

BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re EagleMark Ventures, LLC, 2016 BCSECCOM 288 Date: 20160822

**EagleMark Ventures, LLC, Falcon Holdings, LLC,
Richard Lian (also known as Richard Terry Ruuska) and Enna M. Keller**

Panel	George C. Glover, Jr. Gordon Holloway Don Rowlatt	Commissioner Commissioner Commissioner
Hearing dates	February 22 – 26 and 29, 2016	
Submissions Completed	May 24, 2016	
Decision date	August 22, 2016	
Appearances		
Olobode Fagbamiye	For the Executive Director	
Enna M. Keller	For Enna M. Keller	

Findings

I. INTRODUCTION

- [1] This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.
- [2] The executive director issued a notice of hearing in respect of the respondents on December 9, 2011 (2011 BCSECCOM 546). The executive director amended the notice of hearing on February 27, 2014 (2014 BCSECCOM 74). The executive director further amended the amended notice of hearing on October 31, 2014 (2014 BCSCCOM 453).
- [3] In the further amended notice of hearing, the executive director alleges that:
- (a) the respondents Richard Lian and Enna M. Keller perpetrated fraud on investors contrary to section 57(b) of the Act;
 - (b) the respondents contravened a temporary order of the Commission;
 - (c) the respondents contravened a cease trade order of the Commission; and
 - (d) the respondent Keller contravened section 34 of the Act by engaging in the business of trading securities without registration and without any applicable exemptions.

- [4] The further amended notice of hearing sets out certain other allegations against the respondents which the executive director withdrew during the course of the hearing. The further amended notice of hearing contains an allegation that Lian perpetrated a fraud on Lexicon Building Systems Ltd. as well as on the FFP participants. Although the executive director did not formally withdraw this allegation, his written and oral submissions do not reference Lian's alleged fraud against Lexicon. As a result, we will not consider this allegation in these Findings.
- [5] During the course of the hearing, the executive director called eight witnesses: three Commission investigators, four investor witnesses and one former director of Lexicon. The executive director also tendered documentary evidence and provided written and oral submissions.
- [6] The respondent Keller attended the hearing and represented herself. She gave testimony, tendered documentary evidence and made written and oral submissions.
- [7] The respondents, Lian, EagleMark Ventures, LLC and Falcon Holdings, LLC, had United States counsel, but neither these respondents, nor counsel on their behalf, attended the hearing. These respondents tendered documentary evidence and made written submissions.
- [8] At the request of Lian, the hearing had been adjourned for two lengthy periods prior to its commencement on the basis that his health issues did not allow him to attend the hearing in person or to instruct counsel. Lian made a third application to adjourn the hearing but the panel denied that application on the basis of insufficient convincing evidence and the desirability of getting on with the hearing in the public interest. The respondents other than Keller were offered the opportunity to participate in the hearing by video link but did not avail themselves of this opportunity.
- [9] All currency figures are in US\$ unless otherwise noted below.

II. BACKGROUND

- [10] Lian is a United States resident who had been associated in various capacities with Lexicon from 2008 to at least the date of the further amended notice of hearing.
- [11] Keller is a British Columbia resident who was a director of Lexicon from 1993 to 2007 and served as CEO of Lexicon for part of this period until December 2007. Keller was an early shareholder in Lexicon and at all relevant times owned a significant number of shares in Lexicon.
- [12] EagleMark is a Nevada corporation. Falcon is a New Mexico corporation. At all relevant times, Lian was the managing member of both EagleMark and Falcon and had sole signing authority over their respective bank accounts.

- [13] Lexicon was formerly named American Insulok Inc. Unless otherwise noted, we will refer to this corporation as Lexicon. Lexicon is a reporting issuer in British Columbia and was listed on the CNSX until it was de-listed shortly after the issuance of a cease trade order (the CTO) described below. It remained de-listed throughout the relevant period. Lexicon was engaged in manufacturing and developing products for the construction industry. Of particular interest was a proprietary product known as a “PolyBlock”, a polyurethane block which was thought to have superior properties, especially light weight, strength and superior sound insulation, in various construction applications.
- [14] During the time period relevant to this matter (approximately 2008 through 2012), Lexicon underwent a number of changes in its board of directors and management, often accompanied by bitterness and the making of serious accusations against management and directors, including alleged breaches of fiduciary duties and self-dealing. Lexicon was petitioned into involuntary bankruptcy in December 2009. In 2011, a plan of reorganization was approved by the US Bankruptcy Court resulting in Lexicon’s emergence from bankruptcy. This acrimony continued through the hearing and submissions as certain witnesses were accused of bias and putting forward self-interested evidence.
- [15] On October 1, 2009, the Commission issued the CTO regarding all trading in securities of Lexicon (except for an irrelevant exception) for failure to file financial statements. This CTO remains in place.
- [16] Between 2008 and 2010, Falcon and Eaglemark (and another company associated with Lian) entered into several consulting agreements with Lexicon, effectively engaging Lian to provide various consulting services to Lexicon including:
- seeking manufacturers for the PolyBlock,
 - assisting Lexicon to obtain relief from bankruptcy, and
 - developing marketing and financing plans for Lexicon.

These consulting agreements, either pursuant to their express terms or by approval of Lexicon management, permitted consulting compensation and expense reimbursements under the various consulting agreements to be paid, at the consultant’s request, by the issuance of shares and warrants of Lexicon. Such payment in Lexicon shares and warrants could only be effected legally if and when the CTO was revoked.

- [17] Lian devoted time and effort in attempting to resolve Lexicon’s various issues including dealing with potential PolyBlock manufacturers, dealing with Lexicon’s plan of reorganization and eventual release from bankruptcy, and dealing with Lexicon’s auditors in an effort to obtain audited financial statements to assist in obtaining revocation of the CTO. Lian, directly and through EagleMark and Falcon, paid various outstanding liabilities, expenses and debts of Lexicon directly to the relevant creditors. Lian, through EagleMark and Falcon, billed Lexicon substantial sums for compensation and

reimbursement of expenses under the consulting agreements. These sums would, if fully paid in shares and warrants of Lexicon, have resulted in Lian, through EagleMark and Falcon, owning a very large number of shares and warrants of Lexicon.

