



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

IN THE MATTER OF MARTIN BERNHOLTZ

STATEMENT OF ALLEGATIONS (Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

A. ORDER SOUGHT

Staff of the Enforcement Branch ("**Staff**") of the Ontario Securities Commission (the "**Commission**") request that the Commission make the following orders:

1. that trading in any securities or derivatives by Martin Bernholtz (the "**Respondent**" or "**Bernholtz**"), cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**");
2. that the acquisition of any securities by the Respondent is prohibited permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
3. that any exemptions contained in Ontario securities law do not apply to the Respondent permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;
4. that the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
5. that the Respondent resign any position he holds as a director or officer of an issuer pursuant to paragraph 7 of subsection 127(1) of the Act;
6. that the Respondent be prohibited from being or acting as a director or officer permanently or for such period as is specified by the Commission, pursuant to paragraph 8 of subsection 127(1) of the Act;

7. that the Respondent be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
8. that the Respondent pay an administrative penalty of not more than \$1 million for each failure by the Respondent to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
9. that the Respondent disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
10. that the Respondent pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
11. such other order as the Commission considers appropriate in the public interest.

B. FACTS

Staff make the following allegations of fact:

(i) Regulatory Message

12. It is essential to the integrity of Ontario's capital markets that directors of public companies exhibit the highest standard of ethical conduct. This case involves a director of a publicly traded company who traded shares of the company while possessed of non-public material information respecting the company. Ensuring that directors and insiders of public companies comply with requirements respecting non-public material information is a primary means of achieving the purposes of securities regulation.

(ii) Allegations

13. Staff allege that between January 29, 2016 and March 28, 2016 (the "**Material Time**"), the Respondent, being a person in a special relationship with an issuer, Titan Medical Inc. ("**Titan**"), sold securities of Titan with knowledge of a material fact or material change with respect to Titan that had not been generally disclosed contrary to subsection 76(1) of the Act.

(iii) Background***Titan***

14. Titan is a public company incorporated in Ontario.
15. The shares of Titan are listed on the Toronto Stock Exchange under the symbol "TMD".
16. Titan's primary business is the design, development and commercialization of new robotic surgical technologies.

Martin Bernholtz

17. Bernholtz is a resident of Markham, Ontario.
18. Bernholtz has been a director of Titan since July 2008.
19. Titan generates no revenue and relies on the public offering of its common shares and warrants in order to fund its development process.
20. The Board of Directors of Titan (the "**Board**") receives notice of anticipated public offerings in advance.
21. Having been a director of Titan since 2008, Bernholtz was aware during the Material Time that an announcement of a public offering would result in significant decrease in the price of shares of Titan.

(iv) February 2016 Offering

22. On January 29, 2016, Bernholtz and other members of the Board were advised by Stephen Randall, the Chief Financial Officer of Titan, of a public offering that was planned to "commence as early as Tuesday, February 2 but no later than Thursday, February 11".
23. On February 1, 2016, Bernholtz sold 110,400 Titan shares at share prices of \$1.34 to \$1.39 for total proceeds of \$147,973.32.
24. On February 3, 2016, the share price of Titan opened at \$1.54. At 3:55 p.m., Titan issued a press release announcing an overnight marketed public offering (the "**February 2016 Offering**"), comprised of its common shares and common share

purchase warrants. The share price of Titan closed at \$1.45 at the end of the trading day.

25. On February 5, 2016, the company publicly released further details of the February 2016 Offering. The share price of Titan opened at \$0.88. At 10:08 a.m., Titan issued a press release announcing that the February 2016 Offering would consist of 8,888,889 units issued at a price of \$0.90 per unit for aggregate proceeds of \$8,000,000. Each unit would consist of one common share and one common share purchase warrant, which would be exercisable to purchase one common share at a price of \$1.00 for a period of five years after the public offering. The share price of Titan closed at \$0.80 at the end of the trading day.

26. The average share price of Titan in the 20-trading day period from February 3 to March 2, 2016, inclusive, was \$0.84.

27. Information regarding the February 2016 Offering had not been generally disclosed prior to the press releases on February 3 and February 5, 2016.

28. On February 11, 2016, Bernholtz purchased 200,000 Titan units at the price of \$0.90 per unit pursuant to the February 2016 Offering.

29. By selling shares of Titan on February 1, 2016 with knowledge of the February 2016 Offering that had not been generally disclosed, Bernholtz avoided losses of \$55,237.32.

(v) March 2016 Offering

30. On March 16, 2016, Bernholtz attended a meeting of the Board where the Board was advised of a public offering that was planned to commence “[l]ate this week or early week of March 21, 2016”.

31. On March 17, 2016, Bernholtz sold 22,200 Titan shares at the share price of \$1.36 for total proceeds of \$30,192.

32. On March 18, 2016, Bernholtz further sold 12,800 Titan shares at the share price of \$1.23 for total proceeds of \$15,744.

33. On March 21, 2016, Bernholtz further sold 233,900 Titan shares at share prices of \$1.08 to \$1.20 for total proceeds of \$271,489.

34. On March 21, 2016, the share price of Titan closed at \$1.08. After the market closed, Titan issued a press release announcing its intention to undertake an overnight marketed public offering (the "**March 2016 Offering**"), comprised of its common shares and common share purchase warrants.

35. On March 22, 2016, before the market opened, Titan issued a further press release announcing that the March 2016 Offering would consist of units issued at a price of \$1.00 per unit. Each unit would consist of one common share and one common share purchase warrant, which would be exercisable to purchase one common share at a price of \$1.20 for a period of five years after the public offering. The share price of Titan on March 22, 2016 opened at \$0.85 and closed at \$0.92.

36. The average share price of Titan in the 20-trading day period from March 22 to April 19, 2016 was \$0.89.

37. Information regarding the March 2016 Offering had not been generally disclosed prior to the press releases on March 21 and March 22, 2016.

38. On March 28, 2016, Bernholtz purchased 400,000 Titan units at the price of \$1.00 per unit pursuant to the March 2016 Offering.

39. By selling Titan shares on March 17, 18 and 21, 2016, with knowledge of the March 2016 Offering that had not been generally disclosed, Bernholtz avoided losses of \$78,104.

(vi) Titan Insider Trading Policy

40. Titan's Insider Trading Policy (the "**Insider Trading Policy**") prohibited directors, officers and employees of Titan from buying or selling securities of Titan while in possession of undisclosed material information. The policy also provided that "Reporting Insiders must not" trade Titan's securities without the prior approval of Titan's Chief Financial Officer and required that a "Reporting Insider" must provide an insider report to Titan to reflect any change in beneficial ownership of Titan's securities.

41. During the Material Time, Bernholtz was aware of the Insider Trading Policy and the fact that it applied to him.

42. Bernholtz failed to seek the approval of the Chief Financial Officer of Titan prior to selling shares of Titan during the Material Time. Similarly, Bernholtz failed to provide

an insider report to Titan to reflect the change in beneficial ownership of Titan securities during the Material Time.

C. BREACH OF S. 76(1) AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Staff allege the following breach of Ontario Securities law:

43. By purchasing Titan shares during the Material Time, the Respondent engaged in illegal insider trading contrary to subsection 76(1) of the Act and, therefore acted contrary to the public interest.

44. Staff reserve the right to make such other allegation as Staff may advise and the Commission may permit.

DATED at Toronto, March 28, 2018.