

ALBERTA SECURITIES COMMISSION

NOTICE OF HEARING

Citation: Aurora, Re, 2010 ABASC 382

**Date: 20100816
Docket: ENF-005784**

Securities Act, R.S.A. 2000, c. S-4, as amended (Act)

**To: VARUN VINNY AURORA, DAVID HUMENIUK, DAVID JONES
(the Respondents)**

Notice: The Alberta Securities Commission (**Commission**) will convene at 1:00 p.m., on Wednesday, October 13, 2010 at Calgary, Alberta, to deal with any preliminary matters, and to set a date for a hearing regarding the allegations in this Notice. At the hearing, the Commission will consider whether it is in the public interest to order:

- (i) Under subsection 198(1)(a) of the *Act*, that trading in or purchasing cease in respect of specified securities;
- (ii) Under subsection 198(1)(b) of the *Act*, that you cease trading in or purchasing securities;
- (iii) Under subsection 198(1)(b.2) of the *Act*, that you be reprimanded;
- (iv) Under subsection 198(1)(c) of the *Act*, that any or all of the exemptions contained in Alberta securities laws do not apply to you;
- (v) Under subsection 198(1)(d) and (e) of the *Act*, that you resign any positions that you hold as a director or officer of an issuer, registrant or investment fund manager and that you be prohibited from becoming or acting as a director or officer or as both a director and officer of any issuer, registrant, or investment fund manager;
- (vi) Under subsection 198(1)(e.3) of the *Act*, that you be prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (vii) Under subsection 198(1)(i) of the *Act*, that you pay to the commission any amounts obtained or payments or losses avoided as a result of non-compliance with Alberta securities laws;
- (viii) Under subsection 199 of the *Act*, that you each pay an administrative

penalty to the Commission;

(ix) Under subsections 202(1) and (2) of the *Act*, that you pay the costs of the investigation and hearing to the Commission; and

(x) Such further and other order under Section 198 as the Commission deems appropriate.

Location: Alberta Securities Commission, 6th Floor, 300 – 5th Avenue SW, Calgary, Alberta.

Procedure:

1. You may obtain disclosure and particulars of the allegations in this Notice from Andrew Wilson, c/o Alberta Securities Commission, 4th Floor, 300 - 5 Avenue SW, Calgary, Alberta, T2P 3C4, telephone 403.297.2960
2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence.
3. If you or your counsel fail to attend on October 13, 2010 at 1:00 p.m., or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See also section 29 of the Act and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.

ALLEGATIONS

Summary of Breaches

1. Staff of the Commission (**Staff**) allege that Varun Vinny Aurora (**Aurora**), David Humeniuk (**Humeniuk**) and David Jones (**Jones**) breached the *Act* by acting as dealers without being registered in accordance with Alberta securities laws, and without an applicable exemption to the registration requirement, or by authorizing, permitting or acquiescing in such conduct by one or more corporate entities of which they were a director or officer.
2. Staff allege that Aurora, Humeniuk and Jones breached the *Act* by making, or by authorizing, permitting or acquiescing in the making of, statements each knew, or ought reasonably to have known, were misleading or untrue in a material respect, or that did not state a fact that was required to be stated or that was necessary to make the statement not misleading, and that would reasonably have been expected to have a significant effect on the market price or value of the security in question.
3. Staff allege that Aurora, Humeniuk and Jones each breached the *Act* by trading in securities on his own account, or authorized, permitted or acquiesced in the trade of securities on one or more companies' own account, in circumstances where such trades were distributions, without having filed a prospectus or preliminary prospectus for which a receipt had been issued by the Executive Director of the Commission (the **Executive Director**), and for which no valid exemption applied.
4. Staff allege that Aurora, Humeniuk and Jones each acted contrary to the public interest.

Parties

5. Aurora, Humeniuk and Jones are each individuals resident in Calgary, Alberta. As set forth in more detail below, each of Aurora, Humeniuk and Jones was at all material times a director, officer and shareholder of one or more various companies and associated limited partnerships known as the Concrete Group.

