

ALBERTA SECURITIES COMMISSION

Citation: Re Chmelyk, 2015 ABASC 987

Docket: ENF-008940

Date: 20151211

NOTICE OF HEARING

To: Ferlyn Robert John Chmelyk, Blackbridge Financial Inc., Cerezo Developments Inc., 1735560 Alberta Ltd., 1735563 Alberta Ltd., 1751886 Alberta Ltd., Studio 33 Inc. (formerly 1751889 Alberta Ltd.) and Clifford George Alexander (the Respondents)

Notice: The Alberta Securities Commission (the **Commission**) will convene at **10:00 am on Monday, January 18, 2016**, at Calgary, Alberta to set a date for hearing regarding the allegations in this Notice (the **Set Date**). At the hearing, the Commission will consider whether it is in the public interest to make orders against you under sections 198, 199, and 202 of the *Securities Act*, RSA 2000, c S-4, as amended (the *Securities Act*).

Location: Alberta Securities Commission, 5th Floor, 250 – 5 Street SW, Calgary, Alberta.

Procedure:

1. You may obtain disclosure and particulars of the allegations in this Notice from Peter Verschoote, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.297.4967, email: peter.verschoote@asc.ca.
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 at the Set Date, or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See attached sections 29, 198, 199, and 202 of the Securities Act, and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.

Allegations:

Parties

1. Blackbridge Financial Inc. (**BFI**) is a corporation that was registered in Alberta on January 16, 2012 pursuant to the *Companies Act*, RSA 2000, c C-21 (the *Companies Act*). Its registered office was located in Calgary, Alberta at all relevant times.
2. Cerezo Developments Inc. (**Cerezo**) is a corporation that was registered in Alberta on March 12, 2013 pursuant to the *Companies Act*. Its registered office was located in Calgary, Alberta at all relevant times.
3. 1735560 Alberta Ltd. (**560**) is a corporation that was also registered in Alberta on March 12, 2013 pursuant to the *Companies Act*. Its registered office was located in Calgary, Alberta at all relevant times.
4. 1735563 Alberta Ltd. (**563**) is a corporation that was also registered in Alberta on March 12, 2013 pursuant to the *Companies Act*. Its registered office was located in Calgary, Alberta at all relevant times.
5. 1751886 Alberta Ltd. (**886**) is a corporation that was registered in Alberta on May 30, 2013 pursuant to the *Companies Act*. Its registered office was located in Calgary, Alberta at all relevant times.
6. Studio 33 Inc. (formerly 1751889 Alberta Ltd.) (**889**) is a corporation that was also registered in Alberta on May 30, 2013 pursuant to the *Companies Act*. Its registered office was located in Calgary, Alberta at all relevant times.
7. Ferlyn Robert John Chmelyk (**Chmelyk**) is an individual who resided in Calgary, Alberta. He was the sole director and a directing, controlling and guiding mind of each of BFI, Cerezo, 560, 563, 886 and 889 (collectively, the **Corporate Respondents**) at all relevant times. He was also the chief executive officer of BFI and the president of Cerezo, 560, 563, 886 and 889 (collectively, the **Cerezo Respondents**) at all relevant times.
8. Clifford George Alexander (**Alexander**) is an individual who resided in Calgary, Alberta. He was a directing, controlling and guiding mind of each of the Cerezo Respondents at all relevant times.

Circumstances

Illegal trades and distributions of BFI's securities

9. Between approximately February 6 to 25, 2012, BFI raised approximately \$500,000 from four investors (the **BFI Investors**), all of whom were Alberta residents or otherwise located in Alberta, in exchange for preferred shares of BFI (the **BFI Preferred Shares**). Each investor executed a preferred share purchase agreement with BFI, which provided, among other things,

that the BFI Preferred Shares could be converted into units of Blackbridge United Limited Partnership (**BULP**) or common shares of Blackbridge Wealth Advisory Corporation (**BWAC**).

10. The BFI Preferred Shares were “securities” and the sales or dispositions of such securities constituted “trades,” as those terms are defined in the *Securities Act*. The sales or dispositions of the BFI Preferred Shares were also “distributions,” as that term is defined in the *Securities Act*.

11. Chmelyk prepared promotional material about the investment in the BFI Preferred Shares, disseminated some or all of that material to investors, and met with investors to explain the investment.

