



British Columbia
Securities Commission

REPLY TO:

Deborah W. Flood

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Email: dflood@bcsc.bc.ca

By Regular Mail

May 13, 2021

Dear Mr. Backer:

**Harold Magnus Backer
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), 161(6)(c), 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:

- (a) your criminal conviction for fraud arising from a course of conduct relating to securities; and
- (b) the orders made by the Mutual Fund Dealers Association of Canada (MFDA) arising from your violation of MFDA Rules and By-Laws.

DECISION OF THE PROVINCIAL COURT

1. You entered a guilty plea and were convicted of one count of fraud involving securities over \$5,000, contrary to section 380(1)(a) of the *Criminal Code* in *R v. Backer*, Victoria Registry, File No.: 170775-5-C (Warrant of Committal Upon Conviction).
2. On July 4, 2018, the Honourable Justice Rogers of the Provincial Court of British Columbia sentenced you to the following (Reasons for Sentence):
 - (a) 14 month jail term;
 - (b) restitution in the amount of \$161,900; and
 - (c) a probation order of three years.

Warrant of Committal Upon Conviction



Reasons for Sentence, pp. 7-8

3. The probation order prohibited the following activities:
 - (a) trading in, or purchasing securities or exchange contracts, except that you may purchase, trade and sell securities that belong to you 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.

Reasons for Sentence, paras. 31-33

4. According to the agreed statement of facts and joint submission on sentence (Agreed Facts) and Justice Rogers' Reasons for Sentence, the circumstances of the fraud are as follows:

- (a) As of 2018, you were 55 years old and had no prior criminal record.

Reasons for Sentence, para. 3

- (b) On July 2, 1998, you incorporated a company in British Columbia known as "My Financial Backer Corporation" (the Corporation), through which you solicited funds from investors to manage on their behalf through the Corporation.

Agreed Facts, para. 3

- (c) Between May 1, 2013 to November 5, 2015, you took money from five individuals for purposes of investing that money, and then instead diverted some or all of that money to your own purposes. The total amount taken was \$161,900.

Reasons for Sentence, paras. 1-2

- (i) On May 6, 2013, investors BC and LC, on your advice, took out a line of credit on their house and wrote you a cheque for \$207,000 for investment purposes. You moved \$114,000 to your brokerage account, and diverted \$93,000 for purposes not consistent with the intention of the investment, including your own personal use.
 - (ii) On January 13, 2015, investor TC wrote you a cheque for \$25,000 for investment purposes. You deposited \$1,500 into your brokerage account and diverted \$23,500 for purposes not consistent with the intention of the investment, including your own personal use.



- (iii) On April 29, 2015, investor IV gave you \$37,500 for investment purposes. On May 4, 2015, you transferred all of this money onto your personal line of credit. Approximately \$35,000 of this money was then used for purposes not consistent with the intention of the investment, including a payment to another of your investors.
- (iv) On October 18, 2015, investor HS wrote and mailed you a cheque for \$7,900 for investment purposes. You diverted all \$7,900 for a purpose not consistent with the intention of the investment, including your own personal use.

Agreed Facts, para. 5

- (d) The funds you solicited from these five investors were not used for the purposes that you represented to them. Accordingly, your misconduct satisfied the elements of fraud contrary to section 380 of the *Criminal Code*.

Agreed Facts, para. 5

DECISION OF THE MFDA

- 5. On February 8, 2019, in its reasons for decision (Reasons for Decision¹), the MFDA found you had violated MFDA Rules and By-Laws and ordered that you are:
 - (a) permanently prohibited from conducting securities related business activity in any capacity while in the employment of, or in the association with, any MFDA member;
 - (b) to pay a fine of \$2,745,261.34; and
 - (c) to pay costs of the proceeding in the amount of \$17,875.

Reasons for Decision, para. 73

- 6. In the Reasons for Decisions, the MFDA made the following findings of fact:
 - (a) You became a registered representative for mutual funds in August 1997. You continued to be registered, except for a few months break, until November 17, 2015.

