



REPLY TO:

Deborah W. Flood

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Email: dflood@bcsc.bc.ca

By Regular Mail

July 30, 2021

Dear Mr. Briner

John David Briner Reciprocal Order Application

This letter notifies you and the British Columbia Securities Commission (the Commission) that the Executive Director of the Commission (the Executive Director) is applying for orders against you under sections 161(6) (b), (c), and (d) 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 the findings and orders in:

- *Re John Briner and others*, File No. 3-16339, (SEC Administrative Action);
- *Regina v. John David Briner*, Court File No.: 2040:235454-2-C (Provincial Court Action); and
- *U.S. Commodity Futures Trading Commission (CFTC) v. John b, Metrowest Law Corp. and others*, Civil Action No.: 15-cv-03307 (CFTC Action)

SEC ADMINISTRATIVE ACTION

1. On January 15, 2015, the SEC instituted administrative proceedings against you. On May 20, 2015, an administrative law judge determined you were in default for failing to defend the proceeding.

SEC Order, p. 1, para. I

2. On June 10, 2015, after the court found you in default, you submitted an offer of settlement which the SEC accepted. You consented to the entry of an order against you making findings and imposing remedial sanctions and a cease and desist order.

Offer of Settlement



3. On September 18, 2015, the SEC made an order against you containing sanctions for misrepresentation and conduct in violation of the *Securities Act of 1933*.

SEC Order

Summary of Findings

4. The SEC Order contains the following findings:

- (a) You are an attorney and a Canadian citizen residing in Vancouver, British Columbia. You worked at MetroWest Law Corporation.

SEC Order, p. 2, para. 1

- (b) In 2011, you became the sole director of a B.C. shelf company called Jervis Explorations Inc. You controlled Jervis.

SEC Order, p. 2, para. 1, p. 4, para. 26

- (c) Between September 2011 and May 2013, Jervis acquired 68 mineral claims located in British Columbia.

SEC Order, p. 4, para. 26

- (d) You created twenty issuers (the Issuers).

SEC Order, p. 2, paras. 1-24

- (e) Around the time you caused Jervis to acquire the mineral claims, you recruited 10 individuals, who were current and former law clients and/or acquaintances to serve as officers for the Issuers. The individuals you recruited had little to no actual mining experience. You explained to your recruits that you needed people to serve as officers and directors for companies that you planned to take public.

SEC Order, p. 4-5, paras. 27, 29

- (f) You offered to pay the officers an initial consulting fee of between \$2,000 and \$3,000 for each issuer with the promise of another payment when the issuer obtained an Over The Counter Bulletin Board ticker symbol.

SEC Order, p. 5, para. 28

- (g) You presented the officers of each issuer with decisions you had already made on behalf of the issuer and a pre-packaged set of documents. You had already determined the mineral claims the Issuers would purchase, the stock that would be purchased, and the professionals the issuers would



hire. The officers simply signed the documents you provided them and you paid the officers the promised initial consulting fee.

SEC Order, p. 5, para. 29

- (h) You caused each of the Issuers to engage in two material transactions:
- a. the officer's purchase of issuer stock; and
 - b. the issuer's purchase of mineral claims from Jervis.

SEC Order, p. 5, para. 30

Purchase of issuer stock

- (i) You supplied the officers of each of the Issuers with a stock purchase agreement. The stock purchase agreement was nearly identical for each issuer. The agreement stated that the officer was purchasing the shares as principal for investment purposes only and was paying \$30,000 in cash for the stock. The officers executed the agreement.

SEC Order, p. 5, paras. 31-32

- (j) In fact, none of the officers purchased any of issuer stock nor did any of the officers pay \$30,000 to the Issuers.

SEC Order, p. 5, para. 33

The Mineral Claim Purchases

- (k) You caused Jervis and each of the issuers to enter into an asset purchase agreement for the mineral claim. The asset purchase agreement appeared to reflect the Issuers' purchase of Jervis' mineral claims.

