BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: BLOK Technologies Inc., 2024 BCSECCOM 219 Date: 20240517

BLOK Technologies Inc. and James Joseph Hyland

Panel	Deborah Armour, KC	Commissioner
	Gordon Johnson	Vice Chair
	Jason Milne	Commissioner
Submissions completed	April 2, 2024	
Decision date	May 17, 2024	
Appearing		
Derek Chapman	For the Executive Director	
Audrey Tait		

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act). The findings of this panel on liability made on February 1, 2024, reported at 2024 BCSECCOM 55, are part of this decision.

[2] We found that:

a) Through its public disclosure leading up to the subject news release of June 8, 2018, BLOK Technologies Inc. (BLOK) created an expectation among investors that if it raised significant funds, a large part would go to the development of emerging blockchain technology and investment in strategic opportunities;

b) In its June 8, 2018 news release, BLOK announced that it had raised $5.4 million in a private placement but failed to disclose that the vast majority of those funds would be used to pay consultants;

c) That omission was material; and

d) BLOK ought to have known that the new release was misleading.

[3] We concluded that:

a) BLOK contravened section 50(1)(d) of the Act; and

b) The executive director failed to establish that James Hyland acquiesced in the contravention of BLOK and therefore did not contravene the same section by operation of section 168.2.

[4] The executive director made written submissions on the appropriate sanctions that should be imposed in this case.

[5] BLOK did not make submissions or otherwise participate in the sanctions process.

[6] This is our decision with respect to sanctions.

II. Position of the Parties

[7] The executive director submits it is in the public interest that we impose the following sanctions against BLOK:

> For a period of six years, BLOK is prohibited:
>
> A. under section 161(1)(b)(ii), from trading in or purchasing any securities or derivatives, and
>
> B. under section 161(1)(d)(v), from engaging in promotional activities by or on behalf of:
>
> i. an issuer, security holder or party to a derivative, or
>
> ii. another person that is reasonably expected to benefit from the promotional activity.

[8] The executive director is not seeking an administrative penalty against BLOK under section 162.

[9] The executive director filed affidavit evidence in support of his submissions on sanction including the November 4, 2020 Commission order, 2020 BCSECCOM 456, cease trading securities of BLOK from that time forward. This cease trade order resulted from failures by BLOK to make mandatory public disclosure of financial statements, and remains in place. The affidavit also attaches a corporate search showing that BLOK is active, is not in good standing and is in the process of being dissolved.

III. Analysis

A. Introduction

[10] Section 161(1) orders are protective and preventative in nature and prospective in orientation. This means that, when it crafts its orders, the Commission aims to protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets.

[11] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, at page 24, the Commission provided a non-exhaustive list of factors relevant to making orders under sections 161 and 162 of the Act:

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
>
> - the seriousness of the respondent's conduct,

- the harm suffered by investors as a result of the respondent's conduct,
- the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
- the extent to which the respondent was enriched,
- factors that mitigate the respondent's conduct,
- the respondent's past conduct,
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

[12] The sanctions must be sufficiently severe to ensure that both the respondent and others will be deterred from similar misconduct. They must also be proportionate to the misconduct of the respondent and the circumstances surrounding the misconduct. See: *Re Braun*, 2019 BCSECCOM 65 and *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.

[13] We address the factors which are relevant under the following headings.

B. Seriousness of conduct

[14] The Commission held in *Re Michaels*, 2014 BCSECCOM 457 at paragraph 8 that misrepresentation is among the most serious forms of misconduct in the Act:

> Not far behind fraud, in the scale of seriousness of misconduct, stands misrepresentation. Those who operate and profit in the capital markets by misstating material facts (through commission or omission), undermine the confidence of the public in one of the cornerstones of capital markets regulation, the provision of accurate and complete information for investors to make informed investment decisions.

[15] The case of *Re Ironside*, 2007 ABASC 824 addressed the importance of a reliable disclosure system, at paragraph 117:

> A sound and reliable disclosure system is fundamental to the operation, integrity and strength of the capital market. High disclosure standards for public issuers foster investor confidence and thereby contribute to a fair and efficient market. Disclosure also assists the market in valuing accurately a public issuer's share price. However, the disclosure standards will provide inadequate protection if investors are unable to trust in and rely on the integrity and honesty of those who are appointed to serve as directors or occupy senior management positions within a public issuer…

[16] The executive director has submitted that the misrepresentation in this case is very serious because it deprived investors of information needed for making informed investment decisions and accurately valuing BLOK's share price. We agree with the executive director that BLOK's contravention was serious for the reasons he states.

C. Harm to investors

[17] By concealing that it had committed most of the proceeds of the private placement to consultants, BLOK prevented investors from realizing that it had a much smaller amount of funds to devote to the development of its business.

[18] The Commission in *New Point Exploration*, 2023 BCSECCOM 445 found that news releases and material change reports issued by the company were misleading as, similar to this case, they neglected to disclose that the vast majority of