Reasons for Decision, para. 13

¹ [*Backer \(Re\)*](#), 2019 CanLII 12484 (CA MFDAC)



- (b) On July 2, 1998, you founded the Corporation. You were the Corporation's sole director.

Reasons for Decisions, para. 14

- (c) In 1999, you created and distributed a prospectus for fictitious mutual funds purportedly offered by the Corporation. The prospectus was never filed with the Commission, nor were the funds registered or qualified under the Act.

Reasons for Decision, paras. 15, 16, 54 (a)

- (d) Between May 15, 2002 and November 17, 2015, you promoted and fraudulently induced investors to invest in non-existent mutual funds contrary to MFDA Rule 2.1.1.

Reasons for Decision, paras. 17-37, 55(b)

- (e) You obtained \$1,657,553.64 from 10 clients and 3 individuals who you solicited to invest in the fictitious mutual funds (Investors). You failed to account for \$1,040,907.42 of this money.

Reasons for Decision, paras. 17-37, 68

- (f) You authored a letter admitting to running a pyramid scheme, and deceiving investors about their returns since 1999.

Reasons for Decisions, paras. 41, 54 (d)

- (g) Between May 15, 2002 and November 17, 2015, you failed to repay or otherwise account for \$719,853.78 that you solicited from at least 6 clients and one individual to invest in the fictitious mutual fund, contrary to MFDA Rule 2.1.1.

Reasons for Decision, paras. 17-37, 55 (a)

- (h) Between May 15, 2002 and November 17, 2015, you fraudulently induced the Investors to invest in non-existent mutual funds contrary to MFDA Rule 2.1.1.

Reasons for Decision, paras. 17-37, 55(b)

- (i) By reason of your guilty plea and criminal conviction for fraud, you failed to be of character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.



Reasons for Decision, para. 55(d)

- (j) You failed to cooperate with an investigation into your conduct by MFDA staff, contrary to section 22.1 MFDA By-law No. 1.

Reasons for Decision, paras. 44, 55 (c)

- (k) The MFDA proceeding also involved the five investors in the criminal action.

Reasons for Decision, para. 67

THIS APPLICATION

- 7. 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.
- 8. 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.
- 9. 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

- 10. 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).
- 11. 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 damage done to the integrity of the capital markets in B.C.;
 - (d) the extent to which the respondent was enriched;
 - (e) factors that mitigate the respondent's 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 deter those who participate in the capital markets from engaging in inappropriate conduct, and



- (i) 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

12. The court found the circumstances of the offence were serious, given the significance of the fraud and the number of victims. It determined your moral culpability as high.

Reasons for Sentence, paras. 6, 12

13. Previous decisions of this Commission have repeatedly held that fraud is the most serious misconduct found in the Act.

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

14. The MFDA found that your fraud was executed assiduously over a period of roughly 15 years. During that time, you concealed and perpetuated your misconduct with fictitious account statements and by reporting fabricated rates of returns.

Reasons for Decision, para. 58(a)

15. Your fraud involved non-existent mutual funds outside of your company's normal course record keeping. This, in addition to your failure to co-operate, resulted in the full scale of your misconduct and the precise quantum of your ill-gotten gains to be unknown.

Reasons for Decision, para. 58(d)

Harm suffered by investors

16. In the criminal proceeding, your victims sustained a loss of \$161,900. A restitution order was made in this amount.

Warrant of Committal Upon Conviction, para. 2
Reasons for Sentence, para. 36

17. Two of your victims leveraged their house to obtain the \$207,000 to invest with you. They are undoubtedly faced with significant debts as a result of your misconduct.

Agreed Facts, para. 5(a)



18. The total amount lost by your victims while you were under the MFDA's jurisdiction was approximately \$881,753.78.

Reasons for Decision, paras. 68-69

19. You lost the retirement savings of one of your investors, NP. This caused NP to suffer from a great deal of stress that lead to a stroke. NP is now left adversely affected both physically and cognitively.