12. Each of BFI and Chmelyk acted as a “dealer,” as that term is defined in the *Securities Act*, in respect of the sales or dispositions of the BFI Preferred Shares to the BFI Investors. However, during the relevant period, neither BFI nor Chmelyk was registered with the Commission in any capacity, nor did either of them have an exemption from the registration requirement.

13. Neither BFI nor Chmelyk filed a prospectus or preliminary prospectus with the Executive Director of the Commission (the **Executive Director**) in respect of the BFI Preferred Shares, nor did either of them have an exemption from the prospectus requirement for at least some of the relevant distributions.

Failure to file reports of exempt distribution in respect of BFI’s securities

14. BFI did not file any reports of exempt distribution in respect of the BFI Preferred Shares.

Misrepresentations about BWAC being a registrant

15. In or around December 2011 to February 2012, BFI and Chmelyk represented to investors that BWAC was registered with the Commission. For example, some of the written material that BFI and Chmelyk provided to investors during that timeframe represented that BWAC was:

- 15.1 an “Investment Dealer (EMD)”;
- 15.2 an “Exempt Investment Dealer”;
- 15.3 an “exempt market dealer in Alberta”; and
- 15.4 a “securities registrant”.

16. The representations referred to in paragraph 15 are collectively referred to below as the **BWAC Representations**.

17. The BWAC Representations were materially misleading or untrue because BWAC was not registered with the Commission in any capacity after September 9, 2011.

18. The BWAC Representations would reasonably have been expected to have a significant effect on the value of the BFI preferred shares that BFI and Chmelyk marketed and sold to investors.

Misrepresentations about BFI's relationship with Alaris Royalty Corp.

19. In or around late 2011 and 2012, BFI and Chmelyk represented to investors that Alaris Royalty Corp. (**Alaris**) agreed to provide BFI with capital to help facilitate the acquisition and consolidation of various "Managing General Agencies" in the insurance industry (the **Alaris Capital Representations**).

20. The Alaris Capital Representations were materially misleading or untrue because Alaris never agreed to provide BFI with any capital for any purpose. In the alternative, even if the Alaris Capital Representations were not materially misleading or untrue in themselves, which is denied, BFI and Chmelyk did not state facts that they were required to state in order to make the Alaris Capital Representations not materially misleading, namely that although BWAC and Alaris entered into a "non-binding indication of interest" agreement on or around September 27, 2011 (the **Non-Binding Agreement**), nothing in that or any other agreement between the relevant parties contractually obliged Alaris to provide any capital to BFI or any entity related to BFI.

21. Also in or around late 2011 and 2012, BFI and Chmelyk represented to investors that Alaris would provide liquidity to BFI preferred shareholders in the event that such shareholders converted their shares into units of BULP. For example, some of the relevant marketing materials represented that Alaris would provide BULP unit holders with the option of selling their units to Alaris for "cash," "Alaris shares" or "Publicly Traded units" on a "tax free rollover basis". The representations referred to in this paragraph are collectively referred to below as the **Alaris Liquidity Representations**.

22. The Alaris Liquidity Representations were materially misleading or untrue because Alaris never agreed to provide any liquidity to any BFI preferred shareholders. In the alternative, even if the Alaris Liquidity Representations were not materially misleading or untrue in themselves, which is denied, BFI and Chmelyk did not state facts that they were required to state in order to make the Alaris Liquidity Representations not materially misleading, namely that although BWAC and Alaris entered into the Non-Binding Agreement, nothing in that or any other agreement between the relevant parties contractually obliged Alaris to provide any liquidity to any BFI preferred shareholders.

23. The Alaris Capital Representations and the Alaris Liquidity Representations (collectively, the **Alaris Representations**) would reasonably have been expected to have a significant effect on the value of the BFI Preferred Shares.

Illegal trades and distributions of the Cerezo Issuers' securities

24. Between approximately May 2013 to March 2014, 560, 563, 886 and 889 (the **Cerezo Issuers**) collectively raised approximately \$2,240,000 from 18 investors (the **Cerezo Investors**), most if not all of whom were Alberta residents or otherwise located in Alberta. More particularly:

24.1 560 raised approximately \$510,000 for the purpose of developing a real estate project referred to as the "Wind and Water" project;

24.2 563 raised approximately \$555,000 for the purpose of developing a real estate project referred to as the "Faro" project;

24.3 886 raised approximately \$410,000 for the purpose of developing a real estate project referred to as the "Winston Heights Golf Views" project; and

24.4 889 raised approximately \$765,000 for the purpose of developing a real estate project referred to as the "Color Me Crazy" project.

