

# 2011 BCSECCOM 242

## Settlement Agreement

### SFCS Capital (Canada) Corp. and Robert John Alexander Stitt

#### *Securities Act, RSBC 1996, c. 418 (the Act)*

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director), SFCS Capital (Canada) Corp. (SFCS), and Robert John Alexander Stitt (Stitt) agree as follows:

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

##### ***Background***

1. SFCS is a British Columbia corporation, registered under the Act as a portfolio manager. SFCS has its principal business office in Vancouver.
2. SFCS was the investment fund manager for the investment fund SFCS Titans Limited Partnership (Titans).
3. Stitt resides in Vancouver, and is registered under the Act as an advising representative, director and officer of SFCS. At all material times, Stitt was the chief compliance officer (CCO) of SFCS.
4. Between January 11 and January 15, 2010, in its capacity as portfolio manager, SFCS invested funds in Titans on behalf of five British Columbia residents (the Investors).

##### ***Investments in Titans***

5. Between July 14, 2010 and October 4, 2010, Stitt and SFCS filed five different exempt distribution reports for the Investors relating to their investment in Titans (the Reports).
6. One of the five Reports purported to rely on the accredited investor exemption.
7. At times, the Reports contained errors including:
  - (a) not being in the required form;
  - (b) not including phone numbers for the Investors; and
  - (c) not identifying compensation or referral fees with respect to Titans.

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8. On October 21, 2010, Commission staff conducted a compliance exam (Exam) at the offices of SFCS, and found evidence that Stitt and SFCS:
  - (a) did not obtain complete know-your-client information for the Investors prior to their investments in Titans;
  - (b) relied in part on a third party to determine if Titans was suitable for the Investors; and
  - (c) purported to rely on the accredited investor exemption for the Investors in one of the Reports without first ensuring that that exemption was appropriate for each Investor.

### *Compliance Failures*

9. SFCS and Stitt:
  - (a) failed to establish and maintain an adequate compliance system, contrary to sections 5.2 and 11.1 of National Instrument 31-103 (NI 31-103); and
  - (b) did not obtain complete know-your-client information for the Investors, or perform a full suitability review for each Investor, contrary to sections 13.2 and 13.3 of NI 31-103.

### *Mitigating Factors*

10. Stitt and SFCS cooperated fully with Commission staff during and after the Exam.
11. On April 13, 2011:
  - (a) Stitt ceased acting as CCO of SFCS; and
  - (b) the Executive Director approved the application of a new qualified CCO and ultimate designated person (UDP) for SFCS;
12. Stitt and SFCS provided the Investors with Risk Acknowledgment forms that informed them that Titan investments were risky investments.
13. Stitt recently completed the Canadian Securities Institute Chief Compliance Officers Qualifying Examination.

### *Undertakings*

14. Stitt and SFCS undertake to:

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- (a) comply fully with the Act, the Rules and any applicable regulations; and
- (b) pay \$5,000 to the Commission in respect of settlement of this matter, which sum is due and payable immediately without further demand.

### **Order**

- ¶ 2 The Executive Director, considering it to be in the public interest, will issue an order (the Order) that, for a period of 12 months, commencing on April 13, 2011:
1. under section 161(1)(d) of the Act, Stitt be prohibited from acting as CCO or UDP, as defined in NI 31-103, for any registrant;
  2. under section 161(1)(f) of the Act, conditions be imposed on SFCS' registration as a portfolio manager, that:
    - (a) all advising in securities by Stitt to individual or retail clients must be reviewed for suitability by SFCS' CCO within 24 hours; and
    - (b) SFCS and its CCO must file with the Director of Capital Markets Regulation quarterly compliance reports, with content satisfactory to the Executive Director.

### **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 a similar Order.

### **Waiver**

- ¶ 4 Stitt and SFCS waive any right they 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.

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### 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 May 25, 2011

Robert Stitt )

¶ 7 Robert John Alexander Stitt

Gary Snarch )

Witness Signature )

Gary Snarch )

Witness Name (please print) )

300- 1168 Hamilton Street )

Vancouver, BC V6B 2S2 )

Address )

Barrister and Solicitor )

Occupation )

¶ 8 Robert Stitt )

SFCS Capital (Canada) Corp.  
(Signing Authority)

Robert Stitt )

Print Signing Authority Name

Gary Snarch )

Witness Signature )

Gary Snarch )

Witness Name (please print) )

300- 1168 Hamilton Street )

Vancouver, BC V6B 2S2 )

Address )

Barrister and Solicitor )

Occupation )

¶ 9 May 26, 2011

Paul Bourque

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