- [18] On December 9, 2011, the Commission issued a temporary order (the TO) against EagleMark, Lian and Keller ordering that all persons cease trading in “FFP” securities and that EagleMark, Lian and Keller cease trading in any securities or exchange contracts. The TO described FFP as a “Friends and Family” program through which investors would purportedly make a loan to EagleMark in return for the eventual receipt of shares and warrants of Lexicon. The manner in which the FFP was presented to FFP participants and in which FFP participants were engaged with the FFP is the basis for the remaining allegations in the further amended notice of hearing.
- [19] None of the respondents has ever been registered under the Act.

III. THE FFP

- [20] After issuance of the CTO in October 2009, Lexicon was prohibited from issuing any securities to raise capital to support its operations and the development of the PolyBlock product. After Lexicon was petitioned into involuntary bankruptcy in December 2009, its ability to carry on business was severely constrained.
- [21] It was at this point, early in 2010, that Lian and Keller launched the FFP. In total, approximately \$3.2 million was raised under the FFP from approximately 315 persons, including approximately 140 residents of British Columbia. Other participants were from other provinces in Canada, the United States and various countries in Europe. Payments were made by participants in the FFP to one or more bank accounts of EagleMark, Falcon and Lian (collectively, the Accounts) by wire transfers, deposits and cheques.
- [22] The essence of the FFP from the perspective of the FFP participants was that they would pay monies to EagleMark, Falcon or Lian to contribute towards the funding of various operating costs, debts and liabilities of Lexicon while Lian was endeavouring to assist Lexicon to be removed from bankruptcy and to rectify the impediments to Lexicon’s abilities to raise financing while the CTO was in place. In particular, Lian was expected to work with Lexicon’s auditors, including by paying their bills, to obtain the necessary audited financial statements that would allow Lexicon to apply for revocation of the CTO. In return, the FFP participants understood that they would receive shares of Lexicon at a price of \$0.05 per share and two warrants exercisable for shares of Lexicon at \$0.05 per share with an exercise period of two years, all if and when the CTO was revoked.
- [23] The executive director tendered evidence, which was not challenged, that of the \$3.2 million raised under the FFP, approximately \$180,000 was repaid to FFP participants who demanded return of their funds and approximately \$600,000 was outlaid to pay liabilities, expenses and debts of Lexicon. The balance of approximately \$2.4 million was expended by Lian from the Accounts for matters unrelated to Lexicon.

- [24] The evidence also shows, and this was not disputed, that virtually all of the funds deposited into the EagleMark and Falcon accounts during the relevant period came from the FFP participants. A significant portion of the funds deposited to the relevant personal account of Lian during this period also came, directly or by way of transfers from the accounts of EagleMark and Falcon, from the funds of FFP participants. Virtually all of the FFP participants' monies were expended by April 2012.
- [25] At least \$400,000 was raised from FFP participants after issuance of the TO.
- [26] Typically, FFP participants received virtually no documentation directly relating to their payments to the Accounts. Keller would typically provide each FFP participant with an acknowledgement that she would record the payment by amount and entitlement to Lexicon shares and warrants at the agreed price and requested registration particulars. The evidence included copies of many wire transfer documents and cancelled cheques of FFP participants which often contained notations, such as "investment", "[Lexicon] share investment", "to purchase shares", "purchasing stock in company" and similar wording.
- [27] Notably, there were no documents initially provided to FFP participants by EagleMark, Falcon, Lian or Keller that constituted loan agreements, loan terms and conditions, promissory notes, interest, maturity dates or other documents customarily provided to arm's length lenders by the borrower. Notwithstanding this, the respondents seek to characterize the monies paid by FFP participants as loans with absolutely no restrictions on use of funds and no provisions for payments of principal or interest.
- [28] Except for the \$180,000 refunded to a few FFP participants who demanded return of their funds, no FFP participant has received any repayments or interest and none has received any shares or warrants of Lexicon.

IV. ROLES OF THE PARTIES AND OTHERS

Lian

- [29] Shortly after Lian entered into the first consulting agreement in 2008 through one of his companies, he contacted Keller as a substantial shareholder of Lexicon to enlist her support in rallying other shareholders, including the other major shareholder, RJ, to oust the existing management group. Following the success of this effort, Lian and Keller worked closely together. The program that was developed and commonly known as the "Friends and Family Program" was implemented to facilitate interested persons to send monies to EagleMark, Falcon and Lian personally, ostensibly to support his efforts and to contribute to his costs in trying to assist Lexicon to resolve its issues, including removal from bankruptcy and obtaining revocation of the CTO.
- [30] Lian had very little direct contact with participants in the FFP. He expected Keller to deal directly with participants in the FFP.
- [31] However, the evidence does include a number of examples of Lian's direct contact with FFP participants:

- On occasion, Lian personally provided the bank account information for EagleMark, Falcon and his personal bank account that facilitated transfers of funds by FFP participants to Lian and his companies.
- As the sole signatory for the Accounts, Lian personally disbursed all or substantially all of the FFP participants' funds, including approximately \$180,000 to FFP participants who demanded return of their funds. One of the FFP participants who received a refund said in an email: "[Keller] said Richard [Lian] told her the lawyer would draw up the papers so it [the refund] would come from EagleMark."
- Occasionally, Lian communicated directly with FFP participants in other ways - for example, in response to a direct inquiry by an FFP participant to Lian about when shares and warrants would be issued, Lian replied: "Lexicon is not registered yet. I will call you next week with full details." Lian also directly advised an FFP participant to refer other potential FFP participants to Keller.
- Lian provided update emails to Keller regarding progress on resolving Lexicon's issues including the bankruptcy proceedings, status of audited financial statements, negotiations for production and marketing of the PolyBlock, timing of issuance of Lexicon shares and warrants and extension of the deadline to participate in the FFP. Lian knew that these update emails would be forwarded by Keller to FFP participants. These update emails from Lian were often forwarded verbatim by way of blind copies to Keller's FFP distribution list.

