

REPLY TO:

Mila Pivnenko

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By Regular Mail

July 24, 2025

Dear Mr. Heatherington:

Colin Jeffrey Heatherington Reciprocal Order Application

I am writing this letter on behalf of the Executive Director of the British Columbia Securities Commission (the Executive Director).

This letter notifies you and the British Columbia Securities Commission (the Commission) that the Executive Director is applying for orders against you under sections 161(6)(a) and 161(1) of the *Securities Act*, RSBC 1996, c. 418 (the Act). The Executive Director is not seeking a financial penalty.

The Executive Director is making this application based on your criminal conviction in *United States of America v. Colin Heatherington*, CR13-00183 JAK (Criminal Action).

CRIMINAL ACTION

1. On February 1, 2024, you entered a guilty plea pursuant to a plea agreement you signed on January 5, 2024, and were convicted of one count of conspiracy to commit securities fraud and wire fraud, contrary to sections 1343 and 1348 of Title 18 United States Code.

Judgment and Probation/Commitment Order
Transcript of the Plea Proceeding, p. 3, lines 14-17; p. 8, lines 17-20; p. 19, lines 22-25; p. 20, lines 1-2 and 17-23; p. 27, lines 14-25; p. 28, lines 8-11 and 19-25; p. 29, lines 1-16

2. On July 2, 2024, the Honourable Justice Kronstadt of the United States District Court sentenced you to the following:
 - (a) Imprisonment for 42 months;
 - (b) Upon release from imprisonment, a supervised release for two years, with conditions;
 - (c) A special assessment of \$100; and
 - (d) Restitution in the total amount of \$215,851,031, jointly and severally with a co-conspirator.

Judgment and Probation/Commitment Order
Transcript of the Sentencing Proceeding, p. 26, lines
14-16 and 20-23; p. 27, lines 10-13; p. 28, lines 7-14

Summary of Findings

3. The following facts are contained in the Plea Agreement, Exhibit A – Statement of Facts in support of the Plea Agreement (“**Statement of Facts**”), Transcript of the Plea Proceeding and Transcript of the Sentencing Proceeding:

- a) From approximately September 2004 through June 2008, you, together with co-conspirators, engaged in a scheme to defraud the securities markets and investors in various hedge funds (the “**Absolute Funds**”) based in Mallorca, Spain;

Plea Agreement, p. 4, lines 24-28; p. 5, lines 1-7
Statement of Facts, p. 1, lines 26-28; p. 2, lines 1-2

- b) You were a securities trader at Absolute Capital Management Holdings (ACMH), a hedge fund management company, and had authority to execute trades on behalf of the Absolute Funds in the United States-based securities markets;

Statement of Facts, p. 2, lines 4 and 13-17

- c) With the assistance of co-conspirators, you caused the Absolute Funds to purchase billions of shares in United States-based penny stocks and then caused those penny stocks to be used to manipulate the net asset value (NAV) of the Absolute Funds through manipulative stock trading activity;

Statement of Facts, p. 2, lines 22-26

- d) In furtherance of the scheme, you caused millions of shares to be issued to a company beneficially owned by you and your brother, who you recruited to work at the Absolute Funds. You then directed trades involving the penny stock shares to be made in the US securities markets at prices that you and your co-conspirators would dictate and illegally control. During the relevant period, you and your co-conspirators overwhelmingly controlled the trading activity in many of the penny stocks;

Statement of Facts, p. 3, lines 13-23

- e) The manipulative trading practices that you and your co-conspirators conducted on behalf of the Absolute Funds included cross trades, artificial setting of closing prices, backdated trades and cancelled trades;

Statement of Facts, p. 4, lines 2-7

- f) These manipulative trading practices inflated the value of the penny stock shares you had acquired, which in turn artificially increased the NAVs of the Absolute Funds (a prohibited practice known as “portfolio pumping”) and consequently, the performance and management fees paid by the funds, enabling the principals to falsely advertise higher returns, reap higher fees, and attract new and unsuspecting investor victims resulting in massive profits to the ACMH’s principals at the ultimate expense of the Absolute Funds and their investors;

Statement of Facts, p. 3, lines 4-10; p. 4, lines 7-16

- g) You and your co-conspirators implemented a secret instant messaging system that was not automatically archived, which enabled the co-conspirators to hide conversations about manipulative trades in the penny stocks from the regulators;

Statement of Facts, p. 4, lines 25-28; p. 5, lines 1-2

- h) When the scheme unraveled, the stock prices of the penny stock companies plunged and the Absolute Funds lost millions of dollars;

Statement of Facts, p. 3, lines 11-12

- i) You made millions of dollars through self-dealing trades by selling your own shares of the artificially inflated penny stocks to the Absolute Funds. You personally profited by at least \$15 million;

Statement of Facts, p. 5, lines 22-24

Transcript of the Sentencing Proceeding, p. 20, lines 18-19

- j) As a result of the fraudulent scheme, you and your co-conspirators caused actual losses of approximately \$215,851,031;

Statement of Facts, p. 6, lines 24-25

- k) You admitted that you committed a conspiracy to commit fraud and wire fraud.

