



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

IN THE MATTER OF PAUL DONALD

**STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) allege that:

I. THE RESPONDENT

1. Paul Donald (“Donald”) is a resident of Ontario and is a former Vice President of Research In Motion Limited (“RIM”). Donald was Vice President of a RIM division called CDMA (Code Division Multiple Access). In this role, Donald managed relationships in relation to the sale of Blackberry units with telecom carriers that used CDMA technology in Canada, the United States and Latin America.

II. OVERVIEW

2. On August 20, 2008, Donald attended a RIM golf and dinner function for officers of RIM. Donald sat at a table with, among others, Chris Wormald (“Wormald”), Vice President of RIM’s Strategic Alliances Group. The Strategic Alliances Group was responsible for RIM’s corporate development through acquisitions and licensing.

3. At the function, Donald and Wormald engaged in a conversation involving material facts relating to Certicom Corp. (“Certicom”) that had not been generally disclosed, including that RIM had been in confidential discussions with Certicom relating to a potential acquisition of Certicom by RIM, that RIM had a continuing interest in an acquisition of Certicom, and that Donald understood from Wormald that Certicom’s current share price was dramatically undervalued.

4. On the following day, August 21, 2008, Donald began purchasing securities of Certicom. By September 15, 2008, Donald had purchased 200,000 shares of Certicom (the “Trades”). At the time of the Trades, Donald was in a special relationship with Certicom with knowledge of material facts with respect to Certicom that had not been generally disclosed.

III. BACKGROUND TO ALLEGATIONS

(a) Certicom

5. Prior to being acquired by RIM, Certicom was a provider of cryptography required by software vendors and device manufacturers, including RIM, to embed security in their products. Certicom’s technology was based on elliptical curve cryptography (“ECC”). ECC provides the most security per bit of any known public-key security technology. Devices using ECC require less storage, power, memory and bandwidth than other technologies. Consequently, ECC technology is vital in hand-held communication devices and in providing high-level security assurance.

6. At the time of the Trades, Certicom was a reporting issuer in Ontario and its common shares were listed on the Toronto Stock Exchange (the “TSX”).

(b) RIM

7. RIM is a designer, manufacturer and marketer of wireless devices for the mobile communications market. Its head office is in Waterloo, Ontario. RIM’s common shares are listed on the TSX and the NASDAQ Stock Market.

8. RIM began licensing Certicom’s security technology in or about May 2000. Beginning in February 2002, RIM and Certicom signed a series of non-disclosure agreements, which culminated in the signing of a non-disclosure agreement on June 17, 2008.

9. Certicom’s ECC technology and intellectual property were vitally important to RIM’s core product, the Blackberry, including maintaining its high-security assurance.

(c) RIM Interest in Acquiring Certicom

10. In February 2007, members of the senior management and boards of directors of RIM and Certicom, including Jim Balsillie (“Balsillie”), RIM’s Co-Chief Executive Officer, Mike Lazaridis, RIM’s President and Co-Chief Executive Officer, Herb Little, RIM’s Director of

Blackberry Security, Wormald, Ian McKinnon, Certicom's then Chief Executive Officer, and Scott Vanstone ("Vanstone"), the founder of Certicom and a member of its board of directors, met to discuss Certicom and its future prospects and the possibility of RIM acquiring Certicom. On or after that meeting, RIM had come to the conclusion that Certicom was a natural fit for RIM.

11. On July 11, 2007, RIM and Certicom entered into a non-disclosure agreement (the "2007 NDA"), which also contained a twelve-month standstill provision. The effect of the standstill provision was to prevent RIM from making an offer to Certicom shareholders without Certicom's consent.

12. Under the 2007 NDA, Certicom provided confidential information to RIM in two tranches prior to September 2008. In September of 2007, Certicom provided RIM with a large package of disclosure pursuant to the 2007 NDA. It included: Certicom's financial year 2008 strategic growth plan and business plan; a detailed list of Certicom patents pending and issued; patent licence agreements, including confidential agreements with Certicom's key customers; a breakdown of Certicom's patent licence revenue; Certicom's patent infringement information; and Certicom's litigation information. The information provided was specifically deemed Confidential Information pursuant to the 2007 NDA and was not publically available.

13. In November of 2007, Certicom's interim Chief Executive Officer put the possible acquisition "on hold" because Certicom anticipated that a permanent CEO would be named by year-end, and the matter should be left to the new CEO.

14. A new CEO of Certicom, Karna Gupta ("Gupta"), was appointed in January of 2008.

15. In February of 2008, Vanstone met with Wormald and asked why RIM appeared disinterested in acquiring Certicom. Vanstone was not aware that Certicom's interim CEO had shut down RIM's due diligence and acquisition discussions. He provided Wormald with an e-mail with a summary of certain licences, and later, a memory stick containing some, but not all, licensing agreements. RIM and Certicom agreed to treat this information as though it was provided pursuant to the 2007 NDA.

16. In March of 2008, Balsillie spoke to Gupta about the potential acquisition. Gupta advised Balsillie he was focusing on fixing the business fundamentals and would only turn his attention to the potential acquisition in a few quarters.

17. Certicom and RIM executed a second non-disclosure agreement on June 17, 2008. This agreement was signed in the ordinary course of their commercial relationship and not in contemplation of an acquisition. It did not contain a standstill provision.

18. The standstill provision of the 2007 NDA expired on July 11, 2008.

(d) Project Troy

19. RIM hired Jamie Belcher (“Belcher”), who began work on July 14, 2008 as Manager, Strategic Alliances. Belcher reported to Wormald. Belcher’s role, at the time, was mainly to assist in evaluating a potential transaction with Certicom, including a hostile bid.

