



British Columbia
Securities Commission

REPLY TO:
Deborah W. Flood
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Email: dflood@bcsc.bc.ca

By Regular Mail

May 18, 2022

Dear Mr. Uitvlugt:

**Christopher Uitvlugt
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)(i) 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. You currently reside in British Columbia.

CRIMINAL CONVICTION

1. On June 15, 2018, you were charged with one count of fraud contrary to section 380(1)(a) of the *Criminal Code of Canada (Criminal Code)*, one count of possession of property obtained by crime contrary to section 354(1) of the *Criminal Code*, and one count of conspiracy to commit fraud contrary to section 465(1)(c) of the *Criminal Code*.

Indictment

2. On November 16, 2018, you entered a guilty plea and were convicted of one count of fraud involving money of a value exceeding \$5,000, contrary to section 380(1)(a) of the *Criminal Code*:

Between the 1st day of March, 2016 and the 14th day of March, 2017, at the City of Kingston, in the East Region, did by deceit, falsehood and other fraudulent means, deprive the public of money of a value exceeding five thousand dollars contrary to s. 380(1)(a) of the *Criminal Code of Canada*.

Plea Transcript, p. 4, l. 1-24



3. On November 12, 2019, the Honourable Justice Tranmer of the Superior Court of Justice in Ontario sentenced you to the following:

- (a) Five years in jail (less the time you spent in pre-trial custody);
- (b) Forfeiture order
- (c) DNA Order

Reasons for Sentence, p. 46-47

Summary of Findings

4. You admitted to the following facts that are contained in the Plea Transcript and the Reasons for Sentence. References are to the PDF page number:

- (a) You have a date of birth of February 11, 1990.

Plea Transcript, p. 4, l. 12-15

- (b) You did not have the necessary licences required by the *Ontario Securities Act* to sell investments to the public. You do not have formal education or work experience in the financial or investment sector.

Plea Transcript, p. 5, 23-32

- (c) You were the CEO of Next Level Investments, an Ontario incorporated company (Next Level).

Plea Transcript, p. 5, l. 11-14

- (d) The business model of Next Level was to solicit money from investors on the premise that the money would be invested in the foreign exchange market, and profits would be shared 50/50 between Next Level and the investor.

Plea Transcript, p. 5, l. 16-22,

- (e) You offered investors a 550% rate of return on a three-month term investment. These profits were to be gained through foreign exchange trading by you.

Reasons for Sentence, p. 36, l. 22-24

Plea Transcript, p. 6, l. 18-23

- (f) You employed several unlicensed sales representatives to assist you in your scheme.

Plea Transcript, p.6, l. 5-9



- (g) Next Level offered a range of investment services, despite not one employee having any education or licensing in the financial or investment sector.

Plea Transcript, p. 4, l. 23-29

- (h) Money totaling \$4.8 million poured into the scheme based on your marketing and the promises you made.

Reasons for Sentence, p. 36, l. 25-27

- (i) Only \$24,000 out of the \$4.8 million dollars in deposits was used for foreign exchange trading.

Plea Transcript, p. 6, l. 23-29

- (j) The police investigation revealed Next Level was nothing other than a Ponzi scheme.

Reasons for Sentence, p. 37, l. 1-2

- (k) A review of the financial accounts of Next Level showed a clear stream of investor money entering its accounts, and then the same money being utilized to pay out existing investors.

Plea Transcript, p. 7, l. 14-19

- (l) The investigation revealed 874 investors in the scheme. At least 678 investors did not receive any investor payments whatsoever.

Reasons for Sentence, p. 37, l. 2-5

Plea Transcript, p. 7, l. 29-30

- (m) The total investor loss is complicated as:
- i. some investors made profits on their investments;
 - ii. 678 investors who invested \$3.53 million received nothing back; and
 - iii. not all money received from investors were reflected in the bank records.

Plea Transcript, p. 8, l. 3-29, p. 9, l. 1-12

- (n) Shortly before your arrest, you gathered a package of cash from your safe and delivered it to an associate. The cash was then given to another associate who was told to deliver some of the cash to Ms. Saxon-



Robinson, the mother of your children. When you were in police custody, you instructed your associate to hand over the cash which contained \$90,605. Police also seized \$46,320 from Ms. Saxon-Robinson.

Plea Transcript, p. 9, l. 13-29

- (o) At the time of your sentence, the Superior Court of Ontario had restrained over \$1.6 million in money and property. The court also restrained \$495,000 of investor's money that was paid out to an individual investor.

Plea Transcript, p. 9, l. 30-33, p. 10, l. 1-10

5. The sentencing judge found you operated an elaborate deception that required a high degree of planning and sophistication on your part.

Reasons for Sentence, p. 37, l. 19-25

6. The sentencing judge described you as a predator, who preyed on investors' trust, their hopes, and their dreams.

Reasons for Sentence, p. 38, l. 28-30

THIS APPLICATION

The Law

7. With this letter, the Executive Director is applying to the Commission for orders against you under section 161 of the Act on the basis of section 161(6)(a)(i). I have enclosed a copy of section 161 of the Act for your reference.