EagleMark and Falcon

- [32] As managing member and sole signing officer of EagleMark and Falcon, Lian effectively treated each of these companies as alter egos of himself. FFP funds were deposited to and withdrawn from the EagleMark and Falcon accounts with no apparent regard for corporate purposes. For example, debits from one of the EagleMark accounts included over \$1 million in transfers to Lian's personal account and substantial amounts for jewellery, clothing and golf. Debits from one of Falcon's accounts included \$63,500 in transfers to Lian's personal account and substantial amounts for jewellery and clothing.
- [33] While the other parties to the various consulting agreements entered into by Lexicon included Falcon, EagleMark and another company associated with Lian, these agreements essentially provided for and expected personal services to be provided by Lian including access to his global business contacts and personal time and attention. A letter agreement between Lexicon and EagleMark dated February 15, 2010 authorized EagleMark "to act for and on behalf of [Lexicon] concerning all business matters and operations of [Lexicon] domestic and international, to facilitate business relationships, investments, [Lexicon] capitalization, [Lexicon] funding, manufacturing, joint venture relationships, marketing, sales and distribution of Insulock Block products." There is no doubt that these services were intended to be provided by Lian personally.

[34] KG, a former director of Lexicon, testified as to Lian's role at Lexicon as follows:

“Lian was never more than an independent outside consultant under contract. Richard Lian's leverage of his influence over management affairs of [Lexicon] was because of two reasons. One, he was willing, and he did, fund certain obligations of the company, because the company had no funds to fund itself. [Lexicon] never had any cash flow, never had any assets. It just had debts. Richard Lian was willing, out of, we felt out of his pocket, because this is what he represented, that Richard Lian, out of his pocket, would fund obligations of [Lexicon] in order to bring this company to the point where it could manufacture the product on a large-scale basis and be able to pay off certain debts and obligations of the company, like, obligations to the accounting firm here in Canada, BDO Dunwoody, that was supposed to be doing audits to keep us in conformity to securities laws, and we owed them a lot of money. Richard was going to pay them off and he was going to pay legal fees and he was going to do other things to fund, marketing expenses and so forth, to both acquire the capability of manufacturing the block in large scale and to market the block. And so his funding capabilities, his funding commitment was the first reason.

The second reason was that Richard Lian had represented that he had lots of contacts. He had contacts with business interests. He had contacts in terms of how he could market our product, both domestically in the U.S. and Canada, with Harold Reimer and do more up here, and also in the Middle East, where he had lots more contacts, he said.

So, there were the two reasons that Richard Lian was involved with Lexicon. And again, his whole purpose was to get the stock up significantly higher so he could cash in his 5 cent per share warrants and rights to purchase stock. And if he could get it up to 10, 15 dollars a share or more, he would be a, become a multi, a hundred million, billionaire maybe just out of [Lexicon]. But he never had any actual stock ownership. He was never an officer. He was only an outside consultant.”

Keller

[35] Keller was the predominant face of the FFP to participants and prospective participants. She portrayed herself as the contact person for existing shareholders of Lexicon, participants in the FFP and prospective participants. She described her role as one of helping to resolve issues of Lexicon and providing information (mainly received from Lian) to FFP participants and prospective participants and to correct misstatements and misrepresentations of others. As a former director and CEO of Lexicon, Keller had detailed knowledge about Lexicon's corporate history, governance, products, marketing, manufacturing and affairs including Lexicon's bankruptcy proceedings and its history as a public company. Once Lian became involved with Lexicon, Keller and Lian formed a close business relationship and worked together, ostensibly, towards resolving Lexicon's many problems.

[36] The evidence is replete with examples of Keller's role in enabling prospective FFP participants to send their funds to the Accounts. She maintained records of all monies paid pursuant to the FFP through her assistance. She provided information to FFP participants and prospective participants on the public record (such as SEDAR) and the US Bankruptcy Court proceedings, referrals to relevant websites as well as by forwarding Lian's status report emails and providing information from her own knowledge.

[37] One example of the typical information provided by Keller to prospective FFP participants is an email on June 1, 2010 from Keller to a prospective FFP participant, DB, who was also a witness at the hearing:

Hello Dave

Please take the info marked in red below to your bank to complete the wire transfer for your contributions towards the financing, \$US 0.05 per share with 2 Warrants attached to each share @ \$US 0.05 per Warrant, the Warrants have a lifespan of 2 years. Please let me know when the transfer has been done, and the amount that was transferred in US Funds, as I will keep a record of all transactions completed. Please provide me with the name(s) you want the stock registered in and contact number and with your address. Please see website of Richard Lian and partners, and a wealth of info about the Insulock block.... Should you have any questions, please feel free to contact me.

[38] In terms of information provided to FFP participants and prospective participants, as an example, Keller forwarded the following email of February 1, 2010 from Lian to her FFP distribution list:

Dear Enna:

The authorization from [Lexicon] and [EagleMark] are now confirmed. The Chr. of the Board, Randy Inns [sic], by the attached letter confirmed the current status of the agreements and obligations thereof.

The focus of the application of funds to [EagleMark] for the benefit of [Lexicon] will be applied as follows: a) legal, b) BCSC, c) CNSX, d) registrations, e) compliance, f) JV commitments & agreements, g) prospectus, and the expenses directly and indirectly related to these line items of a budget to advance [the] business interests of [Lexicon].

Funds should be sent by wire transfer or to the business address of [EagleMark] as follows:....

[39] This is one of many deceptive communications to FFP participants demonstrating that they were not told that the use of their funds was unrestricted or totally at the discretion of Lian. Rather, they were deceptively led to believe that their funds were being used in an effort to eliminate the problems that Lexicon had in returning to a listed issuer, free of bankruptcy.

[40] As an example of Keller's continuing to solicit further participation in the FFP, she sent the following email on January 10, 2010 to her FFP email distribution list:

Hi Everyone

I have been told that the company is preparing for a small financing for the company and will be offering this to the supportive shareholders of the company. The offering will consist of one common share at a price of \$US0.05 per share, with each share 2 warrants attached at US\$0.05 per warrant, the warrants will have a 2 year live [sic] span.

If you are interested to participate in the offering, please let me know for further details.

Thank you.

Enna Keller

[41] Keller sent a similar email update and solicitation on October 4, 2010 as follows:

Please note: All stock certificates with the warrants will be issued to everyone by the lifting of the cease trade order.

You will receive your stock certificates with warrants before the listing and trading of the company stock....At the present time you may still make contributions to wire funds for the \$US0.05 offering with the two warrants at \$US0.05 each good for 2 years.

