



British Columbia  
Securities Commission

REPLY TO:

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**By Regular Mail**

April 1, 2022

Dear Ms. Stuart:

**Marilyn Dianne Stuart  
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 for fraud arising from a course of conduct related to securities.

**CRIMINAL CONVICTION**

1. On December 2, 2019, you entered a guilty plea to one count of fraud involving securities of \$5,000, contrary to section 380(1)(a) of the *Criminal Code*.<sup>1</sup>
2. The fraud arose from a course of conduct related to securities. You were convicted by the Ontario Superior Court of Justice for defrauding investors of their investment funds in W.H. Stuart Mutual Ltd. (W.H. Stuart).
3. Investors expected their funds would be held in cash or used for purchases of investment products. Instead, investor funds were not invested as promised and were diverted without investor authorization and used to pay interest and return principal to other investors or paid to other entities and persons related to WH Stuart.<sup>2</sup>
4. On December 19, 2019 the Honourable Justice D.S. Rose, of the Ontario Court of Justice sentenced you to the following:

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<sup>1</sup> Arraignment transcript, p. 9

<sup>2</sup> Arraignment transcript, p. 9-11



- (a) A conditional sentence of two years, less a day, to be served in the community, followed by probation for 2 years;
- (b) Restitution in the amount of \$1.1 million in favour of the MFDA Investor Protection Corporation; and
- (c) A 20-year prohibition under section 380.2 of the *Criminal Code*.<sup>3</sup>

**Summary of Findings**

5. The following facts are contained in the reasons for sentence and arraignment transcript:

- (a) You are currently 74 years of age, and you suffer from health issues.

Reasons for Sentence, p. 7, para. 3

- (b) The misconduct occurred between January 1, 2004 and May 31, 2013.<sup>4</sup>

- (c) At the material time, you and your husband, Walter, were the principals in an investment firm, W.H. Stuart. W.H. Stuart held itself out to the public as a place which would guarantee a return of investment of 5-10% annually (ROR).

Reasons for Sentence, p. 3

- (d) Your clients consisted of mostly retired teachers and police officers who had transferred their pensions to W.H. Stuart on the promise of getting this ROR. The clients expected their money to be invested in cash or cash equivalents.

Arraignment Transcript . 10, para. 3

- (e) W.H. Stuart did not invest the money as promised, instead it was a Ponzi scheme. W.H. Stuart paid investor funds to other investors to give them the impression that their ROR had been met.

Reasons for Sentence, p. 4, para. 2

- (f) W.H. Stuart used investors' money to fund its operations, and to make repayments to you, your family members, related companies, other clients, and to purchase investment products for other clients.

Reasons for Sentence, p. 5, para. 1

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<sup>3</sup> Court sentencing documents, p. 1-8

<sup>4</sup> Court sentencing documents, p. 1



- (g) You were the co-owner and director of W.H. Stuart and related entities. You had complete control over the finances of W.H. Stuart. You had signing authority and functional control of the bank accounts where investor monies were deposited, and you directed operations including W.H. Stuart's financial affairs. You also performed important regulatory functions such as client complaint handling and financial reporting to the Mutual Fund Dealers Association (MFDA).

Arraignment , p. 11-12

- (h) W.H. Stuart's accounting system was sophisticated. You were a part owner of S21C Technologies Limited (S21C).<sup>5</sup> The S21C software was the in-house computer database record system designed and used by the company to manage client accounts.<sup>6</sup> Its main purpose, however, was to give investors independent access to monitor their accounts. You used this software to support the Ponzi scheme by manipulating information given to investors to give them the false impression that their funds were growing and could be redeemed.

Arraignment Transcript , p. 12

- (i) W.H. Stuart was licenced by the MFDA. The MFDA, through its indemnity fund, paid out \$7.2 million as a result of W.H. Stuart's fraudulent scheme. Despite that, the Crown could only prove a fraud involving \$1.1 million.

