

2009 BCSECCOM 438

Settlement Agreement

BMO Nesbitt Burns Inc. and Jaime Alejandro Torres

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director), BMO Nesbitt Burns Inc. (BMO NB) and Jaime Alejandro Torres (Torres) agree as follows:

Agreed Statement of Facts

1. BMO NB is an Investment Dealer (Securities and Exchange Contracts and Underwriter), with its head office located in Toronto, Ontario. It holds registration in various jurisdictions across Canada, including British Columbia.
2. Jaime Alejandro Torres (Torres) currently holds registration with BMO NB as a RR and salesperson (Securities).
3. On August 1, 2007, under section 164(1) of the Act, staff of the Commission (Staff) issued a cease trade order (CTO) against Raven Gold Corp. (Raven), whose shares are quoted on the United States Over the Counter Bulletin Board.
4. On August 1, 2007 at 4:30pm, the Canadian Securities Administrators (CSA) sent an email message to its subscribers, including BMO NB, announcing the Raven CTO.
5. At the time of the Raven CTO, BMO NB had a procedure in place to notify its trade desk staff of CTOs in order to prevent or cancel, as necessary, orders for securities under CTO. In this instance, inadvertently, the CTO was not entered into BMO NB's system due to an error.
6. On the morning of August 2, 2007, BMO NB Retail Compliance sent an email to the trade desk and all its representatives, advising of the Raven CTO.
7. Between August 2, 2007 and October 2, 2007, and contrary to the CTO, Torres traded in the securities of Raven by purchasing 28,000 shares and selling 77,000 shares for three different clients in 11 separate transactions. Torres earned \$262.71 in commission on the Raven trades.

8. Torres represents that, at the time of the Raven trades, he relied on the BMO NB computerized Order Matching System in respect of any outstanding CTOs and had not become aware of the Raven CTO.
9. On October 2, 2007 and October 11, 2007, and contrary to the CTO, a second BMO NB Investment Advisor accepted an order for the purchase of 3,000 and 7,000 shares of Raven.
10. On November 15, 2007, BMO NB cancelled the Raven trades conducted by the second BMO NB Investment Advisor and moved the shares to their internal error account.
11. On November 15, 2007, BMO NB sold 10,000 Raven shares out of its internal error account, contrary to the CTO. BMO NB earned \$1,020.27 on all Raven trades that occurred following the Raven CTO.
12. BMO NB represents that since these events, it has enhanced its procedures to better safeguard against clerical errors in the implementation of CTOs by its trade desk.

Misconduct

13. BMO NB and Torres contravened the Raven CTO issued under section 164(1) of the Act.

Public Interest

14. BMO NB and Torres acted contrary to the public interest by engaging in the conduct set out above.

Undertaking

15. BMO NB will pay \$5,000 to the Commission, which is due and payable immediately without further demand. This includes \$1,020 in commission that BMO NB earned on the Raven trades.
16. Torres will pay \$3,500 to the Commission, which is due and payable immediately without further demand. This includes \$262 in commission that Torres made on the Raven trades.

Order

¶ 2 The Executive Director will issue an order (the Order) that:

1. under section 161(1)(a) of the Act, BMO NB and Torres will comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations; and

2. under section 161(1)(j) of the Act, BMO NB be reprimanded.

Consent to Reciprocal Orders

¶ 3 Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making an order similar to the one contemplated above.

Waiver

¶ 4 BMO NB and Torres waive any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

Counterpart

¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6 July 16, 2009

¶ 7 “Dean Manjuris” _____)
BMO Nesbitt Burns Inc. _____)
(Signing Authority) _____)
“Dean Manjuris” _____)
Print Signing Authority Name _____)
_____)
“Hilda Walsh” _____)
Witness Signature _____)
_____)
“Hilda Walsh” _____)
Witness Name (please print) _____)
_____)
1 First Cdn Place, 49th floor _____)
Address _____)
Toronto, ON _____)
_____)
Vice Chair, BMO NB, PCD Div _____)
Occupation _____)

¶ 8 July 14, 2009

¶ 9 “Jaime Alejandro Torres”)
Jaime Alejandro Torres)
)
“Jaime Alejandro Torres”)
Print Signing Authority Name)
)
“E. Blair Forrest”)
Witness Signature)
)
“E. Blair Forrest”)
Witness Name (please print))
)
3rd floor-1665 Ellis Street)
Address)
Kelowna BC)
)
Barrister & Solicitor)
Occupation)

¶ 10 August 10, 2009

¶ 11 “B. Leong”
Brenda M. Leong
Executive Director