

ALBERTA SECURITIES COMMISSION

Citation: Re Nyadongo, 2021 ABASC 28

Docket: ENF-012049

Date: 20210315

NOTICE OF HEARING

To: Tinashe (Nash) Sylvester Nyadongo and 10194131 Canada Ltd., doing business as Future Growth Investments (the **Respondents**).

Notice: The Alberta Securities Commission (the **Commission**) will convene at 9:00 a.m. on Thursday, April 29, 2021, 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 S.W., Calgary, Alberta.

Procedure:

1. You may obtain disclosure and particulars of the allegations in this Notice from Carson Pillar, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.297.2427, email: carson.pillar@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 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, following which orders may be made against you.

See attached sections 29, 93, 110(1), 198, 199, 202 and 221.1 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

Parties

1. Tinashe (Nash) Sylvester Nyadongo (**Nyadongo**) is an individual who resided in Calgary during the period November 2017 to March 2019 (the **Relevant Period**). Nyadongo was employed by Olympia Trust Company (**Olympia Trust**) during some or all of the Relevant Period.
2. 10194131 Canada Ltd., doing business as Future Growth Investments (**Numberco**), is a federal corporation with a registered office in Calgary, Alberta.
3. Nyadongo was a director of Numberco and its guiding mind during the Relevant Period.

Circumstances

4. In or around November 2017, Nyadongo applied to have Numberco registered as an issuer with Olympia Trust, an application that was approved in or around January 2018. As part of that application, and generally in his interactions with Olympia Trust, Nyadongo:
 - 4.1 concealed his involvement with, and control over, Numberco from his employer, Olympia Trust; and
 - 4.2 provided fabricated documents to Olympia Trust that, among other things, falsely represented the business operations and financial position of Numberco.
5. During the Relevant Period, the Respondents raised capital by selling shares in Numberco to investors, who:
 - 5.1 held locked-in retirement accounts or other registered accounts (**Registered Accounts**) and wanted to “unlock” or otherwise access funds in their Registered Accounts; or
 - 5.2 wanted to invest in other opportunities through Numberco, including real estate.
6. Nyadongo corresponded and/or met with Numberco investors, provided investment information and documentation to Numberco investors and generally facilitated investments in Numberco.

7. Investors subscribed for shares of Numberco, which were registered in the name of Olympia Trust on behalf of the various Numberco investors.
8. Each of the Numberco shares (collectively, the **Securities**) are a security within the meaning of section 1(ggg) of the *Act*.

Illegal Distributions

9. During the Relevant Period, Numberco raised at least \$1.2 million in capital by selling the Securities to approximately 28 investors, 10 of whom were Alberta residents (the **Distributions**).
10. As trades in securities of an issuer that had not been previously issued, the sales of the Securities were “distributions” as defined in the *Act*.
11. At no time did Numberco file a preliminary prospectus or prospectus with the Executive Director of the Alberta Securities Commission, or receive a receipt for same, in respect of the Distributions.
12. The Respondents made no attempt to qualify Numberco investors for any of the prospectus exemptions listed in National Instrument 45-106, *Prospectus Exemptions*.
13. For many of the Distributions, prospectus exemptions were not available.

Fraudulent Course of Conduct

14. During the Relevant Period, the Respondents:
 - 14.1 provided false and misleading information to investors about how their funds would be used, including but not limited to the false representation made to certain investors that Numberco would transfer to such investors a portion of the balance of funds in their Registered Accounts and withhold the remaining balance to address current or future tax implications; and
 - 14.2 misappropriated investor funds for Nyadongo’s personal use and/or other unauthorized uses.

(collectively, the **Prohibited Acts**).
15. In carrying out the Prohibited Acts, the Respondents:
 - 15.1 deceived certain Numberco investors in that Numberco did not segregate, withhold, pay or otherwise put aside any funds to address tax implications or for any other authorized purpose. Investor funds withheld by Numberco were instead used for Nyadongo’s personal use and/or other unauthorized uses; and

- 15.2 deceived Numberco investors in that they did not advise them that their funds would be, or had been, used directly or indirectly for Nyadongo's personal use and/or other unauthorized uses.

Numberco Investors' Pecuniary Interests at Risk

16. By carrying out the Prohibited Acts, the Respondents put Numberco investors' pecuniary interests at risk as follows:
- 16.1 the Respondents used investor funds for purposes that were contrary to the representations the Respondents made to those investors about how their funds would be used; and
- 16.2 the Respondents either put investors at risk of losing funds or caused investors to lose funds.

The Respondents had Knowledge of the Fraud and Deprivation

17. Nyadongo, by engaging in the Prohibited Acts, had knowledge of the Prohibited Acts.
18. In carrying out the Prohibited Acts, Nyadongo knew or reasonably ought to have known that engaging in the Prohibited Acts could have, as a consequence, investor losses or investors' pecuniary interests being put at risk.
19. Numberco, through its guiding mind Nyadongo, had knowledge of the Prohibited Acts and knew or reasonably ought to have known that engaging in the Prohibited Acts could have, as a consequence, investor losses or investors' pecuniary interests being put at risk.
20. In carrying out the Prohibited Acts, the Respondents engaged in acts, practices or a course of conduct that they knew or ought to have known may perpetrate a fraud on Numberco investors within the meaning of the *Act*.

Breaches

21. As a result of the above, Staff allege that:
- 21.1 the Respondents breached section 110(1) of the *Act* by distributing securities of Numberco without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some or all of the relevant distributions of Numberco securities; and
- 21.2 the Respondents breached section 93(1)(b) of the *Act* by directly or indirectly engaging or participating in an act, practice or course of conduct relating to securities that they knew or ought to have known may perpetrate a fraud on investors.

Numberco's Contraventions are Attributable to Nyadongo

22. While a director of Numberco, Nyadongo authorized, permitted or acquiesced in Numberco's contraventions of sections 110(1) and 93(1)(b) of the *Act*. Therefore, in addition to directly engaging in the misconduct as alleged, Nyadongo also contravened those sections by operation of section 198(1.2) of the *Act*.

Calgary, Alberta, 15, March 2021.

) ALBERTA SECURITIES COMMISSION

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) "*Original signed by*"

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David C. Linder, Q.C.

) Executive Director