Circumstances

6. Concrete Equities Inc. ("Concrete") is a corporation incorporated under the laws of Alberta, and that, until June, 2009 carried on business in Calgary, Alberta. Concrete was incorporated on November 23, 2005. The initial directors of Concrete were Aurora and Jones, who remained directors of Concrete at all material times. The officers of Concrete at all material times were Aurora, Humeniuk and Jones. The initial shareholders of Concrete were Jones and Aurora. On April 5, 2007 Humeniuk became a shareholder of Concrete. From this point on, Jones owned 33.4% of the Concrete shares, and Aurora and Humeniuk each owned 33.3%.
7. Commencing in or about February 2006, Aurora, Humeniuk and Jones began incorporating or having incorporated various corporations, and created various limited partnerships, for the purpose of issuing securities in order to raise funds for various

commercial real estate investments. Each of Aurora, Humeniuk and Jones was a director, officer and shareholder of the various general partners of the limited partnerships. Collectively, these companies and limited partnerships will be referred to as the “**Concrete Group**”.

8. The various limited partnerships of the Concrete Group at issue are as follows:
 - (i) Safeguard Real Estate Investment Fund Limited Partnership (**Partnership 1**)
 - (ii) Safeguard Real Estate Investment Fund II Limited Partnership (**Partnership 2**)
 - (iii) Safeguard Real Estate Investment Fund III Limited Partnership (**Partnership 3**)
 - (iv) Safeguard Real Estate Investment Fund IV Limited Partnership (**Partnership 4**)
 - (v) Safeguard Real Estate Investment Fund V Limited Partnership (**Partnership 5**)
 - (vi) Santa Clara Real Estate Investment Fund Limited Partnership (**SC Partnership**)(collectively the **Offending Partnerships**)
9. Each of the Offending Partnerships issued, distributed and traded in securities in Alberta, as those terms are defined by the *Act*. No prospectus or preliminary prospectus was ever filed by or on behalf of any of the Offending Partnerships, and no receipt was ever issued to any of the Offending Partnerships by the Executive Director. Rather, where there was a trade in their securities by or on behalf of the Offending Partnerships, and that trade was a distribution, the Offending Partnerships purported to rely on the Offering Memorandum exemption set forth in sections 2.9 and 3.9 of National Instrument 45-106 – *Prospectus and Registration Exemptions* (**NI45-106**).
10. As set forth in greater detail below, each of the Offering Memoranda relied on by the Offending Partnerships contained serious defects, misrepresentations and omissions, such that it did not comply with the requirements of NI45-106. As a result, the issuance and distribution of securities by each of the Offending Partnerships was an illegal distribution that did not comply with the requirements of Alberta securities laws.
11. As the directors and officers of the various general partners of the Offending Partnerships, as well as the ultimate beneficiaries of undisclosed commissions paid by the Offending Partnerships, each of the Respondents is responsible and liable for the various breaches of Alberta securities laws by the Offending Partnerships.
12. In addition, each of the Respondents was a “dealer” as that term is defined by the *Act*, and as such was required to be registered pursuant to Alberta securities laws. None of the Respondents was so registered.

Breaches by Partnership 1

13. At all material times, the general partner of Partnership 1 was Wealthcrete Investment Corporation (**Wealthcrete**), an Alberta corporation. At all material times the directors of Wealthcrete were Aurora and Jones. At all material times Aurora, Humeniuk and Jones were officers of Wealthcrete. At all material times the shareholders of Wealthcrete were Aurora, Humeniuk and Jones.
14. Partnership 1 raised approximately \$5,325,000, relying on an Offering Memorandum dated February 1, 2006 (the **Partnership 1 OM**).
15. The Partnership 1 OM was signed by Jones and Aurora as directors and officers of Wealthcrete. The Partnership 1 OM contained serious omissions and misrepresentations, such that it did not comply with the requirements of NI45-106. These omissions and misrepresentations are as follows.

