

ALBERTA SECURITIES COMMISSION

Docket: ENF-010583

Citation: Re Lutheran Church-Canada,
the Alberta-British Columbia District, 2019 ABASC 140

Date: 20190911

SETTLEMENT AGREEMENT AND UNDERTAKING

Lutheran Church–Canada, the Alberta British-Columbia District, Lutheran Church–Canada, the Alberta British-Columbia District Investments Ltd., Donald Robert Schiemann, Kurtis Francis Robinson, James Theodore Kentel, Mark David Ruf, and Harold Carl Schmidt

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into Lutheran Church–Canada, the Alberta-British Columbia District (the **District**), Lutheran Church–Canada, the Alberta-British Columbia District Investments Ltd. (**DIL**), Donald Robert Schiemann, Kurtis Francis Robinson, James Theodore Kentel, Mark David Ruf, and Harold Carl Schmidt (collectively, the **Respondents**) to determine if securities laws had been breached.
2. The investigation confirmed, and the Respondents admit that they breached those sections of the *Securities Act*, R.S.A. 2000, c. S-4, as amended, (**Act**), referred to in this Settlement Agreement and Undertaking (**Agreement**).
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to at paragraphs 57 to 61 herein, each of the Respondents agree to the facts and consequences set out in this Agreement.
4. Terms used in this Agreement have the same meaning as provided in Alberta securities laws, a defined term in the *Act* or as specifically defined herein.

Parties

5. The District is a corporation originally formed on or about March 24, 1944, pursuant to the laws of Alberta. The District is a registered charity and at all material times operated out of Edmonton, Alberta. Its purpose was to support congregations in Alberta and British Columbia in advancing the Lutheran Church’s religious mission. The District was controlled by the members of the board of directors (**Board**) of the District.
6. DIL is a not-for-profit company formed by the District on or about December 2, 1996, pursuant to the laws of Alberta. At all material times, it operated out of Edmonton, Alberta.

7. Donald Robert Schiemann (**Schiemann**) is an ordained Lutheran minister who was at all material times a resident of Stony Plain, Alberta. Between 2000 and 2015, Schiemann was an officer and director of the District and DIL, sat on the Board, and held the title of District President.
8. Kurtis Francis Robinson (**Robinson**) is an individual who was at all material times a resident of one or the other of Calgary and Edmonton, Alberta. Between 2007 and 2015, Robinson was an Executive Director of District Finances, the President of DIL, and an advisory (non-voting) member of the District's Department of Stewardship and Financial Ministries (**DSFM**) Committee. Robinson obtained his designation as a certified financial planner and was licensed to sell mutual funds from 2003 to 2007.
9. James Theodore Kentel (**Kentel**) is an engineer who was at all material times a resident of Kelowna, British Columbia. Between 1997 and 2000, and again from 2003 to 2015, Kentel was a member of the Board, sitting as a Director. From 2009 to 2015, he served as Chairman of the Board, was an officer of the District, and a member of the DSFM Committee.
10. Mark David Ruf (**Ruf**) is an ordained Lutheran minister who was at all material times a resident of Calgary, Alberta. Between 2006 and 2015, he was a member of the Board, was an officer and director of the District and DIL, and held at certain times the office of Vice President of the District. He was also a member of the DSFM Committee.
11. Harold Carl Schmidt (**Schmidt**) is a licensed realtor who was at all material times a resident of St. Albert, Alberta. From 2006 to 2015, Schmidt was a member of the Board and DIL. He was also a member of the DSFM Committee.

Agreed Statement of Facts

History and Background

12. This Agreement is focused primarily on events and practices subsequent to January 1, 2008, by which time the Respondents ought to have known that the financial situation of EnCharis Community Housing and Services (**ECHS**) required disclosure to investors, and in particular, the practices of the District and DIL accepting investments and/or deposits (collectively, **investments**) into one or the other of two funds:
 - (a) the Church Extension Fund (**CEF Fund**); and
 - (b) the District Investment Fund (**DIL Fund**).