8. Section 161(6)(a) provides:

The commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person

(a) has been convicted in Canada or elsewhere of an offence

(i) arising from a transaction, business or course of conduct related to securities or derivatives, or

(ii) under the laws of the jurisdiction respecting trading in securities or derivatives,

9. Section 1(1) of the Act defines security to include "an investment contract".
10. An investment contract is an investment of money in a common enterprise with profits to come from the efforts of others.



Zarr (Re), 2014 BCSECCOM 317 citing Pacific Coast Coin Exchange v. Ontario Securities Commission, 1977 CanLII 37 (SCC), [1978] 2 S.C.R. 112.

11. 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.
12. 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

13. 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).
14. 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 deter those who participate in the capital markets from engaging in inappropriate conduct, and
 - (h) orders made by the Commission in similar circumstances in the past.

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

ANALYSIS

The investments are securities

15. The scheme involved the investment of funds with an expectation of profits through your supposed foreign exchange trading efforts. The investments satisfy the common enterprise aspect of the investment contract test in Pacific Coast Coin Exchange of Canada Ltd. v. Ontario Securities Commission, [1978] 2 SCR 112, 1977 CanLII 37. Accordingly, the investments were investment contracts and therefore, securities within the meaning of the Act.



Seriousness of the Conduct

16. The Commission characterizes fraud as one of the most serious types of misconduct prohibited by the Act.

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

17. Your fraud is at the high end range of seriousness. This is the case for a number of reasons including: the scope and magnitude of the fraud, the number of investors, the amount of money raised from investors, and the extent of the deceit visited on investors. The sentencing judge described it as an elaborate deception that involved a high degree of planning and sophistication on your part.

Reasons for Sentence, p. 37, l. 14-32

18. The seriousness of your misconduct is heightened by the lies you told investors about the use of their funds and their prospects for future returns. The evidence is clear that Next Level was little more than a sham entity used by you to carry out your Ponzi scheme. Besides trading in the amount of \$24,000, there is no evidence that investors' money was used in foreign exchange trading.

Plea Transcript, p. 5, l. 5-20

19. The sentencing judge described your misconduct as shameful, deplorable, and unconscionable.

Reasons for Sentence, p.45, l. 26-28

Harm suffered by investors

20. The harm to investors is significant, distressing, and widespread. You caused investors to lose:
- (a) their lifelong savings;
 - (b) their education funds;
 - (c) savings to support children with disabilities;
 - (d) money earmarked to cover expenses for cancer treatments;
 - (e) home repair funds; and
 - (f) retirement funds.

Reasons for Sentence, p.38-40

21. Investors lost money that they couldn't afford to lose. It was a life changing and traumatic experience for the investors.

Reasons for Sentence, p. 38, l. 30-32, p. 45, l. 28-30



21. You caused investors to suffer bankruptcy, stress, depression, loss of self-esteem, anger, and shame. You left investors with insufficient future money, anger and embarrassment.

Reasons for Sentence, p. 40-41

22. Less than one third of the money invested has been recovered.

Reasons for Sentence, p. 37, l. 28-32

23. The sentencing judge found it was vulnerable victims who suffered the consequences of your overwhelming greed.

Reasons for Sentence, p. 37, l. 26-28

Enrichment

24. You were significantly enriched by the Ponzi scheme. You used investors' funds to purchase a Lamborghini and Audi automobile, as well as the purchase of a property.

Reasons for Sentence, p. 37, l. 6-10
Plea Transcript, p. 8, l. 17-21

Mitigating Factors

25. The Court found your guilty plea saved victims from further angst, shame, and embarrassment.

Reasons for sentence, p. 38, l. 3-5

26. The Commission has previously held that admitting liability pre-hearing is a significant mitigating factor as it allows investors to avoid a potentially lengthy hearing to determine liability.

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

Risk to investors and the capital markets

27. Nothing strikes more viciously at the integrity of our capital markets than fraud.

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

28. Fraud violates the fundamental investor protection objective of the Act. Fraud deters investors from reliance on the honesty and integrity of the markets. Investors fear that their investments will not be used in accordance with promises made to them. The fraud of any person who raises capital from investors impacts on the trust that potential investors may have in other honest and credible capital raisers.



[Re Bezzaz Holdings](#), 2020 BCSECCOM 263, para. 16

29. The blatant and extensive fraud committed by you damaged the integrity of the capital markets well beyond your immediate victims.

[Re Bezzaz Holdings](#), 2020 BCSECCOM 263, para. 16

30. The type, size, and scope of your misconduct demonstrates that you pose a significant risk to our capital market. Permanent market prohibitions are necessary to protect the public and the capital market.

