

2008 BCSECCOM 641

Settlement Agreement

Cluster Asset Management Inc.

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director), Cluster Asset Management Inc (CAM) and Peter Michael de Auer (de Auer) agree as follows:

Agreed Statement of Facts

1. CAM registered as an investment counsel and portfolio manager with the Ontario Securities Commission on September 13, 2000.
2. CAM registered as an investment counsel and portfolio manager with the BCSC on May 5, 2008. CAM was not registered in any capacity under the *Securities Act*, RSBC 1996, c. 418 before May 5, 2008.
3. de Auer is the President, Chief Executive Officer and Secretary of CAM and resides in Ontario. He is registered with the BCSC as a Compliance Officer and Director (Advising), with effect from May 5, 2008.
4. From July 2003 to April 2008, CAM provided investment advice to two clients who were BC residents.
5. By advising BC residents without registration, CAM breached section 34 of the Act.

Mitigating Factors

6. Commission Staff are not aware of any complaints made by CAM's BC resident clients.
7. CAM and de Auer do not have any previous regulatory history with the Commission.
8. CAM did not solicit potential new clients in BC.

Public Interest

9. CAM and de Auer acted contrary to public interest by engaging in conduct set out above.

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Undertaking

10. CAM will pay \$8,750 to the British Columbia Securities Commission for registration fees that otherwise would have been payable to the Commission if CAM and de Auer had been registered under the Act as required.
11. CAM and de Auer jointly and severally undertake to pay a penalty to the British Columbia Securities Commission of \$10,000, which sum is due and payable immediately without further demand.

Order

- ¶ 2 The Executive Director will issue an order (the Order) under section 161(1)(a) of the Act, that CAM and de Auer comply fully with the Act, the *Securities Rules*, B.C. Reg. 194/97, and any applicable regulations.

Consent to Reciprocal Orders

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

Waiver

- ¶ 4 CAM waives any right it 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 the 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 December 18, 2008

- ¶ 7 “Peter de Auer”
Cluster Asset Management Inc.
(Signing Authority)

Peter de Auer
Print Signing Authority Name

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“C.S. Archibald”)
Witness Signature)
C.S. Archibald)
Witness Name (please print))
)
27 Kilbarry Road, Toronto)
Address)
)
Trade Consultant)
Occupation)

¶ 8 December 18, 2008

“B. Leong”
¶ 9 Brenda M. Leong
Executive Director