

July 9, 2012

IN THE MATTER OF: THE SECURITIES ACT

- and -

IN THE MATTER OF: WILLIAM MACKAY

**REASONS FOR DECISION
OF THE DIRECTOR OF
THE MANITOBA SECURITIES COMMISSION**

1. Introduction

a. Background

William George MacKay submitted an application under *The Securities Act* for registration as a Dealing Representative with Advantage Exempt Market Offerings Inc. on September 18, 2010. Advantage Exempt Market Offerings Inc. ("Advantage Exempt") also made an application to the Commission for registration in the category of Exempt Market Dealer under the registration rule, National Instrument 31-103. William MacKay has been permitted to conduct exempt market trading activity pursuant to the registration exemption contained in section 16.7 of National Instrument 31-103 pending review and decision on his application for registration.

Advantage Exempt was established to conduct the business of trading securities in the exempt market. The exempt market is the term used to describe the portion of the market where securities are traded to qualifying investors in reliance on prospectus exemptions available under securities laws. The individual registrants of Advantage Exempt were the applicant William MacKay and his sons, Michael MacKay (proposed as Chief Compliance Officer) and Robert (Bobby) MacKay (Chief Operating Officer). Recently Robert MacKay left the business to pursue a career opportunity in the engineering field. While the application of Advantage Exempt and William MacKay has not been withdrawn, it is likely that William MacKay and Michael MacKay will not be conducting their securities business through Advantage Exempt, but will instead be pursuing opportunities to conduct the business with an existing Exempt Market Dealer registered under the Act. While proceeding with William MacKay's application for registration with Advantage Exempt may no longer be necessary, there continues to be a benefit to providing a decision with respect to William MacKay's suitability for registration under the Act as he and his counsel have advised that William MacKay does intend to continue to be in the business of trading exempt securities under the registration of another Exempt Market Dealer.

This decision outlines the steps taken in the Director's review of William MacKay's application for registration, as well as the decision of the Director with respect to whether William MacKay satisfies the criteria to become registered to trade in exempt securities under The Act.

b. Process for Review

Following the filing of the initial application for registration William MacKay has been cooperative in providing the additional information required for the review of his application for registration. This information has included various letters, documents, as well as an interview with Commission Staff which was conducted on April 6, 2011. All of these materials were catalogued by staff into a single volume. This material was provided to William MacKay for his review and comment. William MacKay was given an opportunity to provide additional information, corrections or clarification. This was done in a letter from William MacKay dated March 6, 2012. Finally, pursuant to section 7(1) of the Act, the Director provided William MacKay and his counsel with an opportunity to appear before the Director to be heard on the application. This occurred on April 5, 2012. This was followed by an additional letter from William MacKay's counsel dated May 8, 2012.

c. Registration of Exempt Market Dealers

Securities traded in reliance on an exemption from the prospectus and registration requirements of *The Securities Act* (“exempt securities”) are an important and necessary part of capital markets, providing issuers without the resources required to prepare a prospectus and engage a dealer with a way to raise capital through the sale of securities. It has always been critical that investors who choose to purchase exempt securities exercise caution and research each investment carefully as securities regulators do not review an offering of exempt securities prior to it being offered to qualifying investors.

The enactment of National Instrument 31-103 Registration Requirements marked a shift in the requirements applicable to businesses trading in exempt securities. In Manitoba and other Canadian jurisdictions (except Ontario and Newfoundland & Labrador where Limited Market Dealers were previously registered), dealers in the business of trading exempt securities are now required to be registered as an Exempt Market Dealer. In the past the role of regulators was largely reactive, taking action against market participants who conducted abusive trading practices involving the trading of exempt securities. The requirement to register is an acknowledgment that protection of investors and integrity of capital markets requires the regulator to perform a proactive role by applying the tests contained in section seven of the Act to determine whether an applicant is suitable for registration and that the registration is not objectionable.

While the screening of applicants is important in all categories of registration, this function is arguably even more critical when the securities to be traded by the applicant for registration are exempt securities. The nature of exempt securities requires an Exempt Market Dealer and its Dealing Representatives to exercise critical analysis when determining which exempt securities will be made available to clients. In addition, it is also a requirement that the exempt securities being offered are suitable for the client. This will at times require an Exempt Market Dealer and its Dealing Representatives to put the interests of client ahead of the fee or commission that might otherwise be generated for the registrant.

d. Past and current business History

William MacKay has various business interests that are largely carried out through a series of corporations. Except as detailed below, there is no evidence these business interests raise a public interest concern with respect to his application for registration. William MacKay also has a licence to sell insurance. There is no evidence to suggest his activities in the insurance industry raise a public interest concern with respect to his current application.

