

BRITISH COLUMBIA SECURITIES COMMISSION

Securities Act, RSBC 1996, c. 418

Citation: Re Axion Ventures Inc., 2021 BCSECCOM 118

Date: 20210330

Axion Ventures Inc.

Panel	George C. Glover, Jr.	Commissioner
	James Kershaw	Commissioner
	Marion Shaw	Commissioner

Hearing dates March 18 and 19, 2021

Submissions Completed March 19, 2021

Decision date March 30, 2021

Appearing	
Jennifer Whately	For the Executive Director
Nazma Lee	
Gordon Smith	

Patrick Sullivan	For Axion Ventures Inc.
Edmond Chen	
Larry Yen	

Andrew McCoomb	For John Todd Bonner and the Bonner Affiliates
Felix Boser-Moehm	

Decision

I. Introduction

- [1] Terms in this Decision that are defined in the partial revocation orders (Partial Revocation Orders) set out in Schedule 1 and Schedule 2 to this Decision have the meanings set out in the Partial Revocation Orders.
- [2] Applications were brought by Axion Ventures to have the Commission exercise its discretion under section 171 of the Securities Act, RSBC 1996, c. 418 to grant orders to revoke in part the Management Cease Trade Order and the Axion Ventures Cease Trade Order to:
 - (a) permit Axion Ventures to enter into the Investment Agreement and to permit the trades to effect the Initial Tranche; and

- (b) permit Mr. Bonner to engage in any act, conduct or negotiation directly or indirectly to cause the Bonner Affiliates to transfer Axion Ventures shares to the Japanese Shareholders.

- [3] Axion Ventures also applied for orders under section 114 of the Act regarding the ability to vote certain securities of Axion Ventures at meetings of shareholders of Axion Ventures. During the oral hearing of these applications, the panel advised the parties that it could not consider that application at this time as there are complex evidentiary matters in dispute that are not amenable to decision by the Commission on an expedited basis.

II. Hearing and Decision

- [4] The panel considered the written submissions, documentary and oral evidence and affidavits and heard oral submissions from Axion Ventures and from Mr. Bonner and the Bonner Affiliates at the hearing on March 18 and 19, 2021. The Executive Director was not opposed to the granting of the Partial Revocation Orders.
- [5] The panel reserved its decision at the end of the oral hearing.
- [6] Having considered the evidence and submissions and finding that the Partial Revocation Orders would not be prejudicial to the public interest, the Commission issues the Partial Revocation Orders set out in Schedule 1 and Schedule 2 to this Decision.
- [7] The reasons for our Decision will follow.

March 30, 2021

For the Commission

George C. Glover, Jr.
Commissioner

Marion Shaw
Commissioner

James Kershaw
Commissioner

SCHEDULE 1
BRITISH COLUMBIA SECURITIES COMMISSION
Section 171 of the *Securities Act*, RSBC 1996, c. 418

Citation: Re Axion Ventures Inc., 2021 BCSECCOM 116

Date: 20210330

Partial Revocation Order

Axion Ventures Inc.

- [1] The head office of Axion Ventures Inc. (Axion Ventures) is in Vancouver, British Columbia.
- [2] Axion Ventures is currently a reporting issuer in British Columbia and Alberta.
- [3] On August 4, 2020, the Executive Director issued an order (the Cease Trade Order) under section 164(1) of the *Securities Act*, RSBC 1996, c. 418 (the Act) that all trading in the securities of Axion Ventures cease until it has filed the required records referred to in the Cease Trade Order. The operative provisions of the Cease Trade Order are set out in Appendix A below.
- [4] On December 31, 2020, Axion Ventures applied to the Executive Director for an order under section 171 of the Act for a partial revocation of the Cease Trade Order to permit certain trades in connection with the issuance of securities as described below. On March 2, 2021, Axion Ventures submitted to the Executive Director a letter amending the application set out in the December 31, 2020 application. On March 13, 2021, Axion Ventures submitted to the Commission a written Notice of Application seeking the partial revocation order (the December 31, 2020 application, the March 2, 2021 letter and the Notice of Application constitute the Application).
- [5] In the Application, Axion Ventures is seeking an order for the partial revocation of the Cease Trade Order in order to permit Axion Ventures to enter into a convertible debenture investment agreement approved by the Board of Directors of Axion Ventures (the Investment Agreement) with KUAM (Hong Kong) Investment 01 Ltd. (the Investor).
- [6] Yasuyo Yamazaki, the Executive Chairman of Axion Ventures, is the President and controlling shareholder of the Investor. On completion of the Initial Tranche (as defined below), assuming that the Investor converts the full amount of the Debenture issuable under the Initial Tranche, Mr. Yamazaki would control 14.54% of Axion Ventures' issued common shares.
- [7] On February 11, 2021, Axion Ventures filed notice on SEDAR of its annual and special meeting of securityholders (the Meeting), which is scheduled for April 15, 2021. Because the record date for the Meeting has passed, the Investor would not be entitled to vote at the Meeting any securities converted from the Debentures (referred to below) obtained in the Initial Tranche prior to the Meeting.