Reasons for Decision, para. 58(c)(i)

20. The court received three victim impact statements. The impact on these victims is devastating. Not only have your victims suffered significant and lasting financial losses, which has affected both their present and future financial security, they have also lost much more. Because of their friendship with you, and what they believed was a friendship, your victims have also lost faith in their ability to judge others. Your victims' lives have been forever changed by your crime.

Reasons for Sentence, para. 11

21. Your position in the community gave you access to your victims. You exploited the professional trust relationship you enjoyed with your clients. You also betrayed the personal trust of life-long friends.

Reasons for Sentence, para. 9

Reasons for Decision, para. 58(b)

Damage done to the integrity of the Capital Markets

22. Public confidence in our capital markets is dependent on the honesty and integrity of those who participate in it.
23. Investors lose confidence in the markets and because hesitant to invest if they cannot trust those who sell securities to do so in compliance with securities regulations.

[Wireless Wizard Technologies Inc. \(Re\)](#), 2015
BCSECCOM 443, at para. 11

24. Your misconduct damaged the reputation and integrity of our capital markets and caused investors to lose confidence in the capital markets.

Enrichment

25. The extent to which you were enriched by your misconduct is significant and quantifiable.



26. In the MFDA proceeding, you raised money over \$1.5 million from investors and spent a large portion of this money on your own personal expenses.

Reasons for Decision, Paras. 17-37, 67-69

Aggravating and Mitigating Factors

27. You entered a guilty plea, thereby relieving the crown of the obligation to hold a hearing, saving much court time and resources.

Agreed Facts, para. 7 (a)
Reasons for Sentence, para. 14

28. In the criminal proceedings, you asserted you were remorseful.

Agreed Facts, para. 7 (b)
Reasons for Sentence, para. 14

29. The MFDA hearing panel found that your expression of remorse in the criminal action must be given limited weight, considering:

- (a) the agreed statement of facts does not come close to reflecting the true scale of your wrongdoing;
- (b) you failed to co-operate with the MFDA staff investigation;
- (c) you disappeared in an attempt to escape the consequences of your wrongdoing; and
- (d) your letter to investors was in self-serving terms that failed to acknowledge the crucial fact that you had diverted the majority of investors' money to your own personal use.

Reasons for Decision, para. 59

30. The Commission has previously held that a history of registration under the Act may be an aggravating factor.

[*Re Williams*](#), 2016 BCSECCOM 283, paras. 117-118

31. Your lengthy career as a registrant is a significant aggravating factor.

[*Re Lim*](#), 2017 BCSECCOM 319, para. 20
[*Re SBC Financial Group Inc.*](#), 2018 BCSECCOM 267
para. 31

Risk to investors and the capital markets

32. Your misconduct took place over an extended period, and involved repeated acts of deceit that demonstrates you lack integrity and trustworthiness. You pose a



pronounced risk to the public and are deserving of significant sanctions that will prevent you from any future participation in the capital markets.

Fitness to be a registrant or a director or officer

33. 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

34. You committed numerous acts of deceit against multiple investors, and have used the proceeds of your dishonesty for your own personal benefit. This conduct is completely inconsistent with conduct acceptable for a registrant, director or officer of an issuer, or those otherwise engaged in the capital markets.
35. You pose a great risk to our markets and are ill-suited to act as a registrant, director, officer, promotor, or advisor to any private or public issuers going forward.

Deterrence and Participation in our capital markets

36. 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.
37. You have shown to have flagrant disregard for securities law in Canada, and have no place in British Columbia's capital markets in any capacity.
38. The market as a whole must understand that a finding of fraud will result in a significant penalty.

[Throw \(Re\)](#), 2007 BCSECCOM 758 (CanLII), para. 74

Previous orders

39. The Commission ordered permanent market bans in the three decisions below. These decisions contain similar fact patterns to your misconduct and quantum:
- [Re Braun](#), 2019 BCSECCOM 65
 - The respondents perpetrated a fraud on two investors in the amount of \$450,000. The respondents solicited investors' funds by misrepresenting they would use the funds to purchase properties to generate returns. Instead, the respondents spent investors' funds on unrelated matters, including their own personal expenses.



