

REPLY TO:

Amir Ghorbani

T: 604-899-6872 / F: 604-899-6633

Email: aghorbani@bcsc.bc.ca

By Regular Mail

May 29, 2025

Dear Mr. Babini:

Marco Giovanni Babini
Reciprocal Order Application
Our File No.: 55365

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 guilty plea to, and criminal conviction for, conspiracy to commit securities fraud and wire fraud in the United States.

CRIMINAL CONVICTION

1. On December 11, 2023, you pled guilty to Count One of an indictment issued against you on September 10, 2015 by a Grand Jury of the United States District Court, District of Massachusetts.¹ Count One of the indictment alleged conspiracy to commit securities fraud and wire fraud under 18 U.S.C. § 1349.

Indictment
Plea Agreement²

2. On March 13, 2024, the Honourable Patti B. Saris, Judge, U.S. District Court, imposed the following sentence:

- (a) imprisonment equal to time you had already served;
- (b) eight months of supervised release; and
- (c) fine of \$50,000 and a special assessment of \$100.

Sentencing Judgment³

¹ Grand jury indictment dated September 10, 2015 against Edward W. Withrow III and Marco G Babini.

² Letter from U.S. District Attorney to your counsel outlining the terms of the plea deal, the agreed statement of facts, and an acknowledgment of the plea deal dated December 11, 2023 and signed by you and your counsel (Plea Agreement)

³ Judgment of United States District Court, District of Massachusetts, imposed March 13, 2024, signed and filed March 18, 2024 (Sentencing Judgment)

Summary of Findings

3. You admitted the following facts at page 8 of the Plea Agreement:

- (a) Between approximately June 2012 and March 2013 (the Relevant Period), you participated in a securities fraud scheme with others to sell stock that was under concealed control. You planned to sell the stock during a promotional campaign. You planned to fund the promotional campaign by executing pre-arranged trades with individuals you believed to be corrupt stockbrokers. You believed the corrupt brokers were willing to purchase and hold shares in exchange for kickbacks.
- (b) During the Relevant Period, you were a resident of Vancouver, British Columbia.
- (c) At the start of the Relevant Period, Endeavor Power Corporation (Endeavor) was a publicly-traded Nevada company with little or no operations, and Parallax Diagnostics Inc. (Parallax) was a private bio-medical company based in Massachusetts and controlled by Edward Withrow (Withrow).
- (d) You sold control of Endeavor to Withrow. Withrow then merged Endeavor with Parallax in or about November 2012.
- (e) After the merger, you held trading authority over 5% of Endeavor's outstanding free-trading shares in concealed control accounts held in Switzerland. You controlled the Swiss accounts under the names of nominee entities to circumvent U.S. federal securities laws.
- (f) No reports were filed with the U.S. Securities & Exchange Commission disclosing the common ownership of the shares in the nominee accounts, as required under U.S. federal securities law.
- (g) In or about December 2012, you agreed to execute pre-arranged trades with an individual who, unbeknownst to you, was an undercover FBI agent (Agent). You believed the Agent represented a network of corrupt brokers. You agreed to sell Endeavor shares to the Agent's brokers in the public market. The corrupt brokers would use their client's funds to buy the Endeavor shares from you.
- (h) You entered into pre-arranged trades to generate money for a promotional campaign that would generate investor demand for Endeavor shares. You planned to sell the shares you controlled in Switzerland into the rising investor demand. You agreed to pay a 20% kickback to the Agent and his corrupt brokers. In exchange, the corrupt brokers would not sell the shares that they purchased from you so that you could sell the shares you held under concealed control in Switzerland into the rising investor demand once the promotional campaign started.

At page 9 of the Plea Agreement, you admitted that:

- (i) You, the Agent, and a co-conspirator agreed to executed a pre-arranged trade valued at \$20,000 as a test trade. It was further agreed that if the test trade was successful, the Agent would be paid the kickback and more trades would be arranged with the goal of raising at least \$200,000 to pay for the promotional campaign.
- (j) On or about December 10, 2012, you and the Agent attempted to execute a pre-arranged test trade of Endeavor shares valued at \$20,000.

