

2007 BCSECCOM 200

Schedule A Settlement Agreement

Francis (“Frank”) Jason Dean Biller

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Francis (“Frank”) Jason Dean Biller (Biller) agree as follows:

Agreed Statement of Facts

1. Biller is a resident of Ontario and a former resident of British Columbia. He has never been registered under the *Securities Act*, RSBC 1996, c. 418.
2. On February 16, 2000, the British Columbia Securities Commission prohibited Biller for ten years from trading in securities and engaging in investor relations (the Biller Order).
3. Bayshore Management Corporation (Bayshore), Fairtide Capital Corporation (Fairtide) and Gibraltar Consulting Corporation (Gibraltar) are British Columbia corporations with offices at Suite 600 – 1100 Melville Street in Vancouver (the Premises).

Phone Room

4. From May 2002 to November 2002, Bayshore employed individuals (Phoners) at the Premises to promote securities of public companies to retail investors on behalf of Fairtide (the Phone Room).
5. In June, 2002, Gibraltar hired Biller to manage the Phone Room. He did so from June 2002 until November 2002. While employed in the Phone Room, Biller:
 - (a) divided the Phoners into “qualifiers” and “closers”;
 - (b) trained the Phoners to deal with objections from call recipients;
 - (c) created written scripts for the Phoners to read to call recipients; and
 - (d) oversaw the Phone Room on a daily basis

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6. Between June and November 2002, approximately sixteen Phoners worked in the Phone Room. The majority of telephone calls from the Phone Room were to the United States, but calls were also made to residents of British Columbia and other parts of Canada. The Phoners made approximately:
 - (a) 17,000 outgoing calls in July 2002;
 - (b) 38,000 outgoing calls in August 2002; and
 - (c) 40,000 outgoing calls in September 2002.
7. On November 7, 2002, British Columbia Securities Commission staff executed a search warrant on the Premises. The Phone Room ceased operation after that date.
8. The Phoners, Gibraltar, Bayshore and Biller were not registered under the Act.
9. In making the telephone calls outlined above, the Phoners:
 - (a) traded in securities by encouraging call recipients to purchase shares in the promoted securities, contrary to section 34(1)(a) of the Act;
 - (b) telephoned from British Columbia to residences for the purpose of trading in securities, contrary to section 49(2)(b) of the Act; and
 - (c) engaged in unfair practices, contrary to section 50(1)(e) of the Act, including:
 - (i) making repeated calls to the same recipients; and
 - (ii) pressuring call recipients to purchase the promoted securities.
10. Biller, as manager of the Phone Room, and through his conduct outlined above:
 - (a) engaged in acts in furtherance of trading in the promoted securities, contrary to section 34(1)(a) of the Act and contrary to the Biller Order; and
 - (b) engaged in investor relations activities, contrary to the Biller Order.

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Mitigating Factors

11. Biller's conduct in this matter warrants a sanction of \$250,000. However, Biller is an undischarged bankrupt. He has liabilities in excess of \$30 million. Biller does not have any reasonable prospect of paying the Commission any meaningful sanction. The Executive Director has taken this into account as a factor that mitigates the sanction which would otherwise have applied against Biller in the public interest.

Public Interest

12. Biller acted contrary to the public interest by engaging in the conduct set out above.

Order

- ¶ 2 The Executive Director will issue an order (the Order) that under sections 161(1)(a), 161(b) and 161(1)(d)(i)-(iii) of the Act, Biller:
1. comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations;
 2. resign any position he may hold as a director or officer of any issuer;
 3. be permanently prohibited from:
 - (a) becoming or acting as a director or officer of any issuer;
 - (b) engaging in investor relations activities; and
 - (c) purchasing or trading securities.

Consent to Reciprocal Orders

- ¶ 3 Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making an order similar to the one contemplated above.

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Waiver

- ¶ 4 Biller 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.

Counterpart

- ¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.
- ¶ 6 April 26, 2007

- ¶ 7 “F. Biller”
Francis (“Frank”) Jason Dean Biller

“J. Biller)
Witness Signature)
Justin Biller)
Witness Name (please print))
99 Casabel Drive)
Vaughan, ON)
Address)
Unemployed ESL Teacher)
Occupation)

- ¶ 8 April 26, 2007

“B. Leong”

- ¶ 9 Brenda M. Leong
Executive Director