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Securities
Commission

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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 AJIT SINGH BASI

**REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Act)**

Decision: October 30, 2013

Panel: James E. A. Turner - Vice-Chair

Counsel: Harald Marcovici - For Staff of the Commission

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Schedule “A” – Form of Order

REASONS FOR DECISION

I. OVERVIEW

[1] This was a hearing (the “**Hearing**”) conducted in writing before the Ontario Securities Commission (the “**Commission**”) pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) to consider whether it is in the public interest to make an order imposing market conduct restrictions against Ajit Singh Basi (the “**Respondent**” or “**Basi**”).

[2] A Notice of Hearing in this matter was issued by the Commission on June 25, 2013 and a Statement of Allegations was filed by Staff of the Commission (“**Staff**”) on June 24, 2013. Both the Notice of Hearing and the Statement of Allegations were duly served on the Respondent.

[3] On July 7, 2013, the Commission heard an application by Staff to convert this matter to a written hearing in accordance with Rule 11.5 of the Commission’s *Rules of Procedure* (2012), 35 OSCB 10071, and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, as amended. The Respondent was duly served with that application and did not appear at the application hearing or make any submissions.

[4] The Commission granted Staff’s application to proceed by way of written hearing and set a schedule for submission of materials by the parties.

[5] Staff provided written submissions, a hearing brief and a brief of authorities. The Respondent did not appear and did not file any responding materials.

Facts

[6] Basi is subject to an order made by the British Columbia Securities Commission (the “**BCSC**”) dated December 22, 2011 (the “**BCSC Order**”) that imposes sanctions, conditions, restrictions or requirements upon him.

[7] In its findings on liability dated December 22, 2011 (the “**Findings**”), a panel of the BCSC (the “**BCSC Panel**”) found that Basi perpetrated a fraud, contrary to subsection 57(b) of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418 (the “**BC Act**”).

[8] Staff are seeking an order against the Respondent pursuant to paragraph 4 of subsection 127(10) of the Act, based on the BCSC Order.

[9] The conduct for which the Respondent was sanctioned occurred between 2009 and December 2010 (the “**Material Time**”).

[10] During the Material Time, Basi was a resident of British Columbia.

[11] Staff relies on subsection 127(10)4 of the Act, which permits the Commission to make an order under subsections 127(1) or 127(5) of the Act in respect of a person or company who is

subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company (see paragraph 15 of these reasons).

[12] These are my reasons for the order that I impose on the Respondent pursuant to subsections 127(1) of the Act in reliance on subsection 127(10) of the Act.

II. FINDINGS OF THE BRITISH COLUMBIA SECURITIES COMMISSION

[13] In its reasons, the BCSC Panel found that Basi perpetrated a fraud, contrary to subsection 57(b) of the BC Act.

The BCSC Order

[14] The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon Basi:

- (a) pursuant to subsection 161(l)(b) of the BC Act, that Basi cease trading permanently, and is permanently prohibited from purchasing securities or exchange contracts;
- (b) pursuant to subsections 161(l)(d)(i) and (ii) of the BC Act, that Basi resign any position he holds as, and is permanently prohibited from becoming or acting as, a director or officer of any issuer, registrant, or investment fund manager;
- (c) pursuant to subsection 161(l)(d)(iii) of the BC Act, that Basi is permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
- (d) pursuant subsection 161(l)(d)(iv) of the BC Act, that Basi is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- (e) pursuant to subsection 161(l)(d)(v) of the BC Act, that Basi is permanently prohibited from engaging in investor relations activities;
- (f) pursuant to subsection 161(l)(g) of the BC Act, that Basi pay to the Commission the funds he obtained as a result of his contraventions of the Act, which the BCSC Panel found to be not less than \$11,055; and
- (g) pursuant to section 162 of the BC Act, that Basi pay an administrative penalty of \$100,000.