SEC Order, p. 5, para. 35

- (l) In fact, none of the Issuers acquired any mineral claims from Jervis, and all of the mineral claims continued to remain in Jervis' name.

SEC Order, p. 5, para. 36

Misrepresentations

- (m) Between July 19, 2012 and January 31, 2013, you caused the Issuers to file with the SEC nearly identical Form S-1 registration statements for the officers' public sale of stock.

SEC Order, p. 6, para. 40

- (n) The registration statements contained misrepresentations and omissions, including, but not limited to:



Statement

- a. Each issuer consists of a single officer who “control[s]” and “solely govern[s]” the issuer...there are no material agreements or proposed transactions, whether direct or indirect, with...any promoters.”

Fact

None of the officers controlled the Issuers, you did. The registration statements failed to disclose your role as a promoter and *de facto* control person of the Issuers.

SEC Order, p. 6, para. 42

Statement

- b. Issuers purchased their mineral claims from Jervis and the issuers “own 100% of the rights to the property.”

Fact

The mineral claims at issue were never transferred from Jervis to any of the Issuers.

SEC Order, p. 7, para. 43

Statement

- c. The Issuer’s sole officer capitalized the issuer via a purchase of issuer stock for \$30,000 in cash.

Fact

None of the officers of the Issuers paid for the stock.

SEC Order, p. 7, para. 44

Statement

- d. Each of the Issuers is not a “blank check company” and “does not intend to participate in a reverse acquisition or merger transaction”.

Fact

The Issuers were “blank check” companies as they each intended to engage in a business combination, such as a reverse merger.

- (o) You caused the material misstatements and omissions, described above, to be included in the issuers’ registration statements and you knew or recklessly disregarded, that at the time the issuers’ registration statements were filed that these statements were false or misleading. You received



\$20,000 as payment for your work on behalf of the Issuers, including your work relating to the filing of the registration statements.

SEC Order, p. 6, para. 40

- (p) Based on your conduct described in the paragraphs above, the SEC found that you had willfully violated sections 17(a)(1), (2), and (3) of the Securities Act of 1933.

SEC Order, p. 6, para. 46

Provincial Court Action Background

5. On August 31, 2009, the SEC filed a complaint in the United States District Court for the Southern District of New York (NY District Court) naming you a defendant in *SEC v. Golden Apple Oil and Gas, Inc., et al.*, 09-Civ-7580 (S.D.N.Y) (HB) (Complaint). The Complaint alleged you violated U.S. Securities Act and the Exchange Act.

SEC Complaint

6. The allegations concerned a fraudulent scheme to “pump and dump” millions of shares of stock of a profitless company, Golden Apple and its predecessors. You were legal counsel for Golden Apple. You were alleged to have knowingly created a materially false and fraudulent appearance of legitimate market activity in the stock of Golden Apple.

SEC Complaint, paras. 1-3

7. You consented to a final court judgment to resolve the action. On November 3 2010, the NY District Court granted the SEC an order of final judgment against you for your role in the fraudulent scheme.

2010 Judgment

8. The court imposed a permanent injunction from engaging in future similar conduct, a five year prohibition from acting as an officer or director of certain issuers, as well as a prohibition from participating in activities involving penny stock. You were also subject to a monetary penalty in the amount of \$92,368.40.

2010 Judgment, pp. 5-6, paras. V and VI

9. On April 5, 2011, the Commission made an order under section 161(1) and 161(6)(d) based on the findings from the 2010 Judgment (BCSC Order).



10. Under the terms of the BCSC Order, you were prohibited from doing the following, until November 3, 2015:
 - a. trading in, and prohibited from purchasing securities and exchange contracts;
 - b. becoming or acting as a director of any issuer, registrant, or investment fund manager, and you had to resign any position you hold as a director of any issuer, registrant, or investment fund manager;
 - c. becoming or acting as a registrant, investment fund manager or promoter;
 - d. acting in a management or consultative capacity in connection with activities in the securities market; and
 - e. engaging in investor relations activities.

11. You breached the terms of the BCSC Order and you were charged with nine counts of contravening section 155(1)(c) of the Act.

