



British Columbia
Securities Commission

REPLY TO:

Deborah W. Flood

T: 604-899-6623 / F: 604-899-6633

Email: dflood@bcsc.bc.ca

By Regular Mail

June 2, 2020

Dear Mr. Kitts:

**Brian Arthur Kitts
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)(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 the orders imposed on you by the Alberta Securities Commission (ASC) for breaches of the *Securities Act*, R.S.A., 2000, c. S-4 (Alberta Securities Act).

DECISION OF THE ALBERTA SECURITIES COMMISSION

1. On June 3, 2019, the ASC concluded you and the company you controlled contravened securities law by perpetrating a fraud. The ASC provided the reasons and decisions in [Re Kitts](#), 2019 ABASC 91 (*Liability Decision*).
2. On November 12, 2019, the ASC imposed permanent market prohibitions on you, as well as a disgorgement order of \$1,960,457, an administrative penalty of \$600,000, and a costs penalty of \$150,000 on you and the corporate respondent. The reasons and decision on sanctions and costs are contained in [Re Kitts](#), 2019 ABASC 173 (*Sanction Decision*).
3. In concluding you had engaged in fraud, the ASC found the following facts:
 - (a) Vesta Capcorp Inc. (Vesta) was a federally-incorporated company. It was registered as an extra-provincial corporation in Alberta from September 2014 until March 2018. You were Vesta's sole director and officer and Vesta's guiding mind.



Sanction Decision, para. 5
Liability Decision, para. 13

- (b) Vesta raised approximately \$5.3 million from investors through the issuance of short-term promissory notes (Notes) that promised to repay principal, along with either “fees and profit sharing”, or “profit sharing”, at a 20% monthly rate of return.

Sanction Decision, paras. 6, 49
Liability Decision, para. 19

- (c) Investors were often persuaded, or elected to allow amounts owed to them from a maturing Note to be reinvested, or rolled over into a new Note. Later, when Vesta’s bank account balances were significantly reduced, you unilaterally rolled maturing Notes into new Notes without investors’ consent.

Sanction Decision, para. 6

- (d) Investors generally understood that money paid to Vesta would be used to provide short-term financing to real estate industry participants and that they would receive their principal and profit sharing payments once Vesta was repaid. Investors’ understanding was largely based on information conveyed directly to them by you. Information was conveyed to investors through a combination of email and telephone conversations, in-person meetings, and a PowerPoint presentation.

Sanction Decision, para. 8
Liability Decision, paras. 22-24

- (e) You knew the investment opportunities presented to Vesta investors were fictitious. Vesta was not financing real estate industry participants as represented. Instead, investors’ funds were being misapplied for unauthorized uses.

Liability Decision, paras. 117-118

- (f) Significant amounts of investors’ money were sent to a gaming company and to a company operating a bar in Arizona (of which you had a concealed ownership interest). Investors’ money was also being used by you and your spouse for your personal use, including the purchase of a condominium in Vancouver.

Sanction Decision, paras. 10, 13

- (g) Vesta also used investor funds to repay principal and fictitious profit-sharing to investors in a manner consistent with a Ponzi scheme.



Sanction Decision, para. 11

- (h) The Notes issued by Vesta were found to be securities.

Liability Decision, paras. 109-111

- (i) The ASC found that you and Vesta engaged in prohibited acts by:
- i. Falsely representing to prospective Vesta investors that invested funds would be used to provide short-term financing to real estate industry participants;
 - ii. Diverting invested funds to business ventures that were not identified or otherwise within the reasonable expectation of Vesta investors;
 - iii. Misappropriating investor funds to your personal use and the use of your spouse; and
 - iv. Using investors' capital to repay principal and to pay imaginary profits to Note holders.

Liability Decision, para. 113

- (j) You, and by extension Vesta, were found to have knowingly engaged in the prohibited acts that placed investors' pecuniary interests at risk.

Liability Decision, paras. 120-121

- (k) You, as Vesta's guiding mind throughout the relevant period, authorized and permitted Vesta's actions.

Liability Decision, para. 115

THIS APPLICATION

4. 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.
5. 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.
6. 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



7. 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).
8. 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 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 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

9. Your misconduct was egregious. You engaged in predatory conduct. You orchestrated the scheme and knew full well the consequences.