Plea Agreement, p. 5, lines 8-12; p. 9, lines 5-8

Statement of Facts, p. 1, lines 4-6; p. 7, lines 4-9

Transcript of the Plea Proceeding, p. 8, lines 17-20; p. 19, lines 22-25; p. 20, lines 1-2 and 17-23; p. 27, lines 14-25

THIS APPLICATION

4. With this letter, the Executive Director is applying to the Commission for orders against you under [section 161](#) of the Act. I have enclosed a copy of section 161 of the Act for your reference.
5. In making orders under section 161 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities.
6. Section 161(6)(a) of the Act gives the Commission the power to make orders under section 161(1) of the Act against a person who has been convicted of a securities-related offence in Canada or elsewhere.
7. The Statement of Facts states that:
 - a) With the assistance of co-conspirators, you caused the Absolute Funds to purchase billions of shares in United States-based penny stocks and then caused those penny stocks to be used to manipulate the NAV of the Absolute Funds through manipulative trading activity; and

Statement of Facts, p. 2, lines 22-26
 - b) These penny stocks were securities.

Statement of Facts, p. 1, line 16
8. You have been convicted of an offence arising from a transaction, business or course of conduct related to securities and therefore, section 161(6)(a) applies.
9. Orders under section 161(1) of the Act are protective, preventative and intended to be exercised to prevent future harm.

[Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII), paras. 36, 39 and 56
10. In [Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22, and in subsequent decisions, the Commission identified factors to consider when determining orders under section 161(1).
11. The following factors from *Re Eron* are relevant in this proceeding:
 - (a) the seriousness of the respondent's conduct,
 - (b) the harm suffered by investors as a result of the respondent's conduct,
 - (c) the extent to which the respondent was enriched;

- (d) factors that mitigate the respondent's conduct;
- (e) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- (f) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- (g) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- (h) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- (i) orders made by the Commission in similar circumstances in the past.

[Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22

Application of the Factors Seriousness of the Conduct

12. Contraventions of section 57(1)(a), or market manipulations, share two significant similarities with fraudulent misconduct. Like fraud, a contravention of section 57(1)(a) requires a finding of intent on the part of the respondent and some element of deceit (i.e. creating a misleading appearance of trading activity in, or an artificial price for, a security). As a consequence, a market manipulation is one of the most serious misconduct contemplated by the Act.

[Re Lim](#), 2017 BCSECCOM 319, para. 12¹

13. Market manipulation compromises the integrity of the entire market. Its impact extends beyond the victims who lost money to the investing public as a whole.

[Re Poonian](#), 2015 BCSECCOM 96, para. 15

14. As described in the Plea Agreement and the Statement of Facts, you were an integral participant in a lengthy and massive scheme that manipulated the market prices of multiple penny stock companies and caused millions in losses.
15. At your sentencing, you admitted that you victimized other people and contributed to unfavorable perception of the investment community in which you were a "bad player". Your misconduct was extremely serious.

Transcript of the Sentencing Proceeding, p. 16, lines 11-14 and 20-23; p. 17, line 6

Harm suffered by investors

16. Your conduct resulted in significant harm to investors. You and your co-conspirators caused the investors over US\$215 million in losses.

¹ At the time *Re Lim* was decided, the market manipulation section was numbered 57(a).

Statement of Facts, p. 6, lines 24-25

17. Given the court's finding that your economic circumstances do not allow for either immediate or future payment of the ordered restitution amount and the order for nominal restitution payments, it is highly unlikely that the investors would ever be made whole.

Transcript of the Sentencing Proceeding, p. 26, lines 20-23; p. 27, lines 6-9

Enrichment

18. You personally profited from the market manipulation by at least \$15 million.

Transcript of the Sentencing Proceeding, p. 20, lines 18-19

Mitigating Factors

19. The Commission has previously held that it is a significant mitigating factor when respondents admit liability pre-hearing. Your guilty plea in the Criminal Action is a mitigating factor.