However, a registrant must conduct business in a highly regulated environment. The ability to work within this type of environment, as well as an ability to exercise judgment in a manner that at times requires a registrant to place client interests ahead of personal self interest, are factors that form part of the determination whether an applicant meets the standards of proficiency, integrity and solvency required to be registered to trade in securities.

While financial solvency is not an issue with respect to William MacKay's application for registration, his past conduct raises questions with respect whether he has the proficiency and integrity required to be registered under the Act.

2. Parking Paystations International Inc. and Employment Standards Branch

William Mackay was a shareholder and at times a director in Parking Paystations International Inc. ("PPI"), which became bankrupt in June 2000. William Mackay was involved in the establishment of the business. In later years, he agreed to take a reduced role in the operation of the business and was replaced by a management group. It was this management group that was in place at the time of the bankruptcy. William MacKay at all times maintained a financial interest as a shareholder of PPI, and, as discussed below, was a director of the corporation.

In June 2000 sixteen employees of PPI filed claims for unpaid wages with the Employment Standards Branch of the Department of Labour of the Government of Manitoba. Employment Standards issued an order dated July 6, 2000 for \$87,897.85. The order names William MacKay as he was listed as a director of PPI on records at the Manitoba Companies Office. The order was later filed in court and was converted into a Judgment of the Court of Queen's Bench of Manitoba on or about February 7, 2001.

William MacKay disputes various aspects of his association with PPI, as well as the actions of the Employment Standards Branch.

a. Director of PPI

An annual meeting of PPI shareholders was held on March 30, 2000 at the Viscount Gort Hotel in Winnipeg. At this meeting a vote was held to elect the board of directors to PPI. Although William MacKay was not actively involved in the day to day operations of PPI, he continued to have a financial interest as a PPI shareholder and was well known to the approximate 60 to 70 other shareholders in attendance at the meeting. William MacKay allowed his name to stand for election as a director of PPI and was elected.

William MacKay states that later the same evening of his election as a director of PPI, he changed his mind and decided he no longer wanted to be a director. William MacKay states he wrote a handwritten letter of resignation and provided it to the President of PPI (Garry Marshall) at the Viscount Gort. He did not tell anyone else about his decision to resign. No copy of the resignation letter was produced.

William MacKay's assertion that he personally made the decision to resign as a director of PPI is contradicted by his application for registration where he states he was asked by directors of PPI to resign as a director. The application does not state the date the other directors asked him to resign.

Whether or not a letter of resignation was written, whether it was provided to Garry Marshall of PPI, or whether it was the other directors of PPI that told William MacKay to resign, there is no independent verification of the resignation. Although there is an inconsistency in the positions advanced by William MacKay, it is not necessary to resolve the inconsistency. The fact is William MacKay was listed as a director of PPI

on the records of the Manitoba Companies Office at the time claims for unpaid wages were being made by employees of PPI.

What is clear is that William MacKay allowed his name to stand and he agreed to become a director of PPI at the March 30, 2000 shareholders meeting. William MacKay stated this meeting was attended by sixty to seventy shareholders, all of who saw William MacKay agree to be nominated and be elected as a director of PPI. It is also fair to conclude that at least some of those shareholders voted for William MacKay because they had confidence in him and his knowledge of the business. Under these circumstances it is not clear, and William MacKay has no explanation why he would almost immediately resign as a director, tender his resignation privately, and not make any effort to inform the shareholders of his decision. Assuming there was a resignation, the only possible explanation is William MacKay was placing his own self interest ahead of the shareholders that had earlier that evening expressed their trust in him by voting for him to be a director of PPI. The purported resignation also provided William MacKay with a convenient way to attempt to avoid responsibility for the unpaid wage claims made by PPI employees.

b. Employment Standards – Unpaid Wages

i) Employment Standards order & judgment

One of the functions of the Employment Standards office of the Department of Labour of the Government of Manitoba is to administer The Employment Standards Code. This includes a process for assessing claims made by employees for unpaid wages. Employee claims that are approved become part of an employment standards order. The order can be issued against the corporation that employed the employee as well as directors of that corporation. A party named in the order has a right to challenge the order. If an order is not paid it can be converted into a court Judgment, which then gives the Employment Standards office additional remedies to pursue the collection of the amounts owing.

