



REGISTERED MAIL

October 25, 2018

Ms. Leslie Brandlmayr
Director
HSEF Renaissance Academy
1250 - 1500 W. Georgia St.
Box 62
Vancouver, BC V6G 2Z6

BN: 88520 5427 RR0001
File #: 3007459

Dear Ms. Brandlmayr:

Subject: Audit of HSEF Renaissance Academy

This letter results from the audit of the HSEF Renaissance Academy (the Organization) conducted by the Canada Revenue Agency (CRA). The audit related to the operations of the Organization for the period from December 1, 2009, - November 30, 2015.

On October 25, 2018, the Organization was advised that the CRA identified specific areas of non-compliance with the provisions of the Income Tax Act (the Act) and its Regulations in the following areas.

AREAS OF NON-COMPLIANCE:		
	Issue	Reference
1.	Issuing official income tax receipts not in accordance with the Act	110.1, 118.1, 149.1(2), 168(1)(d) Reg. 3500, 3501(1), and 3501(1.1)
2.	Failure to devote resources to charitable activities	149.1(1), 149.1(3), 149.1(4.1)(a), 168(1)(b)

This letter describes the areas of non-compliance identified by the CRA relating to the legislative and common law requirements that apply to registered charities, and offers the Organization an opportunity to respond and present additional information. The Organization must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act.

Please note that the findings outlined below relate to our previous audit for the period December 1, 2004, to November 30, 2008, and, our current audit for the period December 1, 2009, to November 30, 2015.

Archon Shares (reviewed in prior audit):

- A total of 16,063,637 public shares of Archon Minerals Ltd. (Archon) with a total value of \$30,520,910 were donated to Theanon Charitable Foundation (Theanon) on December 31, 2001.
- An official donation receipt was issued to Stewart Blusson in the amount of \$30,520,910 (16,063,637 @ \$1.90/share).
- The tax-receipted amount was based on the share's exchange trading price on December 31, 2001, of \$1.90/share.
- Theanon gifted the shares to the Organization on January 10, 2002, as reported in Theanon's T3010 for the year ending April 30, 2002.
- Theanon and the Organization were related through a common director (Blake Bromley).
- An Option Agreement dated January 8, 2002, between Mr. Blusson and the Organization granted Mr. Blusson an irrevocable option to purchase any and all of the Archon shares before November 30, 2005.
- Mr. Blusson exercised the option to purchase the Archon shares on July 1, 2005, for \$31,324,000 at the listed price of \$1.95/share (16,063,637 @ \$1.95/share), which created an amount due from Mr. Blusson.
- The Organization purchased a royalty interest (i.e. future revenue) in a diamond mining area in the Northwest Territories known as "Two Misery Pipes" from Mr. Blusson on July 1, 2005, which created an amount due to Mr. Blusson. The royalty interest was valued at \$31,300,000. Note: The Organization was not provided with an independent appraisal of the fair market value of the royalty interest.
- A Debt Offset Agreement dated July 19, 2005, between Mr. Blusson and the Organization offset the amounts owed by each party resulting from the share purchase by Mr. Blusson, and the purchase of the royalty interest by the Organization (i.e. a wash).
- As the legal owner of the royalty interest valued at \$31,300,000, the Organization then gifted the royalty interest to the Stewart & Marilyn Blusson Foundation on August 17, 2005, as reported in the Organization's T3010 for the year ending November 30, 2005.
- The Stewart & Marilyn Blusson Foundation and the Organization were related through a common director (Blake Bromley).

Eldorado Gold Shares (reviewed in current audit):

- A total of 50,000 public shares of Eldorado Gold Corporation (Eldorado) with a total receipted value of \$981,500, were donated to the Organization in a single donation on August 27, 2010.
- An official donation receipt was issued to Stewart Blusson in the amount of \$981,500 (50,000 shares @ \$19.63/share).
- The tax-receipted amount was based on the share's exchange trading price on August 27, 2010, of \$19.63/share.
- On December 17, 2010, the Organization disposed of 12,500 shares for \$231,250 in the market (12,500 @ 18.50/share).
- On January 16, 2011, the Organization disposed of 12,500 shares for \$218,750 in the market (12,500 @ \$17.50/share).
- On August 26, 2011 the Organization disposed of 25,000 shares for \$500,000 in the market (25,000 @ \$20.00/share).
- As a result of the dispositions of Eldorado shares, the Organization did not report any Eldorado shares on its Statement of Financial Position as at November 30, 2011. A \$41,000 loss on disposition was reported on its Statement of Operations.

