

2011 BCSECCOM 557

Anthony Patriarco

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken Don Rowlett Shelley C. Williams	Vice Chair Commissioner Commissioner
Hearing dates	September 20-22, 2011	
Written submissions completed	November 14, 2011	
Date of Ruling	December 14, 2011	
Submissions filed by		
Bronwyn M. Turner	For the Executive Director	
Thomas Manson, QC	For Anthony Patriarco	

Ruling of the Majority

I Introduction

- ¶ 1 This is a ruling made in the course of a hearing under sections 161(1) and 162 of the *Securities Act* RSBC 1996, c. 418.
- ¶ 2 On January 27, 2011 the executive director issued a notice of hearing alleging that Anthony Patriarco contravened section 57.2 of the Act by trading shares of Euromax Resources Ltd. while being in a special relationship with Euromax and with knowledge of a material fact in relation to Euromax that had not been generally disclosed.
- ¶ 3 During the hearing, scheduled for three days in September, we heard the executive director's case and the testimony of two witnesses called by Patriarco. It became clear that more hearing days would be needed to hear the balance of Patriarco's case.
- ¶ 4 Based on the evidence we had heard to that point, we were of the opinion that there was a real question as to whether the fact relating to Euromax, relied on by

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the executive director as the basis for the insider trading allegation against Patriarco, was a “material fact” as defined by the Act.

- ¶ 5 We therefore suggested to the parties that we hear submissions on the material fact issue and rule on that before setting additional hearing dates. A ruling that the fact in issue was not a material fact would end the matter (with the incidental consequence of relieving Patriarco, who resides in Virginia, of the cost and inconvenience associated with the continuation of the hearing). Otherwise, the hearing would resume with no prejudice to Patriarco’s right to present a complete defence to the allegations.
- ¶ 6 Commissioner Williams does not agree with the ruling of the majority of the panel and will issue her reasons in due course.

II Background

- ¶ 7 Among Euromax’s assets were exploration rights under three mining exploration permits in Macedonia. The permits were described in the hearing as Kazandol, Ilovitza 6 and Ilovitza 4. The permits themselves were owned by a third party. Euromax had the right to explore in the permit areas under an agreement with that party.
- ¶ 8 The three permits expired at different times during late 2008 and early 2009. Extensions were obtained for the Kazandol and Ilovitza 6 permits, but there were difficulties with the extension of the Ilovitza 4 permit, apparently associated with changes in the Macedonian legislation that governed permit extensions.
- ¶ 9 Euromax came to realize that the Macedonian government was not likely to extend the Ilovitza 4 permit and instead put it out for public tender.
- ¶ 10 On November 12, 2009 Euromax filed a confidential material change report under the Act disclosing the extensions of the Kazandol and the Ilovitza 6 permits and the Ilovitza 4 permit expiry and the Macedonian government’s decision to put it out for public tender.
- ¶ 11 Although the material change report says the Macedonian government rejected Euromax’s application to extend the permit (language adopted by the executive director in the notice of hearing), the evidence is that there was no formal rejection at the relevant time, although that was Euromax’s expectation.
- ¶ 12 For the purposes of this ruling, we are ignoring this discrepancy and are treating the Ilovitza 4 permit expiry and the Macedonian government’s decision to put it out for public tender as the fact that the executive director alleges is the “material fact” that Patriarco knew when he traded shares of Euromax.

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- ¶ 13 An issuer that files a confidential material change report must renew its request for confidentiality every 10 days. Euromax did so over a period spanning about eight months until it issued a news release on July 9, 2010 announcing the status of the three permits.
- ¶ 14 There is no similar confidentiality mechanism for the filing of financial statements and management discussion and analysis. Euromax disclosed the status of the Ilovitza 4 permit on November 30, 2009 when it filed its 2009 third quarter financial statements and MD&A.

III Analysis

- ¶ 15 Section 57.2(2) of the Act says:

“A person must not enter into a transaction involving a security of an issuer . . . if the person,

(a) is in a special relationship with the issuer, and

(b) knows of a material fact or a material change with respect to the issuer, which material fact or material change has not been generally disclosed.”

