



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
EAGLEMARK VENTURES, LLC, FALCON HOLDINGS, LLC,
RICHARD LIAN (also known as RICHARD TERRY RUUSKA) and
ENNA M. KELLER**

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

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

I. OVERVIEW

1. EagleMark Ventures, LLC (“EagleMark”), Falcon Holdings, LLC (“Falcon”), Richard Lian (also known as Richard Terry Ruuska) (“Lian”) and Enna M. Keller (“Keller”) (collectively, the “Respondents”) are subject to an order made by the British Columbia Securities Commission (the “BCSC”) dated February 14, 2017 (the “BCSC Order”) that imposes sanctions, conditions, restrictions or requirements upon them.
2. In its findings on liability dated August 22, 2016 (the “Findings”), a panel of the BCSC (the “BCSC Panel”) found that Lian and Keller perpetrated a fraud, contrary to section 57(b) of the British Columbia *Securities Act*, RSBC 1996, c 418 (the “BC Act”), and that Keller engaged in unregistered trading, contrary to section 34 of the BC Act.
3. The BCSC Panel further found that each of the Respondents contravened a BCSC cease trade order dated October 1, 2009 (the “BCSC CTO”), and contravened a BCSC temporary order dated December 9, 2011 (the “BCSC TO”).
4. Staff are seeking an inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”).

II. THE BCSC PROCEEDINGS

The BCSC Findings

5. The conduct for which the Respondents were sanctioned took place between approximately 2008 and 2012 (the “Material Time”).
6. As of the date of the Findings, Lian was a United States resident. Lian has never been registered under the BC Act.
7. As of the date of the Findings, Keller was a resident of British Columbia. Keller has never been registered under the BC Act.
8. EagleMark is a Nevada corporation. Falcon is a New Mexico corporation. During the Material Time, Lian was the managing member of both companies and had sole signing authority over their respective bank accounts. The BCSC Panel found Lian effectively treated EagleMark and Falcon as alter egos of himself. EagleMark and Falcon have never been registered under the BC Act.
9. As of the date of the Findings, Lexicon Building Systems Ltd. (“Lexicon”), formerly named American Insulok Inc., was a reporting issuer in British Columbia and was listed on the CNSX. Lexicon was a manufacturing firm engaged in the development of products for the construction industry, in particular a proprietary product known as PolyBlock, a polyurethane block thought to have superior properties in various construction applications.
10. Lian was associated with Lexicon in various capacities from 2008 to at least October 31, 2014. Keller was a director of Lexicon from 1993 to 2007, and was CEO of Lexicon for part of that period until December 2007. Keller was an early shareholder in Lexicon and, during the Material Time, owned a significant number of its shares.
11. On October 1, 2009, the BCSC CTO was issued regarding all trading in Lexicon securities (with an exception the BCSC Panel noted as irrelevant) for failure to file financial statements. The BCSC CTO remained in place at the time of the BCSC proceedings. Following issuance of the BCSC CTO, Lexicon was de-listed, and

remained de-listed, during the Material Time, and was prohibited from issuing securities to raise capital to support its operations and the development of the PolyBlock product.

12. During the Material Time, Lexicon underwent a number of acrimonious changes among its board of directors and management. Lexicon was petitioned into involuntary bankruptcy in December 2009, following which its ability to carry on business was severely constrained. (In 2011, a plan of reorganization was approved by the US Bankruptcy Court, resulting in Lexicon's emergence from bankruptcy.)
13. Between 2008 and 2010, Falcon and EagleMark (and another company associated with Lian) entered into several consulting agreements with Lexicon, whereby Lian was to provide various consulting services to Lexicon, including seeking manufacturers for the PolyBlock; assisting Lexicon in obtaining relief from bankruptcy; and developing marketing and financial plans for Lexicon. Pursuant to the consulting agreements, Lian was permitted to receive compensation in the form of Lexicon shares and warrants, if and when the BCSC CTO was revoked. Lian, through EagleMark and Falcon, billed Lexicon substantial sums for compensation and reimbursement of expenses under the agreements. These sums, would, if fully paid in shares and warrants of Lexicon, have resulted in Lian, through EagleMark and Falcon, owning a very large number of Lexicon shares and warrants.
14. In early 2010, Lian and Keller launched the "Friends and Family Program" ("FFP"). Approximately \$3.2 million was raised under the FFP, from approximately 315 persons, including residents of British Columbia, and other provinces in Canada, the United States and Europe. FFP participants would pay monies to EagleMark, Falcon or Lian to contribute towards the funding of operating costs, debts and liabilities of Lexicon while Lian worked to remove the company from bankruptcy and get the BCSC CTO revoked. FFP participants made payments to one or more bank accounts of EagleMark, Falcon and Lian personally through wire transfers, deposits and cheques.
15. FFP participants were led to believe that their payments would fund Lian's resolving Lexicon's many issues, so that, ultimately, the BCSC CTO would be revoked. Lian and his companies would then receive substantial amounts of Lexicon shares and warrants,

and, in turn, the appropriate amounts of shares and warrants would then be transferred to each FFP participant. Further, the revocation of the BCSC CTO would allow for Lexicon securities to be re-listed for trading, Lexicon could finance manufacturing and marketing of the PolyBlock, and the market value of Lexicon shares and warrants would increase.

