



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
DAVID MICHAEL MICHAELS**

**STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)**

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):
 - (a) against David Michael Michaels (**Michaels** or the **Respondent**) that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Michaels cease permanently, except that he may trade securities for his own account through a registrant, if he gives the registrant copies of the Order of the British Columbia Securities Commission (**BCSC**) dated October 31, 2014 (the **BCSC Order**) and the order of the Commission in this proceeding, if granted;

- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Michaels cease permanently, except he may purchase securities for his own account through a registrant, if he gives the registrant copies of the BCSC Order and the order of the Commission in this proceeding, if granted;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Michaels permanently, except for those exemptions necessary to enable him to trade or purchase securities in his own account;
 - iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Michaels resign any positions that he holds as a director or officer of any issuer or registrant;
 - v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Michaels be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Michaels be prohibited permanently from becoming or acting as a registrant or promoter;
- (b) such other order or orders as the Commission considers appropriate.

B. FACTS

Staff make the following allegations of fact:

- 3. Michaels is subject to the BCSC Order that imposes sanctions, conditions, restrictions or requirements upon him.
- 4. In its findings on liability dated August 6, 2014 (the **Findings**) a panel of the BCSC (the **BCSC Panel**) found that Michaels engaged in unregistered advising and made misrepresentations, contrary to sections 34(b) and

50(1)(d), respectively, of the British Columbia *Securities Act*, RSBC 1996 c 418 (the **BC Act**).

5. The BCSC Panel further found that Michaels perpetrated a fraud, contrary to section 57(b) of the BC Act.

(i) The BCSC Proceedings

Background

6. The conduct for which Michaels was sanctioned occurred between June 2007 and December 2010 (the **Material Time**).
7. As at the time of the BCSC proceedings, Michaels was a resident of British Columbia. Michaels was licenced under the British Columbia *Insurance Act* during the Material Time. Michaels was previously registered under the BC Act as a mutual fund salesperson from 1996 to 2006, but has never been registered after that time.
8. During the Material Time, Michaels sold exempt market securities, among other products, through his business, 509802 BC Ltd. (doing business as Michaels Wealth Management Group) (**509802**).
9. During the Material Time, Michaels promoted his business through a weekly Victoria, British Columbia radio program called "Creating Wealth with David Michaels." Michaels used the radio program to draw new and existing clients to investment seminars he hosted, and to meetings at his offices in Victoria and Vancouver. Michaels also operated a website through which he described various services he offered investors.
10. Of the various media used to promote his business, Michaels' radio program was the most successful and central to his sales strategy. Michaels described himself as a financial services provider, and told his radio program listeners that his target demographic was seniors. The average age of Michaels' clients was 72 years of age.

11. Michaels told clients to sell their existing portfolios, buy exempt market securities, and to borrow against their homes to do so. Michaels steered clients away from traditional investments by telling them such investments produced only losses or poor returns, and that the advisers who sold them could not be trusted. Through his radio program and brochures, Michaels touted the features and benefits of the exempt market securities he offered, but omitted telling clients about the risks associated with those investments. In some cases, Michaels described certain investments he offered as opportunities for his clients to, among other things, earn income without stock market risk or to double retirement savings every six years.
12. Michaels offered a "second opinion" process to help clients, the majority of whom were unsophisticated in investment matters, to decide whether to invest with him. Michaels reviewed their current tax returns and investment statements, and used the information in them to demonstrate how inferior his clients' existing investments were to what he was offering.
13. During the Material Time, Michaels sold \$65 million of exempt market securities to 484 investors, for which he received commissions of \$5.8 million.
14. The BCSC Panel found that securities representing \$40 million of the original \$65 million invested by Michaels' clients were worthless as at the time of the BCSC proceedings, and that investors had suffered significant losses.

509802 BC Ltd. doing business as Michaels Wealth Management Group

15. As noted in the Findings, 509802 was controlled by Michaels and did business under the name "Michaels Wealth Management Group." While 509802 was named as a respondent in the BCSC proceedings, no allegations, nor findings, were made against it.

BCSC Findings - Conclusions

16. In its Findings, the BCSC Panel concluded that Michaels:
- (a) acted as an adviser without being registered, contrary to section 34(b) of the BC Act;
 - (b) made misrepresentations, contrary to section 50(1)(d) of the BC Act; and
 - (c) perpetrated a fraud, contrary to section 57(b) of the BC Act.

(ii) The BCSC Order

17. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon Michaels:
- (a) under section 161(1)(b)(ii) of the BC Act, Michaels cease trading in, and is permanently prohibited from purchasing securities, except Michaels may trade or purchase securities for his own account through a registrant, if he gives the registrant a copy of the BCSC Order;
 - (b) under section 161(1)(c) of the BC Act, all exemptions set out in the BC Act do not apply to Michaels permanently, except for those exemptions necessary to enable Michaels to trade or purchase securities in his own account;
 - (c) under section 161(1)(d)(i) of the BC Act, Michaels resign any position he holds as a director or officer of an issuer or registrant;
 - (d) under section 161(1)(d)(ii) of the BC Act, Michaels is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;
 - (e) under section 161(1)(d)(iii) of the BC Act, Michaels is permanently prohibited from becoming or acting as a registrant or promoter;

- (f) under section 161(1)(d)(iv) of the BC Act, Michaels is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (g) under section 161(1)(d)(v) of the BC Act, Michaels is permanently prohibited from engaging in investor relations activities;
- (h) under section 161(1)(g) of the BC Act, Michaels pay to the BCSC \$5.8 million; and
- (i) under section 162 of the BC Act, Michaels pay to the BCSC an administrative penalty of \$17.5 million.

(iii) Michaels' Appeal – British Columbia Court of Appeal

18. On November 28, 2014, Michaels filed a Notice of Application for Leave to Appeal with the British Columbia Court of Appeal (**BCCA**) with respect to the Findings and the BCSC Order, respectively. On April 13, 2015, the BCCA granted Michaels leave to appeal the BCSC's Findings that he made misrepresentations and perpetrated a fraud, as well as the BCSC Order. The BCCA denied Michaels leave to appeal the BCSC's Finding that he acted as an adviser without being registered.
19. On April 1, 2016, the BCCA issued its Reasons for Judgment, dismissing Michaels' appeal on both the BCSC's Findings and the BCSC Order (*Michaels v British Columbia Securities Commission*, 2016 BCCA 144).

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

20. The Respondent is subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon him.
21. Pursuant to paragraph 4 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 may form the basis for an order in the public interest made under subsection 127(1) of the Act.

22. Staff allege that it is in the public interest to make an order against the Respondent.
23. 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.

DATED at Toronto this 14th day of May, 2019.

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