Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
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Citation: NextBlock Global Limited (Re), 2019 ONSEC 14
Date: 2019-05-13
File No.: 2019-8

IN THE MATTER OF
NEXTBLOCK GLOBAL LIMITED
and ALEX TAPSCOTT

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

Hearing:	May 13, 2019	
Decision:	May 13, 2019	
Panel:	Timothy Moseley	Vice-Chair and Chair of the Panel
Appearances:	Carlo Rossi	For Staff of the Commission
	James D.G. Douglas Veronica Sjolin	For NextBlock Global Limited
	Steven Sofer Usman Sheikh (by telephone)	For Alex Tapscott

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] Staff of the Commission has made various allegations against NextBlock Global Limited (**NextBlock**) and against Alex Tapscott. The purpose of today's hearing is to consider a settlement agreement between Staff and the respondents relating to those allegations.

[2] Mr. Tapscott is a co-founder and director of NextBlock and its chief executive officer. Prior to his involvement with NextBlock, he was registered with the Commission as a Dealing Representative.

[3] In the summer of 2017, Mr. Tapscott and other principals of NextBlock solicited investment in NextBlock through a private placement of convertible debentures to accredited investors. To promote those investments, Mr. Tapscott and others at NextBlock distributed slide deck presentations. The respondents have admitted that those slide decks constituted offering memoranda under Ontario securities law.

[4] One of the slides represented that certain prominent individuals in the blockchain space were advisors to NextBlock. Not all of those individuals had agreed to act as advisors. One individual had not even been approached to do so. The representation in the slide deck was false.

[5] After the slide deck was distributed, the private placement closed. NextBlock raised approximately $20 million from 113 investors. NextBlock began to take steps to complete a reverse take-over and a second private placement. However, before those transactions could be completed, the false representation regarding advisors came to light. NextBlock ultimately decided not to proceed with the reverse take-over or the second private placement. NextBlock has since initiated wind-up proceedings and has submitted a plan of arrangement to the Superior Court of Justice.

[6] NextBlock and Mr. Tapscott have admitted that they made statements in offering memoranda that, in a material respect and at the time were misleading or untrue. That conduct is contrary to clause 122(1)(b) of the *Securities Act*.[1]

[7] The settlement agreement sets out a number of mitigating factors. I will not repeat all of them. I will highlight that all the investors in the private placement have had their initial investment returned to them, and have received a significant profit. In addition, Mr. Tapscott has foregone approximately $3 million in carried interest and elected not to receive a salary during the relevant period. Furthermore, NextBlock and Mr. Tapscott cooperated with Staff of the

[1] RSO 1990, c S.5

Commission throughout its investigation. Finally, Mr. Tapscott has no prior disciplinary record with any securities regulatory authority.

[8] Staff and the respondents have agreed to various sanctions and other measures, and to the payment of costs by NextBlock. While the terms of the settlement have been agreed to by the parties, I must decide whether the settlement should be approved.

[9] The principal terms of the settlement are as follows:

a. NextBlock is to pay an administrative penalty of $700,000, and costs of $100,000, and those funds have now been paid, pending approval of this settlement;

b. Mr. Tapscott is to pay an administrative penalty of $300,000, and has paid that amount, pending approval of this settlement;

c. Mr. Tapscott has written an open letter in which he speaks about the impact and consequences of his misconduct, and he will seek to have that open letter published nationally within the next week; and

d. Mr. Tapscott has volunteered to deliver presentations consistent with his open letter, to students at three Canadian business schools, in the context of an ethics course or something similar, within the next 18 months.

[10] 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.

[11] I have reviewed this settlement in detail, and I conducted a confidential settlement conference with counsel for all parties. I asked questions of counsel and I heard their submissions. With the benefit of that session and my review, I conclude that it would be in the public interest to approve this settlement.

[12] In making that decision, I recognize that the agreement is the product of negotiation between Staff and the respondents, all ably represented by counsel. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.

[13] I 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.

[14] In my view, the terms of the settlement properly reflect 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.

[15] The payment of costs helps to reduce the burden on market participants to pay for investigations and enforcement proceedings.

[16] I also conclude that the terms of the settlement adequately address the need for specific and general deterrence. I did have some hesitation coming to this conclusion with respect to Mr. Tapscott, for reasons that warrant some explanation.

[17] In an enforcement proceeding, where an individual who is an officer and director is found to have contravened Ontario securities law, it is common to see among the imposed sanctions a prohibition against that individual acting as an officer or director for a period of time. Such a prohibition often flows naturally and reflects the preventative nature of the Commission's public interest jurisdiction.

[18] The agreed-upon sanctions in this case do not include a prohibition against Mr. Tapscott acting as an officer or director. Such a prohibition might well be called for, particularly because Mr. Tapscott was a registrant for a number of years. He is experienced in the securities industry and he ought to have known better.

[19] In submitting that the sanctions are appropriate nonetheless, the parties emphasize, among other things, Mr. Tapscott's clear acknowledgment of responsibility for his serious misconduct, as is reflected in the open letter and as will be demonstrated in his presentations to business students. In addition, I note that this is an emerging industry, and that this settlement, if approved, would send a clear message to others in the industry.

[20] I observe also that even though Mr. Tapscott was a director and officer at the relevant time, his admitted misconduct was not necessarily in his capacity as a director and officer of NextBlock. This is so because an employee could be authorized to make representations on behalf of his or her employer, without having to be a director or officer.

[21] Considering all of those circumstances, I am prepared to accede to the joint request for approval of this settlement, despite the absence of a prohibition against Mr. Tapscott acting as a director or officer. While an individual in a future similar case might encounter more difficulty avoiding such a ban, I conclude that the sanctions in this case, taken together, fall within a reasonable range. This settlement is in the public interest.

[22] I will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

[23] The parties have asked that the open letter referred to in the settlement, and included in the material I have reviewed, remain confidential and unavailable to the public for a short period of time. I accept the joint submission on that point. In my view, the desirability of avoiding disclosure of the open letter for a short time outweighs the desirability of adhering to the principle that hearings and materials be open and available to the public. Therefore, pursuant to section

9(1)(b) of the *Statutory Powers Procedure Act*[2] and Rule 22 of the *Ontario Securities Commission Rules of Procedure and Forms*,[3] I will order that the open letter not form part of the public record until the earlier of May 23, 2019, or the date on which counsel for Staff and counsel for Mr. Tapscott jointly advise the Registrar that the open letter has been published in a national publication as set out in Mr. Tapscott's undertaking dated May 13, 2019.

Dated at Toronto this 13th day of May, 2019.

"Timothy Moseley"
Timothy Moseley

[2] RSO 1990, c S.22
[3] (2017) 40 OSCB 8988