

# 2002 BCSECCOM 106

COR#02/013

## **Ruling**

**Pacific International Securities Inc.**

**and**

**Max Meier, Lawrence Hugh McQuid, Jean-Paul Philippe Bachelier, Robert Herbert Blades, Germain Carriere, John Todd Eymann, Alberto John Quattrociocchi, Martin J. Reynolds and Theresa Mary Sheehan**

**Section 161 of the *Securities Act*, RSBC 1996, c. 418**

## **Hearing**

<b>Panel</b>	Adrienne Salvail-Lopez	Commissioner
	John K. Graf	Commissioner
	Roy Wares	Commissioner

**Date of Hearing** January 14-15, 2002

**Date of Decision** February 1, 2002

## **Appearing**

Donald J. Sorochnan, Q.C. For Pacific International Securities Inc., Max Meier, Jean-Paul Philippe Bachelier, Robert Herbert Blades, John Todd Eymann, Alberto John Quattrociocchi, Martin J. Reynolds and Theresa Mary Sheehan

Mark L. Skwarok For Lawrence Hugh McQuid

Gary Snarch For Germain Carriere

Patricia A.A. Taylor For Commission Staff  
Chilwin C. Cheng

## **Ruling of the Commission**

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## Introduction

[para 1]

The respondents have applied for further particulars.

## Background

[para 2]

On July 10, 2001, the Executive Director issued a notice of hearing under section 161 of the *Securities Act*, RSBC 1996, c. 418 against the respondents. Pacific International Securities Inc. is registered under the Act as an investment dealer. The individual respondents are directors of Pacific International.

[para 3]

Essentially, the notice alleges that the respondents failed to set up appropriate procedures to identify and take appropriate steps to deal with suspicious clients and account activity at Pacific International. Consequently, the notice alleges, the respondents contravened specified sections of the *Securities Rules*, BC Reg. 196/97, the *Securities Regulation*, BC Reg. 270/86, the *Company Act*, RSBC 1996, c. 62 and various regulatory instruments issued by the Investment Dealers Association, the Canadian Venture Exchange and the (then) Vancouver Stock Exchange. The notice also alleges that the respondents acted contrary to the public interest by failing to do a number of things. The notice identifies the clients and account activity in issue using defined terms, namely: “Accounts”, “Indictments”, “Complaints”, “Activity”, “Screening Deficiencies”, “Distributions”, and “Demands”.

[para 4]

On receiving the notice, all of the respondents sought further particulars from Commission staff. Commission staff responded to these requests in three letters, dated November 5, 2001, November 13, 2001 and December 31, 2001. The letters provide further facts regarding the terms defined in the notice. Together, the notice and the letters provide the respondents with the following particulars.

[para 5]

“Accounts” are US dollar accounts in which US securities were traded. Most were held by clients not resident in Canada. Each was either an account mentioned in a United States indictment or one of 70 accounts chosen from a sample of accounts generating the largest commission revenue at Pacific International. Both the indictment accounts and the sample accounts upon which staff intend to particularly rely at the hearing are listed in the November 5 letter. Detailed information respecting the Accounts has been disclosed.

[para 6]

“Indictments” are indictments filed by the US Department of Justice on March 28, 1997, May 21, 1998, June 15, 1999, and June 18, 1999, which allege breaches of US securities

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law by clients of Pacific International, trading through some Accounts. As noted in the prior paragraph, the indictment accounts are listed in the November 5 letter.

[para 7]

“Complaints” are civil complaints issued by the US Securities and Exchange Commission naming Accounts of Pacific International. The Accounts named in the Complaints are listed in the December 31 letter.

[para 8]

“Activity” is activities and characteristics displayed in some Accounts that Commission staff allege would have caused a reasonable registrant to investigate the owners and operators of the Accounts, because each Activity is potentially a symptom of conduct that is illegal or contrary to the public interest. The notice describes seven types of Activity. The November 13 letter provides lists of Accounts in which Commission staff say each type of Activity took place.

[para 9]

“Screening Deficiencies” are, Commission staff allege, Pacific International’s failure to fulfil the requirements of various rules and statutes to ensure it had proper client identification. Paragraph 21 of the notice describes three types of allegedly faulty procedures that were followed in some Accounts. However, neither the notice nor the letters specify the Accounts in which these procedures were followed. The November 13 letter refers the respondents to Pacific International’s client account documentation and account statements for further information.