[Re Flexfi Inc.](#), 2018 BCSECCOM 166, para. 70

20. At your sentencing, you expressed significant remorse for your actions. This suggests an acceptance of responsibility for the misconduct and is a mitigating factor.

Transcript of the Sentencing Proceeding, p. 16, lines 2-5, 11-14 and 20-23

[Streamline](#), 2015 BCSECCOM 66, para. 28

Risk to investors and the capital markets; participation in our capital markets; fitness to be a registrant or a director or officer

21. Public confidence in our capital markets is dependent on the honesty and integrity of those who participate in them.

[Re Amir Beiklik](#), 2020 BCSECCOM 261, paras. 25 and 39

22. Core requirements to fitness as a director or officer of a public issuer are honesty, integrity and an ability to act in the best interest of shareholders.

[Re Mountainstar Gold Inc.](#), 2019 BCSECCOM 123, para. 21

23. Those who engage in market manipulation intend to deceive and harm the investing public and represent serious risks to our capital markets. This

misconduct is completely inconsistent with conduct acceptable for a registrant, director or officer of an issuer, or those otherwise engaged in the capital markets.

[Re Lim](#), 2017 BCSECCOM 319, para. 27

[Re Deyrmenjian](#), 2019 BCSECCOM 93, para. 119

24. At your sentencing, the Honourable Justice Kronstadt noted that it was not likely that you would commit further crimes.

Transcript of the Sentencing Proceeding, p. 25, lines 24-25; p. 26, line 1

25. However, when you engaged in the market manipulation, you demonstrated dishonesty and a disregard for compliance with applicable securities laws.

[Re Mawji](#), 2020 BCSECCOM 59, para. 31

26. You are currently incarcerated in the United States but are a former resident of British Columbia whose wife continues to live here. You are expected to return to Canada after the end of your custodial sentence.

Transcript of the Sentencing Proceeding, p. 12, lines 24-25; p. 15, lines 1-3; p. 23, lines 8-12; p. 34, lines 12-13
Affidavit #1 of Colette Colter, sworn July 24, 2025, para. 2

27. Your participation in the capital markets, given the misconduct which you have admitted, raises concerns for the protection of the investing public. In addition, the massive size of the market manipulation that you orchestrated with your co-conspirators and the extreme investor losses that your misconduct caused must be taken into account. Broad, permanent market prohibitions are necessary and appropriate to protect our capital markets.

Deterrence

28. Through the orders we are seeking, we intend to demonstrate the consequences of your conduct, to deter you from future misconduct, and to create an appropriate general deterrent. Permanent market bans are proportionate to the gravity of your misconduct and are necessary to ensure that you and others will be deterred from engaging in similar misconduct in the future.

Previous orders

29. We refer to a number of decisions for guidance on the appropriate sanction. The Commission ordered permanent market bans in the three decisions below. The decisions involve large scale market manipulations with significant harm to the investing public and profit to the respondents:

- [Re Mulholland](#), 2022 BCSECCOM 468
 - This is a reciprocal order case based on US criminal, civil and administrative actions. The respondent, with others, was involved in a \$250 million fraudulent pump and dump scheme to manipulate the public trading market for US penny stocks and was enriched by \$21 million. He pled guilty to money laundering conspiracy, and was sentenced to 12 years in prison. Mulholland was a recidivist who had previously agreed to a permanent ban from the penny stocks market in a settlement with the US Securities and Exchange Commission because of his involvement in a different pump and dump scheme.
- [Re Poonian](#), 2015 BCSECCOM 96
 - Five respondents participated in an extensive and sophisticated market manipulation of shares of one company, targeting a specific pool of largely unsophisticated investors. The scheme involved layers of deception to conceal the respondents' participation in the manipulation. The investor loss (and the corresponding trading gain by the respondents) was approximately \$7 million.
- [Re Deyrmenjian](#), 2019 BCSECCOM 93
 - Respondents Khorchidian and Deyrmenjian, with others, participated in a large scale market manipulation of shares of one company, with the trading accounts connected to the market manipulation realizing approximately \$18.1 million. Khorchidian and Deyrmenjian were enriched by USD\$7.33 million and USD\$7.31 million, respectively.

30. The most similar decision in terms of quantum and misconduct is *Mulholland*. Both you and Mulholland, with others, engaged in over \$200 million dollar market manipulations of multiple US penny stocks and were enriched by millions of dollars. Both of you pled guilty to the misconduct and were criminally convicted. Despite the fact that Mulholland had past securities misconduct and you do not, and your remorse is a mitigating factor in your case, based on the similarities between your case and the facts in the precedent, permanent market bans are reasonable.

