



British Columbia Securities Commission

Citation: 2019 BCSECCOM 291

Further Amended Notice of Hearing

Aik Guan “Frankie” Lim, Scott Thomas Low and Darrell Wayne Wiebe

FS Financial Strategies Inc., FS Financial Strategies Services Inc., 3i Capital ClearPath Limited Partnership, FS Financial Services Inc., FS Financial Services (Alberta) Inc., Verico FS Capital Inc. and FS Financial Systems Inc. (collectively, the FS Group)

Chun Ying “Jim” Pan, Chung-Sheng “Johnson” Kao, George Lay, Gagan Deep Bachra, Chi Kay “Dixon” Wong and Meng Cher “Philip” Tsai (collectively, the nominee directors)

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

- ¶ 1 The British Columbia Securities Commission will hold a hearing at which the executive director will tender evidence, make submissions and apply for orders against the respondents under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

Summary

Misrepresentations

1. Between November 2012 and January 2017 (relevant period), the FS Group raised over \$47 million but did not disclose its true financial condition to investors. It did not disclose the fact that the FS Group was not profitable, its financial situation was deteriorating and it survived by raising money from investors to cover its increasing expenses.
2. Lim and Low were the founders and directors or *de facto* directors of each company in the FS Group during the relevant period. They directed and controlled the FS Group and treated the companies as one entity.
3. Wiebe was the general manager of the FS Group and was aware of its true financial condition. He routinely advised the FS Group about how much money it needed to raise to meet its ongoing financial obligations. He knew, or ought reasonably have known, that the FS Group was not disclosing its true financial condition to investors.



4. By engaging in the conduct set out in this further amended notice of hearing, the FS Group made statements to its investors that it knew, or ought reasonably to have known, were misrepresentations, contrary to section 50(1)(d) of the Act.
5. While they were directors or officers of the FS Group, Lim, Low and Wiebe authorized, permitted or acquiesced in the FS Group's contraventions of section 50(1)(d) of the Act and therefore, by virtue of section 168.2 of the Act, they also contravened section 50(1)(d).

Illegal distributions

6. The FS Group distributed over \$47 million of its securities without filing a prospectus. Prospectus exemptions were not available for about \$29 million of these sales.
7. By engaging in the conduct set out in this further amended notice of hearing, the FS Group contravened section 61 of the Act every time it distributed a security to an investor without an exemption.
8. While they were directors of one or more companies in the FS Group, Lim, Low, Pan, Kao, Lay, Bachra, Wong and Tsai authorized, permitted or acquiesced in the FS Group's contraventions of section 61 of the Act and therefore, by virtue of section 168.2 of the Act, they also contravened section 61.

Unregistered trading

9. FS Services, FS Alberta, FS Capital and FS Systems were in the business of trading in securities when they sold almost \$33 million of the FS Group's securities in the form of unsecured loan agreements. They were not registered under the Act to sell securities when they did so.
10. By engaging in the conduct set out in this further amended notice of hearing, Lim, Low, FS Services, FS Alberta, FS Capital and FS Systems contravened section 34(a) of the Act every time they sold a security to an investor.
11. While they were directors of FS Services, FS Alberta, FS Capital, and FS Systems, Lim, Low, Pan, Kao, Lay, Bachra, Wong and Tsai authorized, permitted or acquiesced in those FS Group companies' contraventions of section 34(a) of the Act and therefore, by virtue of section 168.2 of the Act, they also contravened section 34(a).



Breach of undertaking

12. Lim and Low gave undertakings to the executive director to cease trading and distributing securities in 2014. Despite these undertakings, Lim and Low continued their fund raising activities for the FS Group until 2017, raising an additional \$29.34 million using unsecured loan agreements. By engaging in the conduct set out in this further amended notice of hearing, Lim and Low contravened section 57.6 of the Act.

Background

Lim, Low and Wiebe

13. Lim, Low and Wiebe are residents of British Columbia. Lim and Wiebe were licensed by the Insurance Council of British Columbia throughout the relevant period. Low was licensed by the Insurance Council for most of the relevant period. Lim, Low and Wiebe were former registrants under the Act.

FS Group

14. The FS Group was mainly in the insurance business.
15. Each company in the FS Group was a British Columbia company except FS Financial Services (Alberta) Inc. (FS Alberta), which was an Alberta company, and FS Financial Systems Inc. (FS Systems), which was a federal company registered in British Columbia.
16. None of the companies in the FS Group was ever registered under the Act.
17. FS Financial Strategies Inc. (FS Strategies) and FS Financial Strategies Services Inc. (FS Strategies Services) were the only companies in the FS Group licensed by the Insurance Council during the relevant period.
18. With the exception of FS Strategies Services, each of the companies in the FS Group raised money for its general business purposes using unsecured loan agreements promising lenders annual interest of 10% to 12%, payable monthly.
19. FS Strategies Services was the general manager of 3i Capital ClearPath Limited Partnership (3i Capital) and raised money during the relevant period in the form of subscription agreements entitling investors to units of 3i Capital and paying a priority annual return of 8%.
20. The unsecured loan agreements and subscription agreements were “securities” under the Act.



