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## REASONS AND DECISION

### I. INTRODUCTION AND BACKGROUND

- [1] Keir Reynolds (**Reynolds** or the **Respondent**) entered into a settlement agreement with the Executive Director of the British Columbia Securities Commission (**BCSC**) on July 3, 2018 (the **Settlement Agreement**).<sup>1</sup> In the Settlement Agreement Reynolds admitted to insider trading contrary to section 57.2(2) of the *British Columbia Securities Act* (the **BC Act**).<sup>2</sup>
- [2] In the Settlement Agreement Reynolds agreed to pay \$15,000 to the BCSC and to be subject to certain non-monetary sanctions under the BC Act. Pursuant to the Settlement Agreement the BCSC ordered<sup>3</sup> that:
- a. under section 161(1)(d)(i) of the BC Act, Reynolds resign any position he holds as a director or officer of an issuer that issues securities to the public;
  - b. under section 161(1)(d)(ii) of the BC Act, Reynolds is prohibited for three years from becoming or acting as a director or officer of any issuer that issues securities to the public; and
  - c. under section 161(1)(b)(ii) of the BC Act, Reynolds is prohibited for three years from trading in or purchasing any securities or exchange contracts of an issuer he is in a special relationship with, except that he may receive their securities as payment for services he provided to them (the **Compensation Shares**) pursuant to a valid agreement (the **Agreement**) and on the condition that he is not permitted to trade the Compensation Shares until the earlier of:
    - i. three months after the Agreement has concluded, or
    - ii. the three year ban under section 161(1)(b)(ii) has expired,provided he is otherwise entitled to do so under all applicable laws and regulations.
- [3] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) relies on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**)<sup>4</sup> and requests that the Commission issue an order that replicates the non-monetary sanctions imposed by the BCSC.
- [4] For the reasons that follow, I find that it is in the public interest to issue an order substantially in the form requested by Staff.

### II. BRITISH COLUMBIA SECURITIES COMMISSION SETTLEMENT

- [5] The Settlement Agreement sets out the following agreed facts.<sup>5</sup>
- [6] Reynolds was a director, and later the Chairman and CEO, of Mezzi Holdings Inc. (**Mezzi**), a company involved in the wearable smart technology industry.

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<sup>1</sup> *Reynolds (Re)*, 2018 BCSECCOM 195 (**Settlement Agreement**)

<sup>2</sup> RSBC 1996, c 418

<sup>3</sup> *Reynolds (Re)*, 2018 BCSECCOM 196 (**BCSC Order**)

<sup>4</sup> RSO 1990 c S.5

<sup>5</sup> Settlement Agreement at para 1

- [7] Mezzi entered into a reverse takeover transaction (**RTO**) whereby it was to be vended into a public company (the **Issuer**) which traded on the TSX-V and the Borse Frankfurt. The letter of intent with respect to the RTO was first publicly disclosed on April 25, 2014, however Reynolds had knowledge of undisclosed material information concerning the pending RTO from at least February 2014 by virtue of his position as a Director and Officer of Mezzi.
- [8] Between February 2014 and April 2014, with knowledge of the undisclosed material information concerning the RTO, Reynolds funded and directed trades in the Issuer in the account of another individual. Neither Reynolds nor the individual who held the account made any profit from this trading.
- [9] In the Settlement Agreement Reynolds agreed that by trading shares of the Issuer he contravened section 57.2(2) of the BC Act.
- [10] In his submissions to this Hearing Panel, Reynolds pointed out several errors in the Agreed Statement of Facts relating to certain facts and timelines. I agree with Staff's submissions that the facts the Respondent submits are incorrect do not affect the finding of misconduct admitted to by the Respondent and do not impact the terms of the BCSC Order which Staff seeks to reciprocate.
- [11] The Commission has previously held, and I concur, that inter-jurisdictional enforcement proceedings such as this are not intended to re-litigate the factual findings of securities regulatory authorities in other jurisdictions, but rather to hear evidence and submissions with respect to the terms of an appropriate reciprocal order.<sup>6</sup>

