



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
WILLIAM McDONALD FERGUSON**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) allege:

I. OVERVIEW

1. On June 3, 2014, William McDonald Ferguson (“Ferguson”) entered into a Settlement Agreement with the British Columbia Securities Commission (“BCSC”) (the “Settlement Agreement”).
2. Ferguson is subject to an order made by the BCSC dated June 4, 2014 (the “BCSC Order”) that imposes sanctions, conditions, restrictions or requirements upon him.
3. Staff are seeking an inter-jurisdictional enforcement order reciprocating the BCSC Order, pursuant to paragraphs 4 and 5 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”).
4. The conduct for which Ferguson was sanctioned took place between March 2012 and September 2013 (the “Material Time”).

5. During the Material Time, Ferguson was a resident of British Columbia and the sole director of Black Gold Resources Ltd. (“Black Gold”). In the Settlement Agreement, Ferguson admitted he and Black Gold engaged in unregistered advising during the Material Time.

II. THE BCSC PROCEEDINGS

Agreed Statement of Facts

6. In the Settlement Agreement, Ferguson agreed with the following facts:

Background

- a. Black Gold is a British Columbia (“BC”) company.
- b. Black Gold #5 LP (“BG #5 LP”) and Black Gold #6 LP (“BG #6 LP”) are registered in BC as limited partnerships. The General Partner to BG #5 LP is 0932125 BC Ltd. (“932 Ltd.”), and the General Partner to BG #6 LP is 0933581 BC Ltd (“933 Ltd.”).
- c. Ferguson was at all relevant times resident in BC, and is the sole director of Black Gold, 932 Ltd. and 933 Ltd.
- d. None of Black Gold, BG #5 LP, BG #6 LP (collectively, the “Black Gold Limited Partnerships”), 932 Ltd., 933 Ltd., or Ferguson has ever been registered under the Act.

Misconduct

Unregistered advising

- e. Ferguson created the Black Gold Limited Partnerships to pool investor funds to invest in the oil and gas industry. Black Gold acted as the managing partner of the Black Gold Limited Partnerships.

- f. Black Gold and Ferguson relied on the private issuer exemption to distribute the securities of the Black Gold Limited Partnerships.
- g. Black Gold and Ferguson raised a total of \$625,000 for the Black Gold Limited Partnerships from 11 investors (the “Black Gold LP Investors”), including Ferguson, who contributed \$30,000 of the total amount raised.
- h. Ferguson used the funds raised for the Black Gold Limited Partnerships to invest in a Saskatchewan oil exploration and production company (the “Oil Company”).

Assessing investment merits

- i. The investments in the Oil Company were in the form of joint venture units that were qualified for distribution by the Oil Company through its offering memorandums. The Black Gold LP Investors did not receive the offering memorandums. Ferguson reviewed and assessed the merits of the offering memorandums on behalf of the Black Gold LP Investors.

Taking a management fee

- j. The investments in the Oil Company entitled the Black Gold LP Investors to receive net monthly income from the Oil Company’s sales. The Oil Company paid the monthly income to 932 Ltd. and 933 Ltd., not directly to the Black Gold LP Investors.
- k. Ferguson deposited the monthly cheques into Canadian bank accounts in the name of 932 Ltd. and 933 Ltd., over which he had control and sole signing authority. Ferguson deducted 20% of the monthly cheque amounts as a management fee, prior to distributing the funds to the Black Gold LP Investors, in proportion to their share of the investments.
- l. From March 2012 to September 2013, Black Gold and Ferguson earned approximately \$17,591.68 in management fees (the “Management Fees”).

Discretionary investing

- m. In May 2012, Ferguson purchased a Guaranteed Investment Certificate (“GIC”) with \$175,000 from two of the Black Gold LP Investors. He redeemed the GIC in August 2012, in order to invest those funds with the Oil Company. Ferguson used his discretion over investor funds to purchase the GIC, without the knowledge or consent of the two investors. The GIC investment earned approximately \$438 in interest income, which Ferguson retained (the “GIC Interest Income”).

Breach of the Act

- n. Black Gold and Ferguson engaged in activities (assessing investment merits, taking a fee, and discretionary investing) similar to those of a registrant. Therefore, they engaged in the business of advising in securities, triggering the registration requirements. The Respondents’ failure to register prior to undertaking these activities was a breach of section 34 of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418 (the “BC Act”).

The BCSC Order

7. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon Ferguson:
- a. under section 161(1)(a) of the BC Act, Ferguson will comply with the BC Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations;
 - b. under section 161(1)(b) of the BC Act, Ferguson cease trading in any securities, for a period of three years from the date of the [BCSC Order], except that Ferguson may trade in securities through one account in his own name with a person registered to trade in securities under the Act, if he has first provided the registered representative with a copy of the [BCSC Order] before any trade takes place; and

- c. under section 161(1)(d)(iii) of the BC Act, Ferguson will be prohibited from becoming or acting as an adviser,

until the later of:

- i. three years from the date of the [BCSC Order];
- ii. the date Ferguson becomes registered under the BC Act;
- iii. the date Ferguson complies with his undertakings to:
 1. reimburse the Black Gold LP Investors by returning the Management Fees, as set out in paragraph 20(a) of the Settlement Agreement;
 2. return the GIC Interest Income to the two affected Black Gold LP Investors, as set out in paragraph 20(c) of the Settlement Agreement; and
 3. pay to the BCSC the sum of \$5,000, as set out in paragraph 20(e) of the Settlement Agreement.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

8. Ferguson is subject to an order of the BCSC that imposes sanctions, conditions, restrictions or requirements upon him.
9. Pursuant to paragraphs 4 and 5, respectively, of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company, or an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements on the person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

10. Staff allege that it is in the public interest to make an order against Ferguson.
11. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.
12. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the *Ontario Securities Commission Rules of Procedure*.

DATED at Toronto, this 22nd day of September, 2014.