



British Columbia Securities Commission

Citation: 2014 BCSECCOM 74

### **Amended Notice of Hearing**

**EagleMark Ventures, LLC, Falcon Holdings, LLC, Richard Lian (also known as Richard Terry Ruuska) and Enna M. Keller**

**(the Respondents)**

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

- ¶ 1 The British Columbia Securities Commission (the Commission) will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against EagleMark Ventures, LLC (EagleMark), Falcon Holdings, LLC (Falcon), Richard Lian (also known as Richard Terry Ruuska) (Lian) and Enna M. Keller (Keller) under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

#### **Background**

1. EagleMark is a Nevada corporation. Falcon is a New Mexico corporation. At all relevant times, Lian, a United States resident, was the managing member of EagleMark and Falcon.
2. Lexicon Building Systems Ltd. (Lexicon) is a BC reporting issuer engaged in manufacturing for the construction industry. It last filed a prospectus under the Act in 1986.
3. Keller, a BC resident, was a director of Lexicon from 1993 to 2007. She has never been registered under the Act.
4. Beginning in 2008, Lian entered into several agreements on behalf of EagleMark, Falcon, and another of his companies to undertake consulting work for Lexicon (Consulting Agreements).
5. The Consulting Agreements did not authorize Lian to raise funds by offering Lexicon's shares to the public.
6. In October 2009, the Executive Director issued a Cease Trade Order (CTO) respecting the securities of Lexicon for its failure to file financial statements. It was then de-listed from the Canadian National Stock Exchange (CNSX).
7. Lexicon entered bankruptcy in late 2009 and it had no ability to pay Lian under the Consulting Agreements.



8. Lian knew that Keller had close ties to existing shareholders of Lexicon. Keller had been a director of Lexicon for over a decade, and she continued to be a shareholder in the company and a point of contact for other shareholders.
9. Despite the CTO, in early 2010, Lian and Keller worked together to start a new promotion of Lexicon shares called the “Friends and Family Program” by contacting existing Lexicon shareholders and their friends and family members.

### **Misconduct**

#### ***Lian deceived investors about the use of their money***

10. Keller told potential investors in the Friends and Family Program the following:
  - they should wire money to Lian’s EagleMark account in Nevada,
  - the money would be used for the benefit of Lexicon and, in particular, to get the CTO revoked, and
  - they were supposed to get shares and warrants in Lexicon once the CTO was revoked.
11. Throughout 2010 and 2011, Lian and Keller raised approximately US \$3.2 million. Lian only used around US \$500,000 for the benefit of Lexicon and he refunded around US \$180,000 to investors in response to their demands. He used the rest of investors’ money for personal spending, including
  - payments for a Ferrari and other exotic cars
  - cosmetic surgery
  - luxury retail
  - over US \$1 million in transfers to his personal account
  - almost US \$200,000 in cash withdrawals
12. In December 2011, the Executive Director issued a Temporary Order and Notice of Hearing against EagleMark, Lian, and Keller (Temporary Order). One of the requirements in the Temporary Order was that the parties cease trading in any securities.
13. Despite the Temporary Order, Lian and Keller continued offering shares of Lexicon to the public under the Friends and Family Program. They raised at least US \$400,000 from investors after the date of the Temporary Order.
14. Lian did not transfer any of the money from the Friends and Family Program to Lexicon and Lexicon never had access to or control over the money.
15. Instead, Lian billed Lexicon for more than US \$14 million in consulting services since it went into bankruptcy. For one week of work in May 2010, Lian created an invoice for US \$385,000.



16. Lian's apparent work under the Consulting Agreements has not generated any known revenue for Lexicon.

***Lian and Keller deceived investors and Lexicon management about authorization***

17. Lexicon management did not know about the Friends and Family Program, but Lian and Keller led investors to believe that Lexicon management had authorized it.

18. Lian made Lexicon management believe he was using his own savings to pay for his expenses related to Lexicon rather than telling them about the Friends and Family Program.

