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Notice of Hearing

**Timothy Fernback, Brent Wolverton,
Wolverton Securities Ltd. and William Massey**

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

¶ 1 A hearing will be held (the Hearing) to give Timothy Fernback (Fernback), Brent Wolverton, Wolverton Securities Ltd. (Wolverton Securities) and William Massey (Massey) (collectively the Respondents) an opportunity to be heard before the British Columbia Securities Commission considers whether it is in the public interest to make the following orders:

1. under section 161(1)(c) of the of the *Securities Act*, RSBC 1996, c. 418, that any or all of the exemptions described in sections 44 to 47, 74, 75, 98 or 99 of the Act do not apply to the Respondents;
2. under section 161(1)(d)(i) of the Act, that Brent Wolverton, Massey and Fernback resign any position each holds as a director or officer of any issuer;
3. under section 161(1)(d)(ii) of the Act, that Brent Wolverton, Massey and Fernback are prohibited from becoming or acting as a director or officer of any issuer;
4. under section 161(1)(d)(iii) of the Act, that Brent Wolverton, Massey and Fernback are prohibited from engaging in investor relations activities;
5. under section 161(1)(f) of the Act, that Brent Wolverton and Wolverton Securities be reprimanded or that Brent Wolverton's and Wolverton Securities' registrations be restricted or that conditions be imposed on them as registrants.
6. under section 162 of the Act, that the Respondents pay an administrative penalty;
7. under section 174 of the Act, that the Respondents pay the prescribed fees or charges of or related to the hearing; and
8. any other orders as may be appropriate in the circumstances.

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- ¶ 2 The Commission will be asked to consider the following facts and allegations in making its determination:

The Respondents

1. Wolverton Securities was at all material times an investment dealer registered in British Columbia and a member of the former Canadian Venture Exchange (CDNX), now TSX Venture Exchange (TSX Venture), and the Investment Dealers Association of Canada (IDA).
2. Massey is the president and a director of Cinema Internet Networks Inc. (Cinema).
3. Fernback was at all material times the Manager of Corporate Finance at Wolverton Securities.
4. Brent Wolverton was at all material times the president of Wolverton Securities and is registered as its trading partner and a director. He had main responsibility at Wolverton Securities for compliance with the Act, *Securities Rules*, BC Reg. 194/97 (the Rules), and SRO requirements.

Facts

5. Cinema was incorporated under the *Canada Business Corporation Act* on December 27, 1985, and commenced trading as T.E.N. Private Cable Systems Inc. on the former Vancouver Stock Exchange, now TSX Venture, on November 12, 1986, and changed its name on July 27, 1999, to Cinema.
6. Cinema provided pay per view movies and internet connections for North American hotels.
7. As of January 31, 2000, there were 6,520,987 shares issued and outstanding in Cinema. Massey controlled 3,898,120 or 60% of the total shares.
8. Cinema planned a public offering, by way of a short form offering (the SFO), of 1.5 million shares at \$0.25 per share.
9. Initial planning for the offering began in December 1999. The offer was to be completed by the first week of January 2000.
10. Wolverton Securities was to be the agent for the SFO.
11. On February 1, 2000 (the Halt Day), the CDNX Market Surveillance halted trading in Cinema due to an unexplained increase in the price of Cinema's shares from \$0.32 to \$0.75.

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12. Brent Wolverton was informed of the price increase and the halt on the Halt Day. Brent Wolverton instructed Fernback to discuss the halt and the SFO pricing issues with CDNX.
13. The SFO pricing was an issue because it would be based on the previous day's close. Cinema and Wolverton Securities wanted a price lower than the Halt Day price would allow.
14. In order to reduce Cinema's price and secure an SFO price more to Cinema's and to Wolverton's liking, Massey, on advice from Fernback, asked a Cinema shareholder (the Seller), who owned 120,000 shares in Cinema, to sell those shares on the market as directed, on the understanding, again on advice from Fernback, that the Seller would get an equivalent number of securities back from Cinema.
15. On February 10, 2000, Cinema issued a news release announcing it was in negotiations with a telecommunications carrier. This was issued at the request of CDNX Market Surveillance department to deal with rumours of an alleged agreement with Sprint Communications and in response to the unexplained increase in the price of Cinema shares on the Halt Day. The halt was lifted on February 11, 2000 after the news release was issued. When Cinema began trading after the halt was lifted, its price rose to \$1.25 per share.
16. On Friday, February 11, 2000, the Seller opened an account with Wolverton Securities in order to sell her Cinema shares. The Seller's instructions to Wolverton were to sell the 120,000 shares of Cinema owned by the Seller.
17. The Wolverton head trader managed the Seller's trades, using progressively lower limit prices. The trades occurred before the shares came into the account on the basis that Brent Wolverton himself had approved the trades and told the head trader the shares would be delivered.
18. From 11:21 am, when the Seller's account began its trading, until 1:30 pm, when the market closed, the Seller's account executed 27 of the 29 Cinema market trades. The Seller's account ultimately sold 87,400 shares on February 11, 2000, which was 88% of the total market volume on that day, and 97% of the market volume in approximately the last two hours.

