

ALBERTA SECURITIES COMMISSION

Citation: Re Talbot, 2022 ABASC 29

Docket: ENF-011706

Date: 20220331

NOTICE OF HEARING

To: David Keith Talbot

Notice: The Alberta Securities Commission (the **Commission**) will convene at 9:00 am on May 25, 2022, or as otherwise directed (the **Set Date Hearing**), at Calgary, Alberta, to set a date or dates for the conduct of a hearing regarding the allegations in this Notice (the **Merits Hearing**). At the Merits Hearing, the Commission will consider whether the allegations have been proven. If so, the Commission will subsequently consider whether it is in the public interest to make orders against you under sections 198, 199, and 202 of the *Securities Act*, RSA 2000, c. S-4, as amended (the *Act*).

Location: Alberta Securities Commission, 5th Floor, 250 – 5 Street SW, Calgary, Alberta.

Procedure:

1. You may obtain document disclosure and further information about particulars of the allegations in this Notice from Adam Karbani, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.592.8183, email: adam.karbani@asc.ca.
2. You may be represented by legal counsel or represent yourself. You or your legal counsel may make representations at the Set Date Hearing as part of the process for scheduling the Merits Hearing and the hearing management sessions that will take place between the Set Date Hearing and the Merits Hearing. At the Merits Hearing, you or your legal counsel may make representations and introduce relevant evidence regarding the allegations in this Notice.
3. If you or your legal counsel fail to attend the Set Date Hearing, the scheduling of the Merits Hearing and the hearing management sessions may proceed in your absence without further notice, and the Merits Hearing itself may proceed in your absence without further notice, following which orders may be made against you.

See attached sections 29, 92(4.1), 198, 199, and 202 of the Act, and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.

Reciprocation: Take notice that orders or settlements made by the Commission may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to you. If an order is made or a settlement agreement is reached in relation to this Notice, you should contact the securities regulator of any other jurisdiction in which you may intend to engage in any securities related activities.

Allegations:

The Respondent and Related Parties

1. The Respondent David Keith Talbot (**Talbot**) is an individual who resided in Edmonton, Alberta, during some or all of the period from April 2014 to April 2018 (the **Relevant Period**).
2. Talbot raised capital from the public through a corporate structure set up to loan investment funds from a trust (Weslease Income Growth Fund) to a limited partnership (Weslease Income Growth Fund Limited Partnership), which was managed by a general partnership (Weslease Income Growth Fund GP Ltd.).
3. Weslease Income Growth Fund (**Trust**) was created on April 4, 2014, and maintained its registered office in Edmonton. The Trust was established to raise funds from investors to loan to Weslease Income Growth Fund Limited Partnership (**Weslease LP**) with the objective of generating returns for unitholders of the Trust. Talbot was a trustee of the Trust during the Relevant Period.
4. Weslease Income Growth Fund GP Ltd. (**Weslease GP**) is:
 - 4.1 An Alberta company with a registered office in Edmonton;
 - 4.2 The general partner of Weslease LP; and
 - 4.3 During the Relevant Period, had exclusive authority to manage the business and affairs of Weslease LP.
5. Weslease of Canada Ltd. (**Weslease Canada**) is:
 - 5.1 An Alberta company with a registered office in Edmonton; and
 - 5.2 The limited partner of Weslease LP.
6. During the Relevant Period, Talbot was:
 - 6.1 Trustee of the Trust;
 - 6.2 Director of Weslease LP;

6.3 Director and officer of Weslease GP; and

6.4 Director and officer of Weslease Canada.

7. Talbot was the guiding mind of the Trust, Weslease LP, Weslease Canada, and Weslease GP (collectively, the **Weslease Entities**) during the Relevant Period. Talbot made most or all of the investment and business decisions for the Weslease Entities during the Relevant Period.

Circumstances

8. The Trust was an Alberta-based issuer that raised approximately \$68 million from investors in the exempt market between 2014 and 2016. Nearly all investor funds for the Trust were raised through Pinnacle Wealth Brokers (**Pinnacle**)—an exempt market dealer.
9. While the Trust was raising money from the public, it relied on three separate offering memoranda. Each offering memorandum offered trust units to the public (**Trust Units**).
10. Each of the Trust Units is a security within the meaning of section 1(ggg)(v) or section 1(ggg)(viii) of the *Act*.
11. When the Trust issued Trust Units to investors, the proceeds from the sale of the Trust Units were loaned to Weslease LP. In exchange, Weslease LP issued a promissory note agreeing to pay the Trust interest on the principal amount of the loan at a rate of 12 per cent per annum, payable each month.
12. Talbot and the Weslease Entities represented that the funds loaned from the Trust would be used to carry on an equipment leasing business. They would acquire equipment to be leased and charge lessees interest rates that were to average 22.5 per cent per annum. In return, unitholders in the Trust were to receive a 12 per cent annual yield.
13. For reasons including defaulted leases, Weslease LP and/or Talbot lost a significant amount of investor funds loaned from the Trust. As a result of Weslease LP's financial losses, it ceased paying interest to the Trust, and the Trust stopped paying returns to its unitholders.
14. In May 2018, Weslease GP and Weslease LP filed Notices of Intention to Make a Proposal pursuant to the *Bankruptcy and Insolvency Act*. Weslease LP entered into receivership in July 2018.
15. As the guiding mind of the Weslease Entities, Talbot engaged in a continuing course of conduct by making false and misleading statements to investors during the Relevant Period.

