

BRITISH COLUMBIA SECURITIES COMMISSION  
*Securities Act*, RSBC 1996, c. 418

Citation: Re Backer, 2022 BCSECCOM 414

Date: 20221004

**Order under section 161(6)**

**Harold Magnus Backer**

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

**Introduction**

- [1] This is an order under sections 161(1), 161(6)(a) and 161(6)(c) of the *Securities Act*, RSBC 1996, c. 418.
- [2] The executive director of the Commission has applied (Application) for orders against Harold Magnus Backer (Backer) under section 161(1) of the Act based upon certain orders made by the Provincial Court of British Columbia and the Mutual Fund Dealers Association (MFDA).
- [3] The Provincial Court issued its reasons on July 4, 2018 in *R. v. Backer*, Victoria Registry, File No: 170775-5-C. The MFDA made its orders on February 8, 2019 in its decision *Re: Harold Magnus Backer*, 2019 CanLII 12484 (CA MFDAC).
- [4] In his Application, the executive director tendered affidavit evidence and submissions to the Commission. We find that the executive director provided notice of the Application to Backer. Although Backer was provided the opportunity to be heard, he did not provide any evidence or submissions.
- [5] Section 161(6) facilitates cooperation between the Commission and other securities regulatory authorities, self-regulatory bodies, exchanges and the courts. If the requirements of the section are met and it is in the public interest, the Commission may issue orders without the need for inefficient parallel and duplicative proceedings in British Columbia (*McLean v. British Columbia (Securities Commission)* [2013] 3 S.C.R. 895 at para. 54) or before the Commission.
- [6] The Provincial Court found that Backer took \$161,900 from five people for purposes of investing that money, and instead diverted some or all of that money to his own purposes. The Provincial Court convicted Backer on one count of fraud over \$5,000 contrary to section 380(1)(a) of the *Criminal Code* and sentenced Backer to:
  - a) a 14-month jail term;
  - b) restitution in the amount of \$161,900; and
  - c) a probation order of three years.

[7] The Provincial Court's probation order prohibited Backer from engaging in the following activities:

- a) trading in, or purchasing securities or exchange contracts, except that Backer may purchase, trade and sell securities that belong to him legally and beneficially;
- b) becoming, or acting as a director or officer of any issuer or registrant; and
- c) engaging in any investor relations activities.

[8] The MFDA considered allegations related to more investors than the Provincial Court proceedings and found that Backer:

- a) created fictitious mutual funds;
- b) promoted and sold those funds and failed to account for all the funds he fraudulently obtained from investors;
- c) perpetrated his frauds over an extensive period of many years; and
- d) willfully refused to cooperate with an investigation of the MFDA.

[9] The MFDA ordered that Backer:

- a) be permanently prohibited from conducting securities-related business in any capacity while in the employ of, or in association with, any MFDA member;
- b) pay a fine in the amount of \$2,745,261.34 which included:
  - i. a penalty equal to three times his illegal profit, or \$2,645,261.34; and
  - ii. a penalty of \$100,000 for Backer's failure to cooperate; and
- c) pay costs of the MFDA proceeding in the amount of \$17,875.

[10] We find that it is in the public interest to order that:

1. under section 161(1)(d)(i), Backer resign any position he holds as a director or officer of an issuer or registrant;
2. Backer is permanently prohibited:
  - a) under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, except that, if he gives the registered dealer a copy of this decision, he may trade in or purchase securities through a registered dealer in:
    - (i) RRSPs, RRIFs or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for his own benefit;
  - b) under section 161(1)(c), from relying on any of the exemptions set out in this Act, the regulations or a decision;
  - c) under section 161(1)(d)(ii), from becoming or acting as a director or officer of any issuer or registrant;
  - d) under section 161(1)(d)(iii), from becoming or acting as a registrant or promoter;

- e) 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; and
- f) under section 161(1)(d)(v) from engaging in promotional activities by or on behalf of
  - (i) an issuer, security holder or party to derivative, or
  - (ii) another person that is reasonably expected to benefit from the promotional activity.

October 4, 2022

**For the Commission**

Gordon Johnson  
Vice Chair

Deborah Armour, KC  
Commissioner