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ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

1. OVERVIEW

- [1] Staff of the Ontario Securities Commission has alleged that Raymond Pomroy made misleading or untrue statements in news releases and filings, contrary to section 126.2(1) of the *Securities Act*¹ (the **Act**) and also that he thereby engaged in conduct contrary to the public interest.
- [2] Staff and Pomroy seek approval of a settlement agreement dated February 26, 2024 that they have entered into regarding these allegations (the **Settlement Agreement**). We conclude that it is in the public interest to approve the settlement for the following reasons.

2. FACTS AND ADMISSIONS

- [3] The relevant factual background and admissions are set out in more detail in the Settlement Agreement, but we summarize the most important agreed facts and admissions here.
- [4] From September 2019 to November 19, 2021, Pomroy served as the Chief Executive Officer of SoLVBL Solutions Inc. (**SoLVBL**), a reporting issuer in Ontario. SoLVBL's shares trade on the Canadian Securities Exchange and on the United States over-the-counter Pink Sheets.
- [5] Ahmed Kaiser Akbar was a founder of and initial investor in SoLVBL's predecessor. During the period from April to July 2021, Akbar acted as a consultant and served as legal counsel for SoLVBL. Along with his spouse, Akbar owned over 10% of the shares of SoLVBL.
- [6] On April 23, 2021, SoLVBL signed a private placement financing proposal with broker Research Capital Corporation (**Research Capital**) at an indicative price of

¹ RSO 1990, c S.5

\$0.15 per unit (comprised of one SoLVBL share and one warrant). The agreement provided that the price would be reconfirmed prior to the launch of the private placements.

- [7] SoLVBL had an incentive to keep the price of its shares as high as possible in advance of the private placements in order to raise more funds and minimize the dilution of the shares of the existing shareholders.
- [8] Four days after the agreement with Research Capital, on April 27, 2021, Akbar incorporated New Foundation Technologies Corp. (**New Foundation**) in Ontario with himself as the sole officer and director. SoLVBL and New Foundation entered into an Intellectual Property Licensing Agreement effective April 29, 2021 which granted New Foundation an exclusive, worldwide license to use SoLVBL's intellectual property for the creation of non-fungible tokens (or NFTs) (the **NFT Deal**). Other than the execution of the Licensing Agreement, no work was done on the NFT Deal and New Foundation does not appear to have conducted any business outside of signing the Licensing Agreement.
- [9] In May and June 2021, SoLVBL issued two news releases regarding the NFT Deal that contained false and misleading information (the **News Releases**). SoLVBL's Management Discussion & Analyses from May 31, 2021 to May 1, 2022 repeated some of the same false and misleading statements regarding New Foundation and the NFT Deal. These false and misleading statements would reasonably be expected to have had a significant effect on the market price or value of the SoLVBL shares. The News Releases were drafted by Akbar and reviewed and approved by Pomroy. Pomroy relied on Akbar, SoLVBL's legal counsel, for the information provided regarding New Foundation but did nothing to verify that information.
- [10] The News Releases:
 - a. created the misleading impression that SoLVBL was entering into a deal with an established international company;
 - b. created the misleading impression that SoLVBL submitted a competitive proposal in an RFP process in order to win the contract with New Foundation;and

c. did not disclose the relationship between SoLVBL and New Foundation and important facts about the NFT Deal, including that all of New Foundation's investors were also shareholders of SoLVBL who were funding SoLVBL's operations with loans to the company and had an interest in SoLVBL successfully raising capital in the upcoming private placements.

[11] Following the announcement of the NFT Deal in the News Releases, SoLVBL finalized the terms of two private placements with Research Capital. The private placements occurred in July 2021 and raised a total of \$4 million. Following the private placements, SoLVBL paid off debts owed to various insiders, including Akbar, and paid unpaid salary owed to Pomroy.

3. THE SETTLEMENT AGREEMENT

3.1 Key Terms of the Settlement Agreement

[12] Staff and Pomroy have agreed that Pomroy will pay an administrative penalty of \$75,000 to the Commission, and costs of the Commission's investigation in the amount of \$15,000. In accordance with the terms of the Settlement Agreement, Pomroy paid these amounts to the Commission before this hearing.

[13] The parties have also agreed that:

a. Pomroy will immediately resign any position he holds as a director or officer of a reporting issuer and will be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 5 years; and

b. Pomroy will provide an undertaking to the Commission to: (i) complete an education course no more than one year before the date on which he becomes a director or officer of a reporting issuer, (ii) cooperate with Staff's investigation and testify as a witness in any proceeding commenced or continued by the Commission relating to the matters set out in the Settlement Agreement, and (iii) meet with Staff in advance to prepare to testify. In accordance with the terms of the Settlement Agreement, Pomroy provided this undertaking to the Commission before this hearing.

3.2 Our Consideration of the Settlement Agreement

- [14] We have reviewed the Settlement Agreement in detail. In addition, we had the benefit of a confidential settlement conference (as well as follow-up communications) with OSC Staff and Pomroy's counsel.
- [15] Our role at this settlement hearing is to determine whether the negotiated result in the Settlement Agreement falls within a range of reasonable outcomes, and whether it is in the public interest to approve the settlement.² The Settlement Agreement is the product of negotiation between Staff and Pomroy. When considering settlements for approval, the Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties.³ We have done so in this case.
- [16] We have taken into consideration the agreed mitigating factor that Pomroy has been granted credit for cooperation by Staff pursuant to OSC Staff Notice 15-702 *Revised Credit for Cooperation Program* for cooperating fully with the investigation, including by providing the undertaking.
- [17] Pomroy asked, and Staff did not object, that we consider several additional factors. We have done so. Those factors are detailed in the Settlement Agreement. They include that Pomroy had no previous experience as an officer of a public company, Pomroy relied on Akbar as a corporate and securities lawyer with approximately 22 years of experience, Pomroy did not benefit from his role as CEO other than to receive his negotiated salary, and Pomroy is making the required settlement payments from his personal funds. While some of these additional factors may be mitigating, we do not necessarily agree that they all are.
- [18] We initially struggled with the sufficiency of the amount of the administrative penalty agreed by the parties, from the perspective of the public interest. We asked questions of counsel and heard their submissions on this point in the confidential settlement conference. We ultimately defer to the parties' ability to negotiate the settlement terms and are satisfied, given all of the circumstances,

² *Research in Motion Limited (Re)*, 2009 ONSEC 19 at paras 45-46

³ *Katanga Mining Limited (Re)*, 2018 ONSEC 59 at para 18

that the terms of the Settlement Agreement (including the administrative penalty) fall within a reasonable range of outcomes.

[19] In arriving at our decision, we have applied the relevant factors from the non-exhaustive list of factors the Tribunal has identified as relevant to sanctions orders in general.⁴

4. CONCLUSION

[20] In our view, the terms of the Settlement Agreement fall within a range of reasonable outcomes in the circumstances. The Settlement Agreement also properly reflects the principles underlying the application of sanctions, including recognition of the seriousness of the misconduct, the need for specific and general deterrence of such misconduct, and the importance of fostering investor protection and confidence in the capital markets.

[21] For these reasons we conclude that it is in the public interest to approve the Settlement Agreement. We will therefore issue an order substantially in the form of the draft attached to the Settlement Agreement.

Dated at Toronto this 8th day of March, 2024

"Andrea Burke"

Andrea Burke

"Mary Condon"

Mary Condon

"William Furlong"

William Furlong

⁴ *Belteco Holdings Inc (Re)* (1998), 21 OSCB 7743 at paras 23-26