

ALBERTA SECURITIES COMMISSION

NOTICE OF HEARING

Citation: Wealthstreet Inc., Re, 2010 ABASC 470

**Date: 20101012
Docket: ENF-005583**

Securities Act, R.S.A. 2000, c. S-4 (Act)

To: Wealthstreet Inc., Colin David Jones aka David Colin Jones and Rachael Poffenroth

Notice: The Alberta Securities Commission (**Commission**) will convene at 2:30 pm on Wednesday, the 8th day of December, 2010, at Calgary, Alberta, to deal with any preliminary matters and to set a date for a hearing of the allegations in this Notice. At the hearing, the Commission will consider whether it is in the public interest to order:

- (i) Under subsection 198(1)(a) of the *Act*, that trading cease in or purchasing cease in respect of specified securities;
- (ii) Under subsection 198(1)(b) of the *Act*, that you cease trading in or purchasing securities;
- (iii) Under subsection 198(1)(b.2) of the *Act*, that you be reprimanded;
- (iv) Under subsection 198(1)(c) of the *Act*, that any or all of the exemptions contained in Alberta securities laws do not apply to you;
- (v) Under subsections 198(1)(d) and (e) of the *Act*, that you resign any positions that you hold as a director or officer of an issuer, registrant or investment fund manager and that you be prohibited from becoming or acting as a director or officer or as both a director and officer of any issuer, registrant, or investment fund manager;
- (vi) Under Subsection 198(1)(e.3) of the *Act*, that you are prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (vii) Under subsection 198(1)(i) of the *Act*, that you pay to the Commission any amounts obtained or payments or losses avoided as a result of non-compliance with Alberta securities laws;
- (viii) Under section 199 of the *Act*, that you each pay an administrative

penalty;

(ix) Under subsections 202(1) and (2) of the *Act*, that you pay the costs of the investigation and hearing; and

(x) Such further and other order under section 198 as the Commission deems appropriate.

Location: Alberta Securities Commission, 4th Floor, 300 – 5th Avenue SW, Calgary, Alberta.

Procedure: 1. You may obtain disclosure and particulars of the allegations in this Notice from Carla A. Murray, litigation counsel c/o Alberta Securities Commission, 4th Floor, 300 - 5 Avenue SW, Calgary, Alberta, T2P 3C4, fax: 403.297.2210, carla.murray@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 on December 8th, 2010 at 2:30 p.m., or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See also section 29 of the Act and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.

Allegations

Summary of Breaches

- 1 Staff (**Staff**) of the Alberta Securities Commission (**Commission**) alleges that Wealthstreet Inc. (**Wealthstreet**), Colin David Jones also known as David Colin Jones (**Jones**) and Rachael Poffenroth (**Poffenroth**) (collectively, the **Respondents**) engaged in illegal trading and distributions of securities in Alberta to Alberta investors.
- 2 Staff also alleges that Jones acted as an advisor in Alberta without being registered as an advisor, made prohibited and misleading or untrue representations to Alberta investors and engaged in unfair practices in transactions with Alberta investors.

Parties

- 3 Wealthstreet is an Alberta company with a registered office in Calgary, Alberta. The offices of Wealthstreet were located at 7425 Macleod Trail SW, Calgary, Alberta. At all material times, Wealthstreet was not a reporting issuer in Alberta, and has never been registered in any capacity with the Executive Director of the Commission (**Executive Director**).
- 4 Jones is an individual residing in Calgary, Alberta. He has not been registered in any capacity with the Executive Director since 1991 when he was last registered to sell mutual funds.
- 5 At all material times, Jones was a director, officer and the sole shareholder of Wealthstreet who authorized, permitted or acquiesced in the contraventions of the *Act* by Wealthstreet described below.
- 6 At all material times, Poffenroth was an employee of Wealthstreet. From in or around 2007 to in or around 2008, Poffenroth was the President of Wealthstreet who authorized, permitted or acquiesced in the contraventions of the *Act* by Wealthstreet described below.

Circumstances

Trading in Securities

- 7 The Respondents sold approximately 94 promissory notes dated August 1, 2007 (the **Notes**) to at least 94 Alberta investors raising \$3,302,000.00.
- 8 Staff alleges that the Notes are securities, and the sales by the Respondents are trades, as those terms are defined in the *Act*. Further, as trades in securities of an issuer that had not been previously issued, the Notes are distributions as defined in the *Act*.
- 9 The Respondents filed a Report of Exempt Distribution with the Commission claiming that exemptions were available for all of the Notes sold to Alberta investors.
- 10 Staff alleges that that an exemption was not available for the trades to some or all of the Alberta investors.

Advising

11 Staff alleges that Jones acted as an advisor in Alberta by engaging in or holding himself out as engaging in the business of advising others in the buying or selling of securities without being registered as an advisor under the *Act* or being exempt from such registration requirements.

Misleading or Untrue Statements

12 Staff alleges that Jones made statements to investors that he knew or ought reasonably to have known were misleading or untrue, or which failed to state a fact required to be stated or that was necessary to make the statement not misleading. Particulars include making statements that investors would receive an annual return of 10% from their investment in the Notes.

13 Staff alleges that the statements referred to in paragraph 12 would reasonably be expected to have a significant effect on the market price or value of the Notes.

Unfair Practice

14 Staff alleges that Jones engaged in an unfair practice by putting unreasonable pressure on Alberta investors to purchase securities from Wealthstreet, including by pressuring investors to borrow from their home equity through mortgages in order to invest in securities sold by Wealthstreet.

Breaches

15 As a result of the above, Staff alleges that the Respondents breached:

- 15.1 subsection 75(1)(a) of the *Act* by trading in securities without being registered with the Executive Director as salespersons; and
- 15.2 section 110 of the *Act* by engaging in a distribution of securities without a prospectus or an appropriate exemption; and

16 As a further result of the above, Staff alleges that Jones breached:

- 16.1 subsection 75(1)(b) of the *Act* by acting as an advisor without having been registered with the Executive Director as an advisor;
- 16.2 subsection 92(4.1) of the *Act* by making statements that investors would receive an annual return of 10% from their investment in the Notes, which he knew or ought to have known were misleading or untrue, or which failed to state a fact required to be stated or that was necessary to make the statement not misleading;
- 16.3 subsection 92(5) of the *Act* by engaging in an unfair practice by putting unreasonable pressure to purchase securities from Wealthstreet, including by pressuring investors to borrow from their home equity through mortgages in order to invest in securities sold by Wealthstreet.

17 Staff further alleges that each of the Respondents' activities described above constitute conduct that was contrary to the public interest.

Calgary, Alberta, 12 October 2010.

) ALBERTA SECURITIES COMMISSION

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) *“Original Signed By”*

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W.E. Brett Code

) Director, Enforcement