



British Columbia
Securities Commission

REPLY TO:

Deborah W. Flood

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Email: dflood@bcsc.bc.ca

By Regular Mail

August 4, 2020

Dear Mr. Fielder:

Kelly Boyd Fielder
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) 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 involving securities.

CRIMINAL CONVICTION

1. On October 24, 2012, you were charged with two counts of fraud involving securities of \$5,000, contrary to section 380(1)(a) of the *Criminal Code* (the Information).
2. You entered a guilty plea to count two on the Information, and on August 28, 2014, you were convicted of the offence.

Conditional Sentence Order, pg. 1

3. Count two of the Information states:

From October 1, 2010 to December 31, 2010, inclusive, at or near Vancouver and elsewhere in the Province of British Columbia, you did, by deceit, falsehood or other fraudulent means defraud [RD] of monies, of a value in excess of \$5,000, contrary to section 334(a) of the *Criminal Code*.

Information, p. 2, count 2



4. On November 20, 2014, in brief oral reasons, the Honourable Justice Galati sentenced you to the following orders:
- (a) Conditional sentence of 18 months, the first 6 months under house arrest and the remainder to be served in the community;
 - (b) no engagement in the promotion or distribution of any type of security and no involvement in investor relation activities;
 - (c) 50 hours of community services; and
 - (d) restitution in the amount of \$144,500.00

Conditional Sentence Order, p. 1, 3
Reasons for Sentence, p. 3-5

5. The facts of the offence can be found in the Information, as well as in crown counsel's recital of facts contained in the sentencing submissions. You took no issue with the reading of the recital of facts at the sentencing hearing, which include the following:

- (a) In October 2010, RD was introduced to you through a mutual friend.

Sentencing Submissions, p. 3

- (b) In October and November 2010, you were in direct discussions with RD pertaining to an investment involving the acquisition of shares in a privately held company called Savannah Gold Limited ("Savannah"). Savannah is a private mining company based in the United Kingdom

Sentencing Submissions, p. 3

- (c) You told RD that:
 - (i) monies invested by him would be used to acquire Savannah;
 - (ii) he would receive a 15% finder's fee of the principal investment shortly after making the investment;
 - (iii) the initial share value was \$0.10;
 - (iv) Savannah would go public and be listed on the TSX within 90 to 120 days of the receipt of the investment; and
 - (v) RD's share would then be bought by involved principals for \$1.75 per share.

Sentencing Submissions, p. 3

- (d) You provided RD with materials regarding the validity of: the investment project, the opportunity, the parties, and the sponsoring broker/brokerage house. You also led RD to believe that the investment was fully backed by a major mining company.

Sentencing Submissions, p. 3



- (e) RD told you his current financial and professional issues, especially his need to limit any risk exposure. He told you that he was not in a position to make an investment if the risk was high.

Sentencing Submissions, p. 3

- (f) You assured RD that there was no risk. You told RD that if the TSX declined Savannah's listing transaction, you would return RD's principal investment plus 15% finder's fee.

Sentencing Submissions, p. 4

- (g) RD advised you that he was interested in the investment but he did not have money readily available. RD told you he would have to borrow from his parents, who in turn would have to borrow from a line of credit against their home on Vancouver Island.

Sentencing Submissions, p. 4

- (h) On November 17, 2010, RD contacted his parents and arranged to borrow \$169,000 from his parents' line of credit and \$1,000 in cash from his father.

Sentencing Submissions, p. 4

- (i) On November 18, 2010, a unit subscription agreement was signed between 0883580 B.C. Ltd. (the Issuer), and RD's company, Enlightened Clinical Diagnostic Associates Inc. (the Investor). The agreement was the purchase of 2,200,000 common shares of the Issuer at \$0.10 per unit.

Sentencing Submissions, p.4

- (j) You were the sole shareholder and director of the Issuer. You told RD that the Issuer was the proposed vehicle to be used to acquire Savannah.

Sentencing Submissions, p.4

- (k) On November 19, 2010, RD provided you with a bank draft, made payable to the Issuer, in the amount of \$170,000.

Sentencing Submissions, p. 4

- (l) On November 24, 2010, you provided RD with a bank draft in the amount of \$25,500 representing the 15% finder's fee.

Sentencing Submissions, p. 4



- (m) RD believed he would get back his principal investment plus interest in March 2011.

Sentencing Submissions, p. 4

- (n) Beginning in late February 2011, RD attempted to communicate with you directly via email, text, and telephone, but to no avail. Between May 2011 to August 2011, you sent emails to RD assuring him that the funds were coming shortly. After September 2011, there was no further communication between you and RD.

Sentencing Submissions, p. 5

- (o) Besides the return of \$25,500, you did not return any of RD's principle investment and/or interest.

Sentencing Submissions, p. 5

- (p) Documents relating to the bank account for the Issuer shows that RD's money was deposited into a bank account opened and controlled by you.

Sentencing Submissions, p. 5

- (q) During the months of November and December 2010, you spent RD's money on personal expenditures including a club membership. You also transferred some of RD's money to two companies you were involved with.

Sentencing Submissions, p. 5

- (r) None of RD's monies went towards the proposed investment in Savannah.

Sentencing Submissions, p. 6

THIS APPLICATION

6. 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.
7. 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.
8. 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

9. 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).
10. 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 misconduct;
 - (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***

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

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

12. Your misconduct was egregious as it involved you fabricating lies about a fictitious investment. Contrary to your statements to RD:
 - (a) Savannah did not ask you to solicit investment from members of the public to fund the listing of Savannah;
 - (b) Savannah was not aware that you were soliciting investors;
 - (c) Savannah did not receive funds from any Canadian or American investors in connection with a proposed listing of Savannah's shares on a Canadian stock exchange;
 - (d) the sponsoring brokers/brokerage house named by you in the investment was not involved in any way; and
 - (e) the major mining company that RD believed fully backed the investment, was never aware of the acquisition of Savannah's shares.



