

REPLY TO:

Jillian Dean

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By Regular Mail

August 13, 2024

Dear Mr. Lindsay:

Oliver Barret Lindsay
Reciprocal Order Application
Our File No.: 55191

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 conspiracy to commit securities fraud and manipulative trading.¹

BACKGROUND

1. On August 1, 2019, you entered into a plea agreement in which you agreed to plead guilty to conspiracy to commit securities fraud and manipulative trading, in violation of 18 U.S.C. section 371 (Plea Agreement).
2. On May 12, 2022, the Honourable William Q. Hayes of the United States District Court for the Southern District of California sentenced you to the following:
 - (a) 17 months in custody;
 - (b) A three-year period of supervised release;
 - (c) \$100 mandatory special penalty assessment; and
 - (d) Restitution in the amount of \$187,893.43 (jointly and severally with your co-defendant).

The reasons for your sentence are set out in *United States of America v. Giguere et al*, case 3:18-cr-3071-WQH (Sentencing Decision).

3. According to the Plea Agreement and the Sentencing Decision, the circumstances of your crime are as follows:
 - (a) From October 2017 through March 2018, you and your co-conspirator, Gannon Giguere, carried out a fraudulent and manipulative trading scheme to create a false or misleading

¹ Although your plea refers to “securities fraud” and “manipulative trading”, your conviction arises from a market manipulation scheme. The Executive Director does not consider your conduct to constitute a “fraud” under British Columbian securities law. The Executive Director has taken this into account where relevant in this application.

appearance of active trading in the stock of a corporation called Kelvin Medical Inc. The elements of the scheme were as follows:

- i. Together with other co-conspirators, you and Giguere agreed to deposit Kelvin Medical stock in accounts at various domestic brokerage firms, including accounts that were controlled by you.

Plea Agreement at pg. 3, ll. 22 – 26 and pg. 4, ll. 1 - 2

- ii. You agreed that you and Giguere would then engage in manipulative trading to create the illusion of active trading in Kelvin Medical stock.

Plea Agreement at pg. 4, ll. 3 - 7

- iii. You and Giguere agreed to sell the Kelvin Medical stock into the open market at inflated prices during the period of manipulative trading.

Plea Agreement at pg. 4, ll. 8 - 10

- iv. You and Giguere agreed to then create false pretenses to transfer the proceeds of the sale to accounts controlled by Giguere.

Plea Agreement at pg. 4, ll. 11 - 12

- (b) In or about October of 2017, Giguere bought 1,500,000 shares of Kelvin Medical stock through an entity he controlled.

Plea Agreement at pg. 4, ll. 19 – 21

- (c) In or around November 2017, Giguere caused 1,500,000 shares of Kelvin Medical stock to be deposited in a brokerage account.

Plea Agreement at pg. 4, ll. 22 - 24

- (d) Between October and December 2017, Giguere obtained an additional 1,500,000 shares of Kelvin Medical stock and caused those shares to be deposited in a brokerage account you controlled through a nominee entity.

Plea Agreement at pg. 4, ll. 25 – 26 and pg. 5, ll. 1 - 2

- (e) On or about November 30, 2017, you and Giguere engaged in a coordinated, open market transaction in Kelvin Medical stock. Giguere caused one or more offers from a different brokerage account for 6,000 shares of Kelvin Medical stock at approximately \$0.44 USD per share in the open market. You caused the purchase of those shares. This was done to manipulate the price of the Kelvin Medical stock.

Plea Agreement at pg. 5, ll. 3 - 8

- (f) On many occasions throughout November and December 2017 and January 2018, you and Giguere communicated by phone or messaging apps in order to execute the scheme to manipulate Kelvin Medical's stock price. You and Giguere caused transactions in Kelvin Medical stock corresponding to these communications.

Plea Agreement at pg. 5, ll. 9 - 14

- (g) In December of 2017, you contacted a call room operator, and sought to have the call room invest in, or find investors who would invest in, Kelvin Medical stock.

Plea Agreement at pg. 5, ll. 15 - 17

- (h) From approximately November 29, 2017 through approximately January 16, 2018, Giguere sold, or caused to be sold, 1,500,000 shares of Kelvin Medical stock from brokerage accounts for gross proceeds of \$1,674,188.36 USD. These sales took place at prices that were artificially inflated by and through your fraudulent and manipulative trading scheme.

Plea Agreement at pg. 5, ll. 18 - 23

- (i) From approximately December 8, 2017 through March 15, 2018, you sold, or caused to be sold, approximately 263,000 shares of Kelvin Medical stock from brokerage accounts controlled by you for gross proceeds of \$375,110.49 USD. These sales took place at prices that were artificially inflated by and through your fraudulent and manipulative trading scheme.