It is important to note that by law, the Employment Standards Office takes responsibility to pursue the collection of unpaid wages on behalf of the employees. By pooling the outstanding wage claims and centralizing the collection of unpaid wages within the Employment Standards office, employees do not have to assume the risks or responsibility associated with collecting unpaid wages. The role of Employment Standards in this process is similar to the role performed by the Commission when actions are taken under the Act to protect the public interest.

Although William Mackay continues to dispute several of the amounts claimed by former employees of PPI, he recently entered into an agreement with the Employment Standards office to provide a series of payments to pay the outstanding Judgment. This arrangement was not made until 2012; some twelve years after the initial order issued. This offer was made after Commission staff raised the issue of the outstanding Judgment during the review of William MacKay's application for registration. The review of civil court actions and judgments involving an applicant for registration (or an existing registrant in cases where the civil action has been filed after someone has been registered) is done as part of the determination whether an applicant (or registrant) is suitable for registration.

For the purpose of this decision, it is not necessary to determine the correct amount of each of the unpaid wage claims made by the sixteen employees of PPI. It is also not necessary to determine the appropriateness of actions done by officers and directors of PPI prior to its bankruptcy. However, in determining suitability for registration it is appropriate to take into consideration how William MacKay conducted himself with respect to those employees and the Employment Standards Branch during the time period from 2000 to 2012.

William MacKay provides various explanations for his view that he has no responsibility for the amounts found owing to former employees of PPI. He claims in his interview with Commission Staff that he would have taken action on the order if he was properly served. He acknowledges he met with an employee of Employment Standards after the order was issued and that this employee discussed the order with him. His other assertions include:

- Questions whether it was his signature (acknowledging service) on the order
- While probably his signature, he may not have received all pages of the document
- He was not properly served with the document

Although William MacKay acknowledges he met with an Employment Standards officer after the order was issued and she talked about the unpaid wages owing, he takes the position that he was deliberately misled by this person. He also states he told the Employment Standards officer that he had no involvement in PPI.

William MacKay also stated that he did not take any actions following his meeting with the Employment Standards officer (although he appears to reluctantly confirm he did receive some form of, or at least a portion of, the order). He takes the position that he did not have to take any responsibility for the situation and that he was waiting to be served with a Statement of Claim. He confirmed that this belief that he would be served with a Statement of Claim was based purely on his own belief and was not based on anything that had been told to him by the Employment Standards officer.

I find William MacKay's explanation of his dealings with Employment Standards staff not to be forthright or credible. It is clear he met with an official of the Employment Standards Office, spoke about the unpaid wages order and received official documents detailing the amounts owing under the order. It was also confirmed from information received from Employment Standards Office that these documents set out the process to be followed to dispute the order. William MacKay's attempt to blame the government official, other directors and officers of PPI, and former PPI employees (who he suggests made false unpaid wage claims) instead of accepting responsibility for his decision not to either dispute or pay the amounts ordered, goes directly to his integrity and calls into question his suitability for registration.

ii) Satisfaction of order & judgment

As stated previously, in 2012 William MacKay entered into a payment schedule with Employment Standards which should lead to the satisfaction of the Judgment. He states this was done because his sons convinced him this was the best course of

action. It was not done because he accepted responsibility for the events which lead to the order, Judgment and his failure to challenge the decision.

While William MacKay disputes whether the operation of legislation governing unpaid wages was properly explained to him when the order was first made in 2000, there is no question this process has been explained to him in various correspondence with government officials as well as by legal counsel who he retained to review the matter. As an example legal counsel retained by William MacKay concluded in a letter dated October 20, 2011:

It is doubtful the Payment of Wages Order was ever validly served on you, There were strong arguments available to you that would have had a substantial probability of eliminating or at least substantially reducing your personal liability for any unpaid wages owing to PPI employees. However, given the years that have elapsed since these events occurred, and notwithstanding the apparent unfairness of the situation, we are unable to suggest any specific steps you might take that would have a reasonable prospect of achieving a favourable result for you at this time.

In addition, William MacKay states in his March 6, 2011 letter that his sons also advised him he would be prevented from taking action against former employees because of the passage of time.

In spite of the passage of time, his failure to act to dispute the order and Judgment, and the advice he was receiving from others William MacKay began approaching former employees of PPI who were entitled to recovery under the Judgment in order to attempt to negotiate payments for amounts less than what was ordered in the Judgment. This course of action raises concerns with respect to William MacKay's integrity and suitability for registration for the following reasons:

1. William MacKay had been informed by the Employment Standards branch that under the law it was their role to resolve matters involving the judgment; and
2. In spite of the legal advice he had been provided, and the passage of twelve years, William MacKay engaged in a pattern of conduct suggesting to several of the former employees that he might take legal action against them if they did not agree to his demands to accept less than the amount of their claims.