Firebird Shares (reviewed in current audit):

- A total of 7,200,000 public shares of Firebird Resources Inc. (Firebird) with a total receipted value of \$4,320,000, were donated to the Organization in three donations on November 2, 2011.
- Official donation receipts were issued to:
 - [REDACTED] for \$720,000 (1,200,000 shares @ \$0.60/share)
 - [REDACTED] for \$1,800,000 (3,000,000 shares @ \$0.60/share)
 - [REDACTED] for \$1,800,000 (3,000,000 shares @ \$0.60/share)
- The tax-receipted amounts were based on the share's exchange trading price on November 2, 2011, of \$0.60/share.
- For the fiscal period ending November 30, 2011, (28 days after the shares had been donated) the Organization reported a write-down to market value of \$2,160,000 for the Firebird shares. The market value of the shares was reported at \$2,160,000 on the Organization's Statement of Financial Position, a decrease of 50% (\$2,160,000) from the shares' tax-receipted value of \$4,320,000.

- For the fiscal period ending November 30, 2012, the Organization reported a further write-down to market value of \$1,440,000 for the Firebird shares. The market value of the shares was reported at \$720,000 on the Organization's Statement of Financial Position, a decrease of 83% (\$3,600,000) from the shares' tax-receipted value of \$4,320,000.
- For the fiscal period ending November 30, 2013, the Organization reported a third write-down to market value of \$648,000 for the Firebird shares. The market value of the shares was reported at \$72,000 on the Organization's Statement of Financial Position, a decrease of 98% (\$4,248,000) from the shares' tax-receipted value of \$4,320,000.
- For the fiscal period ending November 30, 2014, the Organization reported a write-up to market value of \$36,000 for the Firebird shares. The market value of the shares was reported at \$108,000 on the Organization's Statement of Financial Position.
- For the fiscal period ending November 30, 2015, the Organization reported the disposition of all 7,200,000 shares in the market for \$36,000. A \$72,000 write-down to market value was also reported. As a result of the disposition, the shares were not reported on the Organization's Statement of Financial Position as at November 30, 2015.

Summary:

Donations (7,200,000 shares)	4,320,000
Less: Write-downs to market value	<4,320,000>
Plus: Write-up to market value	36,000
Less: Share disposition (7,200,000 shares)	<36,000>
Asset value at November 30, 2015	0

Clydesdale Shares (reviewed in current audit):

- A total of 2,500,000 public shares of Clydesdale Resources Inc. (Clydesdale) with a total receipted value of \$1,975,000, were donated to the Organization in a single donation on December 23, 2011.
- An official donation receipt was issued to [REDACTED] in the amount of \$1,975,000 (2,500,000 shares @ \$0.79/share).
- The tax-receipted amount was based on the share's exchange trading price on December 23, 2011, of \$0.79/share.
- For the fiscal period ending November 30, 2012, (less than a year after the shares had been donated) the Organization reported a write-down to market value of \$1,325,000 for the Clydesdale shares. The market value of the shares was

reported at \$650,000 on the Organization's Statement of Financial Position, a decrease of 67% (\$1,325,000) from the shares' tax-receipted value of \$1,975,000.

- For the fiscal period ending November 30, 2013, the Organization reported a write-down to market value of \$387,500 for the Clydesdale shares. The market value of the shares was reported at \$262,500 on the Organization's Statement of Financial Position, a decrease of 87% (\$1,712,500) from the shares' tax-receipted value of \$1,975,000.
- For the fiscal period ending November 30, 2014, the Organization reported a write-down to market value of \$112,500 for the Clydesdale shares. The market value of the shares was reported at \$150,000 on the Organization's Statement of Financial Position, a decrease of 92% (\$1,825,000) from the shares' tax-receipted value of \$1,975,000.
- For the fiscal period ending November 30, 2015, the Organization reported the following transactions:
 - it purchased an additional 3,000,000 Clydesdale shares from Charitable Impact Foundation Canada (CHIMP) for \$75,000 at the share's exchange trading price (3,000,000 @ \$0.025/share).
 - it disposed of 2,500,000 Clydesdale shares to [REDACTED] under signed agreement for \$62,500 (2,500,000 @ \$0.025/share)
 - it reported a write-down to market value of \$39,773 on the share sale to [REDACTED]
 - it reported a write up to market value of \$117,273 on its Clydesdale shares
 - as a result of the disposition, the Organization owned 3,000,000 shares valued at \$240,000 as reported on the Organization's Statement of Financial Position as at November 30, 2015.