Plea Agreement at pg. 5, ll. 24 – 27 and pg. 6, ll. 1 - 2

- (j) On approximately March 26, 2018, Giguere sent an email to you attaching a \$125,000 USD Promissory Note between the nominal owners of one of the brokerage accounts you controlled to a corporation that Giguere controlled. The purpose of the promissory note was to create false pretenses for the transfer of money from the brokerage accounts to accounts controlled by Giguere.

Plea Agreement at pg. 6, ll. 3 - 8

- (k) The gain attributable to your role in the conspiracy was \$1,484,598.54 USD.

Plea Agreement at pg. 6, ll. 14 - 16

- (l) In your statement to the court on sentencing, you said that you were “incredibly sorry for [your] involvement in this crime” and acknowledged that you committed it out of greed and arrogance.

Sentencing Decision at pg. 19, ll. 14 - 16

- (m) The founders of Kelvin Medical, who were in their sixties at the time of sentencing, were financially and psychologically devastated by your crime. As Justice Hayes found:

“...their lives are destroyed. They were placed under a cloud for which they were not responsible. People suggested they had done something wrong. Their families and friends had invested in that company. They lost – their family and friends lost their money, and now their whole lives have been turned upside down and psychologically destroyed as a result of this.”

Sentencing Decision at pg. 28, l. 25 and pg. 29, ll. 1 - 6

- (n) You are a Canadian citizen. Although you were resident in Grand Cayman at the time of the misconduct, you returned to Vancouver, Canada prior to the Sentencing Decision and intended to return to Vancouver, Canada following your term of incarceration.

Sentencing Decision at pg. 18, ll. 12 - 24

- (o) On July 9, 2021, the Securities and Exchange Commission filed a complaint against you alleging that you and your co-defendants engaged in insider trading, contrary to Sections 10(b) and Rule 10b-5 of the *Exchange Act*. This complaint arose from conduct that took place in December 2017.

Securities and Exchange Commission v. Watson et al., United States District Court, S.D. New York, No. 21-cv-05923 (ALC)

- (p) You consented to a March 27, 2023 judgment related to that complaint. You did not admit or deny any of the facts alleged in the complaint, but did agree to certain orders against you, including an order for disgorgement of any ill-gotten gains and a civil penalty. You agreed to an injunction prohibiting you from committing any future violations of certain sections of the Securities Exchange Act of 1934.

Securities and Exchange Commission v. Watson et al., United States District Court, S.D. New York, No. 21-cv-05923 (ALC)

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. Section 161(6)(a) of the Act gives the Commission the power to make orders under section 161(1) of the Act against a person who has been convicted of a securities-related offence in another jurisdiction.
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 respondent's past conduct;

- (g) the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- (h) the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- (i) the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- (j) the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- (k) 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. Market manipulation is one of the most serious types of misconduct contemplated by the Act.

[Re Lim](#), 2017 BCSECCOM 319 at para. 12

11. Together with your co-conspirator, Giguere, you played a mastermind role in orchestrating the market manipulation scheme.
12. The seriousness of your misconduct was exacerbated by your orchestration of your affairs to conceal your involvement by the use of nominees and other intermediaries.

[Re Lim](#), 2017 BCSECCOM 319 at para. 13

Harm suffered by investors

13. Your conduct resulted in financial losses to investors. Your conduct also resulted in significant financial and emotional harm to the founders of Kelvin Medical.
14. By the very nature of the misconduct (market manipulation), members of the investing public were deceived as to the value of the shares that you sold. Your misconduct deprived investors of the full and fair disclosure mandated by US securities laws. This kind of harm to investors is significant because investors were trading shares based on false information.

[Re Hable](#), 2017 BCSECCOM 340 at para. 13

15. Your blatant and extensive misconduct also damaged the integrity of the capital markets.

Enrichment

16. You were clearly enriched by your misconduct. Over the course of the manipulation, the gain attributable to your role in the conspiracy was \$1,484,598.54 USD.

Plea Agreement at pg. 6, ll. 14 - 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 at para. 70

18. You pled guilty in the criminal proceedings and accepted responsibility for your conduct. This is a mitigating factor.

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

Past conduct

20. You have a history of securities regulatory misconduct. In 2021, you were charged by the SEC for your participation in a 2017 insider trading scheme. You entered into a consent judgment in 2023 agreeing to certain injunctions and to pay a civil penalty and disgorgement of any ill-gotten gains. This is an aggravating factor.

Securities and Exchange Commission v. Watson et al., United States District Court, S.D. New York, No. 21-cv-05923 (ALC)

Risk to investors and the capital markets

21. Market manipulation requires a finding of intent on the part of the respondent and some element of deceit. It is this intention to deceive and harm the investing public that makes respondents who engage in market manipulation a significant risk to our capital markets.

