

ALBERTA SECURITIES COMMISSION

Citation: Re Poelzer, 2024 ABASC 62

Docket: ENF-012925

Date: 20240412

SETTLEMENT AGREEMENT AND UNDERTAKING

Denis Jerome Poelzer

Regulatory Message

The registration requirement is a core element of the Alberta securities regulatory regime. Registration of dealers serves an important gate-keeping function, whereby dealers are subject to regulatory requirements related to registration, oversight, disclosure, risk compliance, know your client and suitability obligations as well as other aspects of their business to ensure fair and transparent markets. By ensuring that dealers operate within this framework and adhere to established standards of conduct, investors are better protected from risks and abuses within the securities industry.

Section 75(1)(a) of the *Securities Act*, RSA 2000, c. S-4, as amended, (the *Act*) prohibits a person or company from acting as a dealer when not registered to do so.

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) regulates registration requirements. It introduced uniform and harmonized rules relating to categories of registration and related proficiency, and other requirements. Exemptions from the registration requirement can be found in NI 31-103.

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission** respectively) conducted an investigation into Denis Jerome Poelzer (**Poelzer**) to determine if Alberta securities laws had been breached.
2. The investigation confirmed and Poelzer admitted that he acted as a dealer of securities without being registered in accordance with Alberta securities laws in breach of section 75(1)(a) of the *Act*.
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 20 and for no other use or purpose,

Poelzer agrees to the facts and consequences set out in this Settlement Agreement and Undertaking (**Agreement**).

4. Terms used in this Agreement have the same meaning as provided in Alberta securities laws, a defined term in the *Act*.

Parties

5. Poelzer is an individual who resides in Calgary, Alberta. From March 2003 to November 2014, Poelzer was registered as a representative in the securities industry, but has not been registered in any capacity in the securities industry since that date.
6. Deep Cove Tech Ltd. (**Deep Cove**) is a corporation that was incorporated in South Dakota on May 18, 2020 and purportedly used an algorithmic trading formula and artificial intelligence to trade in forex and capital markets. Deep Cove was struck in August 2022.

Circumstances

7. Poelzer entered into an agreement with Deep Cove in June 2020, whereby Poelzer was hired as an independent contractor to raise capital by soliciting investors to enter into investment agreements characterized as joint venture agreements (the **JV Agreements**). In consideration, Poelzer was to receive incentive fees that were 10 per cent of the purported profits generated from the trading of any capital raised by Poelzer and calculated monthly during the term of his agreement. Poelzer received compensation of at least \$53,027 USD from Deep Cove for his services.
8. Between May 2020 and September 2020 (the **Relevant Period**), Poelzer solicited approximately \$145,000 from six investors to enter into the JV Agreements with Deep Cove, all of whom were Alberta residents (**Investors**).
9. Poelzer introduced, promoted and discussed the JV Agreements with, and raised capital from, the Investors by providing them with Deep Cove's promotional materials, which projected high rates of return and provided them with copies of the JV Agreements.
10. The Investors sent their funds directly to Deep Cove's bank accounts. None of the Investors received any returns on their investment or the repayment of their principal.
11. The Investors were reliant upon Deep Cove to make all of the trading and business decisions.
12. The JV Agreements were each a "security" as defined in section 1(ggg) of the *Securities Act*, RSA 2000, c. S-4, as amended (**Act**).
13. Poelzer engaged in acts in furtherance of a "trade", as defined in section 1(jjj)(vi) of the *Act*, as demonstrated by the following:
 - 13.1 introducing Deep Cove to the Investors and soliciting them to enter into the JV Agreements;