Nominee directors

21. After Lim and Low gave their undertakings to the executive director to cease trading and distributing securities in 2014, they used other companies in the FS Group to raise money. They installed FS Group staff as the nominee directors of FS Alberta, Verico FS Capital Inc. (FS Capital) and FS Systems.
22. All of the nominee directors are residents of British Columbia except Kao, who is a resident of Alberta.
23. During the relevant period, Pan, Wong and Tsai were licensed by the Insurance Council and were registered under the Act. Kao was licensed by the Alberta Insurance Council.
24. During the relevant period, Lay and Bachra were licensed mortgage brokers. They were former registrants under the Act.

Misconduct

Misrepresentations

25. The FS Group raised over \$47 million during the relevant period while making statements to investors with the intention of effecting trades in its securities. Without limiting the foregoing, the FS Group made statements about the level of risk involved by stating its ability to repay investors their principal and pay them a monthly or annual return, but did not disclose its true financial condition. In particular, it did not disclose the fact that the FS Group:
 - (a) was not profitable;
 - (b) did not generate sufficient revenues from its business operations to cover its business expenses and pay investors their monthly returns, leading to consistent shortfalls; and
 - (c) covered the shortfalls by raising more money from investors.
26. The FS Group's true financial condition, including the particular facts in the preceding paragraph, were material facts that were either:
 - (a) required to be stated; or
 - (b) necessary to be stated to prevent the FS Group's loan and subscription agreements from being false or misleading in the circumstances in which they were made.

Illegal distributions

27. The FS Group distributed securities during the relevant period as follows:



Respondent	Distribution	# of Investors	Illegal distribution	# of Investors
FS Strategies	\$13,543,898	147	\$7,244,985	94
FS Strategies Services	\$910,000	26	\$635,000	19
FS Services	\$4,605,000	37	\$1,480,000	20
FS Alberta	\$17,437,980	103	\$12,729,980	72
FS Capital	\$8,915,000	55	\$5,380,000	35
FS Systems	\$1,925,000	21	\$1,620,000	15
Total	\$47,336,878	389	\$29,089,965	255

28. Lim, Low and the nominee directors authorized, permitted or acquiesced in the FS Group's illegal distributions as follows:

Respondent	FS Group company	Amount	Total
Lim and Low	FS Strategies	\$7,244,985	\$29,089,965
	FS Strategies Services	\$635,000	
	FS Services	\$1,480,000	
	FS Alberta	\$12,729,980	
	FS Capital	\$5,380,000	
	FS Systems	\$1,620,000	
Pan and Kao	FS Alberta	\$12,729,980	\$12,729,980
Lay and Bachra	FS Capital	\$5,380,000	\$5,380,000
Wong and Tsai	FS Systems	\$1,620,000	\$1,620,000

Unregistered trading

29. FS Services, FS Alberta, FS Capital and FS Systems sold securities when they were not registered to do so as follows:

Respondent	Unregistered trading
FS Services	\$4,605,000
FS Alberta	\$17,437,980
FS Capital	\$8,915,000
FS Systems	\$1,925,000
Total	\$32,882,980



30. Lim, Low and the nominee directors authorized, permitted or acquiesced in the FS Group's unregistered trading during the relevant period as follows:

Respondent	FS Group company	Amount	Total
Lim and Low	FS Services	\$4,605,000	\$32,882,980
	FS Alberta	\$17,437,980	
	FS Capital	\$8,915,000	
	FS Systems	\$1,925,000	
Pan and Kao	FS Alberta	\$17,437,980	\$17,437,980
Lay and Bachra	FS Capital	\$8,915,000	\$8,915,000
Wong and Tsai	FS Systems	\$1,925,000	\$1,925,000

Hearing Process

- ¶ 2 The respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **Tuesday, September 3, 2019, at 10:00 a.m.** if they wish to be heard at the hearing. Relevant information gathered by Commission Staff in the investigation of this matter has already been disclosed to the respondents by the Executive Director.
- ¶ 3 At the hearing, the respondents may be represented by counsel, make submissions and tender evidence. The respondents are requested to advise the Commission of their intention to attend the hearing by informing the Secretary to the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.
- ¶ 4 If the respondents or their counsel do not appear at the hearing, the executive director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the respondents may be made in their absence.

Peter J Brady

Aug 23 2019 4:17 PM -07:00

- ¶ 5 Peter J. Brady
Executive Director