

REPLY TO:

**Zaid Sayeed**

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## By Regular Mail

May 29, 2024

Dear Mr. Mann:

**Naresh Singh Mann (aka Naresh Singh Maan)**  
**Reciprocal Order Application**  
**Our File No: 52640**

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 arising from a transaction, business, or course of conduct related to securities.

### **CRIMINAL CONVICTION**

1. On November 17, 2023, you entered a guilty plea and were convicted of one count of fraud over \$5,000 contrary to section 380(1)(a) of the *Criminal Code*.

*R. v. Mann*, Vancouver Registry, File No. 251350-1 (Proceedings (Plea/Election)).

2. On November 17, 2023, the Honourable Justice Rideout, of the Provincial Court of British Columbia, ordered you subject to a suspended sentence including the following conditions:

- (a) 12 months of probation; and
- (b) 50 hours of community work service within nine months.

*R. v. Mann*, Vancouver Registry, File No. 251350-1 (Oral Reasons for Sentence).

3. The reasons for sentence are set out in the Oral Reasons for Sentence in *R. v. Mann*, Vancouver Registry, File No. 251350-1 (Proceedings at Sentencing).

### **Summary of Findings**

4. Between February 1, 2013 and April 30, 2013, at or near Burnaby, British Columbia, you committed the offence of fraud over \$5,000. The details of your misconduct are contained in the Proceedings at Sentencing:

- (a) You met CS, then in his early sixties, in February 2013 while he was shopping at your store. During a conversation in which CS revealed to you that he was retired, you asked him if he had money that he would be willing to invest for six months in a business venture relating to online gambling. You told him that he would double his money at the end of six months.

Proceedings at Sentencing, pg. 3 at 13-24.

- (b) You and CS subsequently met a couple more times at your store. CS told you that he could not afford to lose his money. You told CS that that would not be a problem, that you and your brother-in-law had previously invested in the opportunity, and that you had received your funds back in six months.

Proceedings at Sentencing, pg. 3 at 26-32.

- (c) On February 21, 2013, CS provided you with a bank draft for \$15,400 payable to a numbered company of which you were a former director. In return, you provided him with an agreement confirming that, after six months, CS would be paid an additional return on his investment of 25% to 100%.

Proceedings at Sentencing, pg. 3 at 33-41.

- (d) After about six months passed, CS contacted you to redeem his investment. You did not return his funds as promised. You told CS that there was an issue and VISA was not releasing the money.

Proceedings at Sentencing, pg. 3 at 42-47.

- (e) None of CS's funds were invested in the business venture. Rather, you, the numbered company, and your wife spent the bulk of the funds on retail purchases, cash withdrawals, and business expenses. By the time that the matter was submitted to the Crown, you had repaid CS approximately \$300.

Proceedings at Sentencing, pg. 4 at 1-11.

- (f) You entered into a plea agreement with the Crown resulting in you entering a guilty plea in October 2018. Under that agreement, the Crown agreed to a joint submission for a suspended sentence including 12 months of probation and other conditions provided that full restitution was made to CS. In 2019, you made substantial restitution of approximately \$11,000 to CS. You completed making restitution to CS in November 2021.

Proceedings at Sentencing, pg. 2 at 37-45, pg. 4 at 34-47, pg. 5 at 1-12.

#### **THIS APPLICATION**

5. 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.
6. 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.

7. 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

8. 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).

9. 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 British Columbia by the respondent's conduct;
- (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 need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- (h) 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**

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

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

11. Fraud is the most serious misconduct under the Act owing to the deceit that will have been perpetrated upon investors and fraud requires that the respondent had the requisite mental intent (*or mens rea*) with respect to his or her misconduct.

[Re Bai](#), 2018 BCSECCOM 156, para. 9.

12. You defrauded CS by representing that his money would be invested in an online gambling business. Instead of investing CS's money as promised, you diverted the funds to you, your wife, and a company with which you were associated to be spent on retail purchases, cash withdrawals, and business expenses.

13. While your misconduct is exacerbated by the fact that you took advantage of a vulnerable senior, it does not appear to be at the upper end of the scale of fraudulent misconduct. Your fraud was not of long duration or of high value and you made full restitution.

Reasons for Sentence, para. 19.

**Enrichment**

14. You, your wife, and the company which you were associated with spent the bulk of the \$15,400 investment for business and personal expenses, including cash withdrawals and retail purchases.