Re Hable, 2017 BCSECCOM 340 at para. 20

22. Your misconduct involved a sophisticated scheme that was designed to evade regulatory attention. This demonstrates that you pose a significant risk to our capital markets and to investors.
23. By playing a significant role in the fraudulent and manipulative trading scheme, you have demonstrated that you have no concern for legitimate market participation in the British Columbian capital markets.
24. The extent of your misconduct, including the amount to which you and your co-conspirator were enriched, shows that you pose (1) a significant ongoing risk to investors and (2) a serious threat to the integrity of the capital markets unless you are permanently banned.

Participation in our capital markets / Fitness to be a registrant or a director or officer

25. 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

26. You have shown yourself to be dishonest 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, promoter, or advisor to any private or public issuer going forward.

Deterrence

27. 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. The need for general deterrence is very high, especially because sophisticated market manipulation schemes are difficult to detect and prosecute. It is therefore vitally important to demonstrate to the market that these offences are treated seriously.
28. Permanent market 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

29. We refer to a number of decisions for guidance on the appropriate sanction. The Commission ordered permanent market bans with some limited carve-outs in the three decisions below. These decisions involved market manipulations.
- [Re Lim](#), 2017 BCSECCOM 196
 - The respondents engaged in a market manipulation of one issuer. They also engaged in illegal distribution of shares when they were control persons. There was no specific evidence of enrichment.
 - [Re Derymenjian](#), 2019 BCSECCOM 93 (aff'd [Khorchidian v. British Columbia \(Securities Commission\)](#)), 2024 BCCA 232)
 - The respondents engaged in a market manipulation. The respondent Craven was found to have manipulated the shares of an issuer. There was no evidence that Craven was enriched by the misconduct.
 - [Re Hable](#), 2017 BCSECCOM 340
 - The respondent engaged in a market manipulation of one issuer. The respondent also submitted a fabricated document to the Commission. The respondent was enriched by his misconduct in the amount of \$157,596.96.
30. Permanent market bans such as those ordered against Lim, Craven, and Hable are consistent with the egregious nature of your intentional and deliberate misconduct.
31. 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 sufficiently protect the investing public and British Columbia capital markets.

The Davis Consideration

32. In [Davis v. British Columbia \(Securities Commission\)](#), 2018 BCCA 149, the Court of Appeal 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.

Connection to British Columbia

34. You are a Canadian citizen. You were resident in Vancouver at the time of sentencing. You were scheduled to be deported back to Canada following completion of your term in custody.

ORDERS SOUGHT

35. Although there is no limitation on the Commission from imposing a capital market sanction that is similar or different to the criminal 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.
36. 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 including the Plea Agreement;
 - (b) the factors from *Eron* and *Davis*;
 - (c) the sanctions ordered in previous cases cited above; and
 - (d) the public interest.

37. Based on the factors above, 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 in account in your own name with a person registered to trade in securities under the Act if you have first provided the registered representative with a copy of this order before any trade takes place;
 - (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.
38. The Executive Director is not seeking any monetary sanctions against you.

SUPPORTING MATERIALS

39. In making this application, the Executive Director relies on the following, copies of which are enclosed:
- (a) Plea Agreement
 - (b) *United States of America v. Giguere et al*, case 3:18-cr-3071-WQH (Sentencing Decision)
 - (c) *Securities and Exchange Commission v. Watson et al*, United States District Court, S.D. New York, No. 21-cv-05923 (ALC)
 - (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) *Re Lim*, 2017 BCSECCOM 319
 - (g) *Re Hable*, 2017 BCSECCOM 340
 - (h) *Re Flexfi Inc.*, 2018 BCSECCOM 166
 - (i) *Re SBC Financial Group Inc.*, 2018 BCSECCOM 267
 - (j) *Re Lim*, 2017 BCSECCOM 196

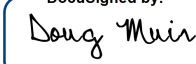
- (k) *Re Derymenjian*, 2019 BCSECCOM 93
- (l) *Khorchidian v. British Columbia (Securities Commission)*, 2024 BCCA 232
- (m) *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149

YOUR RESPONSE

- 40. 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 19, 2024**.
- 41. 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: hearingoffice@bcsc.bc.ca
Telephone: 604-899-6500
- 42. 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.
- 43. The Commission will send you a copy of its decision.
- 44. **If you have any questions regarding this application, please contact Ms. Jillian Dean, at 604-899-6979, or jdean@bcsc.bc.ca**

Yours truly,

DocuSigned by:

8/13/2024 | 9:16 AM PDT

Douglas B. Muir
Director, Enforcement

JD/crc

Enclosures

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