

# 2008 BCSECCOM 173

## Order

### Wallace Gerard Fulkco

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

##### **Background**

- ¶ 1 The Executive Director has entered into a Settlement Agreement with Wallace Gerard Fulkco (Wally Fulkco), a copy of which is attached as Schedule A.

##### **The Order**

- ¶ 2 The Executive Director, considering it to be in the public interest to do so, orders, by consent, that:
1. under section 161(1)(a) of the Act, Wally Fulkco will comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations;
  2. under section 161(1)(b) of the Act Wally Fulkco will cease trading in and be prohibited from purchasing any securities or exchange contracts for 10 years from the date of this Order, except that he made trade in one account in his own name through a registered representative if he provides a copy of this Order to the registered representative before any trade; and
  3. under section 161(1)(d)(i), (ii) and (v) of the Act, Wally Fulkco will resign any position he may hold, and be prohibited from becoming or acting, as a director or officer of any issuer, and be prohibited from engaging in investor relations activities for 10 years from the date of the Order.

- ¶ 3 March 31, 2008

Langley E. Evans

Langley E. Evans Acting For:

- ¶ 4 Brenda M. Leong  
Executive Director

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Schedule “A”

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## Settlement Agreement

### Wallace Gerard Fulkco

#### *Securities Act, RSBC 1996, c. 418*

1. The Executive Director of the British Columbia Securities Commission (the Executive Director) and Wallace Gerard Fulkco (Wally Fulkco) agree as follows:

#### **Agreed Statement of Facts**

1. Wally Fulkco is a resident of British Columbia and has never been registered under the *Securities Act*, RSBC 1996, c. 418. He is 65 years old.
2. Between November 2003 and May 2005, Wally Fulkco solicited investors (Investors) to enter into investment contracts with Kevin Jason Steele (Steele) whereby:
  - (a) Investors agreed to give money to Steele which he then pooled in an account at a United States brokerage firm (the Account);
  - (b) Steele used the money in the Account to trade commodity futures contracts; and
  - (c) Steele promised to share with Investors the profits he earned from his trading business, which he told Investors would result in a return on their investment of approximately 8% per month  
(the Securities).
3. No prospectus was ever filed for the Securities and none of the exemptions under the Act applied to their distribution.
4. Relying on false information provided by Steele and his son David Fulkco, Wally Fulkco made the following representations to Investors to convince them to invest with Steele:
  - (a) the sales of the Securities to investors complied with the Act and other securities legislation;
  - (b) Steele was an authorized commodity futures contract trader;
  - (c) Steele was a very successful commodity futures trader; and

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- (d) Steele would earn the Investors at least an 8% monthly return on their investments.

These statements were false. Wally Fulkco made these misrepresentations carelessly and without taking the proper care to determine if they were true.

5. Wally Fulkco also misrepresented to Investors that he had conducted and would continue to conduct thorough due diligence inquiries on Steele and his trading. Wally Fulkco's due diligence on Steele and his trading was inadequate.
6. Steele was not a successful trader and did not earn any profits for Investors. Steele also misappropriated Investors' money for his personal use and used Investors' principal investments to pay some Investors money he misrepresented as profits.
7. On November 22, 2005, the United States District Court for the Northern District of Illinois Eastern Division found that, through the conduct described in this Settlement Agreement, Steele created false statements and defrauded investors, contrary to the United States *Commodity Exchange Act*. The court ordered Steele to pay investors approximately US\$7.4 million in restitution and ordered a civil monetary penalty of US\$6.2 million against him.
8. On May 16, 2006, Steele pleaded guilty in the Provincial Court of British Columbia to one count of fraud over \$5,000, contrary to section 380 of the Criminal Code, respecting the conduct described in this Settlement Agreement. On June 19, 2006, Steele was sentenced to six years in prison on this matter.
9. As a result of David and Wally Fulkco's conduct, 214 Investors invested approximately US\$7.6 million with Steele. Of these investors, 162 are British Columbia residents who gave Steele a total of approximately US\$6 million. Wally Fulkco's Investors lost approximately US\$7 million as a result of Steele's trading losses and his misuse of their funds.
10. Wally Fulkco and his son David Fulkco jointly invested approximately US\$212,000 with Steele, most of which was Wally Fulkco's money. They were told by Steele that they had earned approximately US\$302,000 in purported commission on profits for soliciting Investors but Wally Fulkco never received any of these purported commissions and none of his principal investment was ever returned to him.

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### ***Misconduct***

11. In soliciting investors to invest in the Securities, Wally Fulkco:
- (a) traded in securities without being registered under the Act, contrary to section 34(1) of the Act;
  - (b) distributed securities without having filed a prospectus, contrary to section 61 of the Act; and
  - (c) made statements that he ought to have known were misrepresentations, contrary to section 50(1)(d) of the Act.

### ***Public Interest***

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

### ***Inability to Pay***

13. Wally Fulkco receives only a small monthly income from the Canada Pension Plan. He sold assets and borrowed money to fund his investments with Steele and suffered a loss from those investments. He also sold or transferred most of his assets to pay substantial personal guarantees to other investors, who have taken proceedings against him. He has provided satisfactory evidence that his liabilities exceed his assets.
14. There is no reasonable prospect of Wally Fulkco paying \$100,000 that would otherwise be assessed in the public interest for the misconduct described in this settlement.

### **Order**

2. The Executive Director will issue an order (the Order) that:
1. under section 161(1)(a) of the Act, Wally Fulkco will comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations;
  2. under section 161(1)(b) of the Act Wally Fulkco will cease trading in and be prohibited from purchasing any securities or exchange contracts for 10 years from the date of the Order, except that he made trade in one account in his own name through a registered representative if he provides a copy of this order to the registered representative before any trade; and
  3. under section 161(1)(d)(i)-(iii) of the Act, Wally Fulkco will resign any position he may hold, and be prohibited from becoming or acting, as a director

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or officer of any issuer, and be prohibited from engaging in investor relations activities for 10 years from the date of the Order.

### **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.

### **Waiver**

4. Wally Fulkco 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. February 18, 2008

7. Wally Fulkco  
Wally Fulkco

Mary Fulkco )  
Witness Signature )  
Mary Fulkco )  
Witness Name (please print) )  
332 Bellevue Street )  
New Denver, BC )  
Address )  
Retired )  
Occupation )

8. March 31, 2008

Langley E. Evans

- Langley E. Evans Acting For:  
9. Brenda M. Leong  
Executive Director