- [8] The Investment Agreement has the following terms:
- (a) the investment envelope will be up to \$20 million by way of convertible debentures (the Debentures);
 - (b) investments will be made in tranches;
 - (c) each tranche is subject to the approval of the TSX Venture Exchange (the Exchange);
 - (d) the investment in the initial tranche will be \$8,000,000 (the Initial Tranche);
 - (e) subject to Exchange approval, the Investor agrees to subscribe for two additional tranches of Debentures in mutually agreeable principal amounts per tranche over the Offering Period referred to in the Investment Agreement when requested by Axion Ventures; and
 - (f) each Debenture will be convertible to common shares in Axion Ventures at the Investor's discretion until maturity at the conversion price (the Conversion Price) that is equal to the higher of \$0.20 per share and the Discounted Market Price (as such term is defined in the policies of the Exchange) at the time when each Debenture is issued.
- [9] In the Application, Axion Ventures also seeks an order under section 171 of the Act for a partial revocation of the Cease Trade Order to permit the trades to effect the Initial Tranche. Axion Ventures has represented that if the Cease Trade Order is still in effect, before it accepts or requests any additional tranches contemplated by the Investment Agreement, it will apply for a further order for a partial revocation of the Cease Trade Order prior to accepting an investment in such additional tranche.
- [10] Upon the execution of the Investment Agreement, Axion Ventures will expeditiously apply to the Exchange for a conditional approval to effect the Initial Tranche.
- [11] Axion Ventures intends to rely on an exemption contained in National Instrument 45-106 *Prospectus Exemptions* to complete the Initial Tranche.
- [12] Before execution of the Investment Agreement, Axion Ventures will:
- (a) provide the Investor a copy of the Cease Trade Order and a copy of this partial revocation order; and
 - (b) obtain a signed and dated acknowledgement from the Investor, which states that the issuance of this partial revocation order does not guarantee the issuance of a full revocation order in the future.
- [13] Axion Ventures will use the funds raised from the completion of the Initial Tranche, among other things to: (a) address its working capital deficiency; (b) pay audit,

accounting and legal fees, (c) pay filing fees with the securities commissions and the Exchange; (d) partly repay convertible debentures; (e) pay outstanding salaries, consulting fees and professional fees, and other accounts payable; and (f) provide general working capital.

- [14] Axion Ventures advised the Commission that its external auditors have indicated that an audit of Axion Ventures' annual financial statements for the year ended December 31, 2019 cannot be completed, and an unqualified audit report cannot be delivered unless Axion Ventures meets certain conditions including, among other things, (a) that Axion Ventures settle the significant liabilities incurred by its Asian operations to demonstrate compliance with local laws, and (b) that Axion have an ability to access sufficient funds to address risks related to working capital deficiencies.
- [15] On February 24, 2021, John Todd Bonner asked that the Application be dismissed, or that alternatively, Mr. Bonner be permitted standing to oppose the Application.
- [16] On March 2, 2021, the Executive Director referred the Application to the Commission.
- [17] On March 13, 2021, Axion Ventures submitted to the Commission a written Notice of Application seeking the partial revocation of the Cease Trade Order as described in this partial revocation order.
- [18] The Application was heard by the Commission on March 18 and 19, 2021. The panel granted standing to Mr. Bonner on the Application.
- [19] Axion Ventures intends to apply to the Executive Director for a full revocation of the Cease Trade Order when it has complied with its continuous disclosure obligations.
- [20] The Commission is satisfied that this order is not prejudicial to the public interest.

