009, the news of the Takeover was disclosed at 8:15 am EST. The same day, at 9:30 am EST, Eveready opened trading at \$9.50 per share, a \$6.03 change from the closing price of April 28, and closed at \$10.40 per share, a \$6.93 change from the closing price of the previous day.
11. Randall Kowalchuk conducted the Trades while in a special relationship with Eveready and with the knowledge of a material fact about Eveready which had not been generally disclosed, contrary to section 57.2(2) of the Act.

### Hearing Process

- ¶ 2 Randall Kowalchuk or his counsel is required to attend at the 12<sup>th</sup> floor Hearing Room, 701 West Georgia Street, Vancouver, BC, on **Wednesday, January 12, 2011 at 10:00 a.m.** if he wishes to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 3 At the hearing, Randall Kowalchuk may be represented by counsel, make submissions and tender evidence. Randall Kowalchuk is requested to advise the Commission of his 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 If Randall Kowalchuk or his counsel do not appear at the Hearing, the Executive Director may apply to have questions of liability and sanction heard at the same time. Determinations adverse to Randall Kowalchuk may be made in his absence.

¶ 5 December 6, 2010

Paul C. Bourque

¶ 6 Paul C. Bourque, Q.C.  
Executive Director