III. ANALYSIS

A. SUBSECTION 127(10) OF THE ACT

[15] Subsection 127(10) of the Act provides in part as follows:

127 (10) Inter-jurisdictional enforcement – Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:

...

4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.

...

[16] The BCSC Order makes the Respondent subject to an order of the BCSC that imposes sanctions, conditions, restrictions or requirements on him, within the meaning of paragraph 4 of subsection 127(10) of the Act.

[17] Based on the BCSC Order, the Commission may make one or more orders under subsections 127(1) of the Act, if in its opinion it is in the public interest to do so.

[18] In *Re Euston Capital Corp.* (2009), 32 OSCB 6313 (“*Euston Capital*”), the Commission concluded that subsection 127(10) of the Act can be the grounds for an order in the public interest under subsection 127(1) of the Act, based on a decision and order made in another jurisdiction:

... we conclude that we can make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario’s capital markets.

(*Euston Capital, supra*, at para. 26)

[19] I therefore find that I have the authority to make a public interest order against the Respondent under subsection 127(1) of the Act in reliance on subsection 127(10) of the Act, based on the findings of the BCSC and the BCSC Order.

[20] The Commission must determine whether, based on the BCSC Order, the market conduct restrictions proposed by Staff would be in the public interest in Ontario. An important consideration is, if the events had occurred in Ontario, whether the respondent's conduct would have constituted a breach of the Act and/or would have been considered to be contrary to the public interest (*JV Raleigh Superior Holdings Inc., Re* (2013), 36 OSCB 4639 at para. 16 (“*JV Raleigh*”).

B. SUBMISSIONS OF THE PARTIES

[21] In order to protect Ontario investors and capital markets, Staff submits that it is in the public interest for the Commission to impose market conduct restrictions on the Respondent consistent with the sanctions imposed by the BCSC pursuant to the BCSC Order.

[22] Staff requests the following sanctions against the Respondent:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Basi cease permanently;
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Basi permanently;
- (c) pursuant to paragraph 7 of subsection 127(1) of the Act, Basi resign any positions that he holds as director or officer of an issuer;
- (d) pursuant to paragraph 8 of subsection 127(1) of the Act, Basi be prohibited permanently from becoming or acting as an officer or director of an issuer;
- (e) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Basi resign any positions that he holds as director or officer of a registrant;
- (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Basi be prohibited permanently from becoming or acting as an officer or director of a registrant;
- (g) pursuant to paragraph 8.3 of subsection 127(1) of the Act, Basi resign any positions that he holds as director or officer of an investment fund manager;
- (h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Basi be prohibited permanently from becoming or acting as an officer or director of an investment fund manager; and
- (i) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Basi be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

[23] Staff submits that I am entitled to issue an order imposing such market conduct restrictions based solely on the evidence before me, which consists of the Findings and the BCSC Order.

C. SHOULD AN ORDER BE IMPOSED?

[24] When exercising the public interest jurisdiction under section 127 of the Act, I must consider the purposes of the Act. Those purposes, set out in subsection 1.1 of the Act, are:

- (a) to protect investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[25] In pursuing these purposes, I must have regard for the fundamental principles described in subsection 2.1 of the Act. That section provides that one of the primary means for achieving the purposes of the Act is restrictions on fraudulent and unfair market practices and procedures.

[26] The Divisional Court in *Erikson v. Ontario (Securities Commission)* acknowledged that when considering imposing an order, it should be remembered that “participation in the capital markets is a privilege and not a right” (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) at para. 55).

[27] An order under section 127 of the Act is protective and preventative in nature. As stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at 1610-1611:

... the 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 [now section 122] 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 doing so 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; we are not prescient, after all.

[28] While the Commission must make its own determination of what is in the public interest, it is important that the Commission recognize the increasingly complex and cross-jurisdictional nature of securities markets (*JV Raleigh, supra*, at paras. 21-26 and *New Futures Trading International Corp.* (2013), 36 OSCB 5713 at paras. 22-27).

