



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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Citation: Bernholtz (Re), 2019 ONSEC 16

Date: 2019-05-21

File No.: 2018-16

**IN THE MATTER OF  
MARTIN BERNHOLTZ**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT  
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

**Hearing:** May 21, 2019

**Decision:** May 21, 2019

**Panel:** Timothy Moseley Vice-Chair and Chair of the Panel  
Garnet Fenn Commissioner  
Heather Zordel Commissioner

**Appearances:** Matthew H. Britton For Staff of the Commission

Kevin Richard For Martin Bernholtz

## REASONS AND DECISION

*The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.*

- [1] Martin Bernholtz is a former director of Titan Medical Inc. (**Titan**). In 2016, he sold shares of Titan at times when he knew that Titan would soon be commencing a public offering. That information had not been generally disclosed. Staff of the Commission and Mr. Bernholtz have agreed that this conduct was contrary to the public interest, and they have jointly submitted a settlement agreement for our approval. We conclude that it would be in the public interest to approve that settlement agreement.
- [2] The relevant facts are set out in detail in the settlement agreement, and we need not repeat them all here. In essence, on two occasions in early 2016, Mr. Bernholtz and other members of the board of directors were advised of imminent public offerings of Titan shares and warrants. On each occasion, and before the offering had been publicly announced, Mr. Bernholtz sold some of his shares of Titan. Had Mr. Bernholtz not sold the shares in advance of the announcements, those shares would have been worth, in total, approximately \$133,000 less in the days following the two announcements.
- [3] Titan had an insider trading policy. That policy applied to Mr. Bernholtz. Mr. Bernholtz was aware of the policy and he knew that it applied to him. The policy prohibited Titan's directors, among others, from buying or selling Titan's securities while in possession of material non-public information. The policy also required Mr. Bernholtz, among others, to seek Titan's approval before trading shares of Titan.
- [4] Mr. Bernholtz did not seek Titan's approval before selling his shares. He acknowledges that he ought to have done so, and that he ought to have conducted a more careful assessment of the materiality of the information he possessed.
- [5] Staff and Mr. Bernholtz have agreed to various sanctions and other measures. The principal terms of the settlement are as follows:
  - a. Mr. Bernholtz has agreed to make a voluntary payment of \$225,000, and he has paid that amount to Staff pending approval of the settlement;
  - b. Mr. Bernholtz has agreed to pay costs of \$75,000, and he has paid that amount pending approval of this settlement;
  - c. Mr. Bernholtz will immediately resign any position that he holds as a director or officer of any reporting issuer or registrant, and he will be prohibited from taking on any such role for seven years; and
  - d. Mr. Bernholtz will be prohibited from acquiring any securities for three years and 45 days, and will be prohibited from trading any securities or derivatives for a three-year period beginning July 5, 2019.
- [6] The Commission's role at a settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to make the order requested.

- [7] We have reviewed this settlement in detail, and we conducted a confidential settlement conference with counsel for both parties. We asked questions of counsel and heard their submissions.
- [8] We recognize that the agreement is the product of negotiation between Staff and Mr. Bernholtz. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.
- [9] We have also taken account of the fact that approval of this settlement would resolve the matter promptly, efficiently and with certainty. A settlement avoids the expenditure of significant resources that would be associated with a contested hearing.
- [10] The payment of costs helps to reduce the burden on market participants to pay for investigations and enforcement proceedings.
- [11] In our view, the terms of the settlement fall within a range of reasonable outcomes in the circumstances. The settlement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.
- [12] For these reasons, we conclude that it is in the public interest to approve the settlement. We will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 21<sup>st</sup> day of May, 2019.

"Timothy Moseley"  
Timothy Moseley

"Garnet Fenn"  
Garnet Fenn

"Heather Zordel"  
Heather Zordel