[42] Some of the FFP participants were existing shareholders of Lexicon and a lot of the information provided by Lian and Keller to FFP participants and prospective participants referred to limiting the opportunity to existing Lexicon shareholders. However, many FFP participants and prospective participants were not existing shareholders. Keller appeared to be willing to facilitate participation by anyone who contacted her. For example, Keller wrote in an update to her distribution list on June 22, 2010: "...if you have friends or Family members that would like to buy into the offering, please have them contact me, and provide your name as there [sic] contact person."

[43] Keller also tried to allay anxieties of various FFP participants about lack of progress and delays in receiving their expected shares and warrants in Lexicon. For example, Keller emailed an FFP participant on August 12, 2011 as follows:

There is nothing for you to be concerned about....as things are going better than anyone had even expected....but we are under the control of securities regulators, and that makes things more complicated....but all is save [sic] and sound.

[44] On several occasions, Keller sent emails to her FFP distribution list suggesting some urgency in making further payments into the FFP. For example, on August 10, 2011, Keller's email following Lexicon's discharge from bankruptcy said:

Hello Everyone

The news we have all been waiting for!!

I would hereby highly suggest to anyone wanting to contribute towards the Shareholders and Family and Friends Program, to have the funds sent in by September 21, 2011.

[45] Extensions of the purported deadline for contributing to the FFP were communicated to the FFP distribution list several times by Keller with the knowledge of Lian.

[46] After this Commission began its investigation, Keller attended, with her husband, a voluntary meeting with Commission staff on November 28, 2011. Following that meeting, Keller sent the following email message to her FFP distribution list on November 29, 2011:

Yesterday I Enna Keller had a very successful meeting with two Officers at the B.C. Securities Commission, to clear me and Richard Lian from any wrong doing in regards of the Securities Law with the B.C.S.C.
Upon departing they told me that, Richard and me, and all the shareholders with the lenders, should be greatly rewarded by the company for all of our efforts and hard work.

[47] Both of the Commission investigators who attended that meeting denied in their sworn testimony making any such statements to Keller. This testimony was challenged by Keller in cross-examination of both investigators but their evidence was unshaken.

Lexicon

[48] Despite the intimate and active involvement of Lian in the business affairs of Lexicon from 2008 forward and through its several management and board upheavals, the evidence shows that management and the board of Lexicon were unaware of the FFP until DB, an FFP participant, wrote to the Lexicon board on October 17, 2011 to express his concerns about the FFP and to raise a number of his questions about Lexicon's role.

[49] The evidence shows that the Lexicon board was shocked by revelation of the FFP. It immediately undertook an investigation which quickly revealed that the respondents had raised substantial sums of money for Lian and his companies through an offer of Lexicon shares and warrants. The Lexicon board had not authorized the FFP and took the position that the FFP was in breach of numerous securities laws including illegal distributions, breaches of the CTO, selective disclosure to FFP participants of previously undisclosed material information and unregistered trading. Lexicon issued cease and desist directions to Lian and Keller, filed complaints with several securities commissions, including this Commission, and with stock exchanges, and terminated the consulting agreements with Lian's companies.

[50] Following yet another management upheaval, a new management team at Lexicon reinstated these consulting agreements.

[51] This Commission also received a complaint from an FFP participant, DB, and the Commission began its investigation of this matter. On December 9, 2011 this Commission issued the TO and its original notice of hearing.

V. APPLICABLE LAW

A. Standard of Proof

[52] The standard of proof is proof on a balance of probabilities. In *F.H. v. McDougall* 2008 SCC 53, the Supreme Court of Canada held:

49 In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[53] The Court also held (at paragraph 46) that the evidence must be “sufficiently clear, convincing and cogent” to satisfy the balance of probabilities test.

[54] This is the standard that the Commission applies to allegations: see *David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group*, 2014 BCSECCOM 327, para. 35:

B. Registration Requirements

[55] Section 34(1) states “A person must not... trade in a security ...unless the person is registered in accordance with the regulations...”.

[56] There are several terms in section 34 that are defined elsewhere in the Act. The relevant provisions of the Act are as follows:

a) Section 1(1) defines “trade” to include “(a) a disposition of a security for valuable consideration”, and “(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e)”.

b) Section 1(1) defines “security” to include “(a) a document, instrument or writing commonly known as a security”, “(c) a document evidencing an option, subscription or other interest in or to a security”, (f) an agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any person”, “(d) a bond, debenture, note or other evidence of indebtedness ...” and (l) “an investment contract.”

[57] National Instrument 31-103 includes further detail on the circumstances under which persons are required to be registered to trade in securities. This National Instrument sets out the registration requirements and the Companion Policy contains interpretations of the National Instrument by the Canadian Securities Administrators. The Canadian Securities Administrators is comprised of the securities regulators of all of the provinces and territories of Canada. Section 8.4(1) of NI 31-103 states:

8.4(1) In British Columbia..., a person...is exempt from the dealer registration requirement if the person...

(a) is not engaged in the business of trading in securities...as principal or agent, and

(b) does not hold himself, herself or itself out as engaging in the business of trading in securities...as a principal or agent.

[58] Under NI 31-103, although certain exemptions from the requirement to be registered, using the “trade trigger” approach, continued both on a transitional basis and on a permanent basis, contraventions of section 34 were after September 28, 2009 determined based upon a “business trigger”. Generally, persons are required to be registered under the Act when they are in the business of trading in securities.

[59] The following from the Companion Policy are factors that regulators consider relevant to the determination whether a person is in the business of trading:

- engaging in activities similar to a registrant – including whether the person is acting as an intermediary between the buyer and seller of securities
- directly or indirectly carrying on the activity with repetition, regularity or continuity – including the frequency of transactions (but the activity does not have to be the sole or even the primary endeavor of the person) and whether the activity is carried out with a view to making a profit, the person’s various sources of income and amount of time allocated to the activity
- being compensated for the activity – receiving or expecting to be compensated for carrying on the activity indicates a business purpose
- directly or indirectly soliciting – contacting potential investors to solicit securities transactions suggests a business purpose

[60] Companion Policies do not have the force of law. Their function is to inform market participants of the regulators’ interpretation of certain aspects of securities law. We find that the statements of policy in NI 31-103CP outlined above to be appropriate to the interpretation of some of the factors to be considered in determining whether a person is required to be registered under the Act.