Sanction Decision, para. 23
Liability Decision, para. 117

10. The perpetration of a Ponzi scheme is among the worst types of fraud. Ponzi schemes are a particularly sinister type of fraud because those lucky enough to get in at the beginning do in fact earn the promised returns, and they lend the credibility to the scheme that it needs in order to lure investors.¹

Sanction Decision, paras. 21, 23

11. You made a variety of risible excuses to investors to avoid payment of their principal and promised returns and to forestall the inevitable collapse of your Ponzi scheme. Your attempts to delay the inevitable collapse of your Ponzi scheme by repeatedly lying to investors, together with the absence of any underlying business, confirmed for the ASC that you planned to defraud innocent investors from the outset.

¹ [*Manna Trading Corp Ltd. \(Re\)*](#), 2009 BCSECCOM 426 (CanLII), at para. 333



Sanction Decision, paras. 23
Liability Decision, para. 120

Harm suffered by investors

12. Your misconduct caused many investors to suffer. Vesta investors experienced significant financial losses. Most received at least a portion of their investment back, while a few may have realized a gain (although any gain came at the expense of other investors, since there was no legitimate business generating revenue).

Sanction Decision, para. 12

13. Many of the investors you harmed were approaching an advanced age.

Sanction Decision, para. 30

Enrichment

14. The Ponzi scheme, masquerading as a legitimate business venture, operated from approximately February 2014 to June 2015, and garnered substantial amounts at the expense of unwitting investors.

Sanction Decision, para. 31

15. You and Vesta obtained significant benefits from your capital market misconduct, estimated in the amount of \$1,960,457.

Sanction Decision, paras. 49, 51

16. You used invested funds for unauthorized purposes, including for your own personal benefit, and the benefit of your spouse.

Sanction Decision, para. 13

Risk to investors and the capital markets

17. You pose a pronounced risk to the public and are deserving of significant sanctions that will prevent you from future participation in the capital market.

Sanction Decision, para. 35

18. There is no basis to believe that you will abide by securities law in the future and your presence in British Columbia's capital markets in any capacity represents a significant risk to investors.

Fitness to be a registrant or a director or officer

19. 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

20. You have committed several acts of deceit against 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.
21. 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.

Past Misconduct

22. On July 19, 2007, you were named as a defendant in a criminal information filed in the Third Judicial District Court of Salt lake County, Utah. The Information alleged that you committed various crimes, including eight counts of securities fraud.

Sanction Decision, para. 15

Affidavit of E. Keller sworn June 26, 2019, Ex. B., pp. 4-9

23. On July 30, 2010, you pled no contest to two counts of second degree felony securities fraud and two counts of third degree felony theft. The securities misconduct included making misrepresentations to investors in the course of offering securities to raise funds for two companies, proceeds of which, you used, in part, for your personal benefit.

Affidavit of E. Keller, Ex. E, p. 39

Sanction Decision, para. 27

24. On November 26, 2018, you were sentenced to four concurrent sentences of imprisonment, each for “an indeterminate term of not less than one year nor more than fifteen years.” Two of the four concurrent sentences were in respect of the securities fraud.

Sanction Decision, para. 15

Affidavit of E. Keller, Ex. E p. 40

25. Rather than accept responsibility for your misconduct in the U.S., you absconded and embarked on a new fraud in Canada and elsewhere in the United States.

Sanction Decision, para. 27

26. You have also been sanctioned by the Utah Securities Commission for securities-infractions relating to the same misconduct which is the subject of your criminal conviction in Utah. The sanctions include a permanent bar from licensing in the securities industry, an order to cease and desist, as well as monetary penalties.



Order on Default dated 29 September 2014

Participation in our capital markets

27. 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.
28. You are an unrepentant recidivist who flagrantly disregards securities law in the U.S. and Canada. You have no place in British Columbia's capital markets in any capacity.
29. Although the Utah proceedings did not involve a Ponzi scheme, your misconduct there was similar inasmuch that you deceived investors and misappropriated their money. You continued your fraudulent capital-market activity in Alberta in the face of regulatory sanction and criminal proceedings elsewhere, thus flouting securities laws.

Sanction Decision, para. 28

30. With a history of securities-related misconduct, you pose a real and serious risk to the British Columbia capital markets.