[para 10]

“Distributions” occurred when clients received into their Accounts securities that were ostensibly issued under US registration exemptions and then disposed of them into US markets without, Commission staff allege, Pacific International making reasonable inquiries to determine whether the clients were illegally distributing the securities in the US. The November 13 letter sets out a list of Accounts in which Commission staff allege Distributions occurred.

[para 11]

“Demands” are the requests for information made to Pacific International from the Commission and the (then) Vancouver Stock Exchange relating to the Accounts. The Demands have been disclosed.

[para 12]

Neither the allegations in the notice nor the particulars provided to the respondents refer to individual directors of Pacific International.

### **Analysis**

[para 13]

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The respondents have requested further particulars for almost every paragraph in the notice, including those setting out the allegations of Commission staff. Rather than addressing each separate request, we will deal with the general submissions made by the respondents in support of those requests.

[para 14]

### **The standard to be applied**

The Commission considered the purpose of particulars in *Cartaway Resources Corporation, et.al.*, [1999] 26 B.C.S.C. Weekly Summary 234, in which the Commission concluded at page 236:

The fact that these are regulatory, as opposed to civil or criminal proceedings, must be kept in mind when considering the sufficiency of particulars.

Having said that, it is our view that the general common sense rule in civil pleadings that ‘particulars are required of facts and not of evidence and must be distinguished from the mode by which the case of a party is to be proved’ is equally applicable in Commission proceedings. Simply put, the purpose of particulars in Commission proceedings is to place the allegations in a factual context so as to eliminate surprise at the hearing and to give the respondents a fair opportunity to know and meet the case that Commission staff is alleging against them.

[para 15]

The respondents also referred us to *Finch v. Assn. of Professional Engineers and Geoscientists of British Columbia*, [1994] B.C.J. No. 930 (Q.L.)(B.C.C.A.).

[para 16]

In *Finch*, the Association revoked Finch’s licence to practice. The Association had charged Finch with two counts of professional misconduct. The first alleged that Finch had breached the Association’s governing act and code of ethics (no sections were specified) in that “specifically you have demonstrated incompetence, negligence or unprofessional conduct by failing to act at all times with fairness, courtesy and good faith to your associates and clients, and with fidelity to the public needs; and more specifically with respect to the following projects and matters: [the addresses of four residences are listed].” The second charge is not relevant to the matter before us.

[para 17]

Finch requested particulars. The Association sent him a book of 35 documents, which included all written complaints and supporting materials received by the Association and upon which they intended to rely at the inquiry. Of the documents, 31 related to the first charge and were grouped as to the four projects. Nothing in the book of documents related the documents to the alternative complaints of incompetence, negligence or unprofessional conduct. Finch requested further particulars, but received none.

[para 18]

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After an inquiry, the Association revoked Finch's licence to practice. The Association's decision was overturned by the Court of Appeal. One of the grounds was that Finch had been given inadequate particulars of the charge against him.

[para 19]

In paragraph 28 of his decision, Cumming J.A. quoted with approval the decision of the Saskatchewan Court of Appeal in *R. v. Discipline Committee, Ex parte Sen* (1969) 6. D.L.R. (3d) 520, where the Court observed at page 524:

Not only must the charge be correct in form and sufficient to inform the person charged, in general terms of the charge against him, but must contain sufficient particulars to enable him to properly prepare his defence. If the charge lacks those particulars essential to a fair hearing, such particulars must be furnished before the person charged can be called upon to answer the charge.

[para 20]

Cumming J.A. noted at paragraph 24 that Finch's principal submission on the appeal was that the notice he had been given was deficient "because it encompasses virtually every dereliction contemplated under the [governing act] without giving particulars as to what is said to constitute incompetence, negligence, or what conduct constituted unprofessional conduct."

[para 21]

Cumming J.A. accepted Finch's submission on this point and concluded at paragraph 36:

Likewise, in the case at Bar, before the appellant could be called upon to make any answer, he was entitled to particulars of his conduct that was alleged, (1) to have been incompetent, (2) to have been negligent, and (3) to have been otherwise unprofessional, and in what way. ... Without these particulars, it was not possible for the appellant to know the case he had to meet. Without appropriate particulars, the charge was unintelligible.

