BRITISH COLUMBIA SECURITIES COMMISSION
Section 171 of the *Securities Act*, RSBC 1996, c. 418

Citation: Re Flexfi Inc., 2018 BCSECCOM 374 Date: 20181128

Flexfi Inc. (formerly known as CC Cornerstone Credit Ltd.)
and Afshin Ardalan

Panel	Nigel P. Cave	Vice Chair
	Audrey T. Ho	Commissioner
	Gordon Holloway	Commissioner

Hearing date	October 30, 2018
Submissions Completed	November 6, 2018
Decision date	November 9, 2018
Reasons date	November 28, 2018
Appearing	
Derek Chapman	For the Executive Director
Robert Cooper	For Flexfi Inc. and Afshin Ardalan

Reasons for Decision

I. Background

[1] On May 24, 2018, the Panel issued its decision on liability and sanction against Afshin Ardalan and Flexfi Inc. (collectively, the Applicants) (2018 BCSECCOM 166) (the Decision). The panel accepted the Applicants' admission of liability and made sanction orders pursuant to sections 161 and 162 of the *Securities Act*, RSBC 1996, c. 418.

[2] Those sanction orders included the following:

1. under section 161(1)(d)(i), Ardalan resign any position he holds as a director or officer of an issuer or registrant except that he may continue to act as a director and officer of Flexfi Inc.;

2. Ardalan be prohibited for the later of four years and the date that the amount set out in subparagraph 3. below is paid:

    a) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account

and one RESP account) through a registered dealer, if he gives the registered dealer a copy of the Decision;

b) under section 161(1)(c), from relying on any of the exemptions set out in the Act, the regulations or a decision;

c) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant, except that he may continue to act as a director and officer of Flexfi Inc.;

d) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

e) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

f) under section 161(1)(d)(v), from engaging in investor relations activities;

3. Ardalan pay to the Commission $40,000 pursuant to section 162 of the Act; and

4. Flexfi be prohibited for four years:

a) under section 161(1)(b)(ii), from trading in or purchasing any securities or exchange contracts;

b) under section 161(1)(c), from relying on any of the exemptions set out in the Act, the regulations or a decision;

c) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

d) under section 161(1)(d)(iv), from acting in a management or consultative capacity in connection with activities in the securities market; and

e) under section 161(1)(d)(v), from engaging in investor relations activities.

[3] The above prohibitions imposed on Flexfi and Ardalan were made subject to the following exceptions:

1. each may engage in conduct necessary to find financing for Flexfi's business, including advertisement, solicitation, negotiation or other investor relations activities, except that if either Ardalan or Flexfi identified a prospective means of financing Flexfi's business, they must apply for an appropriate variation order from this Commission before distributing securities of Flexfi; and

2. each may engage in conduct including advertisement, solicitation, negotiation or other investor relations activities, in order to find financing to enable a new corporate entity (New Entity) to purchase the assets of Flexfi, except that if either Ardalan or

Flexfi identified a prospective means of financing the purchase through the New Entity, they must apply for an appropriate variation order from this Commission before distributing securities of Flexfi or the New Entity.

[4] On September 13, 2018, the Applicants applied, under section 171 of the Act, for a variation of these orders so that Ardalan could pursue a transaction that would involve incorporating a new entity, to be called Finjoy Inc., to issue securities for the purpose of raising funds to purchase Flexfi's assets (the Offering), which funds would be used in part to repay Flexfi's outstanding loans. The Applicants sought a variation of the orders to permit Ardalan, through Finjoy, to:

1. act as a director and chief executive officer of Finjoy, and therefore to act in a management or consultative capacity in connection with activities in the securities market;

2. pursue a proposed offering of securities of Finjoy, which if the minimum aggregate amount is raised will be used in part to purchase the assets of Flexfi and repay existing Flexfi investors;

3. rely on the offering memorandum prospectus exemption in connection with the proposed offering; and

4. engage in investor relations activities in connection with the proposed offering, including the distribution of securities of Finjoy.

[5] The Applicants and the executive director provided written and oral submissions.

[6] On October 30, 2018, after considering the submissions of the parties, the panel advised that it was prepared to grant a variation order pursuant to section 171 of the Act, but could not make the orders the Applicants sought because the requested orders did not contain all of the representations the Applicants had made in their submissions with respect to the Offering.

[7] The panel asked the parties to propose a revised form of order, which they did.