- 13.2 soliciting funds from Investors and providing them with Deep Cove's promotional materials and projections of high rates of return;
 - 13.3 providing the Investors with the JV Agreements, which contained the details of the investments with Deep Cove;
 - 13.4 facilitating the transfer of Investors' funds to Deep Cove; and
 - 13.5 receiving the completed JV Agreements from the Investors and forwarding them to Deep Cove's management.
14. Poelzer engaged in the business of trading in securities as demonstrated by the following:
- 14.1 soliciting funds from the Investors and providing them with Deep Cove's promotional materials and projections of high rates of return;
 - 14.2 acting as an intermediary between the Investors, as buyers, and Deep Cove, as the seller of the securities, by delivering documents and acting as the main point of contact for investors;
 - 14.3 soliciting funds from the Investors repeatedly between May 2020 and September 2020;
 - 14.4 being compensated by Deep Cove for his capital raising activities; and
 - 14.5 otherwise engaging in activities similar to those of a registrant.
15. During the Relevant Period, Poelzer was not registered in any capacity in accordance with Alberta securities laws, or the securities laws of any other jurisdiction in Canada. None of the exemptions in Part 8 of National Instrument 31-103, *Registrant Requirements, Exemptions and Ongoing Registrant Obligations*, applied to Poelzer or his activities described above.

Admitted Breaches of Alberta Securities Laws (Admitted Breaches)

16. Based on the Agreed Facts, Poelzer admits he breached section 75(1)(a) of the *Act* by acting as a dealer without being registered in accordance with Alberta securities laws.

Circumstances Relevant to Settlement

17. Poelzer has not been previously sanctioned by the Commission.
18. Poelzer cooperated with Staff during the investigation.
19. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement and Undertakings

20. Based on the Agreed Facts and Admitted Breaches, Poelzer agrees and undertakes to the Executive Director of the Commission to:
 - 20.1 pay to the Commission a monetary settlement of \$25,000, and \$5,000 in costs;
 - 20.2 be prohibited for a period of three years from:
 - 20.2.1 trading in or purchasing securities or derivatives, except trades or purchases made for the sole benefit of one or more of Poelzer, his spouse and his daughter, provided that any brokerage company used to facilitate such trades or purchases shall first be provided with a copy of this Agreement;
 - 20.2.2 advising in securities or derivatives;
 - 20.2.3 becoming or acting as a registrant, investment fund manager or promoter
 unless the undertaking set out in paragraph 20.3 has not yet been fulfilled in which case the prohibition continues until that undertaking has been fulfilled; and
 - 20.3 successfully complete an industry course related to the ethical conduct and practices of a registrant, as approved by the Executive Director of the Commission in writing upon satisfactory completion.

Administration

21. Poelzer acknowledges that he has had the opportunity to seek independent legal advice and has decided not to do so. Poelzer acknowledges that he has voluntarily made the admissions and undertakings in this Agreement.
22. Poelzer waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
23. Poelzer acknowledges and agrees that the Commission may enforce this Agreement in Alberta or in any other court of competent jurisdiction.
24. Poelzer understands and acknowledges that this Agreement may form the basis for securities-related orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to him. Poelzer understands and acknowledges that he should contact the securities regulator of any other jurisdiction in which he may intend to engage in any securities-related activities.
25. Execution and fulfillment of the terms of this Agreement by Poelzer resolves all issues involving Poelzer relating to the conduct described above, and Staff will take no further steps against him arising from these facts.

26. Notwithstanding paragraph 25, Poelzer understands and acknowledges that the Commission has entered into this Agreement in reliance on statements made by Poelzer. The Commission reserves its right to take action against Poelzer if Staff later learn that any of these statements are false or materially misleading and constitute a further breach of Alberta securities laws.
27. This Agreement may be executed in counterpart.

Signed by Denis Jerome Poelzer at)
 Calgary, Alberta this 12 day of)
 April 2024, in the presence of:)

_____)
 WITNESS NAME)
 WITNESS NAME)

_____)
"Original Signed By")
 SIGNATURE)

_____) *"Original Signed By"*
 Denis Jerome Poelzer

) ALBERTA SECURITIES COMMISSION

Calgary, Alberta, 12 April 2024)

) *"Original Signed By"*
 _____)
~~Samir Sabharwal~~
 Denise Weeres
) Acting Executive Director