Sentencing Submissions, p. 6, p. 7, paras. B and D

Harm suffered by investor

13. The amount involved was significant, totaling \$144,500.00.

Sentencing Submissions, p. 6

14. Your misconduct resulted in substantial harm to RD and his father. You knew RD did not have the money to invest himself and that he had to borrow money from his father, who in turn would have to leverage funds.

Sentencing Submissions, p. 4

Enrichment

15. All the monies you received from RD, besides the \$25,500 that you returned to RD, was used for your own personal benefit.

Sentencing Submissions, pp. 5 and 8

Mitigating Factors

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

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

17. Your guilty plea is a mitigating factor.
18. Your willingness to make restitution to RD was also found to be a mitigating factor by the sentencing judge.

Reasons for Sentence, para. 5

19. The sentencing judge also found that you had remorse for your misconduct.

Reasons for Sentence, para. 4

Risk to investors and the capital markets/participation in capital markets

20. 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.
21. Fraud violates the fundamental investor-protection objectives of the Act. Investors must be confident that the markets are properly regulated and free from manipulation by individuals.



[Mesidor \(Re\)](#), 2014 BCSECCOM 6, paras. 13 and 14

22. Those who commit fraud of any kind represent a very serious risk to our capital markets.

[Re Braun](#), 2019 BCSECCOM 65, para. 21

23. Your actions show a complete disregard for British Columbia's capital markets and the protection of investors. Your participation in our markets, given the conduct for which you were convicted, would present a significant ongoing risk to investors and the capital markets.

Fitness to be a registrant or a director or officer

24. 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

25. You have shown to be deceitful and untrustworthy. Your conduct falls far short of that expected of participants in our capital markets. 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

25. 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

26. Your misconduct calls for orders that are protective of the capital markets and preventative of likely future harm.
27. Through the orders the Executive Director is seeking, the Executive Director intends 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

28. The offence of fraud contrary to section 380(1)(a) of the *Criminal Code* is similar to the offence of manipulation and fraud found at section 57 of the Act.
29. We refer to a number of decisions involving a fraud contravention for guidance on the appropriate sanction. The Commission ordered permanent market bans in the four decisions below. These decisions contain similar fact patterns to your misconduct.



- [*Re Davis*](#), 2016 BCSECCOM 375
The respondent perpetrated fraud on one investor in the amount of \$7,000. The respondent did this by purporting to sell the investor shares he did not own.
- [*Shen Cho \(Re\)*](#), 2013 BCSECCOM 454
The respondents made misrepresentations and perpetrated a fraud when they promised investors that an investment was risk-free and investors would receive a rate of return over 40% . The respondents received \$101,846 from five investors.
- [*Re Dhala*](#), 2015 BCSECCOM 336
The respondent took \$38,250 from four investors on the promise to buy shares of a TSXV listed company that was conducting a private placement. The respondent did not buy shares and instead, he used the investors' funds on personal expenses.
- [*Re Braun*](#), 2019 BCSECCOM 65
The individual respondents committed fraud on two investors in the amount of \$450,000 by way of fictitious investments. The respondents used investors' funds on personal expenses.

The Davis Consideration

30. 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.
31. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

ORDERS SOUGHT

32. The court imposed an order on you not to engage in the promotion or distribution of any type of security, or engage in investor relation activities during your 18 month conditional sentence.

Reasons for Sentence, para. 19
Conditional sentence order, p. 3, condition 9

33. There is no limitation on the Commission from imposing a capital market sanction that is similar or different to the court order, 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.



34. 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 application:

- (a) the circumstances of your misconduct;
- (b) the factors from *Eron* and *Davis*;
- (c) the public interest; and
- (d) the orders imposed in previous cases cited above.

35. Because of these factors, we find it to be in the public interest and proportionate to your misconduct to seek permanent market prohibition orders against you. 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 for your benefit;
 - (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; 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.



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

SUPPORTING MATERIALS

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

- (a) Conditional Sentence Order
- (b) Reasons for Sentence
- (c) Information
- (d) Sentencing Submissions
- (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.\(Re\)*](#), 2009 BCSECCOM 595
- (h) [*Re Flexfi Inc.*](#), 2018 BCSECCOM 166
- (i) [*Mesidor \(Re\)*](#), 2014 BCSECCOM 6
- (j) [*Re Braun*](#), 2019 BCSECCOM 65
- (k) [*Re SBC Financial Group Inc.*](#), 2018 BCSECCOM 267
- (l) [*Throw \(Re\)*](#), 2007 BCSECCOM 758 (CanLII)
- (m) [*Cease Trade Order*](#), 2013 BCSECCOM 16
- (n) [*Variation of Cease Trade Order*](#), 2016 BCSECCOM 338
- (o) [*Re Davis*](#), 2016 BCSECCOM 375
- (p) [*Re Davis*](#), 2018 BCSECCOM 284
- (q) [*Shen Cho \(Re\)*](#), 2013 BCSECCOM 454
- (r) [*Re Dhala*](#), 2015 BCSECCOM 336
- (s) [*Davis v. British Columbia \(Securities Commission\)*](#), 2018 BCCA 149

YOUR RESPONSE

38. 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, September 10, 2020**.

39. 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: commsec@bcsc.bc.ca
Telephone: 604-899-6500

40. 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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41. The Commission will send you a copy of its decision.
42. **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)