Recognizance Order

12. You pled guilty to five counts and on February 9, 2016, you were sentenced to a fine of \$1,000.

Reasons for Sentence, p. 2, paras. 1-7, p. 5, paras. 23-25

DECISION OF THE CFTC

13. On July 27, 2016, the United States District Court for the Northern District of Illinois, Eastern Division granted the U.S. Commodity Futures Trading Commission (CFTC) an order of final judgment against you, MetroWest Law Corp., your client Matthew Marcus, and Tech Power Inc., for violations of the *Commodity Exchange Act*, 7 U.S.C. §§1-26 (2012) and the CFTC's regulations.

14. The Court found that you and others engaged in pre-arranged, non-competitive transactions in single stock futures to illegally move at least \$390,000 from Metro West to Tech Power.

2016 Judgment, p. 1, para. 1

15. The Court imposed a permanent injunction from engaging in future similar conduct, as well as broad, permanent bans on activities involving commodity interests. You were also subject to a monetary penalty in the amount of \$280,000.

2016 Judgment, p. 10, paras. 29 to 31

Summary of Findings

16. In entering the order for final judgment, the court made findings of fact and conclusions of law which are summarized below:



- (a) You were president and principal of Metro West. You have never been registered with the CFTC in any capacity.

2016 Judgment, p. 4, para. 2

- (b) In June 2012, you opened a commodity trading account at a registered futures commission merchant in the name of your law firm, Metro West.

2016 Judgment, p. 4, para. 4

- (c) Your client Marcus caused approximately \$1.2 million to be transferred to Metro West's client trust account. A total of \$500,000 was then wired from Metro West's client trust account and deposited into Metro West's trading account.

2016 Judgment, p. 5 para. 6

- (d) In January 2013, Marcus opened a trading account in the name of Tech Power.

2016 Judgment, p. 5, para.7

- (e) You provided Marcus with the password and login information for the Metro West account and authorized Marcus to enter trades for the Metro West account.

2016 Judgment, p. 6, para. 9

- (f) Beginning on January 28, 2014 and continuing for seven consecutive trading dates through February 5, 2014, Marcus carried out a scheme whereby he moved money from Metro West to Tech Power through a series of pre-arranged, non-competitive transactions.

2016 Judgment, p. 6, paras. 10-12

- (g) Marcus traded the Metro West and Tech Power account almost exclusively against each other. It resulted in Metro West transferring \$390,000 to Tech Power.

2016 Judgment, p. 7, para. 13

- (h) By engaging in the conduct described in detail in the order for final judgment, Marcus, Tech Power and Metro West violated Section 4c(a)(2)(A)(ii) of the *Commodity Exchange Act*, 7 U.S.C. § 6c(a)(2)(A)(ii) (2012), by entering into transactions that are commonly



known as fictitious sales, involving the purchase or sale of a commodity for future deliver.

2016 Judgment, p. 8, para. 18

- (i) You controlled Metro West and therefore, are liable for Metro West's violation.

2016 Judgment, pp. 8-9, para. 19

- (j) By providing Marcus with your password and login information, and by authorizing Marcus to enter trades for the Metro West account, you appointed Marcus your agent and Metro West's agent.

2016 Judgment, p. 9, para. 20

- (k) Marcus' actions occurred within the scope of his agency with you, and therefore, you are liable for Marcus' violation of the Commodity Exchange Act.

2016 Judgment, p. 9, para. 21

THIS APPLICATION

17. 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.
18. 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.
19. 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

20. 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).
21. 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 respondent's past conduct;
- (d) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- (e) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- (f) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- (g) 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

- 22. Your contraventions of futures and securities laws is widespread and unrelenting. You have been sanctioned by the provincial court, the BCSC, the SEC, and the CFTC. Your continued misconduct, notwithstanding sanctions against you, shows you have contempt for securities regulation, and that your misconduct is at the serious end of the range.
- 23. The SEC Order, the BCSC Order, and the CFTC 2016 Judgment involve separate and serious misconduct spanning over a decade. This raises legitimate concerns about whether you will allow yourself to be regulated.
- 24. You made misrepresentations and omissions in filings to the SEC. Your scheme in the SEC Administrative Action was elaborate and deceitful, and involved nominee officers and fictitious claims and agreements. The registration statements misrepresented the ownership of the mining interests, your interest in the issuers, payments made for the stock, as well as the true nature of the issuers. The seriousness of the misconduct is exacerbated by the misleading information being repeated in 20 registration statements that were publicly available.