- ¶ 16 From the language of section 57.2(2) it is clear that no person can contravene that section unless the person has knowledge of a material fact or material change relating to the issuer.
- ¶ 17 The executive director alleges that the undisclosed material fact relating to Euromax that Patriarco knew when he allegedly traded Euromax shares was the Ilovitza 4 permit expiry and its offer under public tender.
- ¶ 18 Section 1(1) defines “material fact”:
- “ ‘material fact’ means, when used in relation to securities issued or proposed to be issued, a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.”
- ¶ 19 The onus of proof on the executive director in a hearing under section 161(1) and 162 is to prove, on a balance of probabilities, that the allegations in the notice of hearing are true. The proof must be clear and convincing and based on cogent evidence. Cogent evidence is “convincing” and “compelling”: *Hu* 2011 BCSECCOM 355 (para 13).

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- ¶ 20 In the context of this ruling, the onus is on the executive director to prove that the Ilovitza 4 permit expiry and its offer under public tender was a material fact relating to Euromax.
- ¶ 21 The executive director says the Ilovitza 4 permit expiry and its offer under public tender was a material fact because:
1. The Ilovitza project was a significant part of Euromax’s business.
 2. Euromax considered the Ilovitza project to have a robust rate of return and a positive net value.
 3. The Ilovitza 4 permit was important for the success of the Ilovitza project.
 4. Euromax planned a confidential and highly secure drilling program near the border of Ilovitza 6 and 4.
 5. Euromax’s filed a confidential material change report shows it considered it to be a material fact.
 6. Correspondence among the Euromax directors demonstrate it was a material fact.
- 1. Significance of the Ilovitza project to Euromax’s business; Euromax’s belief in its economic value**
- ¶ 22 Ilovitza is described in the Euromax 2009 annual report as one of five projects on which Euromax was incurring expenditures, although Ilovitza is not identified in the report as having any particular significance. As of the end of 2009 Euromax had spent \$1.2 million on Ilovitza (not including the acquisition cost of the property) – about 17% of the \$7 million it had spent on all five properties.
- ¶ 23 The annual report opens with a section called “Management Report” signed by Euromax’s Chairman of the Board. In this section, the Chairman refers to a transaction that provided Euromax with the financial resources “to allow exploration on our substantial property portfolio in South-eastern Europe to recommence”. He highlights only two projects – Breznik and Kazandol. He does not mention Ilovitza.
- ¶ 24 John Menzies was the president and chief executive officer of Euromax during the relevant period. Menzies has extensive qualifications and experience related to the natural resources industry, which includes experience in mine economics feasibility studies and mine finance and development. He testified at the hearing about Euromax’s business prospects at the time, including the Ilovitza project.
- ¶ 25 At the hearing, Menzies identified four main objectives the company had in 2009:
1. put the Breznik project into production,
 2. advance the Trun project with a modest programme of exploration,
 3. reevaluate the geological data on Euromax’s properties in Serbia and Bulgaria, and

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4. farm out or dispose of the Ilovitza property.

- ¶ 26 The Ilovitza project was at an early stage of exploration. In August 2008 Euromax filed with securities regulators a report prepared in compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects*. The report found that initial exploration activity supported inferred resources of copper and gold. (The inferred resource category is the lowest in terms of certainty.) The resource calculations were conducted by Menzies and the author of the report.
- ¶ 27 In his testimony, Menzies said the report was “simply a weighted numeric average of the assay data. It does not include any economic parameters whatsoever and importantly does not include any metallurgic recoveries.”
- ¶ 28 Menzies went on to say that the report does not “demonstrate economic viability of the identified source” and that it was merely “an all resource statement” and “contained no economic [*sic*] or anything else from the analysis.”
- ¶ 29 This is consistent with the news release Euromax issued in connection with the filing of the report. In it, Euromax said:
- “Mineral resources do not have demonstrated economic viability and future in-fill drilling and scoping, pre-feasibility and feasibility studies will be needed to determine the viability of the resource.”
- ¶ 30 This opinion was shared by Patriarco. Christopher Serin, Euromax’s chief financial officer at the time, testified that Patriarco objected to a draft budget prepared by Serin that included proposed expenditures on the Ilovitza project. Serin said Patriarco objected to the expenditures because he believed the ore grade was too low for the project to be economically viable.
- ¶ 31 Taking into account economic factors, Menzies had concluded it had a negative net present value and therefore he did not regard Ilovitza as a worthwhile project. He testified that in his opinion the exploration Euromax had done to date in late 2009 suggested that the ore grade would be too low to make the mine economically feasible. He said it was his intention to “press the board to walk from [Ilovitza] and either farm it out or get rid of it because the grade was too low and it was uneconomic.” The executive director says that Menzies’ testimony of Ilovitza’s potential was coloured by subsequent events, but Serin confirmed in his testimony that Menzies held this view at the relevant time.
- ¶ 32 There were other problems. The Ilovitza deposit would likely have been feasible only as an open pit mine. The deposit is on a prominent hill on the side of a valley

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in the main wine and vegetable producing region of Macedonia and clearly visible to the surrounding communities.