Proceedings at Sentencing, pg. 2 at 3-11.

**Harm to investors and damage done to the integrity of the B.C. capital market**

15. CS suffered financial loss for approximately eight years before you made full restitution in 2021 pursuant to your plea agreement with the Crown.
16. Fraud violates the fundamental investor protection objective of the Act. It deters investors from reliance on the honesty and integrity of the markets by causing investors to fear that their investments will not be used in accordance with promises made to them. The fraud of any person who raises capital from investors impacts on the trust that potential investors may have in other honest and credible capital raisers. Fraud committed by the respondent damaged the integrity of the capital markets well beyond its immediate victim.

[Re Bezzaz Holdings](#), 2020 BCSECCOM 263, para. 16.

**Mitigating Factors**

17. 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.

18. You entered a guilty plea in the criminal proceedings and accepted responsibility for your conduct.

Proceedings at Sentencing, pg. 1 at 40-45.  
Proceedings (Plea/Election), pg.1.

19. While the sentencing judge noted that you did not have a prior criminal record, the absence of prior misconduct is not a mitigating factor.

Reasons for Sentence, para. 18.  
[Re Davis](#), 2016 BCSECCOM 375, para. 30.

20. While the sentencing judge also noted that you made full restitution, repayment of investors' funds is not considered a mitigating factor for the purpose of sanctions where no disgorgement is sought.

Reasons for Sentence, para. 19.  
[Re Davis](#), 2016 BCSECCOM 375, para. 24.

**Risk to investors and the capital markets**

21. Fraud violates the fundamental investor-protection objectives of the Act.

[Mesidor \(Re\)](#), 2014 BCSECCOM 6, para. 14

22. Those who commit fraud, because of the *mens rea* associated with the misconduct, represent a significant risk to our capital markets.

[Re DominionGrand](#), 2019 BCSECCOM 335, para. 15

23. Those who take advantage of vulnerable investors pose a very serious risk to our capital markets.

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

24. You orchestrated a scheme to defraud a vulnerable investor. You did not invest his funds as promised; rather, you spent his funds on, among other things, personal expenses. Your fraudulent conduct demonstrates a significant ongoing risk to other investors and the capital markets of British Columbia.

***Deterrence***

25. The market as a whole must understand that a finding of fraud will result in significant penalties.

[Re Thow](#), 2007 BCSECCOM 758, para. 74

26. Specific deterrence and general deterrence are related but not identical concepts. Specific deterrence discourages a respondent from participating in future misconduct. General deterrence discourages others from participating in misconduct similar to that in the subject case. Both goals are legitimate in the crafting of a sanction which properly balances all of the factors which are relevant in any particular case.

[Re Smith](#), 2021 BCSECCOM 486, para. 22

27. Sanctions imposed must be sufficient to deter respondents and others from engaging in similar conduct in the future.

[Durkin \(Re\)](#), 2023 BCSECCOM 180, para. 33

28. Through the orders we are seeking, we intend to demonstrate the consequences of your conduct, to deter you from future misconduct, and to deter others. Permanent market bans are proportionate to the your misconduct and are necessary to ensure that you and others will be deterred from engaging in similar misconduct in the future.

***Previous orders***

29. The Commission has consistently issued permanent market bans against those who have been found to have committed fraud.

[Re Zhong](#) 2015 BCSECCOM 383, para. 31

30. We refer to a number of decisions for guidance on the appropriate sanction. The Commission ordered permanent market prohibitions in the four decisions below involving fraud contraventions. These decisions contain similar fact patterns to your conduct and involve similar circumstances.

- In [Re Davis](#), 2018 BCSECCOM 284, the respondent perpetrated a 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. The respondent spent the funds received from the investor on personal expenses. The investor pursued repayment through court proceedings, eventually obtaining repayment of the funds. The Commission imposed permanent market prohibitions.

- In [Mesidor \(Re\)](#), 2014 BCSECCOM 6, the respondent took \$32,280 from two investors ostensibly for foreign exchange trading. The respondent used \$16,301 of the funds for that purpose, but perpetrated fraud when he used \$16,000 of the funds on cash withdrawals, purchases of groceries, restaurant meals, credit card payments, deposits to his personal bank account, and a payment to a friend. The respondent later returned \$1,000 to each of the investors. The panel ordered permanent market prohibitions.
- In [Basi \(Re\)](#), 2011 BCSECCOM 573, the respondent committed fraud in the amount of \$11,055. The respondent obtained \$15,000 from an investor for the purpose of purchasing shares of a publicly traded company at a discount. Instead, the respondent deposited the money into an intermediary entity that he controlled and used \$11,055 for personal use. The Commission imposed permanent market prohibitions.