The Davis Consideration

31. In the Court of Appeal decision in [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149, the Court identified that it is incumbent upon a tribunal to consider a respondent's individual circumstances when determining whether measures short of a permanent ban would protect the investing public where a person's livelihood is at stake.

32. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

CONNECTION TO BRITISH COLUMBIA

33. You are a citizen of Canada. Before your extradition to the United States, you resided and worked in Canada. You used your accounts in British Columbia to receive some of the proceeds of your misconduct.

Transcript of the Sentencing Proceeding, p. 12, lines 24-25; p. 34, lines 12-13
Amended Criminal Complaint, p. 1, "Address of Accused";
p. 3, para. 3; p. 23, para. 32; p. 24, para. 35
Affidavit #1 of Colette Colter, sworn July 24, 2025, para. 2

ORDERS SOUGHT

34. In seeking orders under 161(1) of the Act, the Executive Director has taken the following factors into consideration when applying for orders in this proceeding:

- (a) the circumstances of your misconduct;
- (b) the documents from the Criminal Action;
- (c) the factors from *Eron* and *Davis*; and
- (d) the public interest.

35. The Executive Director is seeking the following orders pursuant to section 161(1) of the Act:

- (a) under section 161(1)(d)(i), you resign any position you hold as a director or officer of an issuer or registrant;

- (b) you are permanently prohibited:

- (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if you give a registered dealer a copy of this decision, you may trade in or purchase securities only through a registered dealer in:

(A) RRSPs, RRIFs, or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or locked-in retirement accounts for your own benefit;

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

- (iii) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;

- (iv) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;
- (v) under section 161(1)(d)(iv), from advising or otherwise acting in a management or consultative capacity in connection with activities in the securities or derivatives markets;
- (vi) under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of
 - (A) an issuer, security holder or party to a derivative, or
 - (B) another person that is reasonably expected to benefit from the promotional activity; and
- (vii) under section 161(1)(vi) from engaging in promotional activities on the person's own behalf in respect of circumstances that would reasonably be expected to benefit the person.

36. The Executive Director is not seeking any monetary sanctions against you.

SUPPORTING MATERIALS

37. In making this application, the Executive Director relies on the following, copies of which are enclosed:

- (a) Judgment and Probation/Commitment Order
- (b) Plea Agreement
- (c) Exhibit A – Statement of Facts in support of the Plea Agreement (Statement of Facts)
- (d) Transcript of the Plea Proceeding
- (e) Transcript of the Sentencing Proceeding
- (f) Amended Criminal Complaint
- (g) Affidavit #1 of Colette Colter, sworn July 24, 2025
- (h) [Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (i) [Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22
- (j) [Re Lim](#), 2017 BCSECCOM 319
- (k) [Re Poonian](#), 2015 BCSECCOM 96
- (l) [Re Flexfi Inc.](#), 2018 BCSECCOM 166
- (m) [Streamline](#), 2015 BCSECCOM 66
- (n) [Re Amir Beiklik](#), 2020 BCSECCOM 261
- (o) [Re Mountainstar Gold Inc.](#), 2019 BCSECCOM 123
- (p) [Re Deyrmenjian](#), 2019 BCSECCOM 93
- (q) [Re Mawji](#), 2020 BCSECCOM 59

- (r) [Re Mulholland](#), 2022 BCSECCOM 468
- (s) [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149

YOUR RESPONSE

- 38. You are entitled to respond to this application. To do so, you must deliver any response in writing, together with any supporting materials, to the Commission Hearing Office by **Tuesday, September 2, 2025**.
- 39. The contact information for the Commission Hearing Office is:

Commission Hearing Office
British Columbia Securities Commission
PO Box 10142, Pacific Centre
12th Floor, 701 West Georgia Street
Vancouver, BC V7Y 1L2
E-mail: hearingoffice@bcsc.bc.ca
Telephone: 604-899-6500
- 40. If you do not respond within the time set out above, the Commission will decide this application and may make orders against you without further notice.
- 41. The Commission will send you a copy of its decision.
- 42. **If you have any questions regarding this application, please contact Ms. Mila Pivnenko, at 604-899-6610, or mpivnenko@bcsc.bc.ca.**

Yours truly,

DocuSigned by:

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7/24/2025 | 9:59 AM PDT

Douglas B. Muir
Director, Enforcement

MP/crc
Enclosures

cc: Hearing Office (by email to hearingoffice@bcsc.bc.ca)