19. Lexicon management found out about the Friends and Family Program, and Lian and Keller's involvement, only when a concerned investor contacted Lexicon management.

20. Lexicon management then did their own investigation and promptly issued cease and desist letters to Lian and Keller. In response, Lian and Keller did not stop raising money and they refused to give an accounting of the money raised after Lexicon management demanded that they do so.

***Lian and Keller deceived investors about the delivery of shares***

21. Lian asked Keller to handle all communications to and from potential investors. He then continually gave false information to Keller, and Keller used promotional mass e-mails to mislead investors about:

- when the Lexicon CTO would be revoked,
- when Lexicon would be re-listed on the CNSX, and ultimately
- when Lexicon shares and warrants would be issued to investors, sometimes promising these milestones within a matter of weeks.

22. On multiple occasions, Keller also created the false impression that anyone interested in the Friends and Family Program had to invest soon because it was ending.

23. All of these representations were false. Keller continued to make these promises for three years, but the CTO is still in effect, Lexicon has not re-listed on the CNSX, and not a single investor has received shares or warrants under the Friends and Family Program.

24. Keller continues to use mass e-mails to placate investors.

***Keller deceived investors about Commission approval***

25. In November 2011, Staff met with Keller to ask her about the Friends and Family Program. After the meeting, Keller sent an e-mail to investors stating that:



- she had a very successful meeting with Staff to clear her and Lian of any wrongdoing,
- Staff told her that she and Lian should be greatly rewarded for all of their efforts and hard work, and
- the Friends and Family Program was still open and the Commission had “approved” it.

These statements were false.

### **Fraud**

26. Lian perpetrated a fraud against Lexicon and investors in the Friends and Family Program contrary to section 57(b) of the Act by
- misusing investor funds,
  - communicating promises to investors through Keller about the delivery of Lexicon shares and warrants that he knew or should have known were false,
  - omitting to tell investors that Lexicon had not authorized the Friends and Family Program, and
  - concealing the Friends and Family Program from Lexicon management.
27. Keller perpetrated a fraud against investors in the Friends and Family Program contrary to section 57(b) of the Act by
- telling investors that her meeting with Staff cleared her and Lian of any wrongdoing and the Commission had approved the Friends and Family Program,
  - communicating promises to investors about the delivery of Lexicon shares and warrants that she knew or should have known were false, and
  - omitting to tell investors that Lexicon had not authorized the Friends and Family Program.

### **Contravention of Orders Made under the Act**

28. By soliciting and receiving investment money for Lexicon shares until at least June 2013, almost two years after the date of the Temporary Order, EagleMark, Falcon, Lian, and Keller contravened the Temporary Order and therefore contravened an order made under the Act.
29. By trading in securities of Lexicon after October 2009, the Respondents contravened the CTO and therefore contravened an order made under the Act.

### **Illegal Distribution**

30. By distributing securities to approximately 315 investors, 140 of whom were from BC, for at least US \$3.6 million without a prospectus and without any applicable exemptions, the Respondents contravened section 61 of the Act.



### **Trading Without Registration**

31. By engaging in the business of trading securities without registration and without any applicable exemptions, Keller contravened section 34 of the Act.

### **Liability under Section 168.2 of the Act**

32. Lian authorized, permitted, or acquiesced in EagleMark and Falcon's contraventions of provisions of the Act and orders made under the Act and, therefore, also contravened the same orders and provisions under section 168.2 of the Act.

### **Public Interest**

33. The Respondents' conduct described in this Amended Notice of Hearing is contrary to the public interest.

34. It is in the public interest that the Commission issue orders under sections 161 and 162 of the Act.

### **Hearing Process**

¶ 2 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on Tuesday, April 1, 2014, at 9:00 am if they wish 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 Respondents upon request to the Executive Director.

¶ 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](mailto:commsec@bcsc.bc.ca).

¶ 4 If the Respondents or their counsel do not appear at the Hearing, the Executive Director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.

¶ 5 February 27, 2014

Paul Bourque

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