Summary:

Donation (2,500,000 shares)	1,975,000
Less: Write-downs to market value	<1,864,773>
Plus: Write-up to market value	117,273
Plus: Share purchase (3,000,000 shares)	75,000
Less: Share disposition (2,500,000 shares)	<62,500>
Asset value at November 30, 2015 (3,000,000 shares)	240,000

SPT Shares (reviewed in current audit):

- A total of 1,040,000 public shares of SPT Sulphur Polymer Technologies Inc. (SPT) with a total receipted value of \$935,999, were donated to the Organization in five donations on December 31, 2014.
- Official donation receipts were issued to:
 - [REDACTED] for \$150,000 (166,667 shares @ \$0.90/share)

- [REDACTED] for (\$270,000 (300,000 shares @ \$0.90/share)
- [REDACTED] for \$216,000 (240,000 shares @ \$0.90/share)
- [REDACTED] for \$180,000 (200,000 shares @ \$0.90/share)
- [REDACTED] for \$119,999 (133,333 shares @ \$0.90/share)

- The tax-receipted amounts were based on the share's exchange trading price on December 31, 2014, of \$0.90/share.
- For the fiscal period ending November 30, 2015, (less than one year after the shares had been donated) the Organization reported a write-down to market value of \$243,360 for the SPT shares. The market value of the shares was reported at \$692,639 on the Organization's Statement of Financial Position, a decrease of 26% (\$243,360) from the shares total tax-receipted value of \$935,999. The Organization held all 1,040,000 shares in SPT as reported on its Statement of Financial Position as at November 30, 2015.

Summary:

Donations (1,040,000 shares)	935,999
Less: Write-down to market value	<243,360>
Asset value at November 30, 2015	692,639

Identified areas of non-compliance:

1. Issuing official income tax receipts not in accordance with the Act

It is our position that the Organization has contravened the Act by accepting and issuing receipts for transactions that do not qualify as gifts by participating in private tax planning arrangements. The Organization issued tax receipts totaling \$7,230,999¹ for donations of publicly traded securities. We have determined that the properties for which the tax receipts were issued were not a gift at law. The Business Equity Valuations area of the CRA reviewed the tax-receipted values which were used by the Organization for the donation of the Firebird, Clydesdale and SPT shares during the period 2011 to 2015. These valuations indicated that the tax receipted values for the donations of shares of Firebird Resources Inc., Clydesdale Resources Inc., and SPT Sulphur Polymer Technologies Inc. were grossly inflated.

Pursuant to subsection 118.1(2) of the Act, a registered charity can issue tax receipts for income tax purposes for donations that legally qualify as gifts. The Act requires a registered charity to ensure the information on its official donation receipts is accurate. The requirements for the content of the receipts are listed in Regulation 3501 of the Act. A registered charity could have its registered status revoked under paragraph 168(1)(d) of the Act for issuing a tax receipt for a gift otherwise than in accordance with the Act and the regulations or that contains false information.

¹ The Organization received gifts of shares in Firebird Resources Inc. (\$4,320,000), Clydesdale Resources Inc. (\$1,975,000), and SPT Sulphur Polymer Technologies Inc. (\$935,999), for which it issued official donation receipts.

It is of particular importance that the registered charity reports the correct value of the gift on its tax receipts. Given the potential uncertainty over their valuation, the Act stipulates that the fair market value (FMV) of a gift of non-cash property must be reported on an official donation receipt. The CRA recognizes the complexity of valuating non-cash property and recommends the use of an independent appraiser where a registered charity issues a tax receipt of significant value for a gift-in-kind. We recognize that appraisals are not required under the Act or its Regulations; however, it is our view that the onus remains with the charity to ensure the value assigned to non-cash gifts received is reflective of the factual fair market value of the goods being received. For property with a value in excess of \$1,000, we strongly recommend that the property be appraised by an independent third party.² The person determining the FMV of the item should be competent and qualified to evaluate the particular property being donated, as well as be knowledgeable about the marketplace for the specific property. They should be knowledgeable about the principles, theories, and procedures of the applicable valuation discipline and follow the Uniform Standards of Professional Appraisal Practice or the standards of the profession.

Furthermore, a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

A person that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed \$25,000. Where the total exceeds \$25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. We are not proposing these penalties at this time.