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19. The selling by the Seller's account reduced Cinema's share price from \$1.30 to a closing price of \$0.32. The last trade by the Seller in Cinema's shares occurred sixteen seconds before the close of the market that day. The only reason for the selling in the Seller's account was to reduce Cinema's share price.
20. On Monday, February 14, 2000, Cinema issued a news release prior to the opening of the market announcing an SFO of 1,350,000 shares at \$0.30 per share. It did that in order to use the previous trading day's closing price of \$0.32 plus any applicable discounts, as the SFO price, pursuant to CDNX policy 4.6.
21. CDNX Listings Committee refused to accept the SFO price advertised by Cinema on February 14. Ultimately, the SFO price was approved by CDNX Corporate Finance at \$0.675 per unit. Each unit consisted of one common share of Cinema and one-half of one share purchase warrant. On February 23, 2000, Cinema issued a news release announcing the SFO at \$0.675 per unit.
22. In the days following February 11, 2000, Cinema's share price increased from \$0.32 to a high of \$2.35 on February 18, 2000.
23. The selling in the Seller's account was directed by Massey and Fernback and accepted by Brent Wolverton, in order to artificially reduce the price of Cinema shares for the purposes of the SFO.
24. Fernback arranged, to Brent Wolverton's knowledge, to compensate the Seller for selling the Cinema shares, with Massey's and Cinema's cooperation. Fernback's plan was:
 - (a) Step 1: Wolverton allows the Seller to purchase 19,000 units at 67.5 cents (requires \$12,825 from her account).
 - (b) Step 2: the Seller instructs Wolverton to issue a cheque for \$22,200 and deposits the cheque into the Seller's bank account.
 - (c) Step 3: The Seller gives Massey one or two cheques totalling \$22,175 (perhaps different dates).
 - (d) Step 4: Massey and his wife set up two trading accounts with Wolverton. They deposit Cinema shares and a cheque totalling approximately \$22,175 (or more).

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- (e) Step 5: Massey and his wife exercise existing options (88,700 at 25 cents – totalling \$22,175).
- (f) Step 6: Massey and/or his wife journal a total of 68,400 shares into the Seller's Wolverton account on Massey and/or his wife's instructions.
- (g) Step 7: Massey and/or his wife disclose the disposition of stock to the Seller (if necessary).
- (h) The net effect would be that the Seller would get the 87,400 shares back sold on February 11, 2000, with an additional 9,500 warrants, plus \$15,000 to cover capital gains taxes.

25. Pursuant to Fernback's plan, the following events actually occurred:

- (a) The Seller participated in the SFO and acquired 19,000 units.
- (b) Wolverton issued a cheque to the Seller for \$22,200 from her account.
- (c) Massey and his wife exercised 60,000 and 8,400 Cinema share options, respectively.
- (d) Massey's wife instructed Wolverton to journal 8,400 Cinema shares from her account to the Seller's account.
- (e) Massey instructed Wolverton to journal 60,000 Cinema shares from his account to the Seller's account.
- (f) Wolverton issued a second cheque to the Seller for \$14,859 from the Seller's account.
- (g) The net effect was that, the Seller did acquire 87,400 Cinema shares and received \$14,859 in cash. Also, through participating in the SFO, the Seller received 9,500 share warrants.

Breaches of the Act

26. Each of Massey and Fernback arranged, with the knowledge, consent and acquiescence of Brent Wolverton, the sale of the Seller's shares to reduce the price of Cinema's shares for the SFO, knowing that the effect of the selling would result in an artificial price for the securities, in breach of section 57(a) of the Act.

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27. Brent Wolverton and Wolverton Securities did not either establish or apply written prudent business procedures for dealing with clients in compliance with the Act or the regulations, in breach of section 44 of the Rules, CDN X “Supervision of Accounts” Rule F.1.01, CDN X “Responsibility of Supervisors” Rule F.2.22 and IDA “Supervision of Accounts” Regulation 1300.2 (a).
28. Brent Wolverton was at all times material to this Notice of Hearing responsible for compliance at Wolverton Securities. He participated in the scheme to reduce the price of Cinema’s shares through the sale of the Seller’s shares when he knew or ought to have known it was manipulative and would result in an artificial price for Cinema securities and agreed to allow Wolverton Securities to participate in it in breach of sections 57(a) and 168.2 of the Act.

Breaches of Regulatory Requirements

29. Brent Wolverton and Wolverton Securities engaged in conduct and business that was unbecoming and inconsistent with just and equitable principles of trade and detrimental to the public interest in breach of CDN X Rule F.2.01, and in breach of the gatekeeper requirements.
30. Wolverton Securities, Fernback, and Brent Wolverton knew or ought to have known that effect of the selling by the Seller’s account would be to unduly disturb the normal position of the market and to create an abnormal market condition in which the closing price for Cinema’s shares did not fairly reflect current market value, in breach of CDN X Rule F.2.18(4) and F.2.03 “Compliance by Employees”.

Actions Contrary to Public Interest

31. Each of Massey, Fernback, Brent Wolverton, and Wolverton Securities acted in a manner contrary to the public interest in creating, condoning, or participating in the scheme.

- ¶ 3 The Respondents may be represented by counsel at the Hearing, and make representations and lead evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Commission Secretary at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.
- ¶ 4 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on Wednesday, December 11, 2002, at 9:00 am if they wish to be heard before the Commission sets a date for the Hearing.

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¶ 5 Determinations may be made in this matter if the Respondents or their counsel do not appear at the Hearing.

¶ 6 November 20, 2002

¶ 7 Martin Eady
A/Executive Director