

# 2006 BCSECCOM 221

## Settlement Agreement

**Trevor Koenig**

*Securities Act, RSBC 1996, c. 418*

¶ 1 Trevor Koenig has settled the following issues with the Executive Director.

### **Agreed Statement of Facts**

¶ 2 As the basis for the undertakings and order referred to in this settlement, Koenig acknowledges the following facts as correct:

### **Background**

1. Koenig, a resident of British Columbia, became a registered representative under the *Securities Act*, RSBC 1996, c. 418 (the Act) in November 1985. He was employed by Union Securities Ltd. (Union) from March 1997 to September 2001. He became a branch manager of Union in November 1999 and Vice President of Union in May 2000. He is not currently registered under the Act.
2. Union is a British Columbia company, with its head office in Vancouver, British Columbia. Union has been a member of the Vancouver Stock Exchange (VSE), now the TSX Venture Exchange, since 1963, a member of the Toronto Stock Exchange since 1991 and a member of the Investment Dealers Association of Canada (IDA) since June 4, 1997. Union has been continuously registered as an investment dealer under section 34 of the Act or equivalent predecessor provisions since 1982.

### **Misconduct**

#### ***Failure to act as a gatekeeper***

3. From 1999 to 2001, Koenig was the registered representative for US dollar accounts held at Union by the following clients:

World International Marketing Inc.  
Syzygy Inc.  
Berkshire Capital Partners Inc. (Berkshire)  
Dottenhoff Financial Ltd. (Dottenhoff)  
Realtec Inc.  
Capital Growth Management  
Robert Prokos  
Robert Hassett  
C. Dillow & Co

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4. None of these clients or the individuals who gave trading and other instructions on the accounts were residents of Canada. The accounts traded primarily securities listed or quoted on the Over-The-Counter Bulletin Board quotation system (OTCBB) in the United States.
5. Koenig failed to learn the essential facts relative to these clients, including their identity, creditworthiness, and reputation. Among other things, he failed to:
  - (a) obtain sufficient information to complete new client application forms fully and accurately;
  - (b) ascertain the identity of the beneficial owners of the accounts, or of other persons having financial interests in the accounts;
  - (c) request Lexis Nexis searches on some of the clients and the individuals authorized to provide trading and other instructions for their accounts, as required by Union's policy and procedures manual; and
  - (d) make enquiries concerning the reputation of the clients after he became aware of information, including the Account Characteristics described below, that caused doubt about whether they were of good business or financial reputation,

all contrary to section 48(1) of the *Securities Rules*, B.C. Reg 194/97, VSE Rules F.1.01 and F.2.08, Canadian Venture Exchange (CDNX) Rules F.1.01, F.1.02 and F.2.03, IDA Regulation 1300 and IDA By-Law 29.1.
6. The accounts had some or all of the following characteristics (Account Characteristics):
  - (a) they were introduced or opened by non-residents of Canada with no connection to the geographic location of the branch of Union at which Koenig worked;
  - (b) Koenig seldom met personally with the clients;
  - (c) the clients frequently paid full commissions for execution-only services;
  - (d) large denomination stock certificates in OTCBB issuers, sometimes restricted or registered in the name of third parties, were delivered into the accounts;

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- (e) the accounts purchased and sold primarily OTCBB securities, often with no apparent economic purpose;
  - (f) security positions were transferred out of the accounts or liquidated, with the transfers and sale proceeds sometimes directed to third parties; and
  - (g) liquidation proceeds were rarely reinvested, except in the same security.
7. Koenig had a duty, as a gatekeeper to the securities industry, to refuse to engage in conduct which would tend to bring the integrity of the capital markets into disrepute and to ensure that he did not assist in, or permit, conduct by clients which would have a similar effect. The Account Characteristics ought to have raised significant client integrity concerns for Koenig. Despite this, Koenig in his capacity as a registered representative failed to make further enquiries and continued to process orders and transactions in breach of his duties to act as a gatekeeper.
8. Koenig failed to observe industry anti-money laundering standards when he failed to take steps to verify the identity of his clients and the individuals authorized to trade in their accounts.