Lack of Donative Intent

In order to qualify as a charitable donation, there must be a true gift at common law. A true gift is a voluntary transfer of property from a donor, who must freely dispose of the property to a donee who receives the property given. The transaction may not result directly or indirectly in any right, privilege, benefit or advantage to the donor or to the person designated by the donor. Any legal obligation of the donor would cause the transfer to lose its status as a gift.

An essential element of a gift is *animus donandi*, meaning that the donor must be motivated by an intention to give. It must be clear that the donor intends to enrich the donee by giving away property, and to generally grow poorer as a result of making the gift. It is our position that the Firebird, Clydesdale and SPT shares received by the Organization did not constitute a gift at law. A gift must be a gift at law in order for it to be a valid charitable gift under section 118.1 of the Act.

In *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 at paragraph 16, Bowie J. enlarged on the notion of "donative intent":

² An independent party is one who is not affiliated with the charity or the originator of the property.

[16] Much has been written on the subject of charitable donations over the years. The law, however, is in my view quite clear. I am bound by the decision of the Federal Court of Appeal in *The Queen v. Friedberg*, among others. These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative.

In *Coombs et al v. The Queen*, 2008 DTC 4004, Woods J listed the requisite elements of this definition as follows:

[15] First, it is necessary that the gifted property be owned by the donor, second that the transfer to the charity be voluntary, third that no consideration flow to the donor in return for the gift, and fourth that the subject of the gift be property, which distinguishes it from providing services to the charity. These elements reflect the general notion that a taxpayer must have a donative intent in regards to the transfer of property to the charity. [Emphasis added]

It is our view that the primary motivation of the donors was not to enrich the Organization but rather to participate in a series of private tax planning arrangements. As such, there was no intention to make a "gift" within the meaning assigned at section 118.1 of the Act. In our view, these transactions, given the combination of the excessive or inflated tax credits and other benefits received, lack the requisite animus donandi to be considered as a gift.

Fair Market Value (FMV)

Regulation 3501(1.1)(h)(ii) requires every registered charity to report the FMV of a gift of property on an official income tax receipt.

The Business Equity Valuations (BEV) area reviewed the tax-receipted values which were used by the Organization for the donation of Firebird, Clydesdale and SPT shares. Valuations were completed to determine if the exchange trading prices of the shares, which were used for tax-receipting purposes, was reflective of the "actual" market value of the shares. Based upon this review, it was estimated that the FMV for the donated shares is as follows:

- Firebird - Donation receipts were issued for a total of \$4,320,000 for 7,200,000 Firebird shares. The FMV of the shares at the time of the donation is estimated in the range of \$406,220 to \$808,322. We will use the midpoint of the range, that being **\$607,300** (\$0.08/share), which represents the FMV of the shares on November 2, 2011. This results in a decrease to the receipted value of \$3,712,700.
- Clydesdale - Donation receipts were issued for a total of \$1,975,000 for 2,500,000 Clydesdale shares. The FMV of the shares at the time of the donation is estimated in the range of \$162,700 to \$324,600. We will use the midpoint of the range, that

being **\$243,650** (\$0.10/share), which represents the FMV of the shares on December 23, 2011. This results in a decrease to the receipted value of \$1,731,350.

- SPT - Donation receipts were issued for a total of \$935,999 for 1,040,000 SPT shares. The FMV of the shares at the time of the donation is estimated in the range of \$402,200 to \$502,061. Based on an analysis of the share's market activity, we will use the low end of the range, that being **\$402,200** (\$0.39/share), which represents the FMV of the shares on December 31, 2014, and results in a decrease to the receipted value of \$533,799.

Based upon the review by BEV, it was determined that even though the aforementioned shares were traded on a listed stock exchange, the volume of shares donated far exceeded the daily average volume of shares traded. As a result, if a person was to sell the specified number of shares on the open market at once, it would have saturated the market, thereby causing the share price to decrease. The lower share price is a result of a block discount related to the high volume of shares donated at once.

Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations or that contains false information. Issuing a donation receipt where there is no gift, no donative intent or the information on the receipt is incorrect, is not in accordance with the Act. It is our position that the Organization issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of the Organization's charitable status under paragraph 168(1)(d) of the Act.