[61] In *Solara Technologies Inc. and William Dorn Beattie*, 2010 BCSECCOM 163, the Commission confirmed that it is the responsibility of a person trading in securities to ensure that the trade complies with the Act. The Commission also said that a person relying on an exemption has the onus of proving that the exemption is available. The Commission said:

37 The determination of whether an exemption applies is a question of mixed law and fact. Many exemptions are not available unless certain facts exist, often known only to the investor. To rely on those facts to ensure the exemption is available, the issuer must have a reasonable belief the facts are true.

38 To form that reasonable belief, the issuer must have evidence. For example, if the issuer wishes to rely on the friends exemption, it will need representations from the investor about the nature of the relationship...

C. Fraud

[62] Section 57(b) of the Act states:

A person must not, directly or indirectly, engage in or participate in conduct relating to securities . . . if the person knows, or reasonably should know, that the conduct

...

(b) perpetrates a fraud on any person.

[63] In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal cited the elements of fraud from *R. v. Theroux*, [1993] 2 SCR 5 (at page 20):

... the actus reus of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and

2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the mens rea of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and

2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

VI. POSITION OF THE PARTIES

The Respondents

[64] A number of submissions by the respondents were not very if at all relevant to the allegations in the further amended notice of hearing remaining after the executive director determined not to proceed with the other allegations. Information relating to the corporate history of management squabbles and attendant accusations and recriminations and evidence relating to alleged past misconduct of some witnesses went to some degree to the credibility of certain witnesses and to certain documentary evidence. However, while the panel took note of the possible bias of certain witnesses and possible self-serving nature of some of the documents associated with these witnesses, we found the respondents' submissions unpersuasive regarding the validity of the allegations.

- [65] Similarly, the respondents' submissions regarding the number of FFP participants who continued to be supportive of Keller and Lian and the letters of support submitted by the respondents from certain FFP participants are not directly germane to the proof of the allegations remaining in the further amended notice of hearing. As well, affidavits and other documentary evidence submitted by the respondents expressing support for the conduct and actions of Lian and Keller by certain former officers and directors of Lexicon are more in the nature of arguments than facts. Furthermore, this affidavit and other documentary evidence was not tested by cross-examination.
- [66] The respondents or their representatives filed various documents with this Commission which they say were ignored or not responded to including a complaint of misconduct of Lexicon management regarding events prior to those relevant to this proceeding and documentation for a private placement in late 2011. These are not pertinent to the allegations in the further amended notice of hearing.
- [67] The respondents say that a key individual at various times on the board and management of Lexicon, RJ, was not examined or called as a witness. We cannot comment on which possible witnesses the executive director may choose to examine or call to give testimony. It was open to the respondents to call RJ as a witness, if they believed his testimony would be of benefit to their defence.
- [68] The respondents submit that, despite complaints made to many other securities regulatory authorities and other agencies, only this Commission has undertaken proceedings against them. They say that only five FFP participants complained to regulatory authorities. These submissions, even if correct, do not affect the panel's obligations to determine if the remaining allegations in the further amended notice of hearing have been proven to the necessary standard of proof.
- [69] More directly relevant to the remaining allegations, the respondents make the following submissions:
- They did not engage in selling securities through the FFP; indeed, Keller, in her testimony in cross-examination at the hearing responded to questions of the executive director as follows:

47 Q Ms. Keller, this Friends and Family programme started in January 2010; is that correct?
A That is not correct.
48 Q When did the Friends and Family programme start?
A It never started. It was never an offering, was never made.
49 Q Okay, at that leads to the next question. You did not tell the Lexicon management about the Friends and Family programme, correct?
A It was really none of their business, was it.

- There were no solicitations or offerings of securities
- All of the FFP monies were private loans to Lian, EagleMark or Falcon; loans are not subject to securities regulation (at least in Nevada, the incorporating jurisdiction of EagleMark and domicile of Falcon)
- Decisions by FFP participants to deliver funds were independent decisions by them
- They did not breach the CTO or the TO as they did not trade in securities, including FFP securities
- If any representations were made to FFP participants or prospective participants, they were not made by the respondents but by third parties
- EagleMark, Falcon and Lian were not subject to any restrictions whatsoever regarding the use of FFP monies
- The respondents had no obligation to advise Lexicon of the existence or details of the FFP
- Keller misunderstood the messages delivered by Commission staff at her meeting with them on November 28, 2011 and made a “poor choice” in her subsequent communication with FFP participants

The Executive Director

- [70] The executive director says that Lian and Keller committed fraud contrary to section 57(b) of the Act.
- [71] The executive director says that the respondents breached the CTO by trading in securities of Lexicon after the date of the CTO.
- [72] The executive director says that the respondents, EagleMark, Lian and Keller, breached the TO by trading in securities after the date of the TO; specifically by soliciting and receiving investment money for Lexicon shares.
- [73] The executive director says that Keller contravened section 34 of the Act by promoting the sale of Lexicon securities through the FFP and by actively soliciting investors thereby engaging in trading securities without registration and without any applicable exemptions.