[29] In imposing the market conduct restrictions in this matter, I am relying on the BCSC Order. In my view, it is not appropriate in doing so to revisit or second-guess the BCSC’s Findings.

[30] I find that it is necessary to protect Ontario investors and the integrity of Ontario’s capital markets to impose market conduct restrictions against the Respondent in the public interest.

D. THE APPROPRIATE RESTRICTIONS

[31] In determining the nature and duration of the appropriate market conduct restrictions, I must consider the relevant facts and circumstances, including:

- (a) the seriousness of the Respondent’s conduct and breaches of the BC Act;
- (b) the harm to investors;
- (c) whether or not the restrictions imposed may serve to deter the Respondent from engaging in similar abuses of the Ontario capital markets; and
- (d) the effect any Ontario restrictions may have on the ability of the Respondent to participate without check in Ontario capital markets.

(See, for instance, *Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 (“*Belteco*”) at paras. 25 and 26.)

[32] The following facts and circumstances are particularly relevant in determining the market conduct restrictions that should be ordered against the Respondents:

- (a) the Respondent was found by a panel of the BCSC to have perpetrated a fraud and to have breached British Columbia securities law; and
- (b) the conduct for which the Respondent was sanctioned in the BCSC Order would constitute a contravention of Ontario securities law if it had occurred in Ontario, specifically a contravention of subsection 126.1(b) of the Act.

[33] In my view, there are no mitigating factors or circumstances.

[34] I have reviewed the Commission and other decisions referred to me by Staff in assessing the market conduct restrictions appropriate in this case. In reviewing those decisions, I note that each case depends upon its particular facts and circumstances (*Re M.C.J.C. Holdings Inc.* (2002), 25 OSCB 1133 at paras. 9 and 10 and *Belteco, supra*, at para. 26).

[35] In *British Columbia (Securities Commission) v. McLean* (2011) BCCA 455 (“*McLean*”), the British Columbia Court of Appeal held that when issuing an order reciprocating an order originally made in Ontario, the BCSC has a duty to provide reasons, however brief, for the order it is imposing and why they are in the public interest (*McLean, supra*, at paras. 28-29).

[36] In *Lines v. British Columbia (Securities Commission)*, (2012) BCCA 316 (“*Lines*”), the British Columbia Court of Appeal interpreted *McLean, supra*, as holding that the Commission “must make its own determination of the public interest under s. 161 [section 127 of the Act], rather than make an order automatically based on the order of the foreign jurisdiction” (*Lines, supra*, at para. 31).

[37] The Commission held in *Elliott, Re* that “subsection 127(10) ... allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest.”

(*Elliott, Re* (2009), 23 OSCB 6931 at para. 24 (“*Elliott*”))

[38] While the Commission may rely on the findings of another jurisdiction, it must satisfy itself that an order is necessary to protect the public interest in Ontario:

The applicability of subsection 127(10) to the BCSC Order and the Settlement Agreement does not automatically lead to the conclusion that this Panel must make an order similar to that made by the BCSC against Elliott. Rather, we must first consider whether or not sanctions are necessary to protect the public interest, before exercising any powers granted to us under subsections 127(1) and (5), and second, if necessary, consider what the appropriate sanctions should be.

(*Elliott, supra*, at para. 27)

[39] In matters such as this, the Commission has relied on the findings made in other jurisdictions and has not required a direct connection to Ontario or Ontario capital markets (*Weeres, Re* (2013), 36 OSCB 3608 and *Shantz, (Re)* (2013), 36 OSCB 5993).

[40] Staff submits that the market conduct restrictions imposed in the BCSC Order are appropriate to the misconduct by the Respondent and serve as both specific and general deterrence. Staff further submits that a protective order imposing market conduct restrictions on the Respondent, substantially similar to those imposed by the BCSC Order, are appropriate to protect Ontario investors and Ontario capital markets from similar misconduct by the Respondent.