### **III. SERVICE AND PARTICIPATION**

- [12] Staff brought this proceeding under the expedited procedure provided in Rule 11(3) of the Commission's *Rules of Procedure*, which permits the hearing to be conducted in writing.<sup>7</sup>
- [13] Reynolds was served via email on October 26, 2018, with the Notice of Hearing, Statement of Allegations, Staff's written submissions, and hearing brief.<sup>8</sup> He was also served via courier at his home address.<sup>9</sup>
- [14] Pursuant to Rule 11(3) of the *Rules of Procedure* the deadline for the Respondent to serve and file written submissions was November 23, 2018. On November 19, 2018, the Office of the Secretary received an email from Counsel for Reynolds, indicating that he had just been retained and requesting an adjournment of two weeks to prepare written submissions. The request was granted by the Chair of the Panel on November 20, 2018. The new deadline for filing written submissions was December 6, 2018. On December 6, 2018, Counsel for Reynolds filed a hearing brief,<sup>10</sup> brief of authorities and written submissions. Staff of the Commission filed their Reply Submissions on December 18, 2018, in accordance with Rule 11(3)(h) of the *Rules of Procedure*.

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<sup>6</sup> *Black (Re)*, 2014 ONSEC 16, (2014) 37 OSCB 5847 at para 24

<sup>7</sup> *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988 (the **Rules of Procedure**)

<sup>8</sup> Exhibit 1, Staff's Hearing Brief

<sup>9</sup> Exhibit 2, Affidavit of Service of Lee Crann, sworn October 30, 2018 at para 4

<sup>10</sup> Exhibit 3, Respondent's Hearing Brief

## IV. ANALYSIS

### A. Introduction

- [15] The BCSC is a securities regulatory authority. Paragraph 5 of subsection 127(10) of the Act provides for inter-jurisdictional enforcement where a person or company has agreed with a securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements. Reynolds agreed to be made subject to sanctions, conditions, restrictions or requirements in the Settlement Agreement with the BCSC, thereby satisfying the criteria set out in paragraph 5 of subsection 127(10).<sup>11</sup>
- [16] In his written submissions the Respondent has admitted that the threshold under paragraph 5 of subsection 127(10) has been met, and therefore I must determine what sanctions, if any, should be ordered against the Respondent pursuant to subsection 127(1) of the Act.

### B. Statutory authority to make public interest orders

- [17] Subsection 127(1) empowers the Commission to make orders where it is in the public interest to do so. The Commission is not required to make an order similar to that made by the originating jurisdiction. Rather, the Panel must first satisfy itself that an order for sanctions is necessary to protect the public interest in Ontario and then consider what the appropriate sanctions should be.<sup>12</sup>
- [18] Orders made under subsection 127(1) of the Act are “protective and preventive” and are made to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. Such orders are not punitive in nature.<sup>13</sup> The panel in *Mithras Management Ltd. (Re)* explained it this way:

[T]he role of this Commission is to protect the public interest by removing from the capital markets -- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be...<sup>14</sup>

- [19] The Respondent argues in his written submissions that by reciprocating the BC Order the order requested by Staff is punitive in nature. He argues that imposing the requested order would only serve to punish his past conduct, as the order is not protective or preventive.

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<sup>11</sup> Settlement Agreement at para 1

<sup>12</sup> *Elliot (Re)*, 2009 ONSEC 26, (2009) 32 OSCB 6931 at para 27

<sup>13</sup> *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, [2001] 2 SCR 132, 2001 SCC 37 at paras 42-43 (**Asbestos**)

<sup>14</sup> *Mithras Management Ltd. (Re)* (1990), 13 OSCB 1600 at pages 10-11

- [20] With respect, I disagree. The requested order reciprocates the non-monetary sanctions Reynolds agreed to with the BCSC and aims to protect the public interest in Ontario.<sup>15</sup> I find that the terms of the order requested by Staff under section 127(1) of the Act are in the public interest and granting the order in Ontario is not punitive.
- [21] When asked to reciprocate an order from another Canadian jurisdiction, the Commission must make its own determination of what is in the public interest.<sup>16</sup>
- [22] It is also important that the Commission be aware of and responsive to an interconnected, inter-provincial securities industry. The threshold for reciprocity is low.<sup>17</sup> A low threshold is supported by the principle found in section 2.1 of the Act, which provides that “[t]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes.”<sup>18</sup>
- [23] In exercising its jurisdiction to make an order in reliance on subsection 127(10) of the Act, the Commission does not require that the underlying conduct have a connection to Ontario.<sup>19</sup> However, it is noted from the evidence that the shares in the Issuer were listed on the TSX-V, a recognized stock-exchange in Ontario.