VII. ANALYSIS AND FINDINGS

A. Fraud

- [74] The further amended notice of hearing says that Lian perpetrated “a fraud against Lexicon¹ and investors in the” FFP and that Keller perpetrated “a fraud against investors in the” FFP, in each case, contrary to section 57(b). The first issue is whether, by virtue of this wording, the executive director is making one allegation of fraud or allegations of a separate act of fraud against each participant in the FFP. We interpret the allegations to be the latter, that Lian and Keller committed separate acts of fraud against each participant in the FFP. We do so because the wording implies multiple acts and, in fact, each participant in the FFP was dealt with separately with respect to each FFP participant’s involvement in the FFP. In order to establish a contravention of section 57(b), the conduct must relate to securities.
- [75] Under the Act, the definition of a “security” is very broad and non-exclusive, and appropriately so, given the breadth of investment products which can be offered to prospective investors.
- [76] The respondents submit that the FFP participants made private loans to Lian, EagleMark or Falcon with no collateral documentation and that such loans are not subject to securities regulation. Lian submits that Nevada law excludes such loans from the category of securities. The respondents say that they did not solicit any investments.
- [77] Thus, we must determine whether this case involves one or more “securities” as defined in the Act. Through this lens, we find that securities were an essential component of the FFP.
- [78] FFP participants paid money to one or more of Lian, EagleMark and Falcon in the expectation that they would receive in return shares and warrants of Lexicon. Both shares and warrants fall clearly within subsection (a) of the definition of “security” in the Act as they are documents or instruments commonly known as securities. It does not matter whether there were any impediments or conditions to their receiving these securities-- their transactions related to securities.
- [79] Furthermore, even if we accept the respondents’ position that the payments made by FFP participants were loans, what the FFP participants invested in fits squarely within subsection (f) of the definition of security as “an agreement providing that money received will be repaid or treated as a subscription to shares, stock, units or interests at the option of the recipient or of any other person.” The intent of the FFP participants was that their “loan” would be repaid or treated as a subscription for Lexicon shares. This is so even if FFP participants were contemplating that Lian, EagleMark or Falcon would be the person transferring Lexicon shares and warrants to them, once they had received such shares and warrants pursuant to compensation to them under the various consulting agreements or otherwise.

¹ For the reasons stated above, we will not consider the allegation of fraud by Lian as against Lexicon.

[80] Finally, as interpreted by Canadian courts and securities commissions, subsection (l) of the definition of security- “an investment contract”- has been very broadly construed. An investment contract is an investment of money in a common enterprise with profits to come from the efforts of others. (See *SEC v. W. J. Howey Co.* 328 U.S. 293 (1946), *SEC v. Glenn W. Turner Enterprises, Inc.* 474 F. 2d 476 (1973), *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112.)

[81] The return of, and any returns on, the monies which FFP participants sent to Lian, EagleMark and Falcon were entirely dependent on the efforts of persons other than themselves. The FFP participants were entirely passive investors. Whether the FFP participants ever received either repayment or shares and warrants of Lexicon would depend entirely on the efforts of others including Lexicon and Lian. As acknowledged by Lian, he had exclusive access to, and full control over, the FFP participants’ funds. The commonality that is required by the cases cited above would have existed between Lian and his companies and the FFP participants.

[82] We find that “securities”, as defined in the Act, were an essential component of the FFP and, thus, the frauds alleged against the respondents related to securities. While the respondents submit that they did not solicit any investments, the broad and non-exclusive definition of “trade” in the Act includes “any act, ...conduct, or negotiation directly or indirectly in furtherance of any of the activities specified in [the other paragraphs in the definition]”. We also find that the respondents “traded” in “securities”, directly or indirectly, through the acts and conduct that resulted in FFP participants sending their funds to Lian, EagleMark or Falcon.

Lian - fraud against FFP participants

Deceitful act

[83] The executive director says that Lian perpetrated fraud against FFP participants by:

- misusing FFP participants’ funds,
- communicating promises to FFP participants about the delivery of Lexicon shares and warrants that he knew or should have known were false, and
- omitting to tell FFP participants that Lexicon had not authorized the FFP.

[84] As a result of the FFP, approximately \$3.2 million was paid into the Accounts over which Lian had sole control. Approximately, \$600,000 was used by Lian to pay debts, expenses and other liabilities of Lexicon (no funds were paid directly to Lexicon) and approximately \$180,000 was repaid to FFP participants who demanded return of their funds. The balance of approximately \$2.4 million was almost entirely expended by Lian on matters that had no relation to Lexicon and were of no benefit to the FFP participants.

[85] Lian (and Keller) take the position that the full amount of the FFP payments was loaned to Lian or one of his companies on an entirely unrestricted basis and Lian was unfettered in his discretion to spend such funds as he saw fit.

[86] There is considerable evidence, although almost no definitive documentation, that FFP participants were led to believe and did believe that their payments were being used to fund Lian to help Lexicon resolve its many issues so that, ultimately, the CTO preventing trading securities of Lexicon, including issuing new securities, would be revoked. Lian and his companies would then receive substantial amounts of Lexicon shares and warrants and the appropriate amounts of shares and warrants would be transferred to each FFP participant. The revocation of the CTO would allow securities of Lexicon to be once again listed for trading, new financings could be done, Lexicon could finance manufacturing and marketing of the PolyBlock and the market value of Lexicon shares and warrants would increase.

[87] The expectations of FFP participants can be inferred from the notations on many of their FFP payment documents that the funds were for shares and warrants of Lexicon. The numerous emails and correspondence of Lian, both directly and through Keller, to individual FFP participants, as well as the distribution of mass emails to FFP participants and potential participants, reinforced this expectation. These communications frequently referred to matters such as:

- the timing of receiving Lexicon shares and warrants,
- the imminence of obtaining the financial statements needed to form the basis for the CTO revocation process,
- removal of Lexicon from bankruptcy, and
- representations as to how the FFP funds would be used set out in paragraph [38] above.

[88] There is evidence from certain FFP participants that they were not advised, and there is no evidence that any FFP participant was advised, that Lexicon was not made aware of the FFP until this was drawn to the attention of the Lexicon board by DB.

[89] There is no evidence that any of the FFP participants was advised of several key matters when they transferred their funds and thereafter:

- how the majority of the FFP funds were actually being spent,
- that Lian would fail to disclose to Lexicon that the FFP program resulted in \$3.2 million of obligations of Lian and his companies to transfer Lexicon shares and warrants to FFP participants, and
- the possible legal and financial costs to Lexicon in managing the implications of this obligation to transfer Lexicon shares and warrants while the CTO was still in place.

[90] We find that Lian committed a prohibited act by failing to use the substantial majority of the funds paid by FFP participants to assist in the resolution of Lexicon's issues but rather diverting that substantial majority of funds to his personal uses, unrelated to any benefit to Lexicon or the FFP participants. This prohibited act involved both advertent deceit and deceit by omission to inform FFP participants of the true use of their funds.

[91] Lian continued the deception of FFP participants and facilitated potential FFP participants to join the FFP in other ways including providing update reports to Keller which he knew or ought to have known would be forwarded to FFP participants reporting positive developments and extending several times the so-called deadline for participating in the FFP. These acts of deceit contributed to the ongoing funding by FFP participants of Lian and his companies. They also served to prevent or delay FFP participants from making claims against Lian and his companies for return of their funds or delivery of the expected Lexicon shares and warrants. This deceptive conduct put the funds of FFP participants at risk of deprivation and reduced any possibility of recovery of FFP participants' funds before they were all dissipated.

