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Schedule "A" Settlement Agreement

Robert Murray

Securities Act, RSBC 1996, c. 418

[para 1]

The following settlement of issues has been reached between Robert Murray (Murray) and the Executive Director.

Agreed Statement of Facts

[para 2]

As the basis for the undertakings and orders referred to in this settlement, Murray acknowledges the following facts as correct:

1. Murray is a salesperson with Shaw Cable in Kelowna, British Columbia, and was not registered under the *Securities Act*, RSBC 1996, c. 418 (the Act).
2. Specialized Surgical Services Inc. (Specialized Surgical) is a non-reporting issuer incorporated in British Columbia on March 8, 1995.
3. Specialized Surgical was attempting to open a private hospital in Coquitlam, British Columbia under the name Croft Clinic.
4. James Swanney (Swanney) was the president and majority shareholder of Specialized Surgical.
5. Swanney contacted Mark Webster Vaughan Foster (Foster) in 1996 seeking capital on behalf of Specialized Surgical.
6. Foster was employed by Royal Advent Securities Corporation (RASC) and registered as a mutual fund salesperson at the time of being initially contacted by Swanney.
7. RASC is a non-reporting issuer incorporated in British Columbia on August 3, 1994, and is a registered securities dealer under the Act.

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8. Fund raising activities were commenced in the spring of 1997 and \$485,000 was raised.
9. Foster became a director of Specialized Surgical on September 9, 1997.
10. Foster First Financial Corporation (Foster First) was incorporated on September 15, 1997. Foster was the president and majority shareholder of Foster First.
11. Swanney was a director and minority shareholder of Foster First.
12. Swanney signed a subordination agreement in favour of Foster First on September 23, 1997, for \$100,000 that represented the statutory working capital requirement for Foster First.
13. Foster purchased 25,001 shares of Specialized Surgical on September 30, 1997.
14. Specialized Surgical issued an offering memorandum dated November 12, 1997 (Specialized Surgical OM). This offering memorandum did not disclose that:
 - (a) Swanney was a director of Foster First;
 - (b) Foster was a director of Specialized Surgical;
 - (c) Swanney provided the operating capital for Foster First;
 - (d) Foster and Swanney each owned shares in each others companies; and
 - (e) there were more recent audited financial statements, dated November 1, 1997, than the statements disclosed dated May 31, 1997.
15. RASC did not renew Foster's contract of employment when it expired on November 30, 1997.
16. Foster First was registered as a securities dealer on December 18, 1997.
17. Foster was employed by Foster First on December 22, 1997, as a mutual fund salesman.

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18. Foster, at the suggestion of staff of the British Columbia Securities Commission (the Commission), resigned as a director of Specialized Surgical on December 31, 1997.
19. Foster First and Specialized Surgical entered into a contract on January 2, 1998, whereby Foster First was the sole financing agent for Specialized Surgical in return for a 10% commission and a 5% corporate finance fee. In addition, Foster First received a payment of 2% of gross proceeds from Specialized Surgical for any subscriptions for securities sold by any party other than Foster First.
20. Foster was appointed Vice-President of Marketing for Specialized Surgical in February of 1998 and remained in that capacity until June 1999. This was not reported to the Commission.
21. Murray commenced employment with Foster First in February 1998 and worked there until August 1999.
22. Murray's employment duties included preparing promotional materials and giving presentations on behalf of Foster First relating to investments in Specialized Surgical. When giving these presentations Murray discussed the proposed business of the Croft Clinic and Foster presented the merits of the investment opportunity.
23. The activities referred to in paragraph 22 constituted trading under the Act for which Murray was neither registered nor exempted contrary to section 34 of the Act.
24. Specialized Surgical defaulted entirely on its February mortgage payment for the Croft Clinic land and building.
25. On or about March 27, 1998, Foster received a transfer of 100,000 shares of Specialized Surgical from Swanney as partial compensation for past services rendered to Specialized Surgical.
26. Foster acquired 300,000 shares of Specialized Surgical from another director free of charge on April 8, 1998.
27. Murray became a director of Specialized Surgical on May 21, 1998, as a condition of his employment with Foster First. Murray received no additional remuneration for assuming this obligation and was assured by Foster that he would not be asked to do anything wrong as a director of Specialized Surgical.