16. While Lian had some direct contact with FFP participants, Keller was the predominant face of the FFP to both participants and prospective participants. Lian's role included, among other things, providing update emails to Keller. These emails were often misleading in various ways, including alleged progress towards resolving Lexicon's issues; the expected matters on which the FFP funds would be expended; timing for revocation of the BCSC CTO; timing of the transfer of Lexicon shares and warrants to FFP participants; and the potential share prices of Lexicon after relisting. The BCSC Panel found that Lian knew that the update emails would be forwarded by Keller to FFP participants.
17. Keller's role included soliciting prospective FFP investors; enabling FFP participants to make payments into the FFP; maintaining records of monies paid through her assistance; and providing information to FFP participants and prospective participants on, among other things, Lexicon's bankruptcy proceeding. Keller also forwarded the update emails created by Lian to her FFP distribution list.
18. Lexicon was unaware of and did not authorize the FFP. Upon learning of the FFP through a participant in October 2011, Lexicon issued cease and desist directions to Lian and Keller, filed complaints with various securities regulatory authorities and terminated the consulting agreements with Lian's companies. (Following a subsequent change in management, however, Lexicon's new management team reinstated these consulting agreements).
19. On December 9, 2011, the BCSC TO was issued against EagleMark, Lian, and Keller. The BCSC TO required that EagleMark, Lian, and Keller cease trading in any securities or exchange contracts and that all persons cease trading in the FFP securities.

20. The BCSC Panel found that Lian spent approximately US \$600,000, of the US \$3.2 million raised, on Lexicon's debts, expenses and other liabilities (no funds were paid directly to Lexicon), and repaid approximately US \$180,000 to FFP participants who demanded return of their funds. The balance of approximately US \$2.4 million was spent almost entirely by Lian on matters unrelated to Lexicon and of no benefit to the FFP participants. Further, except for the \$180,000 refunded to a few FFP participants, none of the other participants received any repayments, interest, or any shares or warrants of Lexicon.
21. The BCSC Panel found, among other things, that Lian failed to inform FFP participants of the true use of their funds, and knew that the FFP participants' funds had been dissipated with substantial risk that they were lost permanently. The BCSC Panel also found, among other things, that Keller failed to inform FFP participants that Lexicon was unaware of the FFP and had not authorized it, and that Lexicon had ordered that she and Lian "cease and desist" offering the FFP.
22. The BCSC Panel found that Lian, Keller, EagleMark, and Falcon breached the BCSC CTO by trading in securities of Lexicon through the FFP after the BCSC CTO was issued.
23. The BCSC Panel found that Lian, Keller, EagleMark, and Falcon breached the BCSC TO by continuing to raise at least US \$400,000 under the FFP after the BCSC TO was issued.
24. In its Findings, the BCSC Panel concluded that:
 - a. Lian and Keller perpetrated fraud contrary to section 57(b) of the BC Act;
 - b. each of the Respondents contravened the BCSC CTO;
 - c. each of the Respondents contravened the BCSC TO; and
 - d. Keller contravened section 34 of the BC Act by trading in securities without registration and without any available exemptions.

The BCSC Order

25. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements:

a. upon Lian:

- i. under sections 161(1)(b), (c) and (d)(i) through (v) of the BC Act, that Lian resign any position he holds as a director or officer of any issuer or registrant and that permanently:
 1. Lian cease trading in, and be prohibited from purchasing, any securities and exchange contracts;
 2. Lian be prohibited from becoming or acting as a director or officer of any issuer or registrant;
 3. all exemptions under the BC Act, the regulations or a decision do not apply to Lian;
 4. Lian be prohibited from becoming or acting as a registrant or promoter;
 5. Lian be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
 6. Lian be prohibited from engaging in investor relations activities;
- ii. under section 161(1)(g) of the BC Act, that Lian pay to the BCSC US\$2.4 million; and
- iii. under section 162 of the BC Act, that Lian pay to the BCSC an administrative penalty of \$2.42 million;

- b. upon Keller:
 - i. under sections 161(1)(b), (c) and (d)(i) through (v) of the BC Act, that Keller resign any position she holds as a director or officer of any issuer or registrant and that permanently:
 - 1. Keller cease trading in, and be prohibited from purchasing, any securities and exchange contracts;
 - 2. Keller be prohibited from becoming or acting as a director or officer of any issuer or registrant;
 - 3. all exemptions under the BC Act, the regulations or a decision do not apply to Keller;
 - 4. Keller be prohibited from becoming or acting as a registrant or promoter;
 - 5. Keller be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
 - 6. Keller be prohibited from engaging in investor relations activities; and
 - ii. under section 162 of the BC Act, that Keller pay to the BCSC an administrative penalty of \$2.42 million;
- c. upon EagleMark and Falcon:
 - i. under sections 161(1)(b), (c) and (d)(iii) and (v) of the BC Act:
 - 1. a permanent market prohibition against any person purchasing or trading in securities of EagleMark or Falcon;
 - 2. a permanent market prohibition against EagleMark and Falcon on purchasing securities or exchange contracts;

3. permanently that exemptions under the BC Act, the regulations or a decision do not apply to EagleMark or Falcon;
 4. that EagleMark and Falcon be permanently prohibited from being a registrant, investment manager or promoter; and
 5. that EagleMark and Falcon be permanently prohibited from engaging in investor relations; and
- ii. under section 161(1)(g) of the BC Act, that EagleMark and Falcon pay to the BCSC US\$2.4 million;

Joint and Several Liability

- d. Lian, EagleMark and Falcon are jointly and severally liable to pay the amounts in paragraphs 25(a)(ii) and 25(c)(ii) above.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

26. The Respondents are subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon them.
27. 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.
28. Staff allege that it is in the public interest to make an order against the Respondents.
29. 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.

30. 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 17th day of July, 2017.