## **C. Appropriate Sanctions**

### **1. Respondent’s Submissions**

- [24] In his written submissions Reynolds submits that an order reciprocating the sanctions he agreed to in the Settlement Agreement with the BCSC would not be in the public interest. For the reasons that follow, I disagree.
- [25] The burden lies with the Respondent to demonstrate that the BCSC Order should not be reciprocated by the Commission. In *JV Raleigh* the hearing panel set out the test a respondent must meet to show that reciprocating the order of the foreign jurisdiction would be contrary to the public interest: there was no substantial connection between the Respondent and the originating jurisdiction, that the order of the regulatory authority in the originating jurisdiction was procured by fraud, or that there was a denial of natural justice.<sup>20</sup>
- [26] The Respondent has not demonstrated that any of these factors apply to his Settlement Agreement or the BCSC Order.

### **2. Consent to Regulatory Order in Other Jurisdictions**

- [27] In the Settlement Agreement Reynolds consented to, “a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out in paragraph 2” of the BCSC Order.<sup>21</sup> Despite this consent, Reynolds requests this Commission refrain from reciprocating the sanctions imposed by the BCSC.

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<sup>15</sup> *Asbestos* at para 43

<sup>16</sup> *Euston Capital Corp (Re)*, 2009 ONSEC 23, (2009) 32 OSCB 6313 at para 44

<sup>17</sup> *JV Raleigh Superior Holdings Inc (Re)* 2013 ONSEC 18, (2013) 36 OSCB 4639 at para 21 (**JV Raleigh**)

<sup>18</sup> The Act, s 2.1

<sup>19</sup> *Won Sang Shen Cho (Craig Cho)*, 2014 ONSEC 20, (2014) 37 OSCB 7285 at para 48

<sup>20</sup> *JV Raleigh* at para 26

<sup>21</sup> Settlement Agreement at para 3

- [28] The Commission previously considered this issue in *Lee (Re)*. In *Lee* the hearing panel held, “in the absence of compelling circumstances...it would be contrary to the public interest to permit a respondent to avoid the consequences of a commitment previously given to a securities regulatory authority in another jurisdiction.”<sup>22</sup>
- [29] I do not find any compelling circumstances in the present case that would allow Reynolds to alter his commitment to the BCSC.

### 3. Sanctioning Factors

- [30] In determining specific sanctions, the Commission may consider a number of factors including the seriousness of the misconduct, the respondent’s experience in the marketplace, specific and general deterrence, the effect any sanction might have on the livelihood of the respondent, and any aggravating or mitigating factors.<sup>23</sup>
- [31] Reynolds argues that because his breach of the BC Act was an isolated incident, he did not make a profit<sup>24</sup> or avoid a loss, and he misunderstood the legality of the impugned trades, his conduct is less serious in nature than the typical insider trading offence. The fact remains that insider trading is a serious offence and among the most egregious contraventions of the Act. Both the BCSC and this Commission have held that insider trading is the type of conduct that erodes public confidence in the capital markets.<sup>25</sup> Also, it is not for this hearing panel to consider facts that were not contemplated by the BCSC in the Settlement Agreement. I find that in this hearing the arguments made by Reynolds with regards to the circumstances of his conduct do not lessen the seriousness of the offence.
- [32] Reynolds submits that at the time of the misconduct he was both experienced and active in the capital markets. He states that his misconduct was a result of his misunderstanding of one aspect of securities law, and the rest of his extensive activity in the capital markets was lawful. I accept the Respondent’s submissions that his breach of the BC Act was an isolated incident, however, a market participant with his level of experience and activity in the marketplace should have known that the impugned trades were contrary to the BC Act.
- [33] Reynolds provided evidence of enrollment in an educational course and states that he has been in communication with various securities exchanges to work towards his lawful participation in the marketplace. He submits that these steps demonstrate that he is not at risk of future misconduct and therefore no threat to the integrity of the capital markets in Ontario.
- [34] The actions taken by the Respondent in the aftermath of the Settlement Agreement with the BCSC are commendable, however, they do not obviate the purpose of the BCSC Order or its replication in Ontario. It is important that this Commission impose sanctions that will protect Ontario investors by specifically