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(1) of the Act is a regulatory provision. The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to capital markets. No breach of the Act is required to trigger section 161(1). As such, to issue orders against you, the Commission does not need to find that conspiracy to commit securities and wire fraud under 18 U.S.C. § 1349 is analogous to a particular provision of the Act.

[Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII), paras. 36, 39, 42, 43, and 56

7. In [Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22, and in subsequent decisions, the Commission identified factors to consider when determining appropriate orders under section 161(1).
8. 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

9. Fraud is the most serious misconduct prohibited by the Act. As the Commission has stated, "nothing strikes more viciously at the integrity of our capital markets than fraud."

[Manna Trading Corp Ltd. \(Re\)](#), 2009 BCSECCOM 595, para. 18

10. Attempted frauds have the same potential to seriously impair the integrity and reputation of our markets as do actual frauds, especially if it were to appear that attempted frauds draw consequences significantly less serious than actual ones.

[Stiles \(Re\)](#), 2012 BCSECCOM 383, para. 42
[Allaby \(Re\)](#), 2012 BCSECCOM 399, para. 45

Enrichment and Harm suffered by investors

11. Since no actual investment was made, there was no enrichment and no investors were harmed.

Mitigating Factors

12. The Executive Director is not aware of any mitigating factors.
13. A consideration of aggravating factors is not relevant when the misconduct is already at the more serious end of the range.

[Stiles \(Re\)](#), 2012 BCSECCOM 383, para. 44
[Allaby \(Re\)](#), 2012 BCSECCOM 399, para. 47

Risk to investors and the capital markets

14. You engaged in a scheme with others to defraud investors in a publicly traded company.
15. You schemed to sell Endeavor shares to a corrupt network of stockbrokers. You planned to use the proceeds of the sales to fund a promotional campaign to increase the price of shares in Endeavor. You planned to sell Endeavor shares into the rising share price to enrich yourself.
16. You concocted a scheme to use some investors' money to defraud other investors. Your scheme shows your contempt for our system of securities regulation. Your attempted fraudulent conduct and defiance of the regulatory system shows that you present a significant risk to investors and markets.

[Stiles \(Re\)](#), 2012 BCSECCOM 383, para. 46
[Allaby \(Re\)](#), 2012 BCSECCOM 399, para. 48

17. Those who commit fraud, because of the *mens rea* associated with the misconduct, represent a significant risk to our capital markets.

[Re Dominion Grand](#), 2019 BCSECCOM 335, para. 15
[Re Braun](#), 2019 BCSECCOM 65, para. 21

Participation in our capital markets

18. Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating, individuals and companies must comply with securities laws. Compliance is paramount, ensuring the protection of the public and the integrity of the capital markets.

Fitness to be a registrant or a director or officer

19. Honesty is a critical part of being a registrant or a director or an officer of an issuer. In fact, it is part of the basic duties of those positions.

[Re SBC Financial Group Inc.](#), 2018 BCSECCOM 267, para. 34

20. Your dishonest conduct falls far short of that expected of participants in our capital markets. You pose a great risk to our markets and are ill-suited to act as a registrant, director, officer, promotor or advisor to any private or public issuer going forward.

Deterrence

21. The imposition of significant sanctions promotes general deterrence and helps restore the public's confidence in our capital markets. The role of the Commission is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.

[Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario \(Securities Commission\)](#), [2001] 2 SCR 132, para. 43.

22. Attempted frauds have the same potential to seriously impair the integrity and reputation of our markets as do actual frauds, especially if it were to appear that attempted frauds draw consequences significantly less serious than actual ones. Therefore, the sanctions the Commission imposes must be sufficiently severe to ensure that you and others will be deterred from engaging in similarly reprehensible conduct.

[Stiles \(Re\)](#), 2012 BCSECCOM 383, paras. 42, 46
[Allaby \(Re\)](#), 2012 BCSECCOM 399, paras. 45, 49

23. Through the orders sought, the Executive Director intends 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 your misconduct and are necessary to ensure that you and others will be deterred from engaging in similar misconduct in the future.

