

# 2004 BCSECCOM 217

## Order

Walter Leo Barnscher

### Section 161 of the *Securities Act*, RSBC 1996, c. 418

#### Background

- ¶ 1 The Executive Director has entered into a Settlement Agreement with Walter Leo Barnscher (Barnscher), a copy of which is attached as Schedule A.

#### The Order

- ¶ 2 The Executive Director, considering it to be in the public interest to do so, orders by consent that:
1. under sections 161(1)(b) and (c) of the Act, Barnscher cease trading in any securities for three years from the date of this Order, except that Barnscher may rely on section 45(2)(7) of the Act to trade in one registered retirement savings plan (RRSP) and one non-RRSP account in his own name through a registered dealer as long as Barnscher provides the registered dealer with a copy of this Order before any trade takes place;
  2. under section 161(1)(d) of the Act, Barnscher must resign any position he holds as a director or officer of any issuer, except as set out in paragraph 3 below;
  3. under section 161(1)(d) of the Act, Barnscher is prohibited from becoming or acting as a director or officer of any issuer, except for an issuer in which he is the sole director, officer and shareholder and provided that issuer does not provide management, promotion, consulting or administrative services to any other issuer, for the later of:
    - (a) three years from the date of this Order,
    - (b) the date Barnscher successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers, and
    - (c) the date Barnscher satisfies his undertaking to pay \$10,000 to the Commission; and

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4. under section 161(1)(d) Barnscher is prohibited from engaging in investor relations activities for three years from the date of this Order.

¶ 3 April 2, 2004

“Martin Eady”

¶ 4 Martin Eady  
A/Executive Director

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## Settlement Agreement

Walter Leo Barnscher

*Securities Act, RSBC 1996, c. 418*

- ¶ 1 The following settlement of issues has been reached between Walter Leo Barnscher and the Executive Director.

### Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, Barnscher acknowledges the following facts as correct:

### Background

1. Barnscher, a British Columbia resident, was registered under the *Securities Act, RSBC 1996, c. 418* (the Act) as a mutual fund salesperson between 1995 and 1999 with four different dealers. Barnscher was not registered to sell securities in 2000.
2. In 2000, Barnscher was a director, officer and controlling shareholder of 601949 B.C. Ltd. (ShelfCo), which was incorporated in British Columbia on February 24, 2000. As such, he was required to ensure that any distribution of securities by ShelfCo complied with the Act.
3. ShelfCo was not a reporting issuer and its shares were not listed and posted for trading on any exchange. ShelfCo has not filed a prospectus, preliminary prospectus or offering memorandum with the British Columbia Securities Commission.
4. From March 13 to June 6, 2000, Barnscher participated in selling 1,613,705 shares of ShelfCo to 10 British Columbia investors for proceeds of \$242,055.70.
5. All of the shares of ShelfCo sold to those 10 investors were from ShelfCo's treasury and had not been previously issued. The sale was therefore a distribution under the Act, for which a prospectus was required. Registration under the Act was also required for the sale of ShelfCo shares. No exemptions from the prospectus and registration requirements under the Act were available.
6. The proceeds from the sale of ShelfCo shares were used for ShelfCo's purposes.

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### **Breaches of the Act and Actions Contrary to the Public Interest**

7. Barnscher distributed the securities of ShelfCo without a prospectus, contrary to section 61 of the Act.
8. Barnscher sold the securities of ShelfCo without being registered, contrary to section 34(1)(a) of the Act.
9. Barnscher, as a director and officer of ShelfCo, failed to ensure that the distribution of securities by ShelfCo complied with the Act. Accordingly, he failed to exercise the care, diligence and skill of a reasonably prudent person as required by sections 118 and 135 of the *Company Act*, RSBC 1996, c.62, contrary to the public interest.

### **Undertaking**

¶ 3 Barnscher undertakes to do the following:

1. comply with the Act and the *Securities Rules*, B.C. Reg. 194/97;
2. pay to the Commission the sum of \$10,000, of which \$3,500 represents investigation costs;
3. not to apply for registration under the Act for three years from the date of the Executive Director's order consented to in this settlement (the Order); and
4. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

### **Order**

¶ 4 Barnscher consents to an Order that:

1. under sections 161(1)(b) and (c) of the Act, Barnscher cease trading in any securities for three years from the date of the Order, except that Barnscher may rely on section 45(2)(7) of the Act to trade in one registered retirement savings plan (RRSP) and one non-RRSP account in his own name through a registered dealer as long as Barnscher provides the registered dealer with a copy of the Order before any trade takes place;
2. under section 161(1)(d) of the Act, Barnscher resign any position he holds as a director or officer of any issuer, except as set out in part 4, paragraph 3;
3. under section 161(1)(d) of the Act, Barnscher be prohibited from becoming or acting as a director or officer of any issuer, except for an issuer in which he is the sole director, officer and shareholder and provided that issuer does not

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provide management, promotion, consulting or administrative services to any other issuer, for the later of:

- (a) three years from the date of the Order,
  - (b) the date Barnscher successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers, and
  - (c) the date Barnscher satisfies his undertaking to pay \$10,000 to the Commission; and
4. under section 161(1)(d) Barnscher be prohibited from engaging in investor relations activities for three years from the date of the Order.

¶ 5 **Waiver**

Barnscher 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.

¶ 6 March 31, 2004

¶ 7 “Walter Leo Barnscher”

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Walter Leo Barnscher )  
 )  
“N. Jaramillo” )  
Witness Signature )  
Nelly Jaramillo )  
Witness Name (please print) )  
\_\_\_\_\_)  
 )  
750 – 1500 Pender Street )  
Address )  
Receptionist )  
Occupation )

¶ 8 April 2, 2004

“Martin Eady”

¶ 9 Martin Eady  
A/Executive Director