2. Failure to devote resources to charitable activities

We reviewed the charitable activity of the Organization as reported on its Registered Charity Information Returns (T3010) since its registration in 1998. We provide the following information:

- For the period 2000 - 2004, the Organization reported negligible revenue and charitable expenses.
- In 2002, Theanon gifted 16,063,637 Archon shares valued at \$30,520,910 to the Organization as reported on Theanon's T3010 for the year ending April 30, 2002. Theanon and the Organization were related through a common director, Blake Bromley. As a result of our review, it is our position that this transaction falls under paragraph 149.1(4.1)(d) in that the Organization failed to expend before the end of its next taxation year (2003) an amount that is no less than the fair market value of the property received, on charitable activities carried on by it or by way of gifts made to qualified donees with which it deals at arm's length.

- In 2005, the Archon shares were sold to Stewart Blusson under a signed agreement.
- In 2005, the Organization reported total revenues of \$2,643,116 comprised of amounts received from other registered charities (\$830,000), interest and investment income (\$1,009,934), and net proceeds from the disposition of assets (\$803,182). None of the proceeds were expended for charitable purposes as the Organization only reported management and administrative expenses of \$2,696,198 on line 5010 in the T3010. In addition, the Organization reported specified gifts to qualified donees of \$31,300,000 on line 5070, however as detailed above, we do not view the transfer of the royalty interest to the Stewart & Marilyn Blusson Foundation as a charitable expenditure. Although it is a gift to a qualified donee, we view the Stewart & Marilyn Blusson Foundation as an organization that does not deal at arm's length with the Organization. As such, this gift should have been included in the calculation of the disbursement quota for 2005 and 2006. As per paragraph 149.1(4.1)(d) of the Act, the Minister may revoke the Organization in this situation.
- For the period 2006 - 2009, the Organization reported negligible revenues and charitable expenditures.
- For the period 2010 - 2015, the Organization reported tax-receipted income of \$8,212,500 on line 4500; however, no charitable expenditures were incurred. A gift was made to two qualified donees during that time totalling \$957,029; however, we believe that paragraph 149.1(4.1)(d) applies.

Our audit determined that the Organization has devoted a significant portion of its resources to private tax planning arrangements through the issuance of \$7,230,999 in receipts for Firebird, Clydesdale and SPT shares. Subsequent to the donation of these shares, the values decreased substantially, and the Firebird and Clydesdale shares which were disposed, were sold for a fraction of their tax-receipted values.³

It is our position that the Organization has operated for the non-charitable purpose of promoting private tax planning arrangements and has structured its affairs for the benefit of private persons to the detriment of the Organization's charitable mandate.

Trust law imposes on a registered charity's directors the obligation to properly manage the assets of a charity. While it is often difficult for directors to foresee whether an asset they propose to acquire on behalf of the charity will be a good investment, the rules of prudent administration require that they take reasonable steps to ensure that the investment is a wise one which will ultimately be favourable for the charity. It is our view the Organization's directors did not acquire the shares for investment purposes since

³ 7,200,000 Firebird shares were sold for \$0.005/share after having been receipted at \$0.60/share. 2,500,000 Clydesdale shares were sold for \$0.025/share after having been receipted at \$0.79/share.

the Organization received minimal investment income during the time the shares were held.⁴

Based on the Organization's limited activities outside of the private tax planning arrangements, a reasonable person could conclude that the acquisition of the Firebird, Clydesdale and SPT shares was entirely orchestrated for the purpose of earning tax credits for the donors. In our view, the Organization has not operated as a registered charity, but as a facilitator of private tax planning arrangements. Furthermore, the directors of the Organization were complicit in these arrangements, and as such, operated/managed the Organization in a manner that is contrary to the purposes for which it was constituted.

Additionally, it is our position that one of the reasons for these transactions was to avoid or unduly delay the expenditure of amounts on charitable activities; and therefore paragraph 149.1(4.1)(a) also applies.

As per subsection 149.1(1) of the Act, a charitable organization must be constituted and operated exclusively for charitable purposes. It is our position that the Organization engaged in private tax planning arrangements in order to confer significant tax benefits on private persons. Operating for the benefit of a private person is not a charitable purpose. As such, we believe there is sufficient grounds to revoke the charitable status of the Organization under paragraph 168(1)(b), 148.1(3)(b) and 149.4(4.1)(d) of the Act.

The Organization's options:

a) Respond

If the Organization chooses to respond, send written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter to the address below. After considering the response, the Director General of the Charities Directorate will decide on the appropriate course of action. The possible actions include:

- no compliance action;
- issuing an educational letter;
- resolving the issues through a Compliance Agreement;
- applying penalties or suspensions or both, as described in sections 188.1 and 188.2 of the Act; or
- issuing a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

⁴ The Organization has reported investment income of \$8,500 on its investments for 2010/2011. No investment income was reported for 2012 to 2015.

