

2011 BCSECCOM 124

Amended Temporary Order and Notice of Hearing

SFCS Capital (Canada) Corp., and Robert John Alexander Stitt

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 SFCS Capital (Canada) Corp., and Robert John Alexander Stitt under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418, based on the following facts:

Background

1. SFCS Capital (Canada) Corp. (SFCS) is British Columbia corporation, registered with the BCSC as a portfolio manager. SFCS has its principal business office in Vancouver.
2. SFCS is the investment fund manager for the investment fund SFCS Titans Limited Partnership (Titans).
3. Robert John Alexander Stitt (Stitt) resides in Vancouver, and is registered with the Commission as an advising representative, director, officer and chief compliance officer of SFCS.

Compliance Failures

4. Between January 11 and January 15, 2010, SFCS sold investments in Titans to five British Columbia residents (the Investments).
5. Stitt and SFCS filed exempt distribution reports for the Investments, with subsequent amendments, with the Commission on five separate occasions between July 14, 2010, and October 4, 2010 (the Reports). At times, the Reports included significant errors or omissions, including:
 - (a) incorrectly stating investors were accredited investors;
 - (b) not using the prescribed form;
 - (c) omitting evidence of compensation or referral fees paid to third parties relating to the distribution.
6. On September 3, 2010, the Commission issued a Cease Trade order under section 164(1) of the Act, 2010 BCSECCOM 502 (CTO), relating to Titans,

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for filing exempt distribution reports that were not completed in accordance with the Act.

7. The Commission subsequently partially revoked the CTO on February 14, 2011 in 2011 BCSECCOM 81 to allow redemptions of the Investments. Although SFCS has now filed the required exempt distribution reports with the Commission, Titans remains subject to the CTO.
8. SFCS and Stitt did not obtain know-your-client information for the Investors and did not advise the Investors of the suitability of their investments in Titans, prior to their investment, contrary to sections 13.2(c) and (d) and 13.3 of National Instrument 31-103 (NI 31-103).
9. On October 21, 2010, staff conducted a compliance exam at the offices of SFCS and found serious compliance deficiencies, including the failure by SFCS and Stitt to establish and maintain an adequate compliance system, contrary to sections 5.2 and 11.1 of NI 31-103.

The Public Interest

10. The Respondents' conduct as set out above was contrary to the public interest.

Temporary Order and Temporary Order Hearing

- ¶ 2 The Executive Director considers the length of time to hold a hearing under section 161(1) of the Act could be prejudicial to the public interest. In particular:

SFCS Current Corporate Governance Dispute

1. The corporate governance and compliance structure of SFCS appears to be in dispute (Dispute). In particular:
 - (a) On February 24, 2011, the other director and the ultimate designated person for SFCS (the UDP) purported to terminate Stitt's employment contract with SFCS.
 - (b) On February 25, 2011, a Notice of Change of Directors dated February 21, 2011 was filed with BC Registry Services relating to SFCS, stating the UDP had resigned as a director of SFCS.
 - (c) The UDP did not file the Notice of Change of Directors.
 - (d) On March 7, 2011, Stitt applied to the Commission to be the new ultimate designated person of SFCS.

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- (e) On March 14, 2011, Stitt applied to the Commission to have another person registered as the new chief compliance officer for SFCS.

SFCS Capital Requirements

- 2. SFCS may not be in compliance with its minimum capital requirements under Part 12 of NI 31-103 (Capital Requirements). In particular:
 - (a) An individual third party alleges he loaned SFCS \$105,000 to secure SFCS' Capital Requirements. On March 14, 2011, that individual demanded immediate repayment of the \$105,000 he alleges is outstanding.
 - (b) A Cayman Islands corporation alleges it loaned SFCS \$105,000 to pay operating expenses from September 2010 to January 2011. On March 14, 2011, that Cayman Islands corporation demanded immediate repayment of the \$105,000 it alleges is outstanding.
- 3. In light of the Dispute, the Capital Requirements, and considering that it would be in the public interest to do so, the Executive Director orders that the registration of SFCS be suspended under section 161(1)(f) and 162 of the Act, except that SFCS may continue to accept and process redemption orders from existing clients (Order).

¶ 3 A hearing will be held at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **April 1, 2011 at 10:00 am**, where the Executive Director will ask the Commission to:

- 1. extend the Order until:
 - (a) the Dispute has been resolved;
 - (b) SFCS provides evidence satisfactory to the Commission that SFCS is in compliance with the Capital Requirements; and
- 2. set a date for a hearing of the facts and allegations in paragraph ¶1.

¶ 4 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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- ¶ 5 Determinations may be made in this matter if the Respondents do not appear at the hearing.
- ¶ 6 March 18, 2011
Sandra Jakab
- ¶ 7 Sandra Jakab
Acting Executive Director