### *Market manipulation*

9. Koenig was the registered representative for accounts at Union controlled by Edward Durante (Durante). From September 1999 to June 2000, Koenig traded the securities of Wamex Holdings Inc. (Wamex), U.N. Dollars Corp. (UNDR), and Absolutefuture.com (AFTI) from those accounts on instructions from Durante.
10. Koenig knew that the purpose of the trading was to manipulate the share prices of these OTCBB issuers and played a significant role in facilitating the manipulation, contrary to sections 57 and 57.1 of the Act.
11. In February 2001, Koenig pleaded guilty in the United States to conspiracy to commit securities fraud and wire fraud in connection with the manipulation of Wamex, AFTI and other companies. He was sentenced to 22 months imprisonment, three years probation, and ordered to pay restitution of US\$885,000. He served approximately 18 months in prison and has not paid the restitution order.
12. On November 10, 2004, the Commission found that Durante, Berkshire, Dottenhoff and other companies directed by Durante had received profits from the market manipulations that totaled over US\$36 million.

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### *Lying to Commission investigator*

13. While giving evidence to an investigator appointed under section 142 of the Act, Koenig denied that “Ed Simmons” was an alias Durante had used in connection with his manipulative trading. This was a false and misleading statement and contrary to section 168.1(a) of the Act.

### *Profits*

14. Koenig earned net commissions of over \$2.3 million from the trading activity described above.

### **Public Interest**

¶ 3 Koenig’s conduct as described in this settlement was contrary to the public interest.

### **Mitigating Factors**

¶ 4 The Executive Director has taken into account the following factors as mitigating the sanctions that might otherwise have applied in the public interest:

15. Koenig has served his term of incarceration and remains subject to the terms of the United States restitution order. These sanctions provide a significant measure of specific deterrence.

16. Koenig has proven to the Executive Director’s satisfaction through financial evidence that he has earned only \$8,500 in income since being jailed in 2001, his liabilities, including the U.S. restitution order, grossly exceed his worldwide assets, and that does not have any reasonable prospect of being able to pay to the Commission any disgorgement or sanction. Koenig agrees that a sanction amount of \$250,000 would otherwise be required in the public interest for the misconduct described in this settlement.

### **Undertaking**

¶ 5 Koenig undertakes that:

1. he will never apply for registration under the Act, and
2. he will not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

### **Order**

¶ 6 Koenig consents to an order (the Order) by the Executive Director that:

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1. under section 161(1)(a) of the Act, Koenig comply fully with the Act, the *Securities Rules*, B.C. Reg. 194/97, and any applicable regulations, policies and guidelines;
2. under section 161(1)(b) of the Act, Koenig permanently cease trading in and be prohibited from purchasing any securities, except that he may trade and purchase securities in one account in his name held with a single registered dealer to whom he has first provided a copy of the Order;
3. under section 161(1)(d) of the Act, Koenig resign any position he holds as a director or officer of any issuer, and be permanently prohibited from becoming or acting as a director or officer of any issuer; and
4. under section 161(1)(d)(iii) of the Act, Koenig be permanently prohibited from engaging in investor relations activities on behalf of any issuer.

### **Consent to Reciprocal Orders**

- ¶ 7 Koenig consents to any securities regulator anywhere in Canada relying on the facts admitted in this settlement to make orders of a similar nature against him for the misconduct described above.

### **Waiver**

- ¶ 8 Koenig waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

- ¶ 9 March 2, 2006

Trevor Koenig

- ¶ 10 Trevor Koenig

Caroline Koenig )

Witness Signature )

Caroline Koenig )

Witness Name (please print) )

13326 – 25<sup>th</sup> Avenue )

)

Surrey, BC )

Address )

Housewife )

Occupation

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¶ 11 March 6, 2006

Brenda Leong

¶ 12 Brenda M. Leong  
Executive Director