

FORM 1a (Rule 6)  
IN THE COURT OF APPEAL FOR SASKATCHEWAN

Between:

**Euston Capital Corp. and George Schwartz**

*Appellants (Respondents)*

- and -

**The Saskatchewan Financial Services Commission**

*Respondent (Applicant)*

**NOTICE OF MOTION/APPEAL**

TAKE NOTICE:

1. THAT **Euston Capital Corp. and George Schwartz**, the above named appellants, hereby appeal to the Court of Appeal from the decision and order of the Saskatchewan Financial Services Commission (the "Commission") in the matter of Euston Capital Corporation, George Schwartz, Charles Saks, Norman MacLeod, Peter Robinson, and Michael Dicaprio, issued on the 9th day of February, 2006, and delivered to the appellants on February 14, 2006 ("the decision and order").
2. THAT the following parts of the decision and order are being appealed:
  - (i) The Commission's determination that the appellants, George Schwartz and Euston Capital Corp. ("Euston"), did not comply with the Accredited Investor exemption contained in the Multilateral Instrument 45-103 *Capital Raising Exemptions* ("the exemption policy") in respect of sales of shares

in Euston to investors in Saskatchewan from September 2003 to November 2004, and that these sales were illegal distributions;

- (ii) The Commission's determination on sanction that, pursuant to section 134(1)(d) of the Saskatchewan *Securities Act, 1988*, S.S. 1988-89, c. S-42.2 ("the *Securities Act*"), trading in all securities by and of Euston and George Schwartz do cease for the period up to and including 10 years from the date of the decision and order, being February 9, 2006;
- (iii) The Commission's determination on sanction that the exemptions described and provided for in section 134(1)(a) of the *Securities Act* will not apply to Euston and George Schwartz for the period up to and including 10 years from the date of the decision and order, being February 9, 2006;
- (iv) The Commission's determination on sanction that, pursuant to section 135.1(1) and (2) of the *Securities Act*, Euston and George Schwartz each pay an administrative penalty of \$50,000; and
- (v) The Commission's determination on sanction that, pursuant to section 161(1) and (2) of the *Securities Act*, George Schwartz pay the costs of or related to the hearing in the amount of \$14,622.40.

3. THAT the source of the appellants' right of appeal and the court's jurisdiction to entertain the appeal is:

- (i) The *Securities Act*, ss. 11(1)-(8); and
- (ii) The *Court of Appeal Act, 2000*, S.S. 2000, c. C-42.1, s.7(2)(b).

4. THAT the appeal is taken upon the following grounds:

**Liability:**

- (i) The Commission erred in law and acted unreasonably in its interpretation that a "trade" as used to determine the applicability of the Accredited

Investor exemption in the exemption policy was effected and occurred prior to the execution by the Euston investors of the Purchase Agreement for the shares;

- (ii) The Commission erred and acted unreasonably in failing to give any effect to the due diligence of the appellants in determining whether any prospective investor met the criteria for an accredited investor as defined in the exemption policy, and in particular:
  - (a) the Commission erred and acted unreasonably in failing to properly consider the effect of the written certification provided to the appellants by the Euston investors that they met the criteria for accreditation, and the actual reliance of the appellants thereon;
  - (b) the Commission erred and acted unreasonably in finding that the Purchase Agreement, which included the written certification, was the only attempt by the appellants to determine whether or not an investor was accredited, despite clear evidence to the contrary; and
  - (c) the Commission erred and acted unreasonably in failing to give any effect to the reasonable reliance of the appellants on a creditable external business and consumer data provider, as part of their due diligence process;
- (iii) The Commission erred and acted unreasonably in determining that, in order to rely on the Accredited Investor exemption in the exemption policy, the appellants had to orally question all prospective investors, in the face of specific language in the exemption policy, warning against reliance on oral representation from investors regarding their Accredited Investors status;
- (iv) The Commission erred in making the unreasonable inference that the evidence of the six investor witnesses called at the hearing was reliable,

sufficient or representative of the circumstances relating to the sale of Euston shares to all fifty-nine Euston investors in Saskatchewan;

- (v) The Commission erred and acted unreasonably in its determination of whether the investors who testified were accredited in the absence of any evidence of the value of their net worth at the time of the sale of the Euston shares to them and of any evidence of their net income in the year of the sale and the two prior years or, in the alternative, acted unreasonably in their appreciation of the evidence;

**Penalty:**

- (vi) The Commission erred and violated the principles of natural justice by ignoring procedural fairness in failing to provide sufficient reasons, or any reasons at all, for the imposition of the penalties it ordered against the appellants;
- (vii) The Commission erred and acted unreasonably in ordering a penalty "in the public interest" which was excessive and unreasonable and which failed to take into account, or failed to give proper weight to, the relevant circumstances, including but not limited to, the full and frank cooperation of the appellants with the Commission's investigation and hearing; and
- (viii) The Commission erred in its determination that George Schwartz was the sole responsible person for all acts by Euston and failed to properly consider the responsibility by the other director and officer of Euston.

5. THAT the appellants request the following relief:

- (i) That the decision and order of the Commission dated February 9, 2006, insofar as it applies to the appellants, be set aside, the referral and matter

dismissed, and all cease trade orders lifted or, in the alternative, that a new hearing be ordered before the Commission;

- (ii) In the alternative, that the sanction imposed by the Commission, insofar as it applies to the appellants, be set aside and this Court determine a reasonable sanction after taking into account all the relevant factors or, in the alternative, that the issue of sanction be remitted to the Commission with directions for reconsideration;
- (iii) In the further alternative, that the order of the Commission that the appellant, George Schwartz, be liable for the costs of or related to the hearing be set aside; and
- (iv) Such further and other relief as this Honourable Court deems just.

6. THAT the appellants' address for service is:

*c/o:*

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130 Adelaide Street West  
Suite 2400, Box 95  
Toronto, Ontario  
M5H 3P5

**Peter R. Jervis**  
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The lawyer in charge of the file is: Peter R. Jervis/Cynthia B. Kuehl

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7. THAT the Appellant requests that this appeal be heard at *Regina*.

DATED at Toronto, Ontario, this 10<sup>th</sup> day of March, 2006.



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Name and Signature of the Lawyer for the Appellant

TO: Respondent

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