Previous orders

24. This section refers to a number of decisions for guidance on the appropriate sanction. The Commission ordered permanent market bans in the two decisions below. The decisions involve the same misconduct, attempted fraud.
- [Stiles \(Re\)](#), 2012 BCSECCOM 383
 - The Commission found that Stiles contravened section 50(1)(d) when he made blatant and serious misrepresentations with the intention of trading in securities. Fraud was not alleged because no investments were made but the Commission found that Stiles's dishonesty was sufficient for a finding of attempted fraud. The Commission held, at para. 48:

The orders are of necessity less onerous than would apply in the case of an actual fraud because, for example, there is no investment on which to base an order for disgorgement. That said, it is worth remembering that the exercise of the Commission's jurisdiction in making orders under section 161(1) are protective and preventative, intended to prevent likely future harm to securities markets: *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132. It follows that when it comes to making protective and preventative orders in the public interest, those who attempt fraud are likely to find themselves under orders similar to those who actually commit it.

- The Commission ordered permanent bans and an administrative penalty of \$35,000 against Stiles.
- [Allaby \(Re\)](#), 2012 BCSECCOM 399
 - The Executive Director alleged that Allaby and his companies Gaia Equity Investments (Gaia) and Midas Group Holdings Ltd. (Midas) contravened section 57(a) of the Act (as it then was) by making misrepresentations about having 4.2 billion dollars under management and having sophisticated investor clients, thereby creating a misleading appearance of trading activity. The Commission did not accept the Executive Director's submission and instead found that Allaby and his companies' misrepresentations were attempted fraud contrary to section 57(b) of the Act. The Commission stated, at paras. 34-35:

...The Commission investigator did not actually send funds to Gaia, nor is there evidence that any other investor did so. The dishonesty was present, but not the deprivation.

That said, Gaia attempted fraud. We have found that Gaia, in making its misrepresentations, did so with the intention of trading securities. Clearly, had anyone invested in Gaia, their pecuniary interests would have been put at risk. Gaia lied about everything of any significance to an investor. The returns offered were impossible to achieve through legal means. An investor's money would have gone to a bank account controlled exclusively by Allaby.

- The Commission ordered permanent bans and an administrative penalty of \$50,000 against Allaby.

25. Permanent market orders such as the ones ordered against the respondents in the two decisions above are consistent with the egregious nature of your attempted fraud.

The Davis Consideration

26. In the Court of Appeal decision [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 market ban would protect the investing public where a person's livelihood is at stake.
27. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

ORDERS SOUGHT

28. Although there is no limitation on the Commission from imposing a capital market sanction that is similar or different to the criminal sanctions, the Commission needs to consider what is reasonable based on the evidence known to it, as well as what is in the public interest.
29. 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 including the Settlement Agreement;
 - (b) the factors from *Eron* and *Davis*;
 - (c) the sanctions ordered in previous cases cited above; and

- (d) the public interest.
30. Based on all of these factors, 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)(d)(vi) from engaging in promotional activities on your own behalf in respect of circumstances that would reasonably be expected to benefit you.
31. The Executive Director is not seeking any monetary sanctions against you.

SUPPORTING MATERIALS

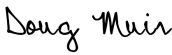
32. In making this application, the Executive Director relies on the following, copies of which are enclosed:
- (a) Indictment
 - (b) Plea Agreement
 - (c) Sentencing Judgment
 - (d) [Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
 - (e) [Re Eron Mortgage Corporation](#), [2000] 7 BCSC Weekly Summary 22

- (f) [Manna Trading Corp Ltd. \(Re\)](#), 2009 BCSECCOM 595
- (g) [Stiles \(Re\)](#), 2012 BCSECCOM 383
- (h) [Allaby \(Re\)](#), 2012 BCSECCOM 399
- (i) [Re Dominion Grand](#), 2019 BCSECCOM 335
- (j) [Re Braun](#), 2019 BCSECCOM 65
- (k) [Re SBC Financial Group Inc.](#), 2018 BCSECCOM 267
- (l) [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149

YOUR RESPONSE

33. 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 **Monday, July 7, 2025**.
34. 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
35. 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.
36. The Commission will send you a copy of its decision.
37. **If you have any questions regarding this application, please contact Amir Ghorbani, at 604-899-6872, or aghorbani@bcsc.bc.ca**

Yours truly,

DocuSigned by:

2C3CEEE01F714DD...

5/29/2025 | 9:38 AM PDT

Douglas B. Muir
Director, Enforcement

AG/crc
Enclosures

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