- ¶ 33 Menzies expected environmental groups would strongly oppose any open pit mine because of that visibility and also because of local experience with another open pit mine about 20 kilometers north of the Ilovitza deposit. That mine was, in Menzies' words, a "very poorly managed operation" that had turned the local stream "bright blue like the sky" with copper from the mine's drainage. For these reasons, Menzies said he "always believed that there would be enormous problems" in getting a mine permitted and developed on the Ilovitza deposit.
- ¶ 34 The executive director says a document dated less than a month after Euromax's NI43-101 report that Menzies prepared entitled "Ilovitza Economics Summary" contradicts Menzies' evidence at the hearing that the Ilovitza project was not economically worthwhile. An economic study contained in the Summary, based on its assumptions, "suggests low operating costs after gold and silver credits, NPV of US\$290 million, an Internal Rate of Return of 17% and 4 year payback."
- ¶ 35 The Summary describes the economic study as "preliminary" and states its purpose is to "provide an initial economic evaluation to guide future project activities." It contains the disclaimer that "Metallurgical recoveries and stripping ratios are estimates only and the conclusions of this report should be treated accordingly." It notes that, "While the resource used in this report is National Instrument 43-101 compliant this report is not 43-101 compliant."
- ¶ 36 Menzies testified that he prepared the study solely at the request of, and for the purpose of attracting the interest of, a party that was a potential buyer or development partner for the Ilovitza property. Menzies described it as "highly promotional in nature". In preparing it he said he used a set of assumptions that were highly optimistic on all important points. These assumptions were, in essence, without foundation, there having been no metallurgical studies, nor any serious calculation of costs related to mine approval and construction, operations, shipping, or environmental compliance. It was, in other words, a marketing document. Although he distributed it to the Euromax board, it was never shown to anyone else other than the prospective buyer/partner.
- ¶ 37 We find this explanation credible. If Menzies, the CEO, really believed Ilovitza had anywhere near the value represented in the Summary, surely Euromax would have devoted significantly more time, attention and money to its exploration than it did, and the project would have figured much more prominently in Euromax's description of its business. It is unlikely Patriarco would have objected to expenditures on the project. Not to mention that, as the Summary says and

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Menzies testified, Euromax did not yet know in September 2008 nearly enough about the Ilovitza resource to attempt any sort of credible economic analysis.

- ¶ 38 We do not find the Summary to be cogent evidence of the value of the Ilovitza property nor do we find its existence contradicts Menzies' testimony as to the value of the Ilovitza project.
- ¶ 39 We do not find clear and convincing proof that the Ilovitza project had significant value to Euromax's business as a whole. Indeed, the evidence is to the contrary.

i. Importance of the Ilovitza 4 permit to the success of the Ilovitza project

- ¶ 40 We have not found that the Ilovitza project was significant to Euromax's business as a whole at the relevant time. Whatever significance it had, however, was associated only with the Ilovitza 6 permit area. That was the only part of the Ilovitza property on which exploration drilling had taken place, the only part on which Euromax had spent significant amounts on exploration, and the only part on which the inferred resource described in the August 2008 NI43-101 report was located.
- ¶ 41 The Ilovitza 4 permit area had no intrinsic value at the relevant time. Euromax had spent no significant amounts on it – Menzies estimated the exploration expense incurred by Euromax to be less than about \$100,000 (not including allocated overhead and so on). The property had no identified mineral resource.
- ¶ 42 According to Menzies and Serin, the significance of Ilovitza 4 lay entirely in the potential it may have held if the deposit on Ilovitza 6 continued in that direction. That hypothesis could have been verified only by an exploration program on the Ilovitza 4 permit area – work that had not been done at the relevant time.
- ¶ 43 Euromax took some trouble to try to secure the permit for Ilovitza 4 and to keep the tender process confidential. Those may have been prudent things to do for the management of the Ilovitza project, especially if Euromax was contemplating a divestiture of the property. But that fact falls far short of establishing that Ilovitza 4 was important to the success of the Ilovitza project, much less material to Euromax's business as a whole.
- ¶ 44 This is what Euromax said about the Ilovitza 4 permit in a July 22, 2010 news release:

“Euromax . . . wishes to clarify the status of the licences held by it in respect of the Ilovitza Project. The Ilovitza Project is the subject of two exploration licences: Ilovitza 4 and Ilovitza 6.

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The majority of exploration work conducted to date by the Corporation has been on the Ilovitza 6 licence. Virtually all of the previously announced 43-101 compliant inferred resource at the Ilovitza Project . . . is within the area covered by the Ilovitza 6 licence. . . . In addition, virtually the entire untested geophysical anomaly identified to date is located on the area covered by the Ilovitza 6 licence.

If, and when, a new exploration licence is issued in respect of the area covered by the former Ilovitza 4 licence, Euromax intends to evaluate the possibility that it contains an extension to the current Ilovitza deposit.

Christopher A. Serin, Interim Chief Executive Officer of Euromax stated, ‘It is important that shareholders appreciate that Euromax’s current inferred resource and the previously announced geophysical anomaly at Ilovitza *were not materially affected by the expiry of the Ilovitza 4 licence*. The area of the former Ilovitza 4 licence however is of interest to Euromax on the basis that it may contain an extension to the resource on Iolovtiza 6.’” [emphasis added]

¶ 45 Although this news release was issued a few months after the material change report, there is no evidence that the importance of the Ilovitza 4 permit changed during that period. Euromax did not file any new material change reports on that subject, nor did the disclosure in its MD&A change in that respect.

¶ 46 We do not find clear and convincing proof that the expiry of the Ilovitza 4 permit was important to the success of the Ilovitza project. To the contrary, the contribution of the Ilovitza 4 permit area was purely hypothetical, and Euromax stated in its news release that the expiry of the Ilovitza 4 permit was not material to the Ilovitza 6 project.

3. Euromax’s drilling near the Ilovitza 4 permit area

¶ 47 Although Menzies did not believe in the economic viability of the Ilovitza project, he did consider it significant from a geological perspective. Menzies testified that Euromax drilled an exploratory hole on Ilovitza 6 near the Ilovitza 4 property to see whether there might be an extension of the Ilovitza 6 deposit into the Ilovitza 4 permit area, but his expectations were low. The only outcome that would have changed his mind, he said, was a result indicating a much higher grade of resource in Ilovitza 4 than on Ilovitza 6.

¶ 48 Euromax drilled the hole while the Ilovitza 4 permit status was unclear. The company took the usual steps when there is a desire to keep drilling results confidential. This was understandable – if the results were encouraging, Euromax would have wanted to ensure that did not distort the auction process for the tender.

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¶ 49 That Euromax decided to drill that hole does not, of itself, make the Ilovitza 4 permit significant. It may, from a mineral exploration point of view, have been a last logical step to take before making a final decision on the project, but that, of itself, does not prove that the Ilovitza 4 permit was important to the success of the Ilovitza project, or otherwise to Euromax's business.

4. Filing of confidential material change report

¶ 50 An issuer's filing of a material change report about new information no more establishes that the information is material than its failure to file one would establish that the information is not material. It is a factor to be considered, but is not determinative.

¶ 51 According to Menzies, Euromax's usual procedure for disclosing information about its properties, other than the acquisition of a new licence, was to disclose the information in its MD&A in the ordinary course. The evidence is consistent with this description of Euromax's practice. When it came to the Kazandol and Ilovitza permits, Menzies saw no reason to do anything differently.

¶ 52 Menzies learned that Serin, who was responsible for the company's regulatory filings, intended to file a material change report about the status of the Kazandol and Ilovitza permits. Menzies told Serin that it was not necessary to do so because the information was not material and could simply be disclosed in the MD&A as usual.

¶ 53 Menzies testified that he did not believe that the status of the Ilovitza 4 permit "would have any impact whatsoever on the market price of the Euromax stock".

