

# 2009 BCSECCOM 506

**Michael Kyaw Myint Hua Hu**

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

## **Hearing**

<b>Panel</b>	Brent W. Aitken Don Rowlatt David J. Smith	Acting Chair Commissioner Commissioner
<b>Date of Hearing</b>	July 15, 2009	
<b>Date of Ruling</b>	September 8, 2009	
<b>Appearing</b>		
Sean K. Boyle Alexandra Luchenko	For Michael Kyaw Myint Hua Hu	
Joyce M. Johner Derek Chapman	For the Executive Director	

## **Ruling**

### **Background**

- ¶ 1 The Commission made an investigation order under the *Securities Act*, RSBC 1996, c.418 on January 11, 2008 and amended it on April 7, 2008. The investigation order as amended appoints BCSC staff and four staff members of the Alberta Securities Commission. The ASC staff were appointed at the request of the ASC. The investigation order is substantially the same as an investigation order issued by the ASC that relates to the same parties and the same facts.
- ¶ 2 During the course of gathering information under the order, BCSC staff conducted their investigation and received information from the ASC.
- ¶ 3 On April 9, 2009 the executive director issued a notice of hearing alleging that Michael Kyaw Myint Hua Hu contravened the Act by, among other things, engaging in conduct commonly known as illegal insider trading.

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- ¶ 4 On July 15, 2009 Hu applied for orders directing the executive director to disclose certain documents and classes of documents.

### Analysis

- ¶ 5 First, we deal with information gathered under an investigation order. A person appointed by the Commission in an investigation order is an agent of the Commission for the purposes of the investigation. It follows that all information gathered by everyone named in an investigation order belongs to the Commission, and BCSC staff must disclose that information to respondents in a notice of hearing on the *Stinchcombe* standard, as set out in *Fernback* 2004 BCSECCOM 378.
- ¶ 6 Second, we deal with information gathered in a joint investigation. Here, the ASC staff and BCSC staff conducted a joint investigation into the facts behind the allegations in the notice of hearing. BCSC staff received some information gathered by the ASC relevant to the allegations in the notice of hearing and disclosed it to Hu. Is there more?
- ¶ 7 We cannot be sure. However, when persons are subject to allegations in a notice of hearing, they are entitled to disclosure of all relevant information gathered in the course of the investigation. Regulators have established, appropriately, flexible and cooperative mutual-assistance and information-sharing arrangements in order to promote effective investigation and prosecution of securities market misconduct. It is inconsistent with that regime for respondents to face technical barriers when seeking the disclosure to which they are entitled.

### Ruling

- ¶ 8 Under these circumstances, we direct that the executive director
- ask the ASC to provide BCSC staff with all information gathered under the ASC investigation that is relevant to the allegations against Hu in the notice of hearing under the *Stinchcombe* standard, and
  - disclose that information to Hu.

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- ¶ 9 If the parties require further direction from us on the issue of disclosure, we direct them to so advise the Secretary to the Commission not later than September 18, 2009.
- ¶ 10 September 8, 2009.
- ¶ 11 **For the Commission**

Brent W. Aitken  
Acting Chair

Don Rowlatt  
Commissioner

David J. Smith  
Commissioner