



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF SHAUN GERARD MCERLEAN
AND SECURUS CAPITAL INC.**

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

Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

I. OVERVIEW

1. On January 22, 2009, the Respondent, Shaun Gerard McErlean (“McErlean”) had his registration as a salesperson terminated. Between January 22, 2009, and August 12, 2010, without disclosing the termination of his registration, McErlean solicited over \$14 million from eight offshore investors and at least three Ontario investors through a sole proprietorship, Aquiesce Investments (“Aquiesce”), and a company, Securus Capital Inc. (“Securus”), that he incorporated. McErlean fraudulently represented to these investors that their funds would be used to enable him to trade securities and earn high returns without placing their funds at risk. In fact, he fraudulently used approximately \$8.7 of the funds for his own personal purposes including paying personal expenses, investing in companies in which he or his relatives had a personal interest, and repaying previous investors as well as using a portion of the funds to engage in discretionary equities trading.

II. THE RESPONDENTS

2. McErlean is an individual who resides in Newmarket, Ontario.

3. Securus is a company incorporated pursuant to the *Ontario Business Corporations Act*, RSO 1990, c. B16 as amended (the “OBCA”). McErlean incorporated Securus on December 22, 2009. He is the sole director and directing mind of Securus. It has never been a registrant or a reporting issuer in Ontario.

III. ALLEGATIONS

4. Staff allege that McErlean and Securus (collectively “the Respondents”):

- (a) between January 22, 2009 and August 12, 2010, the Respondents engaged in or participated in an act, practice or course of conduct relating to securities that the Respondents knew, or reasonably ought to have known, perpetrated a fraud on any person or company, contrary to section 126.1(b) of the *Securities Act* RSO 1990, c. S5, as amended (the “Act”);
- (b) between January 22, 2009 and September 28, 2009, McErlean traded securities without being registered to trade securities and without an exemption from the dealer registration requirement, contrary to section 25(1)(a) of the Act;
- (c) between September 29, 2009 and August 12, 2010, without an exemption from the dealer registration requirement, the Respondents engaged in or held themselves out to be engaged in the business of trading securities without being registered in accordance with Ontario securities law, contrary to section 25(1) of the Act;
- (d) between January 22, 2009 and September 28, 2009, McErlean acted as an adviser without registration and without an exemption from the adviser registration requirement, contrary to section 25(1)(c) of the Act;
- (e) between September 29, 2009 and August 12, 2010, the Respondents, without an exemption from the adviser registration requirement, engaged in the business of,

or held themselves out as engaging in the business of, advising with respect to investing in, buying or selling securities without being registered in accordance with Ontario securities law, contrary to section 25(3) of the Act; and

- (f) between January 22, 2009 and August 12, 2010, the Respondents traded securities which was a distribution of securities without having filed a preliminary prospectus or a prospectus with the Director or having an exemption from the prospectus requirement, contrary to section 53(1).

5. Staff allege that McErlean, as a director of Securus, authorized, permitted or acquiesced in the conduct of Securus contrary to Ontario securities law.

IV. PARTICULARS OF ALLEGATIONS

(a) Background

6. McErlean was registered under the *Act* as a salesperson in the categories of investment dealer and futures commission merchant on October 8, 2004. His registration was sponsored by CIBC World Markets (“CIBC”). On January 16, 2009, McErlean’s registration was suspended. On January 22, 2010, he resigned and his registration was terminated. During the term of his registration, he engaged in financial dealings with clients which were not disclosed to CIBC. He also deleted a client’s online access to his account and created false documents.

(b) Aquiesce Investments

7. On December 19, 2008, McErlean registered the name of Aquiesce Investments (“Aquiesce”) pursuant to the provisions of the *Business Names Registration Act*, RSO 1990, c. B17, as amended. Aquiesce was never a separate legal entity.

8. Between January 22, 2009 and September 11, 2009, McErlean was involved in efforts to raise funds for Aquiesce for investment. On behalf of Aquiesce, he sought to enter into, and did enter into, trade agreements with investors. These agreements provided that investors would advance funds that would be available to Aquiesce by way of a reserve of funds upon which Aquiesce would obtain a line of credit which would be invested in high yield investments. The agreements provided that Aquiesce would earn substantial profits which would be remitted

directly into investors' accounts and that the invested funds would not be at risk. McErlean did not use the funds as provided for in the agreements.

9. In December 2008, McErlean opened a bank account with TD Bank in the name of Aquiesce. Over \$4 million was obtained pursuant to agreements with two offshore investors and at least three Ontario investors which was deposited into the Aquiesce account with TD Bank. On January 30, 2009, McErlean opened a trading account in the name of Aquiesce with TD Waterhouse. McErlean fraudulently represented to these investors that their funds would be used to enable him to trade securities and earn high returns without placing their funds at risk. In fact, he fraudulently used approximately \$2.1 million of the funds for his own personal purposes including paying personal expenses and repaying previous investors as well as using a portion of the funds to engage in discretionary equities trading.

(c) Securus

10. On December 22, 2009, McErlean incorporated Securus under the provisions of the OBCA. On or about the same date, on behalf of Securus, he opened a bank account with the Royal Bank of Canada ("RBC"). Between December 2009 and August 12, 2010, six offshore clients advanced a cumulative amount of over \$10 million into the Securus account with RBC. These funds were advanced pursuant to agreements that provided that investors would advance funds that would be available by way of a reserve of funds upon which McErlean would engage in trading. Pursuant to the terms of these agreements, the profits earned from trading would be remitted monthly to the investors and the invested funds would not be at risk. The clients were told that they would be provided with account statements confirming the invested funds remained in their individual accounts. Investors were provided with false RBC account statements which purported to show that their invested funds remained in their RBC accounts.

11. McErlean did not use the funds deposited into the Securus account to trade securities and the funds advanced to Securus did not remain in its account with RBC. Instead, McErlean used approximately \$6.6 million of the funds for his own personal purposes, to provide capital to private companies in which he or his relatives have a financial interest, and to repay previous clients including an individual who was an investor in Aquiesce and an individual who had been

a client while he was employed with CIBC and with whom he had financial dealings which was not disclosed to CIBC.

V. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

12. By engaging in an act, practice or course of conduct relating to securities which they knew, or reasonably ought to have known, perpetrated a fraud upon investors, the Respondents acted contrary to Ontario securities law and contrary to the public interest.

13. By engaging in registrable conduct without being registered as dealers or advisers and without exemptions from the dealer registration requirement and adviser registration requirement, the Respondents acted contrary to Ontario securities law and contrary to the public interest.

14. By trading securities which was a distribution of securities without a preliminary prospectus or prospectus having been filed with the Director and without an exemption from the prospectus requirement, the Respondents acted contrary to Ontario securities law and contrary to the public interest.

15. Staff may make additional allegations as the Commission may permit.

Dated at the City of Toronto, this “8th” day of December, 2010.