William MacKay's attempt to work around Employment Standards branch and his failure to follow the legislated process established to protect workers with unpaid wage claims at minimum reflects a serious lack of judgment. It also demonstrates that William MacKay will place his personal self interest ahead of compliance with the law. This leads to the conclusion that he would not be suitable for registration on the basis of his integrity. He has demonstrated he is not prepared to work within a regulated environment when that environment does not suit his personal interests.

This conclusion is further supported by William MacKay's attempts to rationalize his actions. He denies that he threatened any of the former employees of PPI. However, it is clear that at minimum he stated he would take legal action against at least some of the former employees if they did not agree with his demands to reduce their

unpaid wage claims. When questioned on this matter, William MacKay provided what can only be seen as self serving answers to attempt to justify his conduct. The following examples are taken from William MacKay's own words as set out in his letter dated March 6, 2012:

- "I recall Doug [MacDonald] making me the offer of \$5,000 for the software in exchange for release of his claim. This offended me, and I responded challenging him that he was lying in his claim, that I knew that he was lying, that it wasn't right, and that I would sue him and all the other employees that had lied along with the Labour Board."
- "I did not threaten to sue all the employees. I indicated I would sue the ones that had and continued to lie in their unpaid wages claims."
- "I told Mr. Fuerst that I was unwilling to pay the Judgment and that I was going to sue the labour board and any employees that A) had lied in their claims or B) I had a case against. I can't recall specifically whether I said A) or B).

There are other examples to the same effect in the submissions. It is clear these statements were made by William MacKay to leave those former employees with the impression they could be subject to legal action if they did not compromise their unpaid wage claims. These employees had followed the same legally established process for advancing their unpaid wage claims that William MacKay was attempting to circumvent.

William MacKay also advances the position that as he had hired and paid some of the former PPI employees in his own business following the bankruptcy, those employees should not advance unpaid wage claims against him with respect to their employment with PPI. While it should be acknowledged William MacKay had no obligation to hire former PPI employees in his business, the hiring of these people allowed William MacKay to continue to do business with customers that he had originally introduced to PPI when he was involved in its day to day operations. The motivation for hiring these people was not entirely altruistic and generated a benefit to William MacKay.

The suggestion made by William MacKay that former employees of PPI should not be pursuing unpaid wage claims with him because he subsequently hired those employees is both contradictory to employment law, and inconsistent with his position that he was not involved with PPI at the time of its bankruptcy. The only person who would benefit from a former employee giving up his or her right to unpaid wages of PPI would be William MacKay as he was named in the Judgment. It is illogical to expect those former PPI employees to in effect work for free just because they secured new employment (doing new work to earn new wages) with a different employer.

I also note that although William MacKay claims not to have been involved with PPI at the time of its bankruptcy, PPI's former landlord contacted William MacKay when books and records of PPI needed to be removed from the former business premises of PPI. William MacKay took custody of those records in spite of his assertion he had no active management in PPI.

Finally, William MacKay raises the example of the unpaid wage claim of William Fuerst to demonstrate that his conduct makes him suitable for registration. William MacKay at first disputed Mr. Fuerst's unpaid wage claim, making an offer of reduced payment similar to what was offered to other former employees of PPI. In fact Mr. Fuerst accepted an offer of reduced payment as William MacKay made it clear he had no intention of paying the full amount of the unpaid wage claim. However, William MacKay later found out through a review of PPI records (which were in his possession) that Mr. Fuerst's original unpaid wage claim was correct. William MacKay admitted his mistake and paid Mr. Fuerst the additional amounts owing. Although this situation does illustrate William MacKay was willing to admit his mistake, he does not seem to appreciate that this also provides an example of the risks that arise when an individual substitutes his own conclusions in place of conclusions reached through legislated processes. In a highly regulated business such as the trading of securities this type of conduct by an individual can lead to significant harm to the public.