[92] These various acts of deceit provide the necessary actus reus of fraud by Lian.

[93] We also find the evidence establishes deprivation. FFP participants sent funds to Lian, EagleMark and Falcon based upon the deceptions. In *R. v. Abramson*, [1983] B.C.J. No. 1305, the British Columbia Court of Appeal confirmed that the payment of money as part of an investment upon deceit was sufficient to establish deprivation, regardless of any subsequent repayment.

Subjective knowledge of the deceit and deprivation

[94] There is no question that Lian had subjective knowledge of his deceptions involving the use of FFP participants' monies.

[95] There is also no doubt that Lian had subjective knowledge of the risk of deprivation of FFP participants' funds as he was in complete control over how those funds were expended. By expending the substantial majority of FFP participants' funds on matters unrelated to Lexicon's issues and by only expending approximately \$600,000 on Lexicon's debts, expenses and other liabilities, Lian knew that the FFP participants' funds had been dissipated with substantial risk that they were lost permanently. In fact, Lexicon's issues were not resolved during the relevant period, neither the CTO nor TO was revoked, no shares or warrants of Lexicon have been issued since the CTO and no audited financial statements have been forthcoming.

[96] Accordingly, we find that Lian committed fraud under section 57(b) of the Act in relation to the FFP participants.

Keller - fraud against FFP participants

Deceitful act

[97] We find that Keller committed numerous acts of deceit and deception, the actus reus of fraud, against the participants in the FFP, including the following:

- Representing to FFP participants and potential FFP participants that their sending funds to Lian or one of his companies entitled them, albeit after the CTO was revoked, to shares and warrants of Lexicon. Examples of these representations included confirming to FFP participants that their entitlements to shares and warrants were “recorded” and by stating that FFP participants would soon receive their shares and warrants.
- Keller facilitated Lian’s acts of deceit by forwarding update emails created by Lian to her FFP distribution list. These emails were often misleading in various ways including alleged progress towards resolving Lexicon’s issues, the expected matters on which the FFP funds would be expended, timing for Lexicon to have the CTO revoked, timing for the transfer of Lexicon shares and warrants to FFP participants and potential share prices of Lexicon after relisting.
- Keller deceived FFP participants and potential participants in several emails to her distribution list advising of extensions to the period in which further FFP payments could be made. This was designed to encourage further payments before a deadline passed and implied that progress was being made towards resolving Lexicon’s problems when Keller was aware that there was no limit to the amounts FFP participants could send to Lian and his companies and no material progress had been made in obtaining revocation of the CTO.
- Keller deceived FFP participants by failing to inform them that Lexicon was unaware of the FFP and had not authorized it. She admitted that she and Lian intentionally withheld from Lexicon management information regarding the existence of the FFP because it was really none of their business. She also suggested that Lexicon management would try to get themselves paid from FFP funds if they were aware of the FFP.
- Keller failed to advise FFP participants that Lexicon management had ordered that she and Lian “cease and desist” offering the FFP, thus failing to alert existing FFP participants to possible issues regarding their funds and not dissuading new FFP participants.
- Following Keller’s meeting with Commission staff in November, 2011, she advised FFP participants that she “had a very successful meeting with two Officers at the B.C. Securities Commission, to clear me and Richard Lian from any wrong doing in regards of the Securities Law with the B.C.S.C.”. Keller offered no credible explanation for this communication which was false and deceitful.
- After the issuance of the TO, Keller facilitated further payments by FFP participants without telling FFP participants that the TO was in place which prohibited any trading in FFP securities and prohibited Keller from trading in any securities. She also omitted to tell FFP participants that the Commission was investigating the respondents and the FFP.

- [98] Keller knew what she was doing in all of these and other acts and conduct engaged in by her in connection with the FFP. She had the necessary mens rea for deceit and fraud.
- [99] Unlike was the case with Lian, a relatively small amount of the funds sent by FFP participants found its way back to Keller. The evidence does not specifically identify what these payments related to but they may well have been, in whole or in part, for reimbursement of expenses in the course of her communications with FFP participants and potential FFP participants, at least some of whom were existing Lexicon shareholders. Keller also testified, and this testimony was not challenged, that she expended considerable of her own resources to assist Lexicon in trying to resolve its issues, including getting discharge from bankruptcy, obtaining revocation of the CTO and relisting Lexicon shares on an exchange.
- [100] Keller was by no means disinterested in the FFP that she and the other respondents created and fostered. Keller was a substantial shareholder of Lexicon. During the relevant period, Lexicon had been in bankruptcy proceedings, was subject to the CTO and, later, the TO, was delisted and underwent several acrimonious management changes. No doubt, Keller saw Lian's promises of devoting his time, contacts and talents to attempting to resolve Lexicon's issues attractive and compelling. The evidence shows that Keller still has full confidence in Lian and blames this Commission and various "conspirators" for inhibiting Lian's ability to fulfill his intentions.
- [101] Keller's support for Lian and her enthusiasm for Lian and his plan to revive Lexicon led her into conduct which we find to constitute prohibited acts of deceit in relation to securities and, therefore, fraud contrary to section 57(b) of the Act.
- [102] While there is not the same direct evidence as there was with Lian that Keller knew in detail how the substantial majority of FFP participants' funds were being spent-- on matters unrelated to Lexicon and its problems -- Keller was very aware that the monies of FFP participants were at risk. She stated that there were no restrictions whatsoever on how Lian and his companies could expend their funds. She knew what Lian had achieved in assisting Lexicon to be discharged from bankruptcy and that Lian had expended some funds on seeking out possible manufacturing for the PolyBlock product. Keller knew that Lian had been trying to work with Lexicon's auditors to pay their bills and to obtain the financial statements which were necessary to seek revocation of the CTO. She also knew approximately how much money had been raised through the FFP as she recorded all payments of which she was aware. She also advised FFP participants of the approximate total amounts raised through the FFP. She knew or ought to have known that Lian had only expended a small portion of the funds raised through the FFP on matters which she represented to FFP participants was the intended use of the funds.
- [103] Keller had the necessary knowledge that FFP participants' funds were at risk of deprivation. Except for the approximately \$180,000 repaid to FFP participants who demanded repayment, those funds remain at risk as almost all FFP funds have been dissipated.