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<sup>22</sup> *Lee (Re)*, 2018 ONSEC 57 at para 25 (**Lee**)

<sup>23</sup> *Belteco Holdings Inc. (Re)* (1998), 21 OSCB 7743 at 7746-7747; *MCJC Holdings Inc. (Re)* (2002), 25 OSCB 1133 at 1136

<sup>24</sup> Settlement Agreement at para 1

<sup>25</sup> *Torudag (Re)* 2009 BCSECCOM 339 at paras 10-11; *Landen (Re)* (2010), 33 OSCB 9489 at para 56; *Harper (Re)* (2004), 27 OSCB 3937 at para 49

detering the Respondent from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons.

- [35] The Respondent argues in his written submissions that his livelihood has already been severely limited by the BCSC Order and an order from this Commission would further limit his livelihood, his ability to participate in the capital markets and further tarnish his reputation. Reynolds has failed to provide sufficient evidence to demonstrate that his livelihood has been impacted, beyond his submissions. The Respondent agreed to the Settlement Agreement in BC, of which a reasonably expected consequence was the limiting of his ability to participate in the capital markets in that province. I wish to make clear that the order sought by Staff would not be imposing any new sanctions on the Respondent but would be reciprocating in Ontario the sanctions ordered by the BCSC.
- [36] Reynolds made early admissions and agreed to pay a voluntary payment in the amount of \$15,000 to the BCSC pursuant to the Settlement Agreement, prior to the issuance of a Notice of Hearing.<sup>26</sup> The BCSC considered this to be a mitigating factor and so do I.
- [37] I accept Staff's submission that the sanctions imposed by the BCSC are proportionate to the Respondent's misconduct and that it would be appropriate for me to issue a substantially similar order.

#### **D. Differences between BC and Ontario Sanctions**

- [38] Due to differences between the Act and the BC statute, some of the sanctions I impose cannot be identical to those imposed by the BCSC.
- [39] The BCSC prohibited the Respondent from trading in or purchasing "exchange contracts" of an issuer he is in a special relationship with. Subsection 127(1) of the Act does not expressly refer to exchange contracts. The BC Act defines "exchange contract" to mean a futures contract or option that meets certain specified requirements. As a result, Staff seeks an order prohibiting the Respondent from trading in derivatives of any issuer he is in a special relationship with for a three-year period. In the circumstances of this case, it is equally in the public interest to protect Ontario investors and the capital markets by prohibiting the Respondent from trading in derivatives of any issuer he is in a special relationship with for a three-year period. I will therefore make the order requested by Staff.

#### **V. CONCLUSION**

- [40] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff. I will therefore order that:
- a. Pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, Reynolds shall cease trading in any securities or derivatives, or purchasing any securities, of any issuer he is in a special relationship with until July 3, 2021, except that:
    - i. Reynolds may receive their securities as payment for services he provided to them (the **Compensation Shares**) pursuant to a valid

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<sup>26</sup> Settlement Agreement at para 1



agreement (the **Agreement**) and on the condition that he is not permitted to trade the Compensation Shares until the earlier of:

- (a) three months after the Agreement has concluded, or
- (b) July 3, 2021, being the end date of the three-year trading ban pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act,

provided Reynolds is otherwise entitled to do so under all applicable laws and regulations;

- b. Pursuant to paragraph 7 of subsection 127(1) of the Act, Reynolds shall resign any positions that he holds as a director or officer of any issuer that issues securities to the public; and
- c. Pursuant to paragraph 8 of subsection 127(1) of the Act, Reynolds is prohibited until July 3, 2021 from becoming or acting as a director or officer of any issuer that issues securities to the public.

Dated at Toronto this 22 day of January, 2019.

"Robert P. Hutchison"

Robert P. Hutchison