Failure to fully disclose material, non-arms length contract

16. Wealthcrete, the general partner of Partnership 1, had in place an agreement with Concrete dated February 1, 2006 (the **Concrete Agreement 1**). Under the terms of the Concrete Agreement 1, Wealthcrete paid Concrete a commission of 7% per unit per month for “marketing and selling” the Partnership 1 securities. The Concrete Agreement 1 was executed by Humeniuk on behalf of both Wealthcrete and Concrete.
17. The terms of the Concrete Agreement 1 were not fully or properly disclosed as required in the Partnership 1 OM. A copy of the Concrete Agreement 1 was not appended to the Partnership 1 OM, and there was no reference in the Partnership 1 OM to the 7% commission being paid to Concrete by the general partner of Partnership 1.
18. The Partnership 1 OM also states: “No commission will be paid in connection with the Offering. The officers and directors of the General Partner will not be compensated for the sale of any of the Units.” This statement is materially misleading as Aurora, Humeniuk and Jones were each indirectly compensated by the commission payments to Concrete under the Concrete Agreement 1.

Failure to disclose sanctions against directors and officers

19. The Partnership 1 OM states: “None of the directors or officers of the General Partner have had any penalty or sanction, relating to the Securities Industry, in effect against them during the past 10 years”. [emphasis added]
20. The underlined qualifier in this passage is not included in the form for an Offering Memorandum set forth in National Instrument 45-106F2 – *Offering Memorandum for Non- Qualifying Issuers*. This qualification was added to allow Humeniuk, at all material times an executive officer of Wealthcrete, to avoid disclosing his lifetime withdrawal (in the face of a Notice of Hearing) from the Real Estate Council of Alberta (**RECA**).

21. RECA issued a Notice of Hearing against Humeniuk on November 18, 2003. It spans 13 pages and contains multiple allegations of breaches of fiduciary duty, creation of false or misleading documents or communications, failures to act in a client's best interest, and failures to use best efforts to ensure parties clearly understand his role in the transaction in question. After RECA issued this Notice of Hearing, Humeniuk withdrew from RECA for life on January 28, 2005.
22. The failure to include reference to Humeniuk's lifetime withdrawal from RECA in the Partnership 1 OM constitutes a misrepresentation, as well as a failure of the Partnership 1 OM to comply with the required form.

Breaches by Partnership 2

23. At all material times, the general partner of Partnership 2 was Concrete Associates Investment Corporation (**CAIC**), an Alberta corporation. At all material times the directors of CAIC were Aurora and Jones. At all material times Aurora, Humeniuk and Jones were the officers of CAIC. At all material times the shareholders of CAIC were Aurora, Humeniuk and Jones.
24. Partnership 2 raised approximately \$12,250,000, relying on an Offering Memorandum dated March 24, 2006 (the **Partnership 2 OM**).
25. The Partnership 2 OM was signed by Jones and Aurora as directors and officers of CAIC. The Partnership 2 OM contained serious omissions and misrepresentations, such that it did not comply with the requirements of NI45-106.

Failure to fully disclose material, non-arms length contract

26. CAIC, the general partner, had in place an agreement with Concrete dated March 29, 2006 (the **Concrete Agreement 2**). Under the terms of the Concrete Agreement 2, CAIC paid Concrete a commission of 7% per unit per month for "marketing and selling" the Partnership 2 securities. The Concrete Agreement 2 was executed by Humeniuk on behalf of both CAIC and Concrete.
27. The terms of the Concrete Agreement 2 were not fully or properly disclosed as required in the Partnership 2 OM. A copy of the Concrete Agreement 2 was not appended to the Partnership 2 OM, and there was no reference in the Partnership 2 OM to the 7% commission being paid to Concrete by the general partner of Partnership 2.