Reasons for Sentence , p.5, para. 2-3

### **THIS APPLICATION**

6. 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.
7. 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.
8. 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

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.



9. 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).
10. 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/aggravate the respondent's conduct;
  - (e) the respondent's past conduct;
  - (f) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
  - (g) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
  - (h) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
  - (i) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
  - (j) 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***

11. You orchestrated an extensive fraud which deprived investors of their retirement funds. This was an elaborate, sophisticated and protracted fraud occurring over 9 years and involving over a million dollars.<sup>7</sup>
12. It was a deliberate and sophisticated fraud. You designed an in-house computer database record system to manage client's accounts. You had full administrative rights to the data system and manipulated it to give investors the false impression that their funds were growing and could be redeemed.<sup>8</sup>
13. In ordering your sentence, Justice Rose also considered the scope of the financial loss, your position as a senior officer at WH Stuart and the sophistication and lengthy time period of the scheme.

Reasons for Sentence, p. 4-5

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<sup>7</sup> Arraignment Transcript, p. 10-13; Reasons for Sentence, p. 3-5

<sup>8</sup> Arraignment Transcript, p. 10



14. Fraud is the most serious misconduct under the Act.<sup>9</sup> In your case, the misconduct was egregious.

***Harm suffered by investors***

15. Justice Rose found that although the overall investor loss was approximately \$7.2 million, the proven loss was only \$1.1 million.

Reasons for Sentence, p. 4-5

16. This \$1.1 million loss was suffered by 10 investors.<sup>10</sup>
17. You inflicted long-lasting and substantial harm to the investors you defrauded. Investors lost substantial non-insured portions of their pensions. This left many investors with much less money for their retirement and unable to pay their basic bills.

Reasons for Sentence, p. 5-6

18. One of the investors lost \$175,000 or about a third of his pension which is a substantial loss for a retired 68-year-old police officer.

Reasons for Sentence, p. 6, para. 1

19. The MFDA compensated most of the investors, but only to the original amount of their principle investment. The total loss paid out by the MDFA was approximately \$7.2 million.<sup>11</sup> That loss was passed on to other mutual fund dealers by way of a special assessment.

Reasons for Sentence, p. 6, para. 2

***Harm to the Capital Markets***

20. Justice Rose noted that your conduct “caused real harm to many people and many organizations” who trusted her to take care of their investment funds and instead of doing so, you ran a Ponzi scheme.

Reasons for Sentence, p. 7

21. Your fraud tarnished the reputation of small mutual fund dealers. It has victimized and brought other small independent dealers into disrepute.

Reasons for Sentence, p. 6, para. 3

***Enrichment***

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<sup>9</sup> [\*Re Bai\*](#), 2018 BCSECCOM 156, para. 9

<sup>10</sup> Reasons for Sentence, pp. 10-11

<sup>11</sup> Arraignment Transcript, p. 9



22. You derived significant financial benefit from your misconduct. You used the \$1.1 million invested by the 10 clients to fund:
- (a) operating expenses;
  - (b) payments to related parties including payments to you, your immediate family or corporations under their control;
  - (c) payments to your employees and spouses,
  - (d) payments to other known clients; and purchase investment products for other clients.<sup>12</sup>

***Mitigating and Aggravating Factors***

23. The Commission has previously held that it is a significant mitigating factor when respondents admit liability pre-hearing. You entered a guilty plea to the charge.

*Re Flexfi Inc.*, 2018 BCSECCOM 166, para. 70

24. An aggravating factor is you were a registrant at the time of your misconduct.<sup>13</sup> Registrants play a critical role in our capital markets as one of the “gatekeepers”.<sup>14</sup> Instead of fulfilling your role as a gatekeeper, you abused the privilege of your registration to assist in your misconduct.
25. Improper or fraudulent conduct by a registrant undermines investor protection and the integrity of the capital markets.