31. Similar to the conduct of the respondents in the three cases above, you deceived an investor and used his funds for undisclosed purposes including personal expenses. The quantum of your fraud is closest to the quantum of the fraud in *Mesidor* but is in a similar range as all of the above cases. While none of the above cases involve admissions regarding the misconduct involved, the fact that you accepted responsibility and entered a guilty plea is not sufficient to outweigh the risk you post to the capital markets given your deceptive conduct towards a vulnerable investor.

#### ***The Davis Consideration***

32. 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.
33. The Executive Director is unaware of any individual circumstances that would support orders short of a permanent market ban.

#### **ORDERS SOUGHT**

34. The Commission can impose a capital market sanction that is similar or different to a court's orders. In imposing such a sanction, the Commission needs to consider what is reasonable based on the evidence known to it, as well as what is in the public interest.
35. 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; and
  - (d) the public interest.
36. Based on the factors in paragraph 35, 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, except that, if you give a registered dealer a copy of this decision, you may trade in or purchase securities only through a registered dealer in:
  - (A) RRSPs, RRIFs, or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or locked-in retirement accounts for your own 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;
- (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.

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

#### **SUPPORTING MATERIALS**

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


- (a) *R. v. Mann*, Vancouver Registry, File No. 251350-1 (Proceedings (Plea/Election)).
- (b) *R. v. Mann*, Vancouver Registry, File No. 251350-1 (Oral Reasons for Sentence)
- (c) *R. v. Mann*, Vancouver Registry, File No. 251350-1 (Proceedings at Sentencing)
- (d) [\*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario \(Securities Commission\)\*](#), [2001] 2 SCR 132, 2001 SCC 37 (CanLII)
- (e) [\*Re Eron Mortgage Corporation\*](#), [2000] 7 BCSC Weekly Summary 22
- (f) [\*Manna Trading Corp. Ltd. et al.\*](#), 2009 BCSECCOM 595
- (g) [\*Re Bai\*](#), 2018 BCSECCOM 156
- (h) [\*Re Bezzaz Holdings\*](#), 2020 BCSECCOM 263
- (i) [\*Re Flexfi Inc\*](#), 2018 BCSECCOM 166
- (j) [\*Re Davis\*](#), 2016 BCSECCOM 375
- (k) [\*Mesidor \(Re\)\*](#), 2014 BCSECCOM 6
- (l) [\*Re DominionGrand\*](#), 2019 BCSECCOM 335
- (m) [\*Re Braun\*](#), 2019 BCSECCOM 65
- (n) [\*Re Thow\*](#), 2007 BCSECCOM 758
- (o) [\*Re Smith\*](#), 2021 BCSECCOM 486

- (p) [Durkin \(Re\)](#), 2023 BCSECCOM 180
- (q) [Re Zhong](#) 2015 BCSECCOM 383
- (r) [Re Davis](#), 2018 BCSECCOM 284
- (s) [Basi \(Re\)](#), 2011 BCSECCOM 573
- (t) [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149

#### YOUR RESPONSE

39. 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, July 8, 2024**.
40. The contact information for the Commission Hearing Office is:
- Commission Hearing Office  
British Columbia Securities Commission  
PO Box 10142, Pacific Centre  
12<sup>th</sup> Floor, 701 West Georgia Street  
Vancouver, BC V7Y 1L2  
E-mail: [hearingoffice@bcsc.bc.ca](mailto:hearingoffice@bcsc.bc.ca)  
Telephone: 604-899-6500
41. 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.
42. The Commission will send you a copy of its decision.
43. **If you have any questions regarding this application, please contact Mr. Zaid Sayeed, at 604-899-6993, or [zsayeed@bcsc.bc.ca](mailto:zsayeed@bcsc.bc.ca)**

Yours truly,

DocuSigned by:  
  
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5/30/2024 | 12:04 PM PDT

Douglas B. Muir  
Director, Enforcement

JMW/crc  
Enclosures

cc: Hearing Office (by email to [hearingoffice@bcsc.bc.ca](mailto:hearingoffice@bcsc.bc.ca))