[8] On November 9, 2018, considering that to do so would not be prejudicial to the public interest, we granted the application and varied the orders, under section 171, against Ardalan as follows:

1. Ardalan is permitted, through a new entity intended to be called Finjoy, to:

   a) act as a director and chief executive officer of Finjoy, and in connection with those positions, to act in a management or consultative capacity in connection with activities in the securities market,

b) pursue the Offering of securities of Finjoy, including trading in or purchasing securities of Finjoy, which if the minimum aggregate amount is raised will be used in part to purchase the assets of Flexfi and repay existing Flexfi investors,

c) rely on the offering memorandum prospectus exemption and exemptions from the registration requirement in connection with the Offering, and

d) engage in investor relations activities in connection with the Offering, including distributing securities of Finjoy;

2. the form of offering memorandum to be used in connection with the Offering must be in the required form and shall include at least the following:

   a) any audited and interim unaudited financial statements required by the applicable offering memorandum form, including at least audited financial statements of Flexfi for the fiscal year ended August 31, 2017 and an interim unaudited financial statement for the period September 1, 2017 to May 31, 2018, and

   b) disclosure of Flexfi's intended use of funds to repay in full the $4.6 million in principal owing to its investors;

3. no material information about the business of Flexfi or Finjoy may be used in marketing materials relating to the Offering if that disclosure is not part of the offering memorandum used in connection with the Offering;

4. if the minimum amount of investment is achieved pursuant to the offering memorandum used in connection with the Offering, Ardalan will cause Flexfi to repay the full amount of the principal owing to existing Flexfi investors; and

5. Ardalan will cause Flexfi and/or Finjoy to take all necessary steps to comply with this Order.

[9] The following are our reasons for making these orders.

II. The law on section 171 applications

[10] Section 171 of the Act states:

> If the commission … considers that to do so would not be prejudicial to the public interest, the commission … may make an order revoking in whole or in part or varying a decision the commission … has made under this Act, … whether or not the decision has been filed under section 163.

[11] *BC Policy 15-601 - Hearings* sets out procedures for hearings under the Act. Section 8.10(a) provides guidance on revoking or varying a decision. It states, in part:

> … Before the Commission changes a decision, it must consider that it would not be prejudicial to the public interest. This usually means that the party must show the Commission new evidence or a significant change in the circumstances.

[12] The Commission has consistently applied the thresholds described in *BC Policy 15-601*. It is also important to note that the wording of section 171 makes clear that there may be circumstances where it would not be prejudicial to the public interest to vary or revoke a previously made order of the Commission without there being new evidence or a significant change in circumstances.

[13] There was no dispute among the parties that this was the legal framework applicable to the application. However, this application was unusual in that the likelihood of it being made was disclosed by the Applicants during the sanctions phase of the hearing which led to the market prohibitions being imposed upon them. The panel made specific carve-outs from its orders at that time to allow the Applicants to explore possible transactions similar to the Offering. As a result, the circumstances of this application under section 171 are somewhat different than typical applications under this provision.

III. Positions of the parties

[14] The Applicants submitted that:

- they had complied with the terms of the Commission's previous orders, including paying the $40,000 administrative penalty imposed upon Ardalan;
- Flexfi's financial circumstances have continued to deteriorate since the date of the original orders and that it needed to raise additional capital to repay its existing indebtedness and to continue with its business plans;
- the Applicants wished to incorporate Finjoy and to complete a financing having a minimum placement amount of $5 million;
- Finjoy would acquire the business and operations of Flexfi for $4.6 million and that Flexfi would then use those funds to repay its existing securityholders (which included all of the holders of securities of Flexfi to whom securities were distributed in contravention of section 61 of the Act);
- the Offering would be conducted by way of an offering memorandum, a draft of which they provided to the executive director for review in connection with this application; and
- a variation of the orders previously made against the Applicants would, therefore, not be prejudicial to the public interest.

[15] The executive director submitted that:

- there were deficiencies in the disclosure relating to the business of Flexfi and the transaction between Flexfi and Finjoy contained in the draft offering memorandum provided by the Applicants;

- even if the disclosure deficiencies were rectified, the Offering should not be allowed to proceed without the Applicants obtaining an independent valuation of Flexfi's assets and the valuation being disclosed in the offering memorandum;

- Finjoy should only be allowed to carry out the Offering through a registrant; and

- these latter two requirements were necessary in order to ensure that new investors in Finjoy received adequate investor protection in circumstances where the principal of Flexfi and Finjoy, Ardalan, had previously engaged in serious contraventions of the Act.