Order

- [21] The Commission orders under section 171 of the Act that the Cease Trade Order be partly revoked solely to permit the execution of the Investment Agreement and the trades to effect the Initial Tranche.

March 30, 2021

For the Commission

George C. Glover, Jr.
Commissioner

Marion Shaw
Commissioner

James Kershaw
Commissioner

Appendix A

Order

- ¶ 6 The Decision Maker is satisfied that the decision concerning the cease trade meets the test set out in the Legislation to make this decision.
- ¶ 7 It is ordered under the Legislation that trading cease in respect of each security of the Issuer.
- ¶ 8 Despite this order, a beneficial securityholder of the Issuer who is not, and was not at the date of this order, an insider or control person of the Issuer, may sell securities of the Issuer acquired before the date of this order if both of the following apply:
1. the sale is made through a “foreign organized regulated market”, as defined in section 1.1 of the Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada; and
 2. the sale is made through an investment dealer registered in a jurisdiction of Canada in accordance with applicable securities legislation.
- ¶ 9 August 4, 2020

SCHEDULE 2
BRITISH COLUMBIA SECURITIES COMMISSION
Section 171 of the *Securities Act*, R.S.B.C.1996, c. 418

Citation: Re Axion Ventures Inc., 2021 BCSECCOM 117

Date: 20210330

Partial Revocation Order

Axion Ventures Inc. (Axion Ventures)

Background

- [1] On June 16, 2020, the Executive Director issued an order (the Management Cease Trade Order) under section 164(1) of the *Securities Act*, RSBC 1996, c. 418 (the Act) against John Todd Bonner (Mr. Bonner) and Peemtat Utsahajit, as follows: Under section 164(1) of the Act, the Executive Director orders that all trading by [Messrs. Bonner and Utsahajit] in the securities of Axion Ventures cease until:
- (a) Axion Ventures files the required records, completed in accordance with the Act and rules; and
 - (b) the Executive Director revokes this order.
- [2] On August 4, 2020, the Executive Director issued an order (the Axion Ventures Cease Trade Order) under section 164(1) of the Act that all trading in the securities of Axion Ventures cease until it has filed the required records, completed in accordance with the Act and rules. The Axion Ventures Cease Trade Order contains an exception that is not relevant to this application.
- [3] In March 2021, Axion Ventures applied to the Executive Director for a partial revocation of the Management Cease Trade Order and the Axion Ventures Cease Trade Order to permit Mr. Bonner to engage in any act, conduct or negotiation directly or indirectly to cause Cern One Limited, Uniq Ventures Ltd., Michael Bonner or CC Asia Pacific (the Bonner Affiliates) to transfer Axion Ventures shares controlled by Mr. Bonner and the Bonner Affiliates to Yuki Hirakawa, Sukeyasu Arimoto, Hajime Yamanaka, Takashi Katagiri, Hisayoshi Suzuki, and Crypton Technologies K.K. (the Japanese Shareholders).
- [4] The Commission is satisfied that this order providing for the partial revocation of the Management Cease Trade Order and the Axion Ventures Cease Trade Order is not prejudicial to the public interest.

The Order

- [5] The Commission, pursuant to section 171 of the Act, orders as follows:
- (a) The Management Cease Trade Order is partly revoked to permit Mr. Bonner to engage in any act, conduct or negotiation directly or indirectly to cause the Bonner Affiliates to transfer Axion Ventures shares controlled by Mr. Bonner and the Bonner Affiliates to the Japanese Shareholders.

- (b) The Axion Ventures Cease Trade Order is partly revoked to permit Mr. Bonner to engage in any act, conduct or negotiation, directly or indirectly, to cause the Bonner Affiliates to transfer Axion Ventures shares controlled by Mr. Bonner and the Bonner Affiliates to the Japanese Shareholders.

March 30, 2021

For the Commission

George C. Glover, Jr.
Commissioner

Marion Shaw
Commissioner

James Kershaw
Commissioner