Cumming J.A. continued at paragraph 38:

The documents forwarded to the appellant did not, in my opinion, assist. They contained opinions, impressions, suspicions, beliefs, and rhetorical questions. There is nothing to relate the many and varied inferences that can arise from the documents to what the respondent alleges in the charge to have been the appellant's misconduct.

...

[para 22]

We agree with the respondents that the standard in *Finch*, which is the same as the standard in *Cartaway*, is the one to be applied in this case. However, we do not agree that the circumstances in *Finch* correspond to those in this case.

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[para 23]

In *Finch*, the allegations were vague and the particulars non-existent. Here, the allegations against the respondents refer to specific sections of legislation or regulatory instruments, or to specific behaviour that Commission staff claims is contrary to the public interest. Facts giving rise to these allegations are set out in the notice and further delineated in the three letters. The only issue before us is whether the facts provided are sufficient to give the respondents a fair opportunity to know and meet the case against them.

[para 24]

**Particulars as to allegations that the respondents “knew or ought to have known”**

The respondents submit that, where it is alleged that a party knew or ought to have known certain facts, particulars must be provided of the means whereby the alleged knowledge was or ought to have been acquired. They point to a number of paragraphs in the notice alleging that the respondents knew or ought to have known of various facts relating to Pacific International’s clients or account activity and argue that they should be given particulars of when and how they ought to have become aware of those facts.

[para 25]

In support of their submission, they referred us to *G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada*, [1993] B.C.J. No. 1062 (Q.L.)(B.C.S.C.). In that case, the plaintiffs, who owned three office towers, sued the defendant for selling them insulation containing asbestos. One of Grace’s defences was that the plaintiffs knew or ought to have known that the insulation contained asbestos, that asbestos could be a health hazard and that asbestos-free products were available. Grace claimed the plaintiffs knew or ought to have known these things because: of advice they had received from salesmen and other employees of Grace and other companies; of various advertising and promotional material circulated by Grace and other companies; of wide publicity about the health hazard of asbestos; concern about the health hazard of asbestos was common knowledge; and the Workers’ Compensation Board conducted inspections at construction sites as well as organizing conferences and distributing publications respecting the possible health effects of asbestos.

[para 26]

The plaintiffs sought further particulars and the Supreme Court agreed. Lowry J. (In Chambers) concluded at page 5 of his decision:

Grace says the material fact is that the owners, their predecessors, or the WCB, had, or ought to have had, knowledge of the nature of the insulation product and the availability of other products. Grace has pleaded the means of knowledge and is not required to plead more: the means need not be particularized. To do so, Grace says, would be to plead evidence or the mode by which the material fact is to be proven. Pleadings are to be a brief summary of material facts; the evidence in support is to be ascertained by discovery.

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I do not accept the distinction Grace would drawn [sic]. It appears to me that what the owners seek are, in large measure, facts that are material to the defence that Grace raises. ...

...

I consider that many of the facts sought are necessary to inform the owners of the case they have to meet and to enable them to properly prepare for trial. They need to tie Grace's hands: they need a statement of specifically what Grace will prove was the means whereby the alleged knowledge was or ought to have been acquired.

Discretion should be exercised in favour of requiring Grace to provide the owners with a statement of facts that makes clear what advice, publications, publicity, and common knowledge it is that are material and that Grace will prove to establish its defence. ...

[para 27]

*G.W.L. Properties* can be distinguished from the case before us. *G.W.L. Properties* was a civil action between corporations involving product liability. This is an enforcement proceeding against a registrant and its directors in a regulatory context. The regulated environment in which the respondents carry on business is composed of a number of legislative and regulatory requirements that are designed to maintain market integrity and that registrants and other market participants are expected to know and comply with.

[para 28]

One of these requirements is IDA Regulation 1300.1(a), which requires that "[e]ach member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted." Commission staff allege that Pacific International failed to do this and that the individual respondents failed to cause Pacific International to do this. Commission staff also allege that the respondents failed to establish and apply written prudent business procedures for dealing with clients.

[para 29]

Allegations that the respondents knew or ought to have known of various facts relating to Pacific International's clients or account activity are made in the context of this regulated environment in which Pacific International carries on business. In their submission on this point, the respondents are not seeking facts; they are seeking information about how and when they should have known of these facts. In effect, they are seeking Commission staff's views as to the way in which they should have complied with their regulatory obligations. We are of the view that this is not an appropriate matter for particulars.