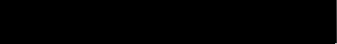
b) Do not respond

The Organization may choose not to respond. In that case, the Director General of the Charities Directorate may issue a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

If the Organization appoints a third party to represent it in this matter, send us a written request with the individual's name, the individual's contact information, and explicit authorization that the individual can discuss the file with us.

If you have any questions or require further information or clarification, do not hesitate to contact me at the numbers indicated below. My team leader, Sherri Davis, may also be reached at 250-363-3128.

Yours sincerely,

John Dumalski, 
Audit Division
Vancouver Island and North Tax Services Office

Telephone: 250-363-6338
Facsimile: 250-363-3000
Address: 9755 King George Blvd.
Surrey BC V3T 5E1

CRA
Surrey NVCC
FEB 04 2019
ARC
CNVR de Surrey

January 31, 2019

Audit Division
Vancouver Island and North Tax Service Office
9755 King George Blvd.
Surrey BC V3T 5E1

Attention: John Dumalski, [REDACTED]

Dear Sirs:

RE: Administrative Fairness Letter to HSEF Renaissance Academy.
BN: 88520 5427 RR0001 YOUR FILE NUMBER: 3007459

We write in response to the Administrative Fairness letter ("AFL") dated October 25, 2018 relating to the audit of the operations of HSEF Renaissance Academy (the "Organization") for the period December 1, 2009 to November 30, 2015.

We will confine our responses to the areas of non-compliance set out in the AFL which relate to the current audit.

Issuing official income tax receipts not in accordance with the Act

The AFL states that the "Organization has contravened the Act by accepting and issuing receipts for transactions that do not qualify as gifts by participating in private tax planning arrangements. The Organization issued tax receipts totaling \$7,230,999 for donations of publicly traded securities. We have determined that the properties for which the tax receipts were issued were not a gift at law. The Business Equity Valuations area of the CRA reviewed the tax-receipted values which were used by the Organization for the donation of the Firebird, Clydesdale and SPT shares during the period 2011 to 2015. These valuations indicated that the tax receipted values for the donation of shares of Firebird Resources Inc. Clydesdale Resources Inc. and SPT Sulphur Polymer Technologies Inc. were grossly inflated."

To begin, characterizing the tax-receipted values as 'grossly inflated' is a bold statement and inappropriate to include in an AFL which did not provide the Organization with any working papers or supporting documentation of the analysis for the BEV findings which has led to the characterization of the tax receipted values for the donation of shares as *grossly inflated*.

The AFL further states that "based upon the review by BEV, it was determined that even though the aforementioned shares were traded on a listed stock exchange, the volume of shares donated far exceeded the daily average volume of shares traded. As a result, if a person was to sell the specific number of shares on the open market at once, it would have saturated the market, thereby causing the price to decrease. The lower share price is a result of a block discount related to the high volume of shares donated at once."

[REDACTED]

The Canada Revenue Agency (CRA) states that fair market value ("FMV") "is normally the highest price, expressed in dollars, that property would bring in an open and unrestricted market, between a willing buyer and a willing seller who are knowledgeable, informed, and prudent, and who are acting independently of each other." The BEV valuation primarily relies on the assumption that these transactions equate to flooding the market which would result in a lower trading price and a high-volume transaction would result in a block discount. We disagree that the valuation of shares is best determined by assuming that this transaction should be viewed as if these shares flooded the market on a single day triggering a feeding frenzy that would result in a fire-sale price. We also disagree that based on a large volume sale, a block discount must necessarily apply. It is difficult to argue (or for CRA to defend for that matter) the BEV analysis considering it is based on an event that didn't happen. Further, both CRA and the sector use the trading price of publicly traded shares as an acceptable valuation and reasonable practice. It is difficult to fathom how any well-informed buyer or seller or donor or donee could better determine a valuation than by using the trading price of the day and awareness of the historical trading profiles or how any alternative valuation based on an event that didn't happen or on future valuations that were not available at the time of the donation could be considered more valid or more reasonable.