(collectively, the **Funds**)

13. The District established and operated the CEF Fund. The CEF Fund was an unregistered trade name designed to facilitate the investment of funds by individual investors into faith-based developments such as churches and schools in Alberta and British Columbia. At all times, investments in the CEF Fund were promoted as an investment opportunity distinct from donations made by church members to the church and/or their own specific congregations.
14. The District operated the CEF Fund by soliciting and obtaining funds for investments from individuals, primarily congregants. These investments took the form of savings/investment accounts, term deposits, and/or bonds. The invested funds were pooled and loaned by the District through the DSFM Committee to individual church congregations and affiliated entities. Some of the money invested in the CEF Fund was held in cash and marketable securities. Investors were promised set rates of interest on the invested funds.
15. The DSFM Committee was responsible for making recommendations to the Board regarding congregation loan applications. The Board was responsible for granting final approval of loan applications.
16. In exchange for their investments, investors were granted flexible terms which permitted investors to withdraw their funds upon request.
17. The tradition underlying the establishment of the Funds was longstanding within the District and the Church, generally. The creation of the Funds arose from an intention to enhance the Church's ministry by providing loans to fund capital projects for congregations.
18. The CEF Fund was created in or about 1920 and was operated continuously from its inception until January 2015. As of November 30, 2014, over \$95 million had been invested by over 2,600 investors in the CEF Fund.
19. The DIL Fund was created and operated by the District from about 1996 to offer investors registered investments, which provided tax efficiencies through RRSP, RRIF, and TFSA accounts. Under trust agreements with investors, DIL pooled the investment funds and loaned the DIL Fund investments in a similar manner to the funds in the CEF Fund to individual church congregations and affiliated entities. Security in the form of mortgages was generally taken by DIL over assets of the borrowing church congregations. As with the CEF Fund, investors were promised set rates of interest on the invested funds.
20. DIL operated continuously from its inception until approximately January 2015. As of November 30, 2014, over \$37 million was invested by over 900 investors in the DIL Fund.
21. Between 2008 and 2013, inclusive, the Funds raised \$33,078,754, which represents new investments and interest from extant investments that were rolled over and reinvested into the Funds.

The Prince of Peace Development

22. In or about the early to mid-1990s, the District and DIL began loaning money from the Funds to support the Prince of Peace community development, located just east of Calgary, which was developing a large seniors' housing complex (the **PoP Development**) in addition to its existing church and school.
23. Over the next several years, substantial amounts from the Funds were used to fund and/or finance the PoP Development.
24. By 2003, approximately \$35 million of the approximately \$50 million raised in the CEF Fund was loaned to the PoP Development.
25. In 2005, the District incorporated ECHS and EnCharis Management and Support Service (**EMSS**) to hold and manage the PoP Development. The District appointed representatives to ECHS and EMSS.
26. By 2009, approximately \$49 million of the approximately \$78.8 million raised in the CEF Fund was loaned in ECHS.

Investments Were Securities

27. The investments in the Funds constituted securities within the meaning of section 1(ggg) of the *Act*.
28. Although most investors were affiliated with congregations within the District, investing in the Funds was not specifically closed to members of the public.

Representations and Promotional Practices

29. The District and DIL engaged representatives from congregations to market the investments in their respective congregations. The representatives were provided with Church Extension Manuals (the **Manual**) by the District. The Manual provided these representatives with information and resources to provide to investors and potential investors.
30. The Manual identified that "the primary goal of Church Extension is to provide loans with reasonable interest rates to congregations that need property/buildings in order to carry out the ministry of reaching souls for Christ." It also included descriptions of the loan eligibility requirements, criteria, and conditions under which investors' funds were to be loaned. These requirements included, among other things, obtaining "security documentation appropriate to the size and conditions of the loan." Representatives referred to these statements, requirements, criteria and conditions in promoting the investments.

31. The Respondents authorized statements in promotional literature from 2008 to 2014 about the Funds that they knew or ought to have known were misleading in that the statements did not state all of the facts that were required to be stated or that were necessary to be stated to make the statements not misleading (**Omitted Facts**, as particularized in paragraph 35 below). These statements (**Statements**) would reasonably be expected to have a significant effect on the market price or value of the investments.
32. The Statements were as follows:
- (a) “ABC District Investments is a risk friendly way to invest in RRSPs” (January 2008);
 - (b) [There is] “\$80 million plus invested throughout the District with congregations in the form of loans for land and buildings” (February 2009);
 - (c) “...with our loan portfolio – made up of loans to congregations and other ministries – we are experiencing normal repayment histories” (February 2009);
 - (d) “Our portfolio of investments is well diversified. We work with outside professional advisors in the construction of an investment portfolio that is conservative and prudent” (February 2009);
 - (e) “Investments in Church Extension are guaranteed by the ABC District of Lutheran Church–Canada which has in excess of \$30 million dollars of assets. Church Extension has a proven record of security” (Church Extension Manual—until at least July 2009);
 - (f) “...no investor has ever lost any portion of account principal or interest in the history of ABC District Church Extension—over 88 years” (January 2010);
 - (g) “Church Extension Fund is presently assisting 69 different projects in Alberta and British Columbia by providing funding through either a loan or a mortgage” (January 2011); and
 - (h) “With more than \$130 million in assets today, CEF is assisting more than 50 congregations throughout Alberta and British Columbia with loans to help” (January 2013).
33. Additional promotional language included the following statements:
- (a) “The Mission of Church Extension Fund is to provide opportunity for making funds and services available in support of the Great Commission through Lutheran Church–Canada, the Alberta British Columbia District” (all Fund related publications);