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. By operating a Ponzi scheme, you have shown a blatant disregard to comply with security regulations. You present a serious threat to the integrity of the capital markets. It is in the public interest to permanently prohibit you from participating in the capital markets.

Fitness to be a registrant or a director or officer

33. Persons who wish to serve as directors, officers or advisors of issuers in British Columbia, must have high standards of honesty, integrity and diligence. Persons who have demonstrated deceit and dishonesty, a disregard for compliance with applicable laws and no concern for the necessity of markets that are honest and fair must be prohibited from serving as directors, officers or advisors in this jurisdiction.

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

34. Your fraudulent and criminal misconduct makes you wholly unqualified to participate in the capital markets in any capacity. You pose a great risk to our markets unless permanent market prohibitions are imposed.

Deterrence

35. 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. Your fraudulent misconduct was deliberate, blatant and unrepentant. 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

36. 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 all involve serious cases of fraud, two of the decisions involve Ponzi schemes. These decisions contain similar fact patterns to your conduct.
- [Re Bezzaz Holdings](#), 2020 BCSECCOM 263
 - The respondents Bezzaz and Todd Bezzasso perpetrated a fraud when they orchestrated a Ponzi scheme involving 85 investors for proceeds of approximately \$5 million. Bezzaz and Bezzasso were enriched in the amount of \$1.6 million.
 - [Re Williams](#), 2016 BCSECCOM 283
 - Williams and the respondents committed fraud when they raised approximately \$12 million from 123 investors and used the funds in a massive Ponzi scheme. Williams was a former registrant and was also found to have breached sections 34 and 61 of the Act. A panel found the respondent and his associates were enriched in the amount of \$6.8 million.
 - [Re Oei](#), 2018 BCSECCOM 231
 - Oei obtained \$5 million from investors by fraudulent misconduct. Oei and the respondents represented to investors that their funds would be used for start-up costs. In actuality, a significant portion of investors' funds were diverted for other purposes. The panel considered the seriousness of the misconduct, the enrichment of the respondent, the significant harm to investors and to the integrity of the markets and the respondents' failure to keep proper records. Oei and the respondents were enriched in the amount of \$3 million.
37. The amount of money fraudulently raised from investors in *Williams* (\$12 million) is higher than the amount raised in your case (\$5 million). However, in *Williams*, the amount of the investors defrauded (123) was significantly less than the number of investors in your case (874). The amount of money fraudulently raised in *Bezzaz* is similar to the amount raised by you. Despite that, the number of investors defrauded by *Bezzaz* is significantly less than the number of investors defrauded in your case.
38. Comparing the facts in *Bezzaz*, *Williams* and *Oei* to the facts in your case, your misconduct is more serious given the significant number of investors it involved. Your misconduct is undoubtedly deserving of permanent market bans.



The Davis Consideration

39. 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.
40. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

ORDERS SOUGHT

41. Sanctions in regulatory proceedings are distinct from criminal sentences. The Commission has different powers than the Superior Court of Justice in Ontario. The Commission cannot reciprocate the penal sanctions imposed on you for your securities related misconduct under the *Criminal Code*.
42. In seeking enforcement 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 factors from *Eron* and *Davis*;
 - (c) the sanctions ordered in previous cases cited above; and
 - (d) the public interest.
43. Based on the factors above, 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, a specified security or derivative or a specified class of securities or class of 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.
44. The Executive Director is not seeking any monetary sanctions against you.

SUPPORTING MATERIALS

45. In making this application, the Executive Director relies on the following, copies of which are enclosed:
- (a) Indictment
 - (b) Plea Transcript
 - (c) Reasons for sentence
 - (d) [*Zarr \(Re\)*](#), 2014 BCSECCOM 317
 - (e) [*Pacific Coast Coin Exchange v. Ontario Securities Commission*](#), 1977 CanLII 37 (SCC), [1978] 2 S.C.R. 112
 - (f) [*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
 - (g) [*Re Eron Mortgage Corporation*](#), [2000] 7 BCSC Weekly Summary 22
 - (h) [*Manna Trading Corp. Ltd. et al.*](#), 2009 BCSECCOM 595
 - (i) [*Re Flexfi Inc.*](#), 2018 BCSECCOM 166
 - (j) [*Re Bezzaz Holdings*](#), 2020 BCSECCOM 263
 - (k) [*Re Mawji*](#), 2020 BCSECCOM 59
 - (l) [*Re Williams*](#), 2016 BCSECCOM 283
 - (m) [*Re Oei*](#), 2018 BCSECCOM 231
 - (n) [*Davis v. British Columbia \(Securities Commission\)*](#), 2018 BCCA 149

YOUR RESPONSE

46. 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 **Friday, June 24, 2022**.



47. 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

48. 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.

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

50. **If you have any questions regarding this application, please contact Ms. Deborah Flood, at 604-899-6623, or dflood@bcsc.bc.ca**

Yours truly,

Douglas B. Muir
Director, Enforcement

DWF/crc
Enclosures

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