¶ 54 He and Serin had several discussions on the matter, but Serin was insistent, and Menzies decided to let the matter drop. He was busy with other things and did not see any particular harm in Euromax's making what he considered a superfluous filing. He did not consider that the filing of the material change report "had anything to do with anyone's expectation of and effect on the price or value of Euromax."

¶ 55 Serin testified that he believed that the renewal of the Kazandol and Ilovitza 6 permits had to be disclosed in a material change report, and he thought the company could be criticized for disclosing only the good news and not the bad if it failed also to disclose the Ilovitza 4 permit expiry and its offer under public tender.

¶ 56 However, disclosing the status of Ilovitza 4 created a problem. The permit was under public tender, and there was a risk that other companies, in particular well-

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capitalized western-based ones, might easily outbid Euromax by bidding an amount that was “pocket change” for them but prohibitive for Euromax to outbid.

- ¶ 57 To deal with this issue, Serin decided to file the material change report on a confidential basis as permitted under the rules.
- ¶ 58 The evidence includes emails among Serin and the directors about the filing of the material change report on a confidential basis. Serin told the directors about the filing, circulated a copy of a memo from the company’s counsel (which spoke only to process, not the issue of materiality), and told them that they must keep the information confidential and that they could not trade Euromax stock until the information was publicly disclosed.
- ¶ 59 The emails in evidence show that some of the Euromax directors acknowledged Serin’s note, but none of them mentioned the subject of the materiality of the disclosure, including Patriarco, who believed that the Ilovitza ore grade was too low for the project to be economically viable.
- ¶ 60 All of this evidence shows that the materiality of the Ilovitza 4 permit expiry was not a matter that the board as a whole considered in any depth. The two individuals in senior management who did consider it – Serin and Menzies – had opposite views on the subject. The decision to file the material change report was therefore not based on a considered and unanimous, or even majority, view of Euromax’s management and board that the Ilovitza 4 permit expiry was a material fact.
- ¶ 61 To the contrary, it was Serin who decided to file the report. He did so over Menzies’ objections. The rest of the board appears to have simply relied on Serin’s advice that the status of the permits was material and agreed to follow his instructions to keep the information confidential and to refrain from trading.

5. Impact of disclosure on the Euromax share price

- ¶ 62 The executive director entered no evidence on the subject of the expected effect on Euromax’s share price – the core of the definition of material fact – of the Ilovitza 4 permit expiry and its offer under public tender at the relevant time. The executive director stated in its reply submissions, without citing any evidence other than Euromax’s filing of a material change report, that the Ilovitza permit expiry and its offer under public tender would have been reasonably expected to have an effect on the Euromax share price at the time.
- ¶ 63 There is evidence, however, about movements in the Euromax share price when it finally disclosed the status of the Kazandol and Ilovitza permits.

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- ¶ 64 Determining whether information is material at a point in time requires an analysis of whether, at that point in time, the information “would be reasonably be expected” to significantly affect the market price or value of the securities. Accordingly, one must use caution in considering how the market price of the securities was in fact affected after disclosure was made. This is because the test is the reasonableness of the expectation of the effect, not the actual effect.
- ¶ 65 That said, the market reaction to the disclosure, when ultimately made, can sometimes be useful to test the reasonableness of the expectation. For example, a significant market reaction that is consistent with the nature and importance of the information, with no other identifiable factors to explain that reaction, may tend to confirm that an expectation of that reaction would have been reasonable. Conversely, no significant market reaction may tend to confirm that an expectation of no market reaction would have been reasonable.
- ¶ 66 Here, the reaction of the market to the disclosure of the status of the Kazandol and Ilovitza permits, including the Ilovitza 4 expiry, indicates that at the relevant time it was reasonable to expect that the disclosure would not have had a significant effect on the price of the Euromax shares.
- ¶ 67 In 2010 Euromax experienced a proxy contest for control of the board. On July 8, 2010 Euromax issued a news release after the close of the market announcing that dissident shareholders were seeking to replace the Euromax board.
- ¶ 68 The next day, July 9, 2010, Euromax issued the news release disclosing the status of the Kazandol and Ilovitza permits, including the Ilovitza 4 permit expiry.
- ¶ 69 On July 6, 2010 the closing price of the Euromax shares on the TSX Venture Exchange was 16.5 cents. On July 8 it was 14 cents. On July 9, the closing price was 11 cents. The price stayed at 11 cents until July 26. By August 16, it reached 14 cents again.
- ¶ 70 Robert Ferguson is an investor relations consultant who provided investor relations services to Euromax during the relevant period. He testified that in his opinion that the price drop in Euromax shares between July 6 and 9 was as a result of the upcoming proxy contest, and not the result of the disclosure about the Kazandol and Ilovitza permits:

“Q And the day after it closed at 11 and the day after and the day after and so on. You can see it stayed at 11 cents. Now, did you – so noting that, did you at the time, give thought to the cause for the decline?”