***Past conduct***

26. A panel of the Alberta Securities Commission (ASC) issued permanent market prohibitions against you in an order dated August 23, 2000, after a liability hearing.<sup>15</sup>
27. The order arose as a result of your firm illegally selling partnership units to Albertan investors without a prospectus. The panel found that you, while acting in a senior compliance and management position with registered dealer W.H. Stuart, orchestrated a crude but deliberate scheme to circumvent Alberta securities law.<sup>16</sup>
28. In the view of the ASC, this was a serious violation because you occupied a position of trust where you were relied on to ensure the strict compliance of W.H. Stuart and its employees with securities law.<sup>17</sup>

***Risk to investors and the capital markets***

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<sup>12</sup> Arraignment Transcript, p. 11

<sup>13</sup> Section 168 Certificate

<sup>14</sup> *Re Lim*, 2017 BCSECCOM 319, para. 20

<sup>15</sup> *W.H. Stuart Mutuals Ltd. Re*, 9 ASCS 3321

<sup>16</sup> *Ibid.*, p. 2, para. 7

<sup>17</sup> *Ibid.*, p. 9, para. 2



29. You are a recidivist and a threat to our capital markets. The circumstances of your misconduct warrant the imposition of permanent and broad market prohibitions.
30. It is evident that you pose a continuing threat to the public interest and the capital markets if you are not permanently banned from participating in the capital markets.

***Participation in our capital markets***

31. 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.
32. Fraud violates the fundamental investor-protection objectives of the Act.<sup>18</sup> Investors must be confident that the markets are properly regulated and free from manipulation by individuals like you.

***Fitness to be a registrant or a director or officer***

33. 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.
34. 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

35. Your conduct falls far short of that expected of participants in our capital markets. You have shown yourself to be ill-suited to act as a registrant, director or officer.

***Deterrence***

36. 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.<sup>19</sup>
37. You have a history of non-compliance with securities law. The need for specific and general deterrence is high, especially considering that sophisticated frauds, such as the one you undertook, are difficult to detect and prosecute.

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<sup>18</sup> [Mesidor \(Re\)](#), 2014 BCSECCOM 6, paras. 13 and 14

<sup>19</sup> [Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario \(Securities Commission\)](#), [2001] 2 SCR 132, para 43.



38. Through the orders we are seeking, we intend to demonstrate the consequences of your conduct to the market and to you, to deter you from future misconduct, and to create an appropriate general deterrent. Permanent market bans are proportionate to your deliberate and unrepentant misconduct.

***Previous orders***

39. We refer to a number of decisions for guidance on the appropriate sanction. The Commission ordered permanent market bans in the decisions below. These decisions contain similar fact patterns to your conduct and involve fraud in a significant amount.

- [Re Nickford](#), 2018 BCSECCOM 57
  - The respondent perpetrated fraud on 13 investors in the amount of at least \$318,141. The respondent used these funds for her own personal use.<sup>20</sup>
- [Re Bezzaz Holdings](#), 2020 BCSECCOM 263
  - Bezzaz Holdings and Todd Bezzasso perpetrated a fraud on 85 investors for approximately \$5 million by operating a Ponzi scheme. The respondents were enriched in an amount of \$1.6 million.<sup>21</sup>
- [Re DominionGrand](#), 2019 BCSECCOM 335
  - The respondents, Wright and Prinster perpetrated a fraud on 40 investors in an amount of approximately \$1.1 million. They did this by diverting and using investor funds for other purposes than represented to the investors.
- [Independent Academies Canada Inc \(Re\)](#), 2014 BCSECCOM 260
  - The respondents illegally raised \$5.1 million, \$1.6 million of that amount fraudulently. Some of the respondents also contravened a cease trade order. A panel found that the respondents took money from investors fraudulently and used some of it to pay themselves and recover their own investment at the expense of investors. s.<sup>22</sup>
- [Castiglioni \(Re\)](#), 2011 BCSECCOM 62
  - Castiglioni perpetrated a fraud, gave false and misleading information to the Commission, and made untrue representations. Castiglioni falsely held out that his companies were an investment fund. He prepared false account statements and sent them to investors. Castiglioni did not use investors' fund in the manner he told investors the funds would be used. Of the \$1.3 million he took