20. On Wormald’s instructions, beginning in early August 2008, Belcher requested the assistance of RIM legal to analyze Certicom’s licence agreements. Belcher also chose a code name for the Certicom transaction. The code name selected was Project Troy and was in use prior to August 20, 2008. A code name was assigned by RIM when a potential transaction reached a point of seriousness.

21. Belcher documented background information and findings of his evaluation of Certicom in a Power-Point presentation, entitled “Acquisition opportunity – Project Troy August 2008” (the “Pitch Book”). Belcher provided daily updates to Wormald as to his progress in evaluating the potential transaction with Certicom and by August 21, 2008, had prepared and circulated a draft Pitch Book, which analyzed the merits of an acquisition of Certicom. The Pitch Book included, among other things:

- a. A number of “value propositions” where the “successful acquisition of Certicom provides RIM with numerous strategic, financial, resource, and product related benefits”;
- b. an “acquisition strategy”, including both friendly and hostile bid scenarios. The friendly bid scenario was characterized as having a “high” likelihood of success.

The hostile bid scenario was characterized as having a “moderate” likelihood of success; and

- c. the following “Next Steps”:
- Engage investment bank and legal advice;
 - Begin preparation of take-over circular;
 - Begin approaching institutional holders re: block trade;
 - Complete detailed integration plan; and
 - Approach Certicom BOD.

(e) The Golf Tournament

22. On August 20, 2008, RIM hosted a golf tournament for its officers, including vice-presidents. Donald and Wormald attended the event, sitting at the same table during dinner. As stated above, Wormald and Donald discussed Certicom, including that

- a. RIM had been in talks with Certicom about a potential acquisition,
- b. Certicom was not interested in a deal at the time;
- c. RIM was speaking to Vanstone, Certicom’s founder and chair of the board of directors;
- d. RIM had an ongoing interest in acquiring Certicom;
- e. Donald knew Certicom’s ex-CEO, Philip Deck, and could attempt to arrange for a meeting if it would assist with the talks; and
- f. based on Certicom’s licensing agreements, Certicom’s share price was dramatically undervalued.

23. On the following day, August 21, 2008, Donald began purchasing securities of Certicom. Donald had never before purchased Certicom securities.

(f) RIM's Insider Trading Policy

24. RIM had an insider trading policy (the "Insider Trading Policy"), which Donald certified yearly to having read and understood and with which he agreed to comply. Among other things, the Insider Trading Policy stipulated that a RIM insider (defined as including RIM officers and employees)

May not buy or sell securities of another public company while in possession of material, non-public information regarding that company, which knowledge was gained in the course of the Insider's work at, or affiliation with, RIM.

25. Schedule A to the Insider Trading Policy contained examples of material information such as "proposed acquisitions of other companies, including take-over bids or mergers". Schedule A also instructed as follows:

An Insider who has a question about materiality of information known to him or her should contact the Chief Financial Officer . . . or the Vice President, Legal. . .

(g) Friendly Discussions Resume

26. In early September 2008, Certicom approached RIM about renewing their friendly discussions, after Certicom had commenced discussions with an unidentified party. Subsequently, Certicom provided more confidential information to RIM.

(h) RIM's Hostile Take-over Offer

27. On December 10, 2008, RIM launched a hostile take-over bid for Certicom. RIM offered to pay \$1.50 per common share for all of the common shares of Certicom.

28. On January 20, 2009, RIM withdrew its offer following an injunction granted to Certicom by the Ontario Superior Court of Justice.

29. After a competing offer from Verisign, Inc. made on January 23, 2009 for \$2.10 per share, RIM and Certicom entered into an arrangement agreement on February 2, 2009, under which RIM would acquire all of Certicom's common shares at \$3.00 per share.

30. On March 23, 2009, Certicom received final court approval for and completed the plan of arrangement with RIM under which RIM acquired all of Certicom's common shares at \$3.00 per share. Certicom's shares were delisted from the TSX on March 25, 2009.

IV. ALLEGATIONS

(a) Donald in a Special Relationship with Certicom

31. At the time of the Trades, Donald was in a special relationship with Certicom because
- a. he learned of material facts with respect to Certicom while he was an insider, officer and employee of RIM, when RIM was a company
 - i. proposing to make a take-over bid of Certicom;
 - ii. proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with Certicom; and/or
 - iii. engaging in business with Certicom; and
 - b. he learned of material facts with respect to Certicom from Wormald, who was in a special relationship with Certicom in circumstances where Donald knew or ought reasonably to have known that Wormald was a person in such a relationship.

(b) Donald Purchased Securities of Certicom

32. Donald acquired 200,000 shares of Certicom during the period August 21 to September 15, 2008 for a total cost of \$305,000.

33. Donald received proceeds of \$600,000 on March 26, 2009 through RIM's offer to acquire all the shares of Certicom. Donald's profit on his trading in shares of Certicom was \$295,000.

(c) Donald Had Knowledge of Material Facts with Respect to Certicom that Had Not Been Generally Disclosed

34. At the time of the Trades, Donald had knowledge of material facts with respect to Certicom that had not been generally disclosed. Specifically, the material facts were that RIM had been in confidential discussions with Certicom relating to a potential acquisition of Certicom by RIM, that RIM was in talks with Vanstone, and that RIM had a continuing interest in an acquisition of Certicom. In addition, Donald understood from Wormald that Certicom's current share price was dramatically undervalued based on Certicom's licensing agreements.

V. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

35. Donald purchased securities of Certicom while in a special relationship with Certicom and with knowledge of material facts about Certicom that had not been generally disclosed, contrary to section 76(1) of the Act.

36. Further, and in any event, in purchasing securities of Certicom in the circumstances, Donald acted contrary to the public interest.

37. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, Ontario, this 20th day of May 2010.