- (b) “Church Extension is a partnership between investors and congregations to share the Good News of Jesus Christ. Church Extension is managed prudently and built on solid financial principles. Church Extension actions are based on the question, ‘Will this further the Great Commission?’” (2009);
 - (c) “Church Extension provides investment opportunities for Lutheran Christians. Through God's grace, these investors make the work of CEF possible” (2009);
 - (d) “Church Extension is a ministry. Its ministry is not dollars, not size, not growth, but reaching more people with the gospel” (2009);
 - (e) “When you invest a portion of your blessings in CEF in an investment account (no investor has ever lost a portion of account principal or interest in the history of ABC District Church Extension—over 88 years), you know that your dollars will make a difference today and enable Church Extension Fund to meet the needs of the Church tomorrow” (June 2008);
 - (f) “CEF not only allow [*sic*] members to earn a competitive return on their money, but more importantly, gives them an opportunity to live out their faith by participating in a common goal, vision and mission” (January 2014);
 - (g) “We want to always put the ministry first and interest rate second so that in all things God will have the glory and that we might spread His news to our communities and beyond” (January 2014);
 - (h) “The Church Extension Committee membership includes a lawyer, an accountant, a bank manager, and others with experience in the financial marketplace” (undated);
 - (i) “You have our permission and encouragement to share this stewardship ‘secret.’ Tell others about this simple way to increase their support to the mission of the LCC—telling the Good News about Jesus Christ—by expanding their stewardship practices though CEF investment” (2011); and
 - (j) “The Board of Directors, the Department of Stewardship and Financial Ministries, the Church Extension Committee and the staff regularly seek God's will in the decisions that are made and in the management of the Fund. However the most convincing aspect of the security of the fund is that God is in control and the fund exists totally for the purpose of providing resources for the sake of proclaiming the saving gospel of Jesus Christ” (undated).
34. The Statements were published in newsletters and circulated to existing and potential investors in Lutheran church congregations throughout Alberta and British Columbia. The statement about the investments being guaranteed was contained in the Manual.

35. The Omitted Facts were that:
- (a) ECHS' mortgages represented 82.2% of the District's loan portfolio in 2008, and by 2012, comprised 96.8% of the District's loans;
 - (b) ECHS defaulted on its principal payments, pursuant to its loan agreement with the District of \$2 million per year in 2007, 2008, and 2009. ECHS never made any payments towards the principal outstanding. ECHS paid off its accrued interest in 2011 by selling a parcel of land;
 - (c) ECHS never produced any financial statements to the District in contravention of its loan agreement with the District;
 - (d) ECHS had inadequate financial controls in place to ensure accurate financial reporting;
 - (e) ECHS had insufficient assets to secure its loan with the District;
 - (f) there was no guarantee by the District of the Funds. It was a simple promise to pay; and
 - (g) there was a conflict of interest between the District and ECHS as four members of the Board were also members of the board of ECHS. As a result of the Board's close relationship with ECHS, including oversight and certain shared management, the Board was acting as both a borrower and lender vis-à-vis funds loaned to ECHS.

Other Relevant Facts

36. Robinson was seconded by the District to ECHS for the purpose of managing the PoP Development from mid-2010 through 2015. He took on the role of Executive Director of ECHS, and as such, was responsible for the day-to-day operations of ECHS, all while continuing in roles with the District, DIL, and DSFM Committee.
37. In 2011, the Board retained a new auditing firm (**New Auditor**). In or about October 2012, the New Auditor provided an opinion that the assets of the PoP Development were overvalued, and that an impairment write-down was necessary in respect of the District's financial statements. The District did not agree with this opinion.
38. This unfavourable opinion was not released to investors until 2014. Throughout the course of 2013, the District continued to evaluate options in regards to the PoP Development including the sale of all assets held by ECHS.
39. In or about January 2014, the District retained Deloitte LLP (**Deloitte**) to evaluate options for the District's assets and provide an evaluation of available options in respect of the PoP Development.

