



British Columbia Securities Commission

Citation: 2019 BCSECCOM 241

Settlement Agreement

Genus Capital Management Inc.

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Genus Capital Management Inc. (Genus) agree as follows:

Agreed Statement of Facts

Background

1. Genus is a British Columbia registered portfolio manager, investment fund manager and exempt market dealer. Genus has been registered with the Commission since 1989.
2. Genus' head office is located in Vancouver, B.C.

Misconduct

Ineligible Use of Soft Dollars

3. Between 2009 and 2016, Genus used over \$1.67 million of client brokerage commissions (commonly referred to as "soft dollars") to pay for ineligible services. Genus used a significant portion of the soft dollars to develop two proprietary software platforms.
4. Genus intended to use the software platforms for research in support of Genus' quantitative investing programs. Although payments for the use of established software and databases for order execution or research purposes can be eligible uses of soft dollars, the development of proprietary software is not an eligible use.
5. Genus did not ensure that the expenditure of soft dollars on software development assisted with investment or trading decisions or with effecting securities transactions on behalf of clients, or that clients were receiving a reasonable benefit given the use and the amount of soft dollars paid.
6. Genus did not provide disclosure to clients regarding their use of soft dollars in the manner required by the *Securities Act*.



7. As a result of the above activity, Genus breached sections 3.1(1), 3.1(2), and 4.1(1) of National Instrument 23-102 *Use of Client Brokerage Commissions*.

Breach of Duty of Care

8. Genus ultimately transferred the intellectual property relating to one of the software platforms to a third party company, in exchange for partial ownership of the third party company, and a perpetual license allowing free use of the intellectual property for Genus clients.
9. By allowing client soft dollars to be used for ineligible software development services, and then transferring the resulting software platform to a related third party company, Genus failed to deal fairly with clients contrary to section 14 of the Securities Rules, and to exercise the required degree of care, diligence and skill contrary to section 125 of the Act.

Conflict of Interest

10. The majority of ineligible services paid for with soft dollars were provided by two companies that had a familial connection with one member of the Genus leadership team.
11. The third party purchaser of the intellectual property paid for with soft dollars also had a familial connection with the Genus leadership team.
12. These are material conflicts of interest that triggered Genus' conflict of interest obligations under the Act.
13. Genus failed to avoid, control or disclose the ongoing conflicts of interest to its clients in the manner required by section 13.4 of National Instrument 31-103.

History of Regulatory Proceedings

14. Genus has a history of previous compliance failures:
 - (a) in 2012 Genus entered into a settlement agreement with the Executive Director with respect to the failure to file exempt distribution reports, and to establish and implement appropriate compliance systems; and
 - (b) in 2016, the Executive Director imposed conditions on Genus' registration, requiring it to engage an external monitor for one year after staff identified several compliance deficiencies in a 2015 review.



Mitigating Factors

15. At the time the ineligible soft dollar expenditures were made, Genus believed it was complying with National Instrument 23-102, and that the software platforms would ultimately provide a benefit to clients. Genus now accepts that its judgement was wrong about the eligibility of the expenditures.
16. Genus cooperated with Commission staff during and after the compliance examination and subsequent investigation.
17. Genus agreed to make early admissions with respect to the above noted misconduct prior to the issuance of a Notice of Hearing.
18. Genus agreed to reimburse past and current clients for the misuse of soft dollars for the entire review period of 2009 to 2016, and to engage an independent third party to ensure appropriate compensation is paid to clients.
19. Staff have found no evidence of dishonest conduct by Genus.

Undertakings

20. Genus undertakes:
 - (a) to repay the \$1.67 million soft dollars wrongfully expended between 2009 and 2016:
 - to all current clients in the form of quarterly management fee credits over the next 16 quarters; and
 - to any former clients, or clients who leave prior to the end of the four year repayment period, and who are owed at least \$50.00, in the form of cash repayments payable in equal annual payments over the next four years;
 - (b) to deliver comprehensive disclosure satisfactory to the Executive Director to current and former clients to explain the nature of Genus' compliance failures and the associated soft dollar repayments;
 - (c) to retain an independent compliance monitor for a period of at least one year to review their soft dollar and conflicts of interest policies, procedures and processes; and
 - (d) to pay \$350,000 to the British Columbia Securities Commission in respect of settlement of this matter, one quarter of which sum is due and payable



immediately without further demand and the balance of which is due in equal annual instalments over the following three years.

Public Interest

21. In light of all of the circumstances, including the undertakings provided by Genus in paragraph 20 of this Agreement, it is not in the public interest to issue orders under section 161 of the Act against Genus.

Waiver

¶ 2 Genus waives any right it may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

Counterpart

¶ 3 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 4 July 18 , 2019

¶ 5 Wayne Wachell
Genus Capital Management Inc.
(Signing Authority)

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

July 19 , 2019

Peter J. Brady
Peter J. Brady
Executive Director