



Ontario
Securities
Commission

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de l'Ontario

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Citation: Hutchinson (Re), 2018 ONSEC 22

Date: 2018-05-02

File No. 2017-54

**IN THE MATTER OF
DONNA HUTCHINSON, CAMERON EDWARD CORNISH,
DAVID PAUL GEORGE SIDDEERS and PATRICK JELF CARUSO**

**ORAL REASONS FOR APPROVAL OF SETTLEMENT
Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5**

Hearing: April 24, 2018

Decision: April 24, 2018

Panel: Janet Leiper
Deborah Leckman
Robert P. Hutchison
Commissioner and Chair of the Panel
Commissioner
Commissioner

Appearances: Matthew H. Britton
Amy Ohler
For Staff of the Commission
For Donna Hutchinson

ORAL REASONS AND DECISION

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the transcript of the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] The respondent, Donna Hutchinson, has entered into a settlement agreement (the **Settlement Agreement**) with Staff of the Commission. In this hearing, the parties submit jointly that it would be in the public interest for us to approve the Settlement Agreement and to issue the requested order. After considering the submissions of the parties, we agree that the requested order is in the public interest and we approve the Settlement Agreement.
- [2] The Settlement Agreement includes a summary of facts with which Ms. Hutchinson agrees, but which remain unproven against the remaining three respondents. The allegations against the non-settling respondents remain the subject of ongoing proceedings and must be proven at a merits hearing.
- [3] The Settlement Agreement is publicly available. It is unnecessary to set out Ms. Hutchinson's actions in detail here. Ms. Hutchinson was employed as a legal assistant by a large Toronto law firm, where she provided assistance with merger and acquisition transactions. Ms. Hutchinson admits that she knowingly provided non-public, confidential information in respect of six merger and acquisition transactions to one of the respondents, Cameron Edward Cornish, during a period of over four years. Ms. Hutchinson admits that, by engaging in this conduct, she breached Ontario securities law by contravening subsection 76(2) of the *Securities Act*, RSO 1990, c S.5 (the **Act**).
- [4] These breaches are serious. The improper use of material non-public information leads to unfair advantages for those who engage in insider tipping and insider trading. It also contributes to a lack of confidence in and cynicism towards the fairness of the public markets. Though Ms. Hutchinson did not engage in any insider trading herself, insider tipping contributes to the erosion of public confidence in the capital markets.
- [5] The Settlement Agreement and the submissions of counsel describe the following mitigating factors:
 - a. Ms. Hutchinson acknowledges her involvement in the matter, which means the Commission will not have to expend further resources to establish her liability. This is some evidence of remorse;
 - b. As a result of her conduct, Ms. Hutchinson lost her position as a legal assistant. She is unemployed and without resources to pay monetary sanctions. It is unlikely she will be able to find future employment in her field;
 - c. Ms. Hutchinson received relatively small sums of money as a result of her misconduct, when compared to the larger profits made by the respondents who conducted the insider trading;
 - d. Ms. Hutchinson has no prior record of breaching Ontario securities law;
 - e. Ms. Hutchinson is not and has never been a registrant; and