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<sup>20</sup> [Re Nickford](#), 2018 BCSECCOM 57, paras. 2, 10, 12-15

<sup>21</sup> [Re Bezzaz Holdings](#), 2020 BCSECCOM 263, paras. 1, 14

<sup>22</sup> [Independent Academies Canada Inc \(Re\)](#), 2014 BCSECCOM 260, paras. 9, 12-15





from six investors, he used \$840,000 for him and his wife and gave \$91,000 to other investors.<sup>23</sup>

40. Despite the additional contraventions, the most comparable decision containing similar misconduct and enrichment is *Castiglioni*. Similar to the facts in your case, Castiglioni sent false statements to investors and used investors' fund to pay himself, his family and other investors. Permanent market orders such as the ones ordered against the respondents in the five decisions above are consistent with the egregious nature of your intentional and deliberate conduct.

#### ***The Davis Consideration***

41. 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.
42. The executive director is unaware of any individual circumstances that would support orders short of a permanent market ban.

#### **ORDERS SOUGHT**

43. Sanctions in regulatory proceedings are distinct from criminal sentences. The Commission cannot reciprocate the penal sanctions imposed on you for your securities related misconduct under the *Criminal Code*.
43. In seeking orders under section 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 factors from *Eron* and *Davis*;
  - (c) the sanctions ordered in previous cases cited above; and
  - (d) the public interest.
44. Based on these factors, the permanent bans sought by the executive director are reasonable and proportionate and are necessary in the public interest. The executive director seeks 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:

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<sup>23</sup> [\*Castiglioni \(Re\)\*](#), 2011 BCSECCOM 62, paras. 22-26



- (i) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives;
- (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.

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

#### **SUPPORTING MATERIALS**

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

- (a) Arraignment transcript
- (b) Court sentencing documents
- (c) Reasons for Sentence
- (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) [\*Re Bai\*](#), 2018 BCSECCOM 156
- (g) [\*Re Flexfi Inc.\*](#), 2018 BCSECCOM 166
- (h) Section 168 Certificate Re: Marilyn Dianne Stuart dated February 4, 2022
- (i) [\*Re Lim\*](#), 2017 BCSECCOM 319
- (j) [\*W.H. Stuart Mutuals Ltd, Re\*](#), 9 ASCS 3321
- (k) [\*Mesidor \(Re\)\*](#), 2014 BCSECCOM 6



- (l) [\*Re SBC Financial Group Inc.\*](#), 2018 BCSECCOM 267
- (m) [\*Re Nickford\*](#), 2018 BCSECCOM 57
- (n) [\*Re Bezzaz Holdings\*](#), 2020 BCSECCOM 263
- (o) [\*Re DominionGrand\*](#), 2019 BCSECCOM 335
- (p) [\*Independent Academies Canada Inc \(Re\)\*](#), 2014 BCSECCOM 260
- (q) [\*Castiglioni \(Re\)\*](#), 2011 BCSECCOM 62
- (r) [\*Davis v. British Columbia \(Securities Commission\)\*](#), 2018 BCCA 149

#### **YOUR RESPONSE**

47. 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, May 8, 2022**.

48. The contact information for the Commission Hearing Office is:

Commission Hearing Office  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
12<sup>th</sup> Floor, 701 West Georgia Street  
Vancouver, BC V7Y 1L2  
E-mail: [hearingoffice@bcsc.bc.ca](mailto:hearingoffice@bcsc.bc.ca)  
Telephone: 604-899-6500

49. 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.

50. The Commission will send you a copy of its decision.

51. **If you have any questions regarding this application, please contact Ms. Deborah Flood, at 604-899-6623, or [dflood@bcsc.bc.ca](mailto:dflood@bcsc.bc.ca)**

Yours truly,

Douglas B. Muir  
Director, Enforcement  
DWF/crc  
Enclosures

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