It is also necessary to consider the fact that the Organization will not fully realize the value of property it holds until such time as it divests itself of the property. Liquidating at a loss is not necessarily prudent and for investments still held by the Organization, a book loss or write-down is moot. It is difficult to determine when it is prudent and in the best interests of the Organization to sell shares that have lost value. We cannot disagree that hindsight would be very helpful as sometimes, the best decision is to sell and 'cut your losses' and other times, it is perhaps best to hold the shares for the long-term. The Organization did sell the Firebird shares and suffered a loss. However, during the audit period, the Organization retained the majority of the Clydesdale shares and the SPT shares. You have noted that the shares were written down in the audit years but an unrealized loss or gain, is exactly that - unrealized. Further, it should be noted that the write-downs shown on the financial statements at each fiscal year end reflect the trading price of the shares on the final day of the fiscal year. The Organization will only fully realize the value of property when it sells its share holdings or gifts the shares to another Qualified donee and quite likely, the valuation of the shares on such transactions would be determined by the trading price of the shares and recorded in the financial statements accordingly.

Further, I was legal counsel to a different donor (Donor A) who donated a large block of publicly traded shares to a registered charity. CRA was approached and asked whether the Official Donation Receipt (the "ODR") could have a higher value than the trading price because of the break-up value. CRA said that the ODR should use the trading price on the day of the donation. Consequently, it is evidence of both prejudice and bias that a donor should be maligned as "participating in a private tax planning arrangement" because the ODR was not based upon an appraisal.

The AFL alleges that the transfer was "not a gift at law." The standard of review of questions of law is "correctness". The AFL states:

In order to qualify as a charitable donation, there must be a true gift at common law. A true gift is a voluntary transfer of property from a donor, who must freely dispose of the property to a donee who receives the property given. The transaction may not result directly or indirectly in any right, privilege, benefit or advantage to the donor or to the person designated by the donor.

The AFL makes no allegation that the property was not voluntary and freely given. The Organization undoubtedly received the property. CRA's statement of the law is that the transaction may not result in any advantage to the donor. This statement of law incontrovertibly fails the correctness test because the ODR is required by ITR 3500(1)(h.1) to include "a description of the advantage, if any, in respect of the gift and the amount of that advantage". Also, given that the ITA contains a statutory definition of "advantage",

it is difficult to understand CRA's interpretation of ITA ss. 248(32) in the context of the AFL's test of why the transfer was "not a gift at law".¹

The AFL cites *Woods J* listing the four requisite elements of a "gift" in *Coombs et al v. The Queen*, 2008 DTC 4004, as indicia of the taxpayer having "a donative intent". The AFL does not allege that the donor failed to meet a single one of the four tests so it is unclear why this jurisprudence establishes a lack of donative intent.

The AFL also cites *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 as authority for the legal proposition "that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor". CRA is entirely ignoring the statutory provision in subsection 248(30) which deals with intention to give and says that the advantage can be 80% of the fair market value of the transferred property.

Failure to devote resources to charitable activities

The AFL states "It is our position that the Organization has operated for the non-charitable purpose of promoting private tax planning arrangements and has structured its affairs for the benefit of private persons to the detriment of the Organization's charitable mandate." The Organization's mandate is to encourage donors to make gifts to fund qualified donees. The AFL does not explain as to what the private tax planning arrangement consisted of and why the Organization is not in compliance with the Act.

The AFL also reports that "the Organization's directors did not acquire the shares for investment purposes since the Organization received minimal investment income during the time the shares were held." We trust you can appreciate that an investment portfolio of publicly traded shares does not always produce income. Further, the Organization anticipated that its holdings would increase in value.

The AFL also states that in CRA's view, one of the reasons for "these transactions was to avoid or unduly delay the expenditure of amounts of charitable activities". To begin, we are not clear as to what transactions "these transactions" reference. However, we advise that the auditor was fully aware that the Organization was operating on the understanding that it had a large Disbursement Quota excess carry forward and it was applying to the disbursement quota excess to the shortfalls of the years under the current audit. The CRA's determination that the Organization did not have a disbursement quota excess has not been fully addressed. Accordingly, an education letter is reasonable.

The AFL also reports that as "per paragraph 149.1(4.1)(d) of the Act, the Minister may revoke the Organization in this situation." We understand that "this situation" is based on a CRA determination of non-arm's length relationships that have not been fully addressed or documented. This determination is not only subjective, it is also a determination of CRA subsequent to the audit years. At the very least, because the determination is based on a subjective determination of relationships between parties, the reasonable response is an education letter.