- f. Ms. Hutchinson was manipulated by an experienced trader.
- [6] Further, Ms. Hutchinson has agreed to cooperate with Staff in its investigation of the non-settling respondents. That cooperation includes testifying as a witness for Staff in any proceedings relating to the misconduct described in the Settlement Agreement and meeting with Staff to prepare for that testimony.
- [7] Staff took Ms. Hutchinson's cooperation into account as a significant mitigating factor, resulting in the reduced sanctions proposed in the Settlement Agreement. In 2014, the Commission published Staff Notice 15-702 – *Revised Credit for Cooperation Program*, which recognizes that a respondent's cooperation may play a role in reducing the sanctions recommended by Staff in enforcement proceedings. The program is meant to encourage market participants to self-police, self-report and self-correct potential breaches of Ontario securities laws or conduct that is otherwise contrary to the public interest.
- [8] As the Commission has noted previously, some aspects of insider trading and tipping cases are "very difficult to prove as, generally, the only persons who have direct knowledge of relevant communications are the wrongdoers themselves".¹ As a result, insider trading and tipping cases often rely on circumstantial evidence and inferences drawn from indirect evidence, a manner of proof that is significantly more difficult than presenting direct evidence. Through her testimony, Ms. Hutchinson will provide otherwise unavailable direct evidence against one of the respondents – Mr. Cornish – and will assist in Staff's case against the other two respondents.
- [9] Generally, sanctions for insider tipping include the disgorgement of profits, administrative penalties, market participation bans, and orders to resign director and officer positions. Notably, no disgorgement of profits or administrative penalty against Ms. Hutchinson is proposed in the Settlement Agreement, despite her receipt of several thousand dollars from Mr. Cornish as a result of her misconduct. Staff submits that these reduced sanctions are in the public interest because of the considerable importance of Ms. Hutchinson's testimony and because of the general deterrence that will be communicated to market participants who may consider insider trading. Staff has noted that its submissions rest on the specific circumstances of this case.
- [10] The joint submission, the mitigating factors listed above and Ms. Hutchinson's cooperation and contribution to Staff's case, satisfies us that the proposed sanctions in this case are reasonable. We agree with Staff that reduced sanctions are warranted, due in large part to the policy aims of the *Revised Credit for Cooperation Program*. These aims can only be attained if settling respondents receive meaningful credit for providing valuable cooperation with Staff. Taken together, the sanctions reflect the seriousness of Ms. Hutchinson's misconduct, the mitigating factors identified in the Settlement Agreement, and the significant credit given to Ms. Hutchinson for her cooperation with Staff's investigation. In these specific circumstances, we approve the Settlement Agreement as being reasonable and in the public interest.
- [11] We note that the agreed sanctions in the Settlement Agreement include a reprimand. The Commission has previously stated that, in some cases, "a reprimand can reflect recognition and acceptance of responsibility by the parties

¹ *Azeff (Re)* (2015), 38 OSCB 2983, 2015 ONSEC 11 at para 43.

who receive it.”² This is such a case. Ms. Hutchinson’s agreement to attend this hearing today and to be publicly reprimanded demonstrates an acknowledgment of her responsibility for her conduct.

[12] Taking into consideration the seriousness of Ms. Hutchinson’s conduct and the relevant mitigating factors, we find that the Settlement Agreement is reasonable and its approval is in the public interest. We approve the settlement agreement, including substantially the same terms contained in the proposed order, as follows:

- a. the Respondent will be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- b. trading by the Respondent in any securities and derivatives shall cease for a period of two years, pursuant to paragraph 2 of subsection 127(1) of the Act commencing on the date of the Order, except that trading shall be permitted in mutual fund, exchange-traded fund or index fund securities for the account of any registered retirement savings plans, tax-free savings accounts and self-directed retirement savings plans (as defined in the *Income Tax Act (Canada)*) in which the Respondent has legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom she must give a copy of our Order at the time she opens or modifies these accounts;
- c. the acquisition of any securities by the Respondent is prohibited for a period of two years, pursuant to paragraph 2.1 of subsection 127(1) of the Act commencing on the date of the Order, except that the acquisition of securities shall be permitted in mutual fund, exchange-traded fund or index fund securities for the account of any registered retirement savings plans, tax-free savings accounts and self-directed retirement savings plans (as defined by the *Income Tax Act (Canada)*) in which the Respondent has sole legal and beneficial ownership, and such trading is carried out through a registered dealer in Canada to whom she must give a copy of our Order at the time she opens or modifies these accounts;
- d. any exemptions contained in Ontario securities law do not apply to the Respondent for a period of two years, pursuant to paragraph 3 of subsection 127(1) of the Act;
- e. the Respondent shall resign any position she holds as a director or officer of an issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1) of the Act;
- f. the Respondent is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of two years, pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the Act commencing on the date of the Order; and

² *Sentry Investments Inc. (Re)* (2017), 40 OSCB 3435, 2017 ONSEC 7 at para 14.

- g. the Respondent is prohibited from becoming or acting as a registrant, investment fund manager or a promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act commencing on the date of the Order.

Dated at Toronto this 24th day of April, 2018.

"Janet Leiper"

Janet Leiper

"Deborah Leckman"

Deborah Leckman

"Robert P. Hutchison"

Robert P. Hutchison