40. In or about March 2014, the District and DIL stopped soliciting new investments, but continued to accept contributions, which had been set up through automated deposits and/or fund transfers.
41. On or about July 18, 2014, Deloitte suggested to the District and DIL that they may be “insolvent.”
42. On January 23, 2015, the Alberta Court of Queen’s Bench made an order under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (CCAA), granting a stay of proceedings against the District, DIL, and others, and appointing Deloitte as the Monitor (the **CCAA Proceedings**).

Executive Responsibility

43. From approximately 2000 through 2015, Schiemann was an officer and director of the District and DIL, sat on the Board, and held the title of District President. From 2012 onward, he held a non-voting, ecclesiastical role. As a consequence of his position on the Board, with the District, and with DIL, he knew:
 - (a) about the District’s and DIL’s operations as described herein; and
 - (b) how the investments were being promoted and sold.
44. From approximately 2007 through 2015, Robinson was the Executive Director of ECHS and maintained positions with the Board and the District. As a consequence of his position on the Board, with the District, and with DIL, he knew:
 - (a) about the District’s and DIL’s operations as described herein; and
 - (b) how the investments were being promoted and sold.
45. From approximately 1997 through 2000, and 2003 through 2015, Kentel was a member of the Board, an officer of the District, and a member of the DSFM Committee. As a consequence of his positions, he knew:
 - (a) about the District’s and DIL’s operations as described herein; and
 - (b) how the investments were being promoted and sold.
46. From approximately 2006 through 2015, Ruf was a member of the Board, and officer and director of the District and DIL, and a member of the DSFM Committee. As a consequence of his positions, he knew:
 - (a) about the District’s and DIL’s operations as described herein; and
 - (b) how the investments were being promoted and sold.

47. From approximately 2006 through 2015, Schmidt was a member of the Board and the DSFM Committee. As a consequence of his positions, he knew:
- (a) about the District's and DIL's operations as described herein; and
 - (b) how the investments were being promoted and sold.

Admissions

48. Subsequent to January 1, 2008, the District and DIL each violated section 92(4.1) of the *Act* by making statements which they knew or ought to have known did not state all of the facts required to be stated to make the statements not misleading, and which would reasonably be expected to have a significant effect on the market price or value of the securities distributed by the District and DIL.
49. Schiemann, Robinson, Kentel, Ruf, and Schmidt each, as a consequence of his position on the Board, with the District, and with DIL, authorized, permitted, or acquiesced in the above-noted breaches of Alberta securities laws by the District and DIL.

Circumstances Relevant to Settlement

50. At all material times, each of Schiemann, Robinson, Kentel, Ruf, and Schmidt assert they believed that ultimately they would be able to save the PoP Development.
51. At the outset of the CCAA Proceedings, the total claims of investors into the Funds were:
- (a) CEF Fund: \$89.4 million; and
 - (b) DIL Fund: \$38 million.
- (collectively, the **Claims**)
52. A significant portion of the Claims have now been distributed to the Funds' investors. While the CCAA Proceedings are ongoing, at the date of this Agreement, and based on the reports of the Monitor in the CCAA Proceedings, it is anticipated that the CEF Fund and the DIL Fund may have a shortfall of approximately:
- (a) CEF Fund: \$20 million; and
 - (b) DIL Fund: \$7.2 million.
53. Regarding the CEF Fund, the assets of ECHS were transferred to a new entity called Sage Properties Corp. (**Sage**). The Sage shares are now owned by the Funds' investors. Sage was ascribed a value of \$51,364,729 by the Monitor in the CCAA Proceedings. This value of the Sage shares has been set off against the amount owing to investors for the purpose of calculating the shortfall referred to in paragraph 52.

54. None of the Respondents have previously been sanctioned by the Commission.
55. The Respondents cooperated with Staff during the investigation.
56. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement and Undertakings