SEC Order, para. 41

- 25. Not far behind fraud, in the scale of seriousness of misconduct, stands misrepresentation. Those who operate and profit in the capital markets by misstating material facts (through commission or omission), undermine the confidence of the public in one of the cornerstones of capital markets regulation.

Michaels (Re), 2014 BCSECCOM 457, para. 8

- 26. Your misconduct in the CFTC proceeding involved facilitating fictitious transactions to illegally move money. This misconduct is at the higher end of seriousness, and is clearly abusive of the capital markets.



27. You breached an order of the Commission. Failure to comply with an order of the Commission undermines the Commission's ability to effectively regulate the capital markets. Contravening an order is therefore serious misconduct.

Harm suffered by investors

28. Evidence of actual damage to the capital market is not necessary to consider this a factor.

[Johnson \(Re\)](#), 2007 BCSECCOM 437 (CanLII)

29. False or misleading filings misleads securities regulators and if undetected, can mislead investors regarding the facts relevant to their investment decision.

Enrichment

30. You were enriched by \$20,000 as a result of your misconduct in the SEC Administrative Action.

SEC Order, para. 40

The risk to investors and the capital markets

31. With a long history of securities-related misconduct involving sophisticated, deceptive schemes, your participation in the capital markets would pose a significant risk to investors and to the capital markets.
32. You have shown that you pose a serious risk to our capital markets, and cannot be trusted to comply with the legal requirements and orders of the Commission.
33. Your misconduct spans over a decade. We find it to be in the public interest, proportional and appropriate in the circumstances, to seek permanent comprehensive market bans against you.

Fitness to be a registrant, director, officer or advisor and participate in our 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. 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.
36. Your complete disregard of compliance with securities and futures regulations shows that your participation in the capital markets poses a substantial risk and



you are ill-suited to act as a registrant, director or officer or as an advisor to any private or public issuers going forward. A sanction denying you access to the capital markets permanently is proportionate to your misconduct.

Deterrence

37. You have a checkered history of regulatory misconduct. Despite being sanctioned by the SEC and the Commission for misconduct starting in 2004, you committed further misconduct between 2011 and 2014. You are an unrepentant, repeat offender and the need for specific deterrence cannot be overstated. Additionally, the need for general deterrence is incredibly high.
38. 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. Permanent 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

39. 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 involve either misrepresentation or the filing of false or misleading information with the Commission.
 - [*Re Mountainstar Gold Inc.*](#), 2019 BCSECCOM 123
 - Mountainstar repeatedly made false or misleading statements in its required public filings concerning certain Chilean mining claims and related legal proceedings. The seriousness of the misconduct was exacerbated by the repetition of the false or misleading disclosure over a three year period. The respondent individual, Johnson, received permanent market bans for authorizing, permitting or acquiescing in Mountainstar's repeated contraventions.
 - [*Allaby \(Re\)*](#), 2012 BCSECCOM 399 (CanLII)
 - The respondents made blatant misrepresentations about investments on its website. Despite no enrichment nor investor harm, the Commission imposed permanent market bans on the respondents.
 - [*McCabe v Speckert*](#), 2014 BCSECCOM 512 (CanLII)
 - The respondent McCabe contravened the Act and engaged in egregious conduct contrary to the public interest when he made misrepresentations in promotions about an issuer's resources, and facilitated arrangements designed to conceal payment to him for the promotions. McCabe had no history of regulatory misconduct.