3. Trading Activities

In addition to the matters described above William MacKay has also been involved in offerings of exempt securities which raise a concern with respect to his proficiency and competence to conduct the critical analysis required to trade these products.

i) ProForma Bond Corporation

Advantage Exempt was involved in offering securities of Proforma Bond Corporation ("Proforma"). Proforma raised funds which were in turn invested in New Solutions Financial ("New Solutions"). According to William MacKay in April 2009 New Solutions advised Advantage Exempt that it had an agreement with Proforma to grant Proforma the exclusive right to purchase New Solutions Financial Series II debentures. This meant that investors who could not subscribe to New Solutions directly would instead be able to participate in New Solutions by subscribing to Proforma's Profit Notes Offering. Advantage Wealth was told that investors would receive a higher rate of return if a larger amount was invested. This lead Advantage Exempt to conclude it would be advantageous to pool smaller amounts of investor monies into a new fund established for the purpose of investing in the offering. The pooled monies would then be used to purchase the investment at the higher return (9% on a minimum \$500,000 investment) promised by Proforma.

Once Advantage Exempt determined it could not pool monies in this manner in reliance on an existing exemption under the Act, Advantage arranged for a meeting at the offices of the Commission with myself, William MacKay, Robert MacKay and Michael MacKay on January 4, 2010. A second meeting was held between myself and Michael MacKay (representing Advantage Exempt) on January 19th, 2010. While it is not necessary to set out all of the details of the meeting for the purpose of this decision, the submissions made as part of William MacKay's application for registration confirm that the meetings concluded with an understanding that an exemption from prospectus and registration requirements of the Act was required to conduct the proposed activity, no exemption had been obtained and the Director was not prepared to support an application for an exemption based on established

precedent that the pooling of monies in this manner to qualify for investment in an exempt offering was not permitted.

Following the meeting with the Director Advantage Exempt completed two subscriptions for investment that had been commenced, but not concluded, prior to the meetings with the Director. One involved the formation of a partnership between two brothers in order to create a combined investment of \$500,000 (the amount needed to secure the higher interest rate for the investment). The second involved William MacKay establishing the BHR Plus Group Partnership. BHR Plus is a partnership involving William MacKay, and two other individuals. Clause 1.7 of the partnership agreement states:

1.7 Business of Partnership

The business of the Partnership shall be to acquire the Pro forma Capital Bonds for a total investment of not less than \$500,000, of which interest will be paid directly from Proforma Capital Inc. pro rata to each partner as set out in this agreement. This activity will be the only activity of the partnership.

Clearly the BHR partnership, and in all likelihood the partnership between the two brothers, were created by Advantage Exempt to avoid the rules applying to exempt offerings.

In the case of BHR partnership the subscription agreement to Proforma was for \$550,000 of five year bonds containing an interest rate of 10% (somehow the interest rate offered rose between the time of the discussions and the time of investment by the partnership).

It is clear William MacKay was motivated by the rates of return being offered instead of conducting the due diligence necessary to determine the appropriateness of the investment and whether the pooling of smaller amounts of investment monies was in compliance with securities laws. The nature and multiple layers of investment required to participate in the offering should have lead to at minimum the exercise of some caution.

ii) Donations Canada

The Donation Canada program is an investment scheme which was promoted as a way to minimize income tax. These products have been frequently challenged by Canada Revenue Agency (CRA). The risks of this type of investment are frequently the subject of CRA bulletins and have been the subject of news stories.

William Mackay promoted the Donations Canada program to clients. One of the tools he used to promote this program was a letter from a lawyer. In this letter the lawyer provides a general description of this type of program and discloses the possibility that this type of program could be challenged by CRA.

The difficulty with the letter is that it does not provide an opinion with respect to the Donations Canada program. It is clear on the face of the letter that the lawyer providing the opinion did not review the documentation involved in the Donations Canada program. In spite of the plain wording of the letter William MacKay continues to take the position that the letter provides an opinion specifically about the

Donations Canada program. This faulty interpretation is clearly not in the best interest of clients, although it does advance the financial interests of William MacKay if a client relies on the letter as part of his or her decision to purchase the product.

When questioned about Donations Canada, William MacKay took the position the CRA ``always`` challenges these products, again demonstrating a pattern of William MacKay placing his own opinions above those of legislated authorities.

Donations Canada is now the subject of a class action lawsuit in Superior Court of Ontario. William MacKay is named as a Third Party in that lawsuit (although he had not yet been served at the time he was given an opportunity to be heard by the Director).