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A I felt that it was a more or less a knee-jerk reaction by the market. At the sight of a potential infight that was taking place and, you know, quite often, investors and shareholders just want to stray from situations like that would rather wait until there is an outcome one way or another until reentering the market. This was basically how I felt about it. I felt it was basically just a knee-jerk reaction.

Q Did you feel that the – was it your view at the time as to whether the second news release that we looked at, the one dated July 9, concerning Ilovitza, did that news release from in your experience generate any market impact?

A No. No, the part of my job was to draw awareness to the company's projects and activities in south-eastern Europe and it clearly was a very difficult thing to do. And people were not paying any attention whatsoever as far as I, in my, in my opinion, were not paying attention to what was going on on the ongoing activities within the projects. So this was, it was insignificant as far as I was concerned."

- ¶ 71 In our opinion, Ferguson's theory is reasonable and accords with common sense. It is also corroborated by Menzies' testimony about the views of others about the Ilovitza project. He testified, "I heard the occasional comment from shareholders, from brokers, from other industry participants that the grade was too low. No one was particularly interested in it."
- ¶ 72 Furthermore, the news about the permits was largely positive – Kazandol and Ilovitza 6 had been renewed. The Ilovitza project was all about Ilovitza 6. It is not reasonable to conclude that the uncertainty around Ilovitza 4, whose contribution to the project was purely hypothetical, would account for any significant drop in the Euromax share price in this time frame.
- ¶ 73 Ferguson's theory is also consistent with the decrease in the Euromax share price immediately on the news of the proxy contest, and the lack of movement in the share price on the news of the permits.

IV Finding

- ¶ 74 We find no cogent evidence that provides clear and convincing proof that the Ilovitza 4 permit expiry and its offer under public tender was a material fact:
1. The evidence shows that the Ilovitza project was not a significant part Euromax's business.
 2. The evidence shows that both Menzies and Patriarco believed that the ore grade from the project was too low for it to have any economic value. The

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- only potentially controverting evidence is the marketing document Menzies prepared that we have found was not cogent evidence of the value of Ilovitza.
3. The evidence does not show that the Ilovitza 4 permit was important for the success of the Ilovitza project. Its potential was purely hypothetical, and Euromax itself took pains in its July 22, 2010 news release to explain that the expiry of the Ilovitza 4 permit was not material to the Ilovitza project.
 4. Euromax did decide to drill a hole near the border of Ilovitza 6 and 4 and, given the uncertainty around the Ilovitza 4 licence, did take steps to keep the drilling results a secret. For the reasons we have given above, that alone does not prove that the Ilovitza 4 permit expiry was a material fact.
 5. For the reasons we have given above, that Euromax filed a confidential material change report, and the related correspondence among the directors, does not prove that Euromax considered the Ilovitza 4 permit expiry to be a material fact, or that it was, objectively, a material fact.
 6. There is no direct evidence about whether the effect of any or all of those factors would, at the time, have been reasonably expected to have a significant effect on the market price or value of the Euromax shares.

¶ 75 We do not find that the expiry of the Ilovitza 4 permit was a material fact in relation to Euromax's securities.

V Ruling

¶ 76 We have not found that the expiry of the Ilovitza 4 permit was a material fact in relation to Euromax's securities. Since that is the only fact that the executive director alleges was a material fact that Patriarco knew when he traded shares while in a special relationship with Euromax, there is no foundation to support the allegation that Patriarco contravened section 57.2(2).

¶ 77 We direct the executive director to discontinue the proceedings against Patriarco under the notice of hearing.

¶ 78 December 14, 2011

¶ 79 **For the Commission**

Brent W. Aitken
Vice Chair

Don Rowlatt
Commissioner