

2012 BCSECCOM 151

Settlement Agreement

Genus Capital Management Inc.

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (Executive Director) and Genus Capital Management Inc. (Genus) agree as follows:

Agreed Statement of Facts

1. Genus is a British Columbia registered portfolio manager that manages the investment portfolios of retail and institutional clients. It mainly invests in exempt pooled funds that Genus manages in its capacity as a registered investment fund manager (Genus Funds).
2. Genus' head office is located in Vancouver, B.C.

Background

3. On June 9, 1989, the predecessor company to Genus obtained an exemption order that, among other things, exempted trades and distributions relating to its investment funds from the registration and distribution requirements under the *Securities Act, RSBC 1996, c. 418* (Order).
4. The Order remained in force when Genus assumed the business of the predecessor company and conferred upon the Genus Funds the same exemptions that the funds of the predecessor company had enjoyed.

Genus Cautioned

5. In April and August of 2005, Commission staff wrote to the Chief Compliance Officer for Genus (CCO):
 - (a) Staff explained that legislative changes had introduced new statutory exemptions, and asked Genus to review whether these new exemptions were applicable to distributions made by the Genus Funds.
 - (b) Staff advised that unless Genus could show that the new exemptions would not cover distributions by the Genus Funds, the Executive Director intended to revoke the Order at a future date, yet to be determined.

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- (c) Staff further advised that in the event the Order was revoked, they would expect to receive the requisite exempt distribution reports and associated fees in connection with the distribution of securities of the Genus Funds after such date.
6. In a letter to the Commission dated April 28, 2005, the CCO indicated that Genus understood that upon revocation of the Order it would be required to comply with additional filing requirements and pay associated fees.
7. On February 6, 2008, Commission staff spoke with the CCO and reminded him that the Executive Director planned to revoke the Order. The CCO confirmed orally that Genus had no concerns about the implications of the revocation.
8. Effective January 5, 2009, Genus' CCO was replaced with a new CCO (for the purposes of this agreement, this replacement CCO is still referred to as the "CCO").
9. On July 16, 2009, the Executive Director revoked the Order. Commission staff sent a copy of the revocation order to the CCO, together with a letter reminding Genus that it now needed to comply with additional regulatory requirements.
10. On two subsequent occasions in July 2009, Commission staff orally discussed the revocation of the Order and its regulatory implications with the CCO.

Misconduct

11. Between July 16, 2009 and December 31, 2010, the Genus Funds distributed securities with a value of approximately \$380 million to discretionary accounts managed by Genus (collectively, the Distributions), in transactions involving:
 - (a) approximately \$150 million of new capital raised in the exempt market placed under Genus' management; and
 - (b) approximately \$230 million in capital already under management at Genus that was transferred by Genus among the Genus Funds.
12. In August 2011, Commission staff examined Genus as part of its routine audit cycle (2011 Examination). Staff discovered that:
 - (a) Genus had failed to file the requisite exempt distribution reports and pay the filing fees in respect of the Distributions; and

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- (b) Genus did not have written policies or procedures in place directing its staff on how to comply with exempt distribution filing requirements or that informed its staff that Genus was obligated to ensure that the Genus Funds met those requirements.

Commission staff advised the CCO of these preliminary findings on August 18, 2011.

13. Genus responded on September 2, 2011, by filing the outstanding exempt distribution reports for 2009 and 2010, and paying the associated outstanding filing fees of \$118,245.98 on behalf of the Genus Funds.
14. Genus acknowledges that:
 - (a) it was grossly negligent in failing to amend its policies and procedures to ensure that Genus met its regulatory obligations after revocation of the Order;
 - (b) it was grossly negligent in failing to file the requisite exempt distribution reports and pay the associated fees for a period of two years after revocation of the Order; and
 - (c) Genus' failure to heed Commission staff's repeated compliance guidance and reminders under the circumstances is an aggravating factor.

Mitigating Factors

15. Genus cooperated with Commission staff during and after the 2011 Examination.
16. Genus has no prior record of regulatory or disciplinary proceedings.
17. There is no evidence that Genus' misconduct had a negative impact on its clients or investors in the Genus Funds, or any monetary or other benefit to Genus.
18. Immediately upon being advised of the results of the 2011 Examination, Genus filed the required exempt distribution reports and paid the outstanding fees in relation to the Distributions.
19. In response to the results of the 2011 Examination, Genus has implemented changes to its practices and procedures manual to ensure future compliance with respect to the specific shortfalls identified, and has

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provided Commission staff with a copy of its updated written policies and procedures manual addressing these requirements.

Undertaking

20. Genus undertakes to pay \$90,000 to the Commission in respect of settlement of this matter, which sum is due and payable immediately without further demand.

Order

- ¶ 2 Pursuant to the *Securities Act*, RSBC 1996, c. 418 (Act), the Executive Director will issue an order that:
 1. under section 161(1)(j) of the Act that Genus be reprimanded for:
 - (a) failing to file the requisite exempt distribution reports and pay associated fees with respect to distributions of securities of the Genus Funds in 2009 and 2010;
 - (b) failing under the circumstances to establish and implement a compliance system in accordance with National Instrument 31-103 that was sufficient to provide reasonable assurances that Genus, and each individual acting on its behalf, complied with securities legislation; and
 - (c) failing to discharge these obligations despite repeated compliance guidance and reminders from Commission staff, and contrary to Genus' own assurances that it would discharge its obligations;
 2. under section 161(1)(i) of the Act that Genus make changes to its practices and its policies and procedures manual to ensure compliance with all regulatory requirements, including but not limited to:
 - (a) filing of exempt distribution reports in accordance with National Instrument 45-106 and B.C. Instrument 45-505;
 - (b) when necessary, filing the requisite notice in accordance with B.C. Instrument 45-505; and
 - (c) revising the description of CCO duties and responsibilities to include the review of all information received from, or published by, the Commission, and implementation of compliance procedures that account for such information; and

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3. under section 161(1)(h) of the Act that Genus submit its revised policies and procedures manual to the Executive Director by July 31, 2012 for review and final approval.

Consent to Reciprocal Orders

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

Waiver

- ¶ 4 Genus 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 this Settlement Agreement.

Counterpart

- ¶ 5 This Settlement Agreement may be executed in counterpart.

- ¶ 6 May 2, 2012

- ¶ 7 Stephen Au

Genus Capital Management Inc.
(Signing Authority)

Carol Cheong)

Witness Signature)

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Carol Cheong)

Witness Name (please print))

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6957 Georgia St. Bby BC V5B 1V2)

Address)

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Accountant)

Occupation)

- ¶ 8 May 2, 2012

Paul C. Bourque

- ¶ 9 Paul C. Bourque, Q.C.
Executive Director