CONCLUSION

The summarize, the Organization makes note of the following concerns set out in the AFL:

- 1. The absence of the statutory basis for revoking the charitable status because of "participating in a private tax planning arrangement" because this is not identified in the statutory provisions cited

in the AFL.

2. CRA taking the position that it has the power to revoke based upon non-compliance with CRA's administrative policies absent an express statutory authority for revocation.
3. CRA's position that it is not reasonable to value a donation of publicly traded corporations by the trading price of the date of the donation.
4. CRA's position that future values upon disposing of publicly traded shares is relevant to the valuation of the official donation receipt issued to the donor based on the trading price on the day of the gift of the shares.
5. Given that the ITA contains a statutory definition of "advantage", CRA's interpretation of ITA ss. 248(32) in the context of the AFL's test of why the transfer was "not a gift at law".
6. The AFL cites Woods J listing the four requisite elements of a "gift" in *Coombs et al v. The Queen*, 2008 DTC 4004, as indicia of the taxpayer having "a donative intent". The AFL does not allege that the donor failed to meet a single one of the four tests so it is unclear why this jurisprudence establishes a lack of donative intent.
7. The AFL cites *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453 as authority for the legal proposition "that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor". CRA is ignoring the statutory provision in subsection 248(30) which deals with intention to give and says that the advantage can be 80% of the fair market value of the transferred property.
8. Lack of jurisprudential or statutory authority provided in support of the purported statement of law in the AFL, "the intent of the donor must, in other words, be entirely donative".
9. The Organization being subjected to the BEV analysis without being provided with the BEV analysis and report so that the Organization could not fully respond to CRA's position.
10. CRA's position that the ODR, using the daily trading value, is grounds for any more than an education letter.

Summary

The AFL begins by stating that "the Foundation must comply with the law; if it does not, its registered status may be revoked in the manner described in section 168 of the Act." The AFL concludes by noting "we believe there is [sic] sufficient grounds to revoke the charitable status of the Foundation under paragraph 168(1)(b) of the Act."

In response, the Organization notes that it is trite law that the decision of the Minister to send a notice of revocation under s-s. 168(1) must be arrived at in a manner enabling the Minister to create a record sufficiently complete to be used by [the Federal Court of Appeal] in deciding the appeal. This



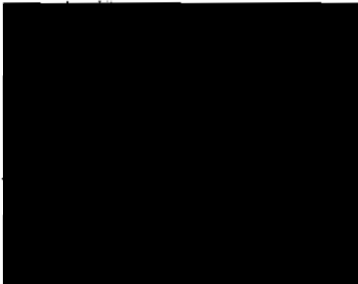
The law further states that charities at risk of de-registration must be "fully informed of the case to be met and [be] given a full opportunity to respond."² Although the de-registration under paragraph 168(1)(b) is threatened by the AFL, the content of the AFL leaves me truly unable to understand the case to be met.

It is unfortunate that the views of CRA set out in the AFL have caused the Organization to feel that it is necessary to respond in writing. The Organization is mindful of wasting its resources to respond in any further detail with the technical and legal arguments addressing the administrative positions adopted by CRA.

Further, in its 2018 fiscal year, the Organization intended to carry on charitable programs in furtherance of its charitable purposes but found that it does not have the operational capacity to do so.

Consequently, as a result of the realization that the Organization does not have the operational and resource capacity to carry out charitable activities and that the AFL lists revocation as a possible action, the directors made the decision to wind up its operations and therefore has requested voluntary revocation. We include a copy of the request for your files.

Sincerely,



Encl.

² Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 23.

HSEF Renaissance Academy

c/o Suite 1250 – 1500 West Georgia Street
Vancouver, BC V6G 2Z6
604.683.7006

January 30, 2019.

Canada Revenue Agency
Charities Directorate
Ottawa, Ontario
K1A 0L5

Dear Sirs:

**Re: HSEF Renaissance Academy (the "Charity")
Business Number 885205427 RR0001
REQUEST FOR VOLUNTARY REVOCATION**

The members and directors of the Charity have determined that they are not able to properly carry on the activities of the Charity as they lack the organizational capacity and human resources to implement programs. Accordingly, the members and directors have decided to request voluntary revocation of registered charity status for the Foundation. The Charity will shortly attend to submitting its T3010 and financial statements for the fiscal period ended November 30, 2018.

Accordingly, please commence voluntary revocation proceedings and provide us with the necessary forms related to the filings after revocation.

Sincerely,

HSEF RENAISSANCE ACADEMY

Per. 

LESLIE BRANDLMAYR
Director