- [Re the Falls Capital Corp.](#), 2015 BCSECCOM 422
 - The respondents perpetrated a fraud on investors in the amount of \$517,500. The respondents raised funds by representing to investors that the money raised would be loaned to four joint venture agreements. Instead, the respondent Wharram misappropriated investors' funds and used the money on personal expenses.
- [Re Nickford](#), 2018 BCSECCOM 57
 - The respondent fraudulently misappropriated \$300,000 from 13 investors. The respondent solicited investors' funds by misrepresenting she would use the funds in her business. Instead, the respondent used investors' funds on personal expenses.

Davis Consideration

40. 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.

41. You are 58 years of age.

Warrant of Committal Upon Conviction, p. 1

42. Your misconduct goes back as far as 1999, two years after becoming a registered representative. You were involved in securities misconduct for the majority of your securities related career. There is no evidence that you could participate in the capital markets in a legitimate capacity.

Reasons for Decision, para. 13

43. You are already permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA member. Therefore, permanent market bans imposed by the Commission would only marginally impact your already limited ability to work in the capital markets.

ORDERS SOUGHT

44. There is no limitation on the Commission from imposing a capital market sanction that is similar or different to the probation order and MFDA penalties against you, 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.



45. 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) court documents from *R v. Backer*;
- (c) the factors from *Eron* and *Davis*;
- (d) the sanctions ordered in previous cases cited above;
- (e) the enforcement orders available under the Act;
- (f) your individual circumstances; and
- (g) the public interest.

46. Your misconduct was deplorable. You repeatedly lied to investors over an extended period of time, and used investors' funds for your own enrichment. Your misconduct caused Investors to suffer detrimental harm. Taking the factors at paragraph 43 into consideration, nothing short of permanent and expansive market bans would protect the investing public. Accordingly, the Executive Director is seeking orders pursuant to section 161(1) of the Act that:

- (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, except that you can trade in or purchase securities through a registrant (who has first been given a copy of this decision) in:
 - RRSPs, RRIFs, or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts in your name.
 - (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 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.

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

SUPPORTING MATERIALS

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

- (a) Warrant for Committal Upon Conviction (*R v. Backer*, Victoria Registry, File No.: 170775-5-C)
- (b) Reasons for Sentence (*R v. Backer*, Victoria Registry, File No.: 170775-5-C)
- (c) Agreed Facts (*R v. Backer*, Victoria Registry, File No.: 170775-5-C)
- (d) [*Backer \(Re\)*](#), 2019 CanLII 12484 (CA MFDAC) (Reasons for Decision)
- (e) [*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (f) [*Re Eron Mortgage Corporation*](#), [2000] 7 BCSC Weekly Summary 22
- (g) [*Manna Trading Corp. Ltd. et al.*](#), 2009 BCSECCOM 595
- (h) [*Wireless Wizard Technologies Inc. \(Re\)*](#), 2015 BCSECCOM 443
- (i) [*Re SBC Financial Group Inc.*](#), 2018 BCSECCOM 267
- (j) [*Throw \(Re\)*](#), 2007 BCSECCOM 758 (CanLII)
- (k) [*Re Williams*](#), 2016 BCSECCOM 283
- (l) [*Re Lim*](#), 2017 BCSECCOM 319
- (m) [*Re Braun*](#), 2019 BCSECCOM 65
- (n) [*Re the Falls Capital Corp.*](#), 2015 BCSECCOM 422
- (o) [*Re Nickford*](#), 2018 BCSECCOM 57
- (p) [*Davis v. British Columbia \(Securities Commission\)*](#), 2018 BCCA 149

YOUR RESPONSE

49. 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, June 21, 2021**.

50. 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



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Vancouver, BC V7Y 1L2
E-mail: commsec@bcsc.bc.ca
Telephone: 604-899-6500

51. 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.
52. The Commission will send you a copy of its decision.
53. **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: Commission Hearing Office (by email to commsec@bcsc.bc.ca)