57. Based on the agreed facts and admissions, the individual Respondents agree to pay a total of \$500,000 (the **Settlement Funds**), attributed as follows:
 - (a) Schiemann: \$175,000
 - (b) Robinson: \$100,000
 - (c) Kentel: \$ 75,000
 - (d) Ruf: \$ 75,000
 - (e) Schmidt: \$ 75,000
58. In lieu of a payment to the Commission, the individual Respondents undertake to pay the Settlement Funds to the Monitor for distribution to the Funds' investors in accordance with the directions of the Court of Queen's Bench in the CCAA Proceedings.
59. The individual Respondents agree to pay to the Commission the amount of \$100,000 for costs.
60. Each of the District and DIL undertakes, permanently:
 - (a) not to trade in or purchase securities or derivatives, and acknowledges that all of the exemptions contained in Alberta securities laws do not apply to it;
 - (b) not to act as a registrant, investment fund manager or promoter;
 - (c) not to advise in securities or exchange contracts; and
 - (d) not to act in a management or consultative capacity in connection with activities in the securities market.
61. Each of Schiemann, Robinson, Kentel, Ruf, and Schmidt undertakes, personally and permanently:
 - (a) not to trade in or purchase securities or derivatives, and acknowledges that all of the exemptions contained in Alberta securities laws do not apply to them, except

that this order does not preclude them from trading in or purchasing securities through a registrant (who has first been given a copy of this decision);

- (b) to resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, and agrees not to act as a director or officer, or as both a director and an officer, of any issuer, registrant, or investment fund manager;
- (c) not to advise in securities or exchange contracts;
- (d) not to act as a registrant, investment fund manager or promoter; and
- (e) not to act in a management or consultative capacity in connection with activities in the securities market.

Administration

- 62. The Respondents acknowledge that they received independent legal advice and voluntarily made the admissions and undertakings in this Agreement.
- 63. The Respondents waive any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
- 64. The Respondents acknowledge and agree that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.
- 65. The Respondents understand and acknowledge that this Agreement may be referred to in any other proceedings under the *Act*, and in securities regulatory proceedings involving other securities regulators in other jurisdictions, but for no other purpose. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to the Respondents. The Respondents understand and acknowledge that they should contact the securities regulator of any other jurisdiction in which they may intend to engage in any securities related activities.
- 66. Execution and fulfillment of the terms of this Agreement by the Respondents resolves all issues involving the Respondents relating to the conduct described herein, and Staff will seek no further sanction against them arising from these facts.

67. This Agreement may be executed in counterpart.

Signed by the duly authorized signatory of)
 Lutheran Church–Canada, the Alberta)
 British Columbia District at Stony Plain,)
 Alberta this 3 day of September, 2019 in)
 the presence of:)
)

Lutheran Church–Canada, the Alberta British
 Columbia District

 WITNESS NAME)
 WITNESS NAME)

Per: “Original signed by”_____
 Roland Kubke

“Original signed by”_____
 SIGNATURE)

Signed by the duly authorized signatory of)
 Lutheran Church–Canada, the Alberta)
 British Columbia District Investments Ltd.)
 at Stony Plain, Alberta this 3 day of)
 September, 2019 in the presence of:)
)

Lutheran Church–Canada, the Alberta British
 Columbia District Investments Ltd.

 WITNESS NAME)
 WITNESS NAME)

Per: “Original signed by”_____
 Roland Kubke

“Original signed by”_____
 SIGNATURE)

Signed by Harold Carl Schmidt at St.)
 Albert, Alberta this 26 day of August,)
 2019 in the presence of:)
)

 WITNESS NAME)
 WITNESS NAME)

“Original signed by”_____
 Harold Carl Schmidt

“Original Signed by”_____
 SIGNATURE)

Signed by Donald Robert Schiemann at)
Stony Plain, Alberta this 23 day of)
August, 2019, in the presence of:)

_____))
WITNESS NAME)
_____))
WITNESS NAME)

_____))
“Original signed by”)
SIGNATURE)

_____))
“Original signed by”)
Donald Robert Schiemann)

Signed by Kurtis Francis Robinson at)
Kelowna, BC this 26 day of August, 2019,)
in the presence of:)

_____))
WITNESS NAME)
_____))
WITNESS NAME)

_____))
“Original signed by”)
SIGNATURE)

_____))
“Original signed by”)
Kurtis Francis Robinson)

Signed by James Theodore Kentel at)
Kelowna, BC this 23 day of August, 2019,)
in the presence of:)

_____))
WITNESS NAME)
_____))
WITNESS NAME)

_____))
“Original signed by”)
SIGNATURE)

_____))
“Original signed by”)
James Theodore Kentel)

Signed by Mark David Ruf at Calgary,)
Alberta this 23 day of August, 2019, in the)
presence of:)

_____))
WITNESS NAME)
WITNESS NAME)

_____))
“Original signed by”)
SIGNATURE)

_____))
“Original signed by”)
Mark David Ruf)

) ALBERTA SECURITIES COMMISSION

Calgary, Alberta, 11 September 2019)

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“Original signed by”)
_____))
David C. Linder, Q.C.)
Executive Director)