IV. Analysis

[16] In his submissions on sanction in connection with the proceedings which resulted in the Decision the executive director had objected to the carve-outs that the panel ultimately made. In the Decision, we explained our reasons for including the carve-outs as follows (at paragraphs 75-78):

> 75. As noted above, the respondents requested three carve outs from these orders.
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> 76. The executive director did not object to their request that Ardalan be allowed to maintain certain personal trading accounts and to remain as a director and officer of Flexfi. Flexfi is currently an operating business and Ardalan is currently its primary mind and management. As with *Solara*, we think that barring Ardalan from continuing in a management role at Flexfi could increase the risk of its investors not recovering their investments. It is in the public interest to allow him to continue in this role. Our orders incorporate these requested exceptions.
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> 77. The executive director did object to the respondents' request to carry out acts in furtherance of potential trades of securities to allow Flexfi, or a new entity related to the respondents that would acquire the assets of Flexfi, to raise additional funds, provided that any actual issuances of securities would require the respondents to seek a variance of our orders. The executive director objected to this carve out on the basis that it was unnecessary and not in the public interest.
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> 78. The evidence supports the submissions of the respondents that Flexfi may need to raise additional capital, whether within Flexfi or in a new entity. Flexfi has existing debt obligations, including the remaining

> $850,000 of loan arrangements that it illegally distributed, that may be impaired without an additional influx of capital. As the panel did in *Solara*, we find it to be in the public interest to allow the respondents to take steps to seek this additional financing should the need arise, provided they apply to this Commission to seek a variance of our orders prior to issuing, directly or indirectly, any securities in furtherance of this objective. Our orders incorporate this requested exception as well.

[17] We continue to be of the view that it is not prejudicial to the public interest that Ardalan be allowed to act as a director and senior officer in connection with the business and affairs of Flexfi and, post-transaction, Finjoy. We also continue to be of the view that it is not prejudicial to allow Ardalan, Flexfi and Finjoy to raise funds in order to repay the existing securityholders in Flexfi and to allow Finjoy to finance its business.

[18] This is a case where Ardalan has demonstrated compliance with securities regulatory provisions, once his contraventions of section 61 were identified. This is also a case where the investors who acquired securities in connection with a contravention of section 61 have yet to suffer any direct financial harm (i.e. all of the existing loans remain in good standing).

[19] However, it is also clear from all of the evidence that Flexfi must raise more capital or it will not be able to continue to meet either its existing debt obligations or carry on as a going concern.

[20] We were sympathetic to a number of the issues raised by the executive director with respect to certain disclosure deficiencies in the proposed offering memorandum. Our orders address these deficiencies.

[21] With respect to the requirements to obtain an independent valuation of Flexfi's assets and to only use a registrant to carry out the Offering, both would add substantial cost and delay to the Offering. More importantly, they are significantly in excess of what market participants would normally be required to do. Neither a valuation of the assets of an issuer nor a requirement to conduct an offering through a registrant is normally required to conduct an offering using the offering memorandum exemption from the prospectus requirement of the Act. The investor protection benefits identified by the executive director that would be derived from these two requirements are benefits that are not present in any offering of the type contemplated by the Applicants.

[22] Flexfi's current financial situation raises substantial risk for its existing securityholders – we were mindful of not imposing restrictions on its ability to raise capital that would substantially increase the risk of loss to those investors.

[23] We were also satisfied that prospective investors of Finjoy (in the Offering) will not be prejudiced. Those investors will receive an offering memorandum that will disclose that $4.6 million of their invested funds will be used to repay existing Flexfi indebtedness. They will be made aware of the financial history and condition of Flexfi and its business through the financial statements to be attached to the offering memorandum. They will also receive disclosure about the previous sanctions imposed upon Flexfi and Ardalan and their previous non-compliance with securities laws. These investors will also receive all of the other protections that all investors receive in offerings conducted by way of an offering memorandum.

After weighing the regulatory history of Ardalan, against his subsequent compliance with our orders, the costs of these additional requirements, the obvious need for financing in order to repay existing investors in Flexfi, and the disclosure and protections available to prospective investors in the Offering through an offering memorandum, we concluded that it was not necessary for the protection of the public interest to impose the two conditions on the proposed Offering requested by the executive director.

[24] As a consequence, we granted the variation order in the form set out above.

November 28, 2018

For the Commission

Nigel P. Cave
Vice Chair

Audrey T. Ho
Commissioner

Gordon Holloway
Commissioner