Deterrence

31. 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

32. The seriousness of your misconduct demonstrates an overwhelming need to protect the investing public against future harm from you. There is also a need to send a message to others who might be tempted to emulate such misconduct.

Sanction Decision para., 25

33. Your misconduct in Alberta and in Utah reinforce the need for strong sanctions that will discourage future misconduct.

Sanction Decision, paras. 33 and 34

Mitigating/Aggravating Factors

34. There are no mitigating factors. The continuation and escalation of your fraudulent activity in Alberta, while a fugitive from criminal proceedings in Utah, is a significant aggravating factor. Your behavior is indicative of a brazen scofflaw with a callous regard for the victims you duped.



Sanction Decision, para. 33

Previous orders

35. We refer to a number of decisions for guidance on the appropriate sanction. The Commission imposed permanent market bans on respondents Oei, Williams, and Samji in the three decisions below. The decisions involve the same contravention (fraud).
36. The most similar case in terms of quantum is *Re Oei*. Oei raised approximately \$5 million from investors through fraud.² Oei also co-mingled investor funds with his personal funds and using them for his own benefit.

Re Oei, 2017 BCSECCOM 365, para. 306

37. The most similar recent case in terms of misconduct, although not in terms of quantum, is *Re Williams*. Williams committed a \$12 million fraud by operating a Ponzi scheme and diverting a portion of the investors' funds to persons with a history of fraud and other misconduct.³
38. Another similar case in terms of misconduct, although not in terms of quantum, is *Re Samji*.⁴ Samji perpetrated a fraud when she ran a Ponzi scheme in which she received over \$83 million from 218 investors. She raised funds by misrepresenting how she was going to use investors' funds. Samji and other respondents were enriched by the Ponzi scheme by almost \$11 million.

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.

CONNECTION TO B.C.

41. We have reason to believe you and your spouse are now living in Summerland, British Columbia.

² [*Re Oei*](#), 2018 BCSECCOM 231 (CanLII), paras. 131

³ [*Re Williams*](#), 2016 BCSECCOM 283 (CanLII), paras. 2, 41, and 61.

⁴ [*Samji \(Re\)*](#), 2015 BCSECCOM 29 (CanLII)



ORDERS SOUGHT

42. The ASC ordered broad, permanent market bans against you, as well as joint and several monetary penalties totaling approximately \$2.7 million.
43. Although there is no limitation on the Commission from imposing a capital market sanction that is similar or different to the ASC sanctions, the Commission needs to consider what is reasonable based on the evidence known to it, as well as what is in the public interest.
44. 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 factors from *Eron* and *Davis*;
 - (c) the sanctions ordered in previous cases cited above;
 - (d) the available orders under the Act; and
 - (e) the public interest.
45. Based on these factors, 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;
 - (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;
 - (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.

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

SUPPORTING MATERIALS

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

- (a) [*Re Kitts*](#), 2019 ABASC 91 (*Liability Decision*)
- (b) [*Re Kitts*](#), 2019 ABASC 173 (*Sanction Decision*)
- (c) [*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (d) [*Re Eron Mortgage Corporation*](#), [2000] 7 BCSC Weekly Summary 22
- (e) [*Manna Trading Corp Ltd. \(Re\)*](#), 2009 BCSECCOM 426 (CanLII)
- (f) [*Re SBC Financial Group Inc.*](#), 2018 BCSECCOM 267
- (g) Affidavit of E. Keller sworn June 26, 2019
- (h) Order on Default dated September 29, 2014
- (i) [*Throw \(Re\)*](#), 2007 BCSECCOM 758 (CanLII)
- (j) [*Re Oei*](#), 2018 BCSECCOM 231 (CanLII)
- (k) [*Re Williams*](#), 2016 BCSECCOM 283 (CanLII)
- (l) [*Samji \(Re\)*](#), 2015 BCSECCOM 29 (CanLII)
- (m) [*Davis v. British Columbia \(Securities Commission\)*](#), 2018 BCCA 149

YOUR RESPONSE

48. 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 **Thursday, July 16, 2020**.

49. The contact information for the Commission Hearing Office 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

50. 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.



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51. The Commission will send you a copy of its decision.
52. 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)