[104] Accordingly, we find that Keller committed fraud under section 57(b) of the Act in relation to the FFP participants.

Contraventions of the CTO

[105] On October 1, 2009, the Commission issued the CTO ordering that all trading in securities of Lexicon (except for an irrelevant exception) cease. The CTO was partially revoked on two occasions to permit specific trades but neither of these specific transactions was completed. The CTO remained in effect throughout the relevant period.

[106] The executive director has alleged that all of the respondents contravened the CTO by trading in securities of Lexicon after October 1, 2009. The executive director argues that the respondents' activities under the FFP constituted "act[s] ... directly or indirectly in furtherance..." of a trade, as otherwise defined in the Act, of Lexicon securities. By engaging in these activities - these "trades" - the executive director says the respondents breached the CTO.

[107] We agree. The essence of the FFP was an offering by Lian, directly and through EagleMark and Falcon, of securities in Lexicon to FFP participants. It was not contemplated by anyone aware of the circumstances that the fulfillment of the expectations of FFP participants to receive Lexicon shares and warrants would be directly by way of new issuances by Lexicon of its shares and warrants. Fulfillment of the expectations of FFP participants to receive Lexicon shares and warrants would have to be achieved by transfers of Lexicon shares and warrants by Lian and his companies.

[108] If the CTO were revoked and Lexicon securities were able to be traded, Lian and his companies could acquire Lexicon shares and, presumably, warrants in market transactions and transfer such shares and warrants to FFP participants as contemplated by them.

[109] As set out above, all of the respondents traded in securities through the FFP after the CTO was issued. These were acts in furtherance of trades of Lexicon securities and, therefore, were trades in Lexicon securities under the Act. The CTO prohibited trades in Lexicon securities. Thus, we find that each of the respondents contravened the CTO by trading in Lexicon securities after October 1, 2010.

[110] As to this allegation of breaching the CTO as it pertains to Keller, there was no expectation that she was required to transfer Lexicon shares or warrants to FFP participants. However, Keller engaged in numerous acts and conduct in furtherance of the trades by Lian, EagleMark and Falcon as detailed above and, accordingly, we find that Keller contravened the CTO by trading in securities of Lexicon after October 1, 2010.

Contraventions of the TO

- [111] The executive director has alleged that EagleMark, Falcon, Lian and Keller contravened the TO by trading in securities of Lexicon after December 9, 2011. We note that Falcon was not specifically named in the TO but is subject to the TO as “all persons” were ordered to cease trading in FFP securities.
- [112] “FFP securities” are not defined as such in the TO but reference is made to “securities under a ‘Friends and Family’ program through which investors would purportedly make a loan to EagleMark in return for shares and warrants of Lexicon (the FFP).”
- [113] The FFP is not an entity in itself legally capable of trading in “FFP securities” but, as we have found, the FFP involved trades by all of the respondents in securities of Lexicon, directly or by trades in rights to acquire securities of Lexicon.
- [114] According to the evidence, FFP participants paid monies into one or more of the accounts of all of EagleMark, Falcon and Lian under the FFP after December 9, 2011. These payments were made under the FFP and there is evidence that the relevant FFP participants intended to receive Lexicon shares and warrants as a result of these payments. Such payments amounted to at least \$400,000.
- [115] Accordingly, Lian, EagleMark and Falcon contravened the TO by trading in FFP securities after the date of the TO.
- [116] As we have found, Keller’s acts and conduct regarding the FFP constitute acts in furtherance of trades in securities of Lexicon and, accordingly, trades in FFP securities. Her acts and conduct continued after the date of the TO.
- [117] Accordingly, Keller contravened the TO by trading in FFP securities after the date of the TO.
- [118] Under the TO, Lian, EagleMark and Keller were ordered not to trade in any securities. By their continuing trading in Lexicon securities under the FFP, these respondents also breached the general prohibition on trading securities in the TO.

Trading without Registration

- [119] We have found that Keller traded in securities by her acts and conduct in furtherance of trades as defined in the other subsections of the definition of “trade” in the Act.
- [120] Keller engaged in many of the activities set out as factors in the Companion Policy to NI 31-103, including performing functions similar to those of a registrant, intermediating trades and carrying on the activities with repetition, regularity and continuity throughout the relevant period. Although there is no evidence directly showing that Keller was remunerated or compensated for her activities, we have pointed out that if the activities had contributed to the revocation of the CTO, Keller stood a much better chance that her large share ownership position in Lexicon would become much more valuable. Keller

also encouraged and facilitated FFP participants to send their funds to Lian and his companies in the expectation that this would result in their receiving shares and warrants of Lexicon.

[121] There is no evidence, and Keller has made no submissions, to satisfy the onus upon her to prove the availability of an exemption from the requirement that she register under section 34 of the Act.

[122] Based on the evidence that the executive director has provided, we find that the conduct of Keller constituted engaging in the business of trading in securities and therefore she was not entitled to an exemption from the requirement on her to register under the Act.

[123] Thus, we find that Keller contravened section 34 of the Act by trading in securities without an exemption.

VIII. SUMMARY OF THE FINDINGS

[124] In summary, we find that:

- a) the respondents, Lian and Keller, perpetrated fraud contrary to section 57(b) of the Act;
- b) each of the respondents contravened the CTO;
- c) each of the respondents contravened the TO; and
- d) Keller contravened section 34 of the Act by trading in securities without registration and without any available exemptions.

IX. SUBMISSIONS ON SANCTION

[125] We direct the parties to make their submissions on sanction as follows:

By September 12, 2016

The executive director delivers submissions to the respondents and to the secretary to the Commission.

By September 26, 2016

The respondents deliver response submissions to each other, the executive director and to the secretary to the Commission.

Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission. The secretary to the Commission will contact the parties to schedule the hearing as soon as practicable after the executive director delivers reply submissions (if any).

By October 3, 2016

The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission.

August 22, 2016

For the Commission

George C. Glover, Jr.
Commissioner

Gordon Holloway
Commissioner

Don Rowlatt
Commissioner