25. In exchange for their invested capital, the Cerezo Investors entered into "Joint Venture Agreement[s]" with the Cerezo Issuers, which agreements provided that the Cerezo Investors were entitled to receive from the Cerezo Issuers their invested capital plus a pro-rata share of the profits from the relevant real estate project (the **JV Agreements**). According to the JV Agreements, the only duty that the Cerezo Investors had to the "Joint Venture" was to provide their invested capital to the Cerezo Issuers.

26. The JV Agreements were "securities" and the sales or dispositions of such securities constituted "trades," as those terms are defined in the *Securities Act*. The sales or dispositions of the JV Agreements were also "distributions," as that term is defined in the *Securities Act*.

27. Cerezo:

27.1 prepared and disseminated advertisements and other promotional material about the investments offered and sold by the Cerezo Issuers; and

27.2 entered into agreements with various "referral partners" who collected a fee for referring investors to the Cerezo Issuers.

28. Chmelyk:

28.1 helped prepare at least some of the JV Agreements;

28.2 signed all of the JV Agreements on behalf of the Cerezo Issuers;

28.3 met with investors in connection with the investments offered by the Cerezo Issuers; and

28.4 referred investors to the Cerezo Issuers.

29. Alexander:

29.1 accepted money from the Cerezo Investors;

29.2 helped prepare at least some the JV Agreements;

29.3 met with investors in connection with the investments offered by the Cerezo Issuers;

29.4 prepared and disseminated advertisements and promotional material about the investments offered by the Cerezo Issuers; and

29.5 referred investors to the Cerezo Issuers.

30. Each of Cerezo, Chmelyk and Alexander acted as a “dealer,” as that term is defined in the *Securities Act*, in respect of the JV Agreements. However, during the relevant period, none of Cerezo, Chmelyk or Alexander was registered with the Commission in any capacity, nor did any of them have an exemption from the registration requirement.

31. Further, none of the Cerezo Issuers, Chmelyk or Alexander filed a prospectus or preliminary prospectus with the Executive Director in respect of the JV Agreements, nor did 560, 563, 886, Chmelyk or Alexander have an exemption from the prospectus requirement for at least some of the relevant distributions.

Failure to file reports of exempt distribution in respect of the Cerezo Issuers’ securities

32. The Cerezo Issuers did not file any reports of exempt distribution in respect of the JV Agreements.

Chmelyk authorized, permitted or acquiesced to the conduct of the Corporate Respondents that violated Alberta securities laws

33. As the sole director, an officer, and a directing, controlling and guiding mind of each of the Corporate Respondents at all relevant times, Chmelyk authorized, permitted or acquiesced in all of the conduct of the Corporate Respondents that violated Alberta securities laws.

Alexander authorized, permitted or acquiesced to the conduct of the Cerezo Respondents that violated Alberta securities laws

34. As a directing, controlling and guiding mind of each of the Cerezo Respondents at all relevant times, Alexander authorized, permitted or acquiesced in all of the conduct of the Cerezo Respondents that violated Alberta securities laws.

Cerezo authorized, permitted or acquiesced to the conduct of the Cerezo Issuers that violated Alberta securities laws

35. As the owner of 100% of the voting shares of the Cerezo Issuers at all relevant times, Cerezo authorized, permitted or acquiesced in all of the conduct of the Cerezo Issuers that violated Alberta securities laws.

Breaches

36. As a result of the above, Staff allege that:

36.1 Chmelyk, BFI, Cerezo and Alexander breached section 75(1)(a) of the *Securities Act* by acting as a dealer without being registered and without an exemption from that requirement for some or all of the relevant trades of securities;

36.2 Chmelyk, BFI, 560, 563, 886 and Alexander breached section 110 of the *Securities Act* by distributing, or participating in distributions of, securities without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some or all of the relevant distributions of securities;

36.3 BFI, 560, 563, 886 and 889 breached section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* by failing to cause reports of exempt distribution to be filed with the Commission within 10 days of trading in securities;

36.4 Chmelyk and BFI breached section 92(4.1) of the *Securities Act* by making the BWAC Representations and the Alaris Representations; and

36.5 the Respondents acted contrary to the public interest in relation to their respective misconduct described herein.

Calgary, Alberta, 11 December
2015

) ALBERTA SECURITIES COMMISSION

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) “Original Signed By”

) David C. Linder, Q.C.

) Executive Director