Failure to disclose sanctions against directors and officers

28. The Partnership 2 OM states: "None of the directors or officers of the General Partner have had any penalty or sanction, relating to the Securities Industry, in effect against them during the past 10 years". [emphasis added]
29. As with the Partnership 1 OM, the failure to include reference to Humeniuk's lifetime withdrawal from RECA in the Partnership 2 OM constitutes a misrepresentation, as well as a failure of the Partnership 2 OM to comply with the required form.

Breaches by Partnership 3

30. At all material times the general partner of Partnership 3 was Concrete Associates II Investment Corporation (**CAIC II**), an Alberta corporation. At all material times the directors of CAIC II were Aurora and Jones. At all material times Aurora, Humeniuk and Jones were the officers of CAIC II. At all material times the shareholders of CAIC II were Aurora, Humeniuk and Jones.
31. Partnership 3 raised approximately \$13,600,000, relying on an Offering Memorandum dated January 19, 2007 (the **Partnership 3 OM**).
32. The Partnership 3 OM was signed by Jones and Aurora as officers and directors of the general partner CAIC II. The Partnership 3 OM contained serious omissions and misrepresentations, such that it did not comply with the requirements of NI45-106.

Failure to fully disclose material, non-arms length contract

33. CAIC II, the general partner of Partnership 3, had in place an agreement with Concrete dated October 26, 2006 (the **Concrete Agreement 3**). Under the terms of the Concrete Agreement 3, CAIC II paid Concrete a commission of 7% per unit per month for “marketing and selling” the Partnership 3 securities. The agreement was executed by Humeniuk on behalf of CAIC II and Aurora on behalf of Concrete.
34. The terms of the Concrete Agreement 3 were not fully or properly disclosed as required in the Partnership 3 OM. The Partnership 3 OM also misrepresented the payment terms to Concrete under the Concrete Agreement 3, by stating that Concrete “will bill the general partner for marketing services provided”. In fact, the compensation terms under the Concrete Agreement 3 state that CAIC II will pay Concrete “7% per [Partnership 3] Unit per month”.
35. The Partnership 3 OM also states “no commission will be paid in connection with the Offering. The officers and directors of the General Partner will not be compensated for the sale of any of the Units.” This statement is a misrepresentation, as the officers and directors of the general partner, which is to say Aurora, Humeniuk and Jones, are each indirectly compensated by the payments to Concrete pursuant to the Concrete Agreement 3.

Failure to disclose sanctions against directors and officers

36. The Partnership 3 OM states: “None of the directors or officers of the General Partner have had any penalty or sanction, relating to the Securities Industry, in effect against them during the past 10 years”. [emphasis added]
37. As with the Partnership 1 OM and the Partnership 2 OM, the failure to include reference to Humeniuk’s lifetime withdrawal from RECA in the Partnership 3 OM constitutes a misrepresentation, as well as a failure of the Partnership 3 OM to comply with the required form.

Breaches by Partnership 4

38. At all material times the general partner of Partnership 4 was Concrete Associates III Investment Corporation (**CAIC III**), an Alberta corporation. At all material times the directors of CAIC III were Aurora and Humeniuk. At all material times Aurora, Humeniuk and Jones were the officers of CAIC III. At all material times the shareholders of CAIC III were Aurora and Humeniuk.
39. Partnership 4 raised approximately \$25,100,000, relying on an Offering Memorandum dated May 10, 2007 (the **Partnership 4 OM**).
40. The Partnership 4 OM was signed by Jones and Humeniuk as officers and directors of the general partner CAIC III. There was no signature in the Partnership 4 OM on behalf of a promoter.
41. The Partnership 4 OM contained serious omissions and misrepresentations, such that it did not comply with the requirements of NI45-106.

Failure to sign the Partnership 4 OM as a promoter

42. CAIC III, the general partner of Partnership 4, had in place an agreement with Concrete dated April 13, 2007 (the **Concrete Agreement 4**). Under the terms of the Concrete Agreement 4, CAIC III paid Concrete a commission of 10% per unit per month for “marketing and selling” the Partnership 4 securities. The Concrete Agreement 4 was executed by Humeniuk on behalf of both CAIC III and Concrete.
43. As a result of the 10% commission payable to Concrete under the Concrete Agreement 4, Concrete was a “promoter” of Partnership 4, as that term is defined in the *Act*. None of the Respondents, as the officers and directors of Concrete, signed the Partnership 4 OM on behalf of Concrete as a promoter, as required by NI45-106.