Misleading Statements

16. During the Relevant Period, Talbot and/or Weslease LP made representations to Pinnacle and/or existing or prospective investors, examples of which are set out below:

- 16.1 Talbot made numerous statements regarding the risk profile of the Trust and/or Weslease LP. For example, Talbot represented that:
 - 16.1.1 Many, if not all, of the leases entered into by Weslease LP were “highly secured” and “well-secured,” which minimized investment risk;
 - 16.1.2 A key aspect of Weslease LP’s leasing business was that leases would typically have collateral on leased equipment on a 1.5x to 1 basis, which minimized investment risk;
 - 16.1.3 In order for Weslease LP to fail, nearly every lease would have to fail based on steps taken by Weslease LP to secure its leases; and
 - 16.1.4 Investors’ funds were “secure.”
- 16.2 Talbot promoted Weslease LP as a profitable and successful business despite significant financial losses in 2015 and 2016.
- 16.3 Talbot stated that investors would be provided with full and regular reporting.
- 16.4 Talbot omitted disclosing payment holidays for leases where there were significant outstanding balances.

(collectively, the **Weslease Statements**).

- 17. The Weslease Statements, individually and/or collectively, were statements within the meaning of section 92(4.1) of the *Act*.
- 18. The Weslease Statements, individually and/or collectively, were misleading or untrue, or failed to contain a fact required to make the Weslease Statements not misleading. The true facts included the following:
 - 18.1 Talbot and Weslease LP did not maintain the risk profile that was represented to the investors. For example:
 - 18.1.1 Weslease LP entered into leases and loan agreements with insufficient security to meet the standard of security that was represented to investors;
 - 18.1.2 Leases of significant value entered into by Weslease LP did not have collateral on leased equipment on a 1.5x to 1 basis;
 - 18.1.3 Weslease LP entered into related transactions with R5 Energy Services Ltd. and RND Holdings Ltd. relating to a worksite camp in the fall of 2015 without either transaction being “well-secured” or “highly secured;” and
 - 18.1.4 Investor funds were not secure.
 - 18.2 Weslease LP lost approximately \$2.6 million for the year ending December 31, 2015, and \$37 million for the year ending December 31, 2016.

- 18.3 Talbot did not have the audited financial statements for the Trust or Weslease LP for the year ending December 31, 2016, prepared in a timely manner, nor did he distribute such financial statements in a timely manner to Pinnacle and/or investors.
- 18.4 Talbot and Weslease LP granted lessees payment holidays that were inconsistent with Weslease LP's business objective of earning 22.5 per cent from its leases and, in turn, providing unitholders with a return of 12 per cent.

Misleading Statements were Material

- 19. The Weslease Statements, individually and/or collectively, were material and would reasonably be expected to have a significant effect on the market price or value of the Trust Units.

The Respondent and Related Parties had Knowledge that Statements were Materially Misleading

- 20. Talbot directly or indirectly made the Weslease Statements to investors.
- 21. Talbot made the Weslease Statements when he knew or reasonably ought to have known the true facts set out in paragraph 18 above, and therefore, Talbot knew the Weslease Statements were misleading or untrue.
- 22. To the extent that any of the foregoing conduct is attributable to any of the Weslease Entities, Talbot authorized, permitted or acquiesced in such conduct during the Relevant Period as described in this Notice of Hearing.

Conduct Contrary to the Public Interest

- 23. Further, or in the alternative, Talbot's conduct, as described in paragraphs 12 to 22 above, constitutes conduct contrary to the public interest.
- 24. By engaging in conduct as described in paragraphs 12 to 22 above, Talbot engaged in conduct that was abusive to the capital market. For example:
 - 24.1 Talbot misled Pinnacle and/or investors as to the standard of security of Weslease LP's leases;
 - 24.2 Talbot misled Pinnacle and/or investors as to the safety and security of investing in the Trust;
 - 24.3 Talbot misled Pinnacle and/or investors as to the profitability and success of Weslease LP as a business;
 - 24.4 Key financial statements for the Trust and/or Weslease LP were not disclosed in a timely manner to Pinnacle and/or investors; and
 - 24.5 Payment holidays given by Weslease LP to lessees for leases of significant value were not disclosed in a timely manner to Pinnacle and/or investors.

Breaches

25. As a result of the actions and circumstances set out above, Talbot breached section 92(4.1) of the *Act* by making statements that he knew, or reasonably ought to have known, were in a material respect, misleading or untrue, did not state facts that were required to be stated or necessary to make the statements not misleading, and would reasonably be expected to have a significant effect on the market price or value of a security.
26. In the alternative, if Talbot is not found to be in breach of the specific provision of Alberta securities laws as alleged in paragraph 25, Staff allege that Talbot is nevertheless deserving of sanctions and other orders under the *Act* as his conduct, as described in paragraphs 23 and 24, was contrary to the public interest.

Calgary, Alberta, 31 March, 2022.

) ALBERTA SECURITIES COMMISSION

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) *“Original signed by”*

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David C. Linder, Q.C.

) Executive Director