William MacKay's lack of understanding about the product being sold, the failure to conduct appropriate due diligence about the product, and the placing of his personal financial interest ahead of the interests of clients resulted in a situation where clients were put at risk. It also supports the conclusion that William MacKay does not have sufficient proficiency required for registration.

iii) SMART Notes

Starting in approximately August 2009 William MacKay and Michael MacKay (through Advantage Exempt) explored the possibility of offering securities known as "Smart Notes" in reliance on prospectus and registration exemptions available under the Act. The Smart Notes offering came to the attention of Commission investigator Jason Roy who contacted Michael MacKay about this offering, expressing concern that there were unanswered questions about the offering which potentially called into question its legitimacy. In his submissions in support of his application for registration, William MacKay at first denied that it was Mr. Roy's contact and discussion with Michael MacKay that lead Advantage Exempt to stop marketing the Smart Notes offering. Later submissions show the timing of the decision by Advantage Exempt not to proceed with the offering was close to when concerns were raised by Commission staff. In any event, William MacKay advised that Advantage Exempt had requested documentation involved with the offering from the issuer as part of its due diligence. Once there was a delay in providing that documentation the decision was made not to sell the product to clients. No trades of Smart Notes were completed by Advance Exempt or William MacKay.

During the time Advantage Exempt was conducting its due diligence, William MacKay was ``encouraged by my first hand confidence in Edward Furtak`s honesty, his choice of (then proposed) General Partner, and very competitive returns to clients``. William MacKay was also actively soliciting clients for monies to invest in the Smart Notes offering during this time. Monies provided by clients were placed in a trust account with a law firm. These monies were returned to the clients after Advantage Exempt made a decision was made not to proceed with the offering of Smart Notes.

What is clear is that William MacKay placed the possibility of receiving a commission ahead of first ensuring the securities being offered to clients were appropriate. He was prepared to have client monies tied up in a trust account before it was even clear whether those monies would be needed. Conduct that places self interest

ahead of the client falls far short of the standard of conduct expected of a registrant. In addition to this complete lack of regard for the interests of clients, when questioned on the matter William MacKay did not accept responsibility for his actions, making it clear that it was his son Michael MacKay who approved of his actions. This demonstrates a lack of proficiency and integrity by William MacKay.

4. Decision

Section seven of the Act sets out the legal basis for an application for registration:

Registration by Director

7(1) The Director shall grant registration or renewal of registration to an applicant where in the opinion of the Director the applicant is suitable for registration and the proposed registration is not objectionable.

In addition, National Instrument 31-103 (NI31-103) sets out the requirements for registration. The Companion Policy to NI31-103 indicates that an applicant's suitability for registration will be governed by an assessment of proficiency, integrity and solvency.

Decisions such as *Re Mithras Management Ltd.* (a decision of the Ontario Securities Commission)¹ and *Harrington Capital Partners Inc.* (a decision of the Alberta Securities Commission)² confirm an assessment of past conduct is appropriate when determining whether an applicant is suitable for registration and whether the registration of the applicant would be objectionable.

In reaching a decision with respect to William MacKay's application for registration I have taken into consideration both the fact that he has been cooperative throughout the review of the application, and that he has been licensed in the insurance industry for a significant period of time without any evidence of problems or complaints.

However, in each of the matters set out in this decision William MacKay has demonstrated a course of conduct that can best be characterized as placing his own self interest ahead of others.

While matters involving PPI were over a decade ago they are still relevant to the consideration of the current application for registration not only because of William MacKay's conduct at that time, but because of his continued actions for over a decade after the Judgment to avoid paying amounts under the Judgment, and more importantly by circumventing the legislated process relied on by the former employees to recover their unpaid wages. It was only because of the advice of his sons to stop avoiding the situation, not because he accepted responsibility, that William MacKay made arrangements to make payments on the amounts owing under the judgment.

¹ 13 OSC Bulletin 1600

² 2011 ABASC 62

In addition, the conduct of William MacKay relating to exempt securities, including the use of partnerships to work around regulatory requirements, lack of due diligence about securities being offered, as well as the collection of monies from clients prior to completing due diligence about what was being offered, lead to the conclusion that William MacKay is not suitable for registration under the Act. He has not demonstrated an ability to put others interests ahead of his own, and has demonstrated a lack of critical judgment and analysis required to conduct business trading exempt securities.

Pursuant to section 7 of the Act I have concluded that registration of William MacKay would be objectionable on grounds of integrity and proficiency, and that he is not suitable for registration. This application for registration under the Act is denied. To the extent William MacKay has been relying on the registration exemption contained in section 16.7 of National Instrument 31-103, that exemption is no longer available to William MacKay.

"D.R. Brown"

Douglas R. Brown
Director