[41] The BCSC Panel found that the Respondent perpetrated a fraud, noting that “Basi stole the investor's money. Fraud is the most serious misconduct under the [BC] Act” (*BCSC Decision, supra*, at paras. 12 and 14).

[42] The BCSC Panel concluded that Basi was enriched by his misconduct, noting: “Basi benefited from his illegal activity - he took \$11,050 of the investor's money and used it for personal purposes and was enriched by the \$11,055 that she lost.” The Panel further stated: “[t]hat the investor was harmed is obvious. There is no evidence to suggest that she will recover any part of the \$11,055 she lost” (*BCSC Decision, supra* at paras. 15 and 16).

[43] Based on the foregoing, I have concluded that it is in the public interest to make an order under subsection 127(1) of the Act imposing the following market conduct restrictions on the Respondent:

- (a) trading in any securities by Basi shall cease permanently;
- (b) any exemptions contained in Ontario securities law do not apply to Basi permanently;
- (c) Basi shall resign any positions that he holds as director or officer of an issuer;
- (d) Basi shall be prohibited permanently from becoming or acting as an officer or director of an issuer;
- (e) Basi shall resign any positions that he holds as director or officer of a registrant;
- (f) Basi shall be prohibited permanently from becoming or acting as an officer or director of a registrant;
- (g) Basi shall resign any positions that he holds as director or officer of an investment fund manager;
- (h) Basi shall be prohibited permanently from becoming or acting as an officer or director of an investment fund manager; and
- (i) Basi shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

IV. CONCLUSION

[44] Accordingly, I find that it is in the public interest to issue an order in the form attached as Schedule “A” to these reasons.

DATED at Toronto this 30th day of October, 2013.

“James E. A. Turner”

James E. A. Turner

Schedule "A"



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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 AJIT SINGH BASI

ORDER

(Subsections 127(1) and 127(10) of the Act)

WHEREAS on June 25, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Ajit Singh Basi (the "Respondent" or "Basi");

AND WHEREAS on June 24, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on July 7, 2013, the Commission heard an application by Staff to convert the matter to a written hearing in accordance with Rule 11.5 of the Commission's *Rules of Procedure* (2012), 35 OSCB 10071 and section 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS the Commission granted Staff's application to proceed by written hearing and set down a schedule for the submission of materials by the parties;

AND WHEREAS Staff filed written submissions, a hearing brief and a brief of authorities;

AND WHEREAS the Respondent did not appear and did not file any materials;

AND WHEREAS the Respondent is subject to an order dated December 22, 2011 made by the British Columbia Securities Commission that imposes sanctions, conditions, restrictions or requirements upon him within the meaning of paragraph 4 of subsection 127(10) of the Act;

AND WHEREAS I find that it is in the public interest to issue this order pursuant to subsection 127(1) of the Act in reliance upon subsection 127(10) of the Act;

IT IS HEREBY ORDERED THAT:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities by Basi shall cease permanently;
- (b) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Basi permanently;
- (c) pursuant to paragraph 7 of subsection 127(1) of the Act, Basi resign any positions that he holds as director or officer of an issuer;
- (d) pursuant to paragraph 8 of subsection 127(1) of the Act, Basi be prohibited permanently from becoming or acting as an officer or director of an issuer;
- (e) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Basi resign any positions that he holds as director or officer of a registrant;
- (f) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Basi be prohibited permanently from becoming or acting as an officer or director of a registrant;
- (g) pursuant to paragraph 8.3 of subsection 127(1) of the Act, Basi resign any positions that he holds as director or officer of an investment fund manager;
- (h) pursuant to paragraph 8.4 of subsection 127(1) of the Act, Basi be prohibited permanently from becoming or acting as an officer or director of an investment fund manager; and
- (i) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Basi be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter.

DATED at Toronto this 30th day of October, 2013.

“James E. A. Turner”

James E. A. Turner