

Citation: 2023 BCSECCOM 381

## Settlement Agreement

**Vertex One Asset Management Inc., Martin David Lang, Jeffrey David McCord**

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

¶ 1 The Executive Director of the British Columbia Securities Commission (Executive Director) and Vertex One Asset Management Inc. (Vertex), Martin David Lang (Lang), and Jeffrey David McCord (McCord) (collectively, the Respondents) agree as follows:

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

##### **Background**

1. Vertex is a federally incorporated company registered in British Columbia. It was registered in British Columbia as a portfolio manager from 1997 to 2021, as an investment fund manager from 2009 to 2021, and as an exempt market dealer from 2009 to 2021. In 2021, it ceased operations and applied to surrender its registrations.
2. Lang is a resident of Vancouver, British Columbia. He was the Chief Compliance Officer (CCO) of Vertex from June 2013 to July 2021. He applied to surrender his registration in July 2021.
3. McCord is a resident of North Vancouver, British Columbia. He was a director of Vertex from 1998 to 2023 and its Ultimate Designated Person (UDP) from January 2010 to May 2019. He also served as an advising representative from September 2003 to December 2009, and an associate advising representative from 2010 to 2021.

#### **Misconduct**

##### ***Improper Incentives***

4. In 2018 and 2019, Commission staff conducted compliance examinations (Examinations) of Vertex to evaluate its compliance system and operations.
5. In the course of the Examinations, Commission staff discovered that Vertex provided approximately \$107,183 in monetary benefits to dealer representatives (DRs) in breach of section 2.1(1)(a) and (c) of NI 81-105, including:
  - \$68,430 in co-operative marketing expenses paid to a team of DRs;
  - \$26,753 in sporting event tickets paid to participating representatives;
  - \$10,000 in participating dealer sponsored events; and
  - \$2,000 in participating dealers' golfing events.

6. Vertex also provided non-monetary benefits to DRs in breach of section 2.1(1)(b) of National Instrument 81-105 *Mutual Fund Sales Practices* (NI 81-105), including entry to sporting events, concert tickets, and gift baskets valued at approximately \$151,322.

***Lack of systems of control and supervision***

7. In the Examinations, Commission staff identified significant deficiencies in Vertex's overall compliance systems, record keeping systems, administrative requirements, financial reporting, registration and supervision. Specifically, Commission staff found that Vertex:
  - a. failed to establish, maintain and apply policies and procedures that establish a system of controls and supervision;
  - b. failed to ensure that its staff were appropriately registered to advise as well as being registered in each province in which it had clients;
  - c. did not have evidence to demonstrate that it has taken steps to pre-approve an associate advising representative's advice;
  - d. did not maintain records to demonstrate Vertex's compliance with mutual fund sales practices;
  - e. failed to comply with terms set out in an inter-fund trading exemptive relief previously granted by the Commission; and
  - f. failed to maintain adequate insurance coverage.
8. Because of the deficiencies, Vertex's system of controls and supervision did not sufficiently manage the risks associated with its business, or provide reasonable assurance that the firm complied with securities legislation. As a result, Vertex:
  - a. failed to meet the requirements of section 11.1 of National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103); and
  - b. failed to maintain records to accurately record its business activities, financial affairs, and client transactions, and demonstrate the extent of the firm's compliance with applicable requirements of securities legislation, contrary to section 11.5 of NI 31-103.
9. Section 5.1 of NI 31-103 imposes compliance supervision and promotion obligations on a UDP, and section 5.2 imposes compliance policy, monitoring, assessment, and reporting obligations on a CCO. McCord and Lang failed to adequately perform several of their obligations as set out in those sections, thereby

failing to ensure that Vertex's compliance systems were adequate. Their failures led to Vertex's contraventions of NI 31-103 and NI 81-105.

### **Mitigating Factors**

10. It is a significant mitigating factor that the Respondents entered into this Settlement Agreement and allowed the Commission to avoid a potentially lengthy hearing to determine liability.
11. None of the incentives described in this Settlement Agreement that were contrary to NI 81-105 resulted in increased fees to Vertex clients.
12. On their own initiative, the Respondents ceased operations and applied to surrender their respective registrations in 2021.
13. The Respondents fully cooperated with Staff throughout the investigation in this matter.

### **Public Interest**

14. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

### **Undertaking**

15. The Respondents undertake to pay \$300,000 to the Commission, which is due and payable immediately without further demand;

### **Order**

¶ 2 The Executive Director and the Respondents agree to the following Orders:

1. Under section 161(1)(d)(iii), Lang and McCord are prohibited from becoming or acting as Chief Compliance Officer or Ultimate Designated Person of any registrant for a period of four years; and
2. Under section 161(1)(f), Lang and McCord will be subject to the registration condition of strict supervision during any periods for which they are registered in any category under the Act. This condition will apply cumulatively for a total of three years from the date of registration.

### **Consent to Regulatory Orders**

¶ 3 The Respondents consent to regulatory orders made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out in paragraph ¶ 2 above.

**Waiver**

¶ 4 The Respondents 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.

**Counterpart**

¶ 5 This Settlement Agreement may be signed in counterpart and all such counterparts of signed copies, whether delivered electronically or otherwise, shall be read or construed together as if they formed one originally executed document.

¶ 6 August 22, 2023

¶ 7 Jeffrey David McCord  
**Vertex One Asset Management Inc.**  
(Per Jeffrey David McCord  
Signing Authority)

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Witness Signature )  
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Witness Name (please print) )  
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Address )  
Redacted )  
Occupation )

¶ 8 Martin David Lang  
**Martin David Lang**

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¶ 9 Jeffrey David McCord  
**Jeffrey David McCord**

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*Peter J Brady*  
8/24/2023 | 2:34 PM PDT

¶ 10 Peter J. Brady  
Executive Director