[para 30]

### **Particulars on an individual basis**

The respondents submit that they should be given particulars of the allegations against them on an individual, rather than a group, basis. The respondents argue that each of the nine individual respondents had a different role and responsibilities within Pacific

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International and should therefore be given particulars that address his or her individual circumstances.

[para 31]

The respondents referred us to *Hou v. Wesbild Holdings Ltd.*, [1994] B.C.J. No. 2021 (Q.L.) (B.C.S.C.) in support of their submission. In *Hou*, the plaintiffs sued the defendants for damages for fraudulent misrepresentations that induced them to enter contracts. The defendants sought further particulars. The plaintiffs refused to provide them, on the basis that the particulars requested could be obtained by the defendants on examination for discovery of each of the plaintiffs.

[para 32]

The Supreme Court ordered the plaintiffs to provide the particulars requested. At paragraph 25 of the decision, Baker J. concluded:

In this case, where there are many plaintiffs and many defendants, each defendant is entitled to know the case made against it. Each of the plaintiffs will be required to prove a statement or representation made to it; the fact that he or she relied upon that representation; the fact that the representation was false and that damages were suffered by that particular plaintiff. ... In each case, the defendants are entitled to know, in respect of each plaintiff, the particularity of each pleading.

[para 33]

Commission staff disagree with the respondents' position. They submit that they will be advancing a theory of collective liability against the directors of Pacific International and, therefore, that it is appropriate to provide particulars on a collective basis.

[para 34]

*Hou* can be distinguished from the case before us. In *Hou*, each plaintiff sued each defendant for misrepresentation. Therefore, a defendant in that case would be required to prepare a defence against each plaintiff. To do so, the defendant would require particulars of the case made against that defendant by each plaintiff.

[para 35]

Here, Commission staff have made allegations against the directors only as a group. In these circumstances, we are satisfied that Commission staff need not provide the respondents with particulars on an individual basis.

[para 36]

### **Particulars of Indictments and Complaints**

The respondents submit that they should be given particulars of any outcomes of the various Indictments and Complaints. Commission staff say that the outcomes of these various matters are not relevant to their case as they will be arguing that the mere issuance of the Indictments and Complaints should have put the respondents on notice.

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We agree with Commission staff that, if that is the argument they will be making, they do not have to provide particulars of any outcomes.

[para 37]

### **Particulars of Accounts**

The respondents submit that they should be given further particulars regarding the Accounts. They request particulars of the specific transactions in each Account that form the basis for the allegations. They also request particulars of what Activity, Screening Deficiencies and Distributions were identified and documented by Pacific International's compliance and operations staff, and of the documents its staff created.

[para 38]

The notice alleges that the respondents failed to set up appropriate procedures to identify and take appropriate steps to deal with suspicious clients and account activity. Commission staff have categorized the clients and account activity that they allege Pacific International should have identified and, with one exception (the Screening Deficiencies), provided a list of the Accounts falling into each category. From each Account, the respondents are able to identify the client or activity in issue as well as any queries made or action taken by Pacific International's staff. We are of the view that the respondents do not require further particulars regarding the Accounts.

### **Conclusion**

[para 39]

We are satisfied that, apart from the exception noted in the prior paragraph, the particulars provided to the respondents place the allegations in a factual context so as to eliminate surprise at the hearing and give the respondents a fair opportunity to know and meet the case that Commission staff is alleging against them.

[para 40]

Accordingly, we direct Commission staff to provide to the respondents particulars of the alleged Screening Deficiencies described in paragraph 21 of the notice, specifically lists of the Accounts in which:

- (a) client verification procedures did not satisfy the requirements of the *Proceeds of Crime (Money Laundering) Act*, S.C. 1991, c. 26, paragraph 24.5, and the *Proceeds of Crime (Money Laundering) Regulations* SOR 93-75;
- (b) opening documents lacked certain information, such as proper client identification or other essential facts; and
- (c) trading and other activity occurred before a designated partner, director or officer approved the opening of the Account, as required by CDNX Rule F.1.01.3 (formerly VSE Rule F.1.01.c) and IDA Regulation 1300.2.

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[para 41]

**For the Commission**

Adrienne Salvail-Lopez  
Commissioner

John K. Graf  
Commissioner

Roy Wares  
Commissioner