



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
PETER VOLK**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES
COMMISSION AND PETER VOLK**

PART I - INTRODUCTION

1. This matter concerns the trading in Pacific Rubiales Energy Corporation (currently named Frontera Energy Corporation and prior to that named Pacific Exploration and Production Corporation (“Pacific”)) debentures by Pacific’s general counsel, Peter Volk (“Volk” or the “Respondent”), at a time when Pacific was involved in a due diligence process regarding its potential acquisition with two potential purchasers. As Pacific’s general counsel, the Respondent was in a position of high responsibility and trust and was subject to a high professional standard to avoid any appearance of conflicts of interest and any appearance of misuse of confidential information related to Pacific.

2. The parties shall jointly file a request that the Ontario Securities Commission (the “Commission”) issue a Notice of Hearing (the “Notice of Hearing”) to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the “Act”), it is in the public interest for the Commission to make certain orders against Volk in respect of the conduct described herein.

PART II - JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission (“Staff”) recommend settlement of the proceeding (the “Proceeding”) against the Respondent commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. Staff and the Respondent consent to the making of an order (the “Order”) in the form attached as Schedule “A” to this Settlement Agreement based on the facts set out herein.

4. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

A. THE RESPONDENT

5. Volk was the general counsel to Pacific and its predecessors and successors from 2004 to March 2018. Pacific is a Canadian oil and gas company with offices in Toronto, Calgary, Peru and Colombia. Pacific's common shares trade on the TSX. Volk has significant experience in capital markets transactions and has an unblemished regulatory reputation.

B. BACKGROUND

Interest in acquiring Pacific (October 2014 – July 2015 (the "Material Time"))

6. On October 17, 2014, Pacific received a confidential, non-binding letter from ALFA S.A.B. de C.V. ("ALFA"), a Mexican conglomerate. ALFA proposed a potential acquisition of all outstanding Pacific common shares at a price of \$20.00. Despite ALFA's interest, the period by which ALFA and Pacific were to execute a confidentiality agreement with respect to a potential transaction expired on October 31, 2014, in large part because Pacific's stock price had declined significantly, a decline that continued throughout the Material Time. As a result, ALFA did not commence any due diligence review of Pacific with regard to a potential transaction at this time.

7. On December 28, 2014, Harbour Energy Ltd. ("Harbour") delivered a due diligence request to Pacific in regard to the potential acquisition of Pacific. Harbour is an investment vehicle specializing in private investments in energy and energy-related infrastructure. No binding offer was made. No price or transaction structure was proposed by Harbour for acquiring all outstanding Pacific shares, but the parties entered into a confidentiality agreement to allow Harbour to commence due diligence investigations in order to determine whether it wished to make a binding offer.

8. Although ALFA's original October 2014 proposal to acquire Pacific did not result in a confidentiality agreement being entered into, a few months later, in February 2015, ALFA and

Pacific entered into a confidentiality agreement, which allowed ALFA to have access to non-public Pacific information for the purposes of conducting a due-diligence review for the potential acquisition of Pacific by ALFA.

9. Pacific's management participated in separate discussions regarding due diligence with ALFA and Harbour throughout the first few months of 2015.

10. In March 2015, ALFA and Harbour each advised Pacific that they were unwilling to propose a transaction with Pacific without a partner. Pacific then proceeded to introduce Harbour and ALFA and they discussed a possible joint offer. This led to ALFA and Harbour delivering a non-binding expression of interest to acquire Pacific on April 26, 2015. However, despite negotiations between all three parties that eventually led to a May 20, 2015 agreement for ALFA and Harbour to acquire Pacific for \$6.50 per common share, ultimately the bid was withdrawn in July 2015 and no acquisition of Pacific occurred.

Pacific's Insider Trading Policy

11. As per Pacific's insider trading policy (the "IT Policy") during the Material Time, all employees including Volk were required to sign documentation acknowledging that they were aware of the IT Policy and that they agreed to follow it. The IT Policy covered among other things, prohibitions on insider trading and tipping, insider reporting obligations, and trading during blackout periods. Under the IT Policy, blackout periods were imposed in relation to Pacific's financial disclosures, and in relation to the knowledge of material, generally-undisclosed information held by Pacific employees. The imposition of blackout periods, where not prescribed by the IT Policy, was at Volk's discretion.

12. The IT Policy directed that all Pacific insiders must give Volk (or alternatively, Pacific's Deputy General Counsel at the time) advance notification of any trading in Pacific securities so that Volk could confirm that the trade would be made at a time when there was no knowledge of material non-public information and/or any blackout period in place to prohibit the trade.

13. On February 13, 2015 (the "Purchase Date") Volk purchased USD \$100,000 par value Pacific senior unsecured notes (the "Notes") for a total of \$75,349.31. In making the purchase of

the Notes Volk self-assessed (pursuant to the IT Policy) that he had no knowledge of any material, generally-undisclosed information.

14. On the Purchase Date, Volk had knowledge of a non-binding expression of interest received from Harbour on January 8, 2015 (which expression lacked material terms, such as a price), the ongoing Harbour due diligence process, and meetings between Harbour and Pacific related to the due diligence (the “Harbour Facts”). With respect to ALFA, Volk knew about a February 4, 2015 confidentiality agreement and ALFA having been granted access to confidential Pacific information to conduct due diligence with respect to a potential transaction, although ALFA had not yet commenced its due diligence investigations (the “ALFA Facts”).

Pacific blackout periods imposed due to the existence of material, generally-undisclosed information during the Material Time

15. At the Purchase Date Volk had knowledge of the Harbour Facts and the ALFA Facts. No blackout period was in place on the Purchase Date. Volk subsequently imposed a blackout in March 2015, at which point Pacific was actively working to combine the two parties, who had made it clear that neither was interested in proceeding alone.

16. Volk had previously imposed a blackout on October 21, 2014, in relation to the preparation and filing of quarterly financial information. This blackout was lifted on November 7, 2014 upon filing of that information. No blackout was imposed specifically relating to ALFA’s initial expression of interest. Volk imposed a separate blackout between December 2, 2014 and December 9, 2014 related to the entering into of a joint venture with ALFA on Mexican opportunities, unrelated to any interest ALFA may have had in acquiring Pacific. Volk imposed another blackout in March 2015. The March 2015 blackout was in response to the joint expression of interest by ALFA and Harbour to acquire Pacific. The March 2015 blackout was in effect from on or around March 9, 2015 to on or around May 15, 2015.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

17. The Respondent acknowledges and admits that:
- (a) as Pacific's general counsel and the person who supervised Pacific's Insider Trading Policy (which allowed him to self-assess whether he was in possession of material, generally-undisclosed information when contemplating a trade in Pacific securities), he was in a position of high responsibility and trust and was subject to a high professional standard to avoid any appearance of conflicts of interest and any appearance of misuse of confidential information related to Pacific;
 - (b) the prudent course of action as Pacific's general counsel would have been to err on the side of caution given his knowledge of the Harbour Facts and ALFA Facts and refrain from purchasing Pacific securities at the time he did; and
 - (c) the Respondent's conduct was contrary to the public interest as he failed to adhere to the high standard of conduct expected of him in the circumstances.

PART V - RESPONDENT'S POSITION

18. The Respondent intends to request that the panel at the Settlement Hearing (as defined below) consider the following mitigating circumstances:
- (a) The Respondent made a good faith and reasonable decision not to impose a blackout based on his assessment of materiality at the time;
 - (b) The respondent held a good faith belief that he did not have material undisclosed information at the Purchase Date;
 - (c) The Respondent has cooperated with Staff;
 - (d) The Respondent earned no profit from his trading in the Notes and in fact lost almost the entire value of them due to Pacific entering CCAA proceedings;
 - (e) Volk had previously bought the initial issuance of many of Pacific's notes as an investment to earn the "coupon", or interest rate, associated with the notes. He

bought the Notes because the reduced price would allow him to earn a premium over the stated interest rate over the life of the Notes.

- (f) Volk did not maintain a blackout that had been imposed for unrelated reasons (quarterly financial filings) after ALFA failed to sign a confidentiality agreement in November 2014 as there was demonstrably no interest from ALFA in acquiring Pacific. Although Harbour expressed an interest in late December 2014, that interest was highly conditioned on, among other material matters, completion of due diligence, determination of a price and structure, and the delivery of a binding offer. None of these matters was resolved until April 2015. However, by March 2015, after the Trade had occurred, a material event had occurred – the expression of interest by both ALFA and Harbour to acquire the Company only if a partner could be found, and the Company’s attempts to combine the two parties – which caused Volk to conclude that a blackout should be imposed.
- (g) Volk, as General Counsel, was not only responsible for self-assessing his own trades, but also the trades of all insiders. Throughout the period between the end of the blackout in November 2014 and the imposition of the blackout in March 2015, a number of trades were proposed and executed by insiders after assessment by Volk; in all cases, he was of the opinion that no material, undisclosed information existed at the time of the trades, an assessment that he applied to the Trade as well.

PART VI - TERMS OF SETTLEMENT

19. The Respondent agrees to the terms of settlement set forth below.

20. The Respondent has given an undertaking (the “Undertaking”) to the Commission in the form attached as Schedule “B” to this Settlement Agreement, which includes an undertaking by the Respondent to:

- (a) make a voluntary payment, at the time of the Settlement Hearing, in the amount of \$30,000 to be designated for allocation or use by the Commission in accordance with paragraph (i) or (ii) of subsection 3.4(2)(b) of the Act;

- (b) obtain external legal advice in regard to any and all future trades by the Respondent in securities of issuers of which the Respondent is an insider, in circumstances where the Respondent is required to self-assess at the time of the trade whether he is in possession of material, generally undisclosed information related to the issuer, for a period of two years from the date of the Commission's order approving this Settlement Agreement; and
- (c) successfully complete either the Directors Education Program of the Institute of Corporate Directors, or the Partners, Directors and Senior Officers Course of the Canadian Securities Institute within 2 years commencing on the date of the Commission's order approving this Settlement Agreement and report his completion thereof to Staff.