40. There are no identical decisions in our jurisdiction containing similar misconduct and enrichment to you. The most comparable decision on misconduct is *Mountainstar*. The misconduct in *Mountainstar* was more serious as the misleading statements were contained in public documents that were relied upon by investors. Nonetheless, the less serious nature of your misconduct is balanced out by your prior regulatory history, something Johnston did not have.
41. Permanent market orders such as the ones ordered against Johnson are consistent with the egregious nature of your intentional and deliberate conduct.
42. Considering the findings and the application of the relevant *Eron* factors to the evidence, you are deserving of significant rebuke and orders at the upper end of the spectrum. Only permanent market bans would protect the investing public and the capital markets in B.C.

The Davis Consideration

43. 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.
44. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

SEC ORDERS

45. The SEC Order imposed the following sanctions:
 - (a) you are to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the U.S. Securities Act;
 - (b) you are permanently prohibited from acting as a director or officer of any issuer that has a class of securities registered pursuant to section 12 of the *Exchange Act* or that is required to file reports pursuant to the section 15(d) of the *Exchange Act*;
 - (c) you are barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock;
 - (d) you are suspended from appearing and practicing before the Commission as an attorney; and



- (e) you shall pay disgorgement of \$20,000, prejudgment interest of \$1,820.94, and a civil penalty of \$50,000.00.

SEC Order, p. 7, section IV

ORDERS SOUGHT

46. There is no limitation on the Commission from imposing a capital market sanction that is similar or different to the SEC orders, however, the Commission needs to consider the enforcement orders available under the Act, what is reasonable based on the evidence known to it, and what is in the public interest.
47. Unlike the *Exchange Act*, the Act does not create a separate category of securities with a price of less than five dollars. Further, there are no specific enforcement orders under the Act prohibiting participation in an offering of penny stock, or prohibiting activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock.
48. Although there is no comparative enforcement order specifically prohibiting trading and purchasing penny stock under the Act, there is an order available under section 161(1)(b) of the Act that prohibits trading and purchasing of securities or derivatives.
49. 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;
 - (b) the SEC Order;
 - (c) the enforcement orders available under the Act;
 - (d) the factors from *Eron* and *Davis*;
 - (e) the public interest; and
 - (f) the sanctions ordered in previous cases cited above.
50. The Executive Director seeks the following orders against you:
- (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;
 - (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 acting in a management or consultative capacity in connection with activities in the securities market; and
- (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.

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

SUPPORTING MATERIALS

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

- (a) SEC Order
- (b) Offer of Settlement
- (c) SEC Complaint
- (d) 2010 Judgment
- (e) Recognizance Order
- (f) Reasons for Sentence
- (g) 2016 Judgment
- (h) [*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (i) [*Re Eron Mortgage Corporation*](#), [2000] 7 BCSC Weekly Summary 22
- (j) [*Michaels \(Re\)*](#), 2014 BCSECCOM 457
- (k) [*Johnson \(Re\)*](#), 2007 BCSECCOM 437 (CanLII)
- (l) [*Re SBC Financial Group Inc.*](#), 2018 BCSECCOM 267
- (m) [*Re Mountainstar Gold Inc.*](#), 2019 BCSECCOM 123
- (n) [*Allaby \(Re\)*](#), 2012 BCSECCOM 399 (CanLII)
- (o) [*McCabe v Speckert*](#), 2014 BCSECCOM 512 (CanLII)
- (p) [*Davis v. British Columbia \(Securities Commission\)*](#), 2018 BCCA 149



YOUR RESPONSE

53. 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 Secretary to the Commission by **Tuesday, September 7, 2021**.
54. The contact information for the Secretary to the Commission is:
- Hearing Office
British Columbia Securities Commission
PO Box 10142, Pacific Centre
12th Floor, 701 West Georgia Street
Vancouver, BC V7Y 1L2
E-mail: commsec@bcsc.bc.ca
Telephone: 604-899-6500
55. 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.
56. The Commission will send you a copy of its decision.
57. **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 commsec@bcsc.bc.ca)