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28. On or about June 1, 1998, Foster First entered into a contract with Specialized Surgical to provide administrative services to Specialized Surgical and those services were provided by Foster, Foster First, M.W. Foster and Associates Ltd. (M.W. Foster), and its employees until about June 1999.
29. M.W. Foster is a non-reporting issuer incorporated in British Columbia on April 8, 1993. At all material times, the sole director and officer of M.W. Foster was Foster.
30. A judgment was entered against the Croft Clinic land and property on August 27, 1998.
31. A certificate of Pending Litigation was filed against the property on January 8, 1999.
32. Murray voluntarily ceased employment with Foster First and his directorship of Specialized Surgical approximately May 31, 1999.
33. The Specialized Surgical OM of November 12, 1997, was never amended to reflect any of the material changes described in paragraphs 28, 30, and 31 above which occurred during Murray's time as a director of Specialized Surgical.
34. Foster and Foster First sold approximately \$530,000 of Specialized Surgical shares to non-directors under the Specialized Surgical OM during the period Murray was employed by Foster First from February 1998 to May 31, 1999.
35. Murray, as a director of Specialized Surgical authorized, permitted or acquiesced in the misrepresentations made in the Specialized Surgical OM as a result of the failure to amend for the material changes described in paragraphs 30 to 33 above, contrary to section 50(1)(d) of the Act and the public interest.
36. Murray, by means of the conduct described in paragraphs 33 and 35 above, was in breach of his duties as a director of Specialized Surgical contrary to section 118 of the Company Act and the public interest.

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37. Specialized Surgical raised approximately \$305,000 during the time Murray was a director. These funds were raised in reliance upon the sophisticated purchaser exemption in section 128(b) of the *Securities Rules*, B.C. Reg. 194/97 (the Rules).
38. The Form 20s that were filed with the Commission by Specialized Surgical contained misrepresentations that the distributions were made to sophisticated purchasers when some of the investors did not meet the self-assessment of financial risk or net worth requirements of section 128(b) of the Rules.
39. Murray, as a director of Specialized Surgical, authorized, permitted or acquiesced in these misrepresentations, contrary to section 50(1)(d) of the Act, sections 135 and 139 of the Rules, and the public interest.

Mitigating Factors

[para 3]

The Executive Director has taken into account the following facts as factors mitigating the sanctions which would otherwise have applied in the public interest:

1. Murray has co-operated fully with staff of the Commission in the course of this investigation.
2. Murray and his family members lost approximately \$25,000 in this investment.
3. Murray at all times was acting on the instructions of Foster.
4. Absent the mitigating factors a payment to the British Columbia Securities Commission of \$10,000 would have been appropriate.

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Undertakings

[para 4]

Murray undertakes:

1. to pay to the British Columbia Securities Commission the sum of \$2,500 of which \$500 represents costs of the investigation;
2. to comply fully with the Act, Rules, and applicable regulations; and
3. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

[para 5]

Murray consents to an order by the Executive Director (the Order) that:

1. under section 161(1)(b) of the Act, Murray cease trading in any security for a period of two years from the date of the Order;
2. under section 161(1)(c) that any or all of the exemptions described in sections 44 to 47, 74, 75, 98, or 99 do not apply to Murray for a period of two years from the date of the Order except that Murray may trade in securities he currently holds, solely through one registered dealer, under section 45(2)(7) of the Act;
3. under section 161(1)(d) of the Act, Murray resign any position that he holds as a director and officer of any issuer and is prohibited from becoming or acting as a director or officer of any issuer until the later of:
 - (a) the date he successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers; or
 - (b) two years from the date of the Order; and
4. under section 161(1)(d) of the Act, Murray be prohibited from engaging in investor relations activities until two years after the date of the Order.

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Waiver

[para 6]

Murray waives any right he 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.

[para 7]

May 9, 2002

“Rob Murray”

Robert Murray

“Sheldon Page”)
Witness Signature)
Sheldon Page)
Witness Name (please print))
1479 Oak Ridge Road)
Kelowna, BC V1W 3A8)
Address)
Manager)
Occupation)

[para 8]

May 10, 2002

Martin Eady

A/Executive Director