Failure to fully disclose material, non-arms length contract

44. The terms of the Concrete Agreement 4 were not fully or properly disclosed as required in the Partnership 4 OM.
45. Furthermore, as with the Partnership 3 OM, the Partnership 4 OM misrepresented the payment terms to Concrete under the Concrete Agreement 4, by falsely stating that Concrete “will bill the general partner for marketing services provided”, when in fact Concrete was paid a flat rate 10% commission per unit sold per month.
46. The Partnership 4 OM also states: “No commission will be paid in connection with the Offering. The officers and directors of the General Partner will not be compensated for the sale of any of the Units.” Given that Aurora, Humeniuk and Jones were shareholders and employees of Concrete, this statement is a misrepresentation.

Failure to disclose sanctions against directors and officers

47. The Partnership 4 OM states “none of the directors or officers of the General Partner have had any penalty or sanction, relating to the Securities Industry, in effect against them during the past 10 years”. [emphasis added]
48. As with the other Offending Partnership OMs, the failure to include reference to Humeniuk’s lifetime withdrawal from RECA in the Partnership 4 OM constitutes a misrepresentation, as well as a failure of the Partnership 4 OM to comply with the required form.

Breaches by Partnership 5

49. At all material times, the general partner of Partnership 5 was Concrete Associates IV Investment Corporation (**CAIC IV**), an Alberta corporation. At all material times the directors of CAIC IV were Aurora and Humeniuk. At all material times Aurora, Humeniuk and Jones were the officers of CAIC IV. At all material times the shareholders of CAIC IV were Aurora and Humeniuk.
50. Partnership 5 raised approximately \$16,690,000, relying on an Offering Memorandum dated November 29, 2007 (the **Partnership 5 OM**).
51. The Partnership 5 OM was signed by Aurora and Humeniuk as officers and directors of the general partner CAIC IV. There was no signature in the Partnership 5 OM on behalf of a promoter.
52. The Partnership 5 OM contained serious omissions and misrepresentations, such that it did not comply with the requirements of NI45-106.

Failure to sign the Partnership 5 OM as a promoter

53. CAIC IV, the general partner, had in place an agreement with Concrete dated November 23, 2007 (the **Concrete Agreement 5**). Under the terms of the Concrete Agreement 5, CAIC IV paid Concrete a commission of 10% per unit per month for “marketing and selling” the Partnership 5 securities. The Concrete Agreement 5 was executed by Humeniuk on behalf of both CAIC IV and Concrete.
54. As a result of the 10% commission payable to Concrete under the Concrete Agreement 5, Concrete was a “promoter” of Partnership 5, as that term is defined in the *Act*. None of the Respondents, as the officers and directors of Concrete, signed the Partnership 5 OM on behalf of Concrete as a promoter, as required by NI45-106.

Failure to fully disclose material, non-arms length contract

55. The terms of the Concrete Agreement 5 were not fully or properly disclosed as required in the Partnership 5 OM.
56. Furthermore, as with the Partnership 3 OM and the Partnership 4 OM, the Partnership 5 OM misrepresented the payment terms to Concrete under the Concrete Agreement 5, by

falsely stating that Concrete “will bill the general partner for marketing services provided”.

57. The Partnership 5 OM also states: “No commission will be paid in connection with the Offering. The officers and directors of the General Partner will not be compensated for the sale of any of the Units.” Given that Aurora, Humeniuk and Jones were shareholders and employees of Concrete, this statement is a misrepresentation.

Failure to disclose sanctions against directors and officers

58. The Partnership 5 OM states “none of the directors or officers of the General Partner have had any penalty or sanction, relating to the Securities Industry, in effect against them during the past 10 years”. [emphasis added]
59. As with the other Offending Partnership OMs, the failure to include reference to Humeniuk’s lifetime withdrawal from RECA in the Partnership 5 OM constitutes a misrepresentation, as well as a failure of the Partnership 5 OM to comply with the required form.

Breaches by the SC Partnership

60. At all material times, the general partner of the SC Partnership was El Golfo Investment Corporation (**El Golfo**), an Alberta corporation. At all material times the directors of El Golfo were Aurora and Humeniuk. At all material times Aurora, Humeniuk and Jones were the officers of El Golfo. At all material times the shareholders of El Golfo were Aurora and Humeniuk.
61. The SC Partnership raised approximately \$23,770,000, relying on an Offering Memorandum dated June 4, 2007 (the **SC Partnership OM**).
62. The SC Partnership OM was signed by Aurora and Humeniuk as officers and directors of the general partner El Golfo. There was no signature in the SC Partnership OM on behalf of a promoter.
63. The SC Partnership OM contained serious omissions and misrepresentations, such that it did not comply with the requirements of NI45-106.

Failure to sign the SC Partnership OM as a promoter

64. El Golfo, the general partner of the SC Partnership, had in place an agreement with Concrete dated August 16, 2007 (the **Concrete Agreement SC**). Under the terms of the Concrete Agreement SC, El Golfo paid Concrete a commission of 10% per unit per month for “marketing and selling” the SC Partnership securities. The Concrete Agreement SC was executed by Humeniuk on behalf of both El Golfo and Concrete.
65. As a result of the 10% commission payable to Concrete under the Concrete Agreement SC, Concrete was a “promoter” of the SC Partnership, as that term is defined in the *Act*.

None of the Respondents, as the officers and directors of Concrete, signed the SC Partnership OM on behalf of Concrete as a promoter, as required by NI45-106.

Failure to fully disclose material, non-arms length contract

66. The terms of the Concrete Agreement SC were not fully or properly disclosed as required in the SC Partnership OM.
67. Furthermore, as with the Partnership 3 OM, the Partnership 4 OM, and the Partnership 5 OM, the SC Partnership OM misrepresented the payment terms to Concrete under the Concrete Agreement SC, by falsely stating that Concrete “will bill the general partner for marketing services provided”.
68. The SC Partnership OM also states: “No commission will be paid in connection with the Offering. The officers and directors of the General Partner will not be compensated for the sale of any of the Units.” Given that Aurora, Humeniuk and Jones were shareholders and employees of Concrete, this statement is a misrepresentation.

Failure to disclose sanctions against directors and officers

69. The SC Partnership OM states “none of the directors or officers of the General Partner have had any penalty or sanction, relating to the Securities Industry, in effect against them during the past 10 years”. [emphasis added]
70. As with the other Offending Partnership OMs, the failure to include reference to Humeniuk’s lifetime withdrawal from RECA in the SC Partnership OM constitutes a misrepresentation, as well as a failure of the SC Partnership OM to comply with the required form.

The Impact of the Respondents’ Actions

71. The Offending Partnerships collectively raised approximately \$96,735,000, using the impugned Offering Memoranda referred to above. In total the Concrete Group raised over \$118,000,000 through the issuance of securities to 3,723 investors.
72. On May 26, 2009 Partnerships 1 through 5 sought and obtained protection from their creditors through the filing of a Notice of Intention to Make a Proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended. On June 9, 2009 Ernst & Young Inc. was appointed as Interim Receiver of Partnerships 1-5.
73. On July 29, 2009 Concrete, the Offending Partnerships and each of their general partners were made subject to a Receivership Order (the **Receivership Order**). Ernst & Young Inc. was appointed Receiver for each entity.
74. Prior to the Receivership Order, the shareholders of the Concrete Group received distributions of slightly under \$5,000,000. This represents a payment of only roughly 4% of their investment principal.