21. The Respondent consents to the Order, pursuant to which it is ordered that:

- (a) this Settlement Agreement be approved;
- (b) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and
- (c) the Respondent pay costs in the amount of \$10,000, pursuant to section 127.1 of the Act.

22. The Respondent agrees that the amounts set out in paragraph 20 and sub-paragraph 21(c) shall be paid by the Respondent by separate bank drafts at the hearing before the Commission to approve this Settlement Agreement, if this Settlement Agreement is approved.

PART VII - FURTHER PROCEEDINGS

23. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the conduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement or the Undertaking, in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on,

among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement or the Undertaking.

24. The Respondent acknowledges that, if the Commission approves this Settlement Agreement and the Respondent fails to comply with any term in it or the Undertaking, the Commission is entitled to bring any proceedings necessary.

25. The Respondent waives any defences to a proceeding referenced in paragraph 15 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement or the Undertaking.

PART VIII - PROCEDURE FOR APPROVAL OF SETTLEMENT

26. The parties will seek approval of this Settlement Agreement at a public hearing (the “Settlement Hearing”) before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission’s *Rules of Procedure*, adopted October 31, 2017.

27. The Respondent will attend the Settlement Hearing in person.

28. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

29. If the Commission approves this Settlement Agreement:

- (a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

30. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART IX - DISCLOSURE OF SETTLEMENT AGREEMENT

31. If the Commission does not make the Order:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the Settlement Hearing will be without prejudice to Staff and the Respondent; and
- (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

32. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

33. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

34. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this “4th” day of “June”, 2018.

“Lauren Culp”

“Peter Volk”

Witness (print name):

Peter Volk

DATED at Toronto, Ontario this “8th” day of “June”, 2018.

**STAFF OF THE ONTARIO SECURITIES
COMMISSION**

By: *“Jeff Kehoe”*

Name: Jeff Kehoe

Title: Director, Enforcement Branch

SCHEDULE "A"



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Commission des
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22nd Floor
20 Queen Street West
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File No.

IN THE MATTER OF PETER VOLK

(Names of panelists comprising the panel)

(Day and date order made)

ORDER

(Section 127 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on ____, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the approval of a settlement agreement dated ____, 2018 (the **Settlement Agreement**) between Peter Volk (the **Respondent**) and Staff of the Commission (**Staff**);

AND WHEREAS pursuant to the Settlement Agreement, the Respondent has given an undertaking (the **Undertaking**) to the Commission dated [date], in the form attached as Schedule "A" to this Order, which includes an undertaking to:

1. make a payment of \$30,000 to be designated for allocation or use by the Commission in accordance with paragraph (i) or (ii) of subsection 3.4(2)(b) of the *Securities Act*, RSO 1990, c S.5 (the **Act**),
2. obtain external legal advice in regard to any and all future trades the Respondent makes in securities of issuers of which the Respondent is an insider, in circumstances where the Respondent is required to self-assess at the time of the trade whether the Respondent is in possession of material non—public information related to the issuer, for a period of two years from the date of the Commission's order approving the Settlement Agreement; and
3. successfully complete either the Directors Education Program of the Institute of Corporate Directors, or the Partners, Directors and Senior Officers Course of the Canadian Securities Institute within 2 years commencing on the date of the Commission's order approving this Settlement Agreement and report his completion thereof to the Commission.

ON READING the Statement of Allegations dated [date], the Settlement Agreement, and the Undertaking, and on hearing the submissions of the representatives of Staff and the Respondent;

IT IS ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and
- (c) the Respondent pay costs in the amount of \$10,000, pursuant to section 127.1 of the Act.

[Commissioner]

[Commissioner]

[Commissioner]

**IN THE MATTER OF
PETER VOLK
UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION**

1. This Undertaking is given in connection with the settlement agreement dated [**date**] (the “Settlement Agreement”) between Peter Volk (the “Respondent”) and Staff of the Commission (“Staff”). All terms shall have the same meanings in this Undertaking as in the Settlement Agreement.

2. The Respondent undertakes to the Commission to:
 - a. make a payment of \$30,000 to be designated for allocation or use by the Commission in accordance with paragraph (i) or (ii) of subsection 3.4(2)(b) of the Act;

 - b. obtain external legal advice in regard to any and all future trades he makes in securities of issuers of which he is an insider, in circumstances where he is required to self-assess at the time of the trade whether he is in possession of material, generally undisclosed information related to the issuer, for a period of two years from the date of the Commission’s order approving the Settlement Agreement; and

 - c. successfully complete either the Directors Education Program of the Institute of Corporate Directors, or the Partners, Directors and Senior Officers Course of the Canadian Securities Institute within 2 years commencing on the date of the Commission’s order approving this Settlement Agreement and report his completion thereof to the Commission.

DATED at Toronto, Ontario this “5th” day of “June”, 2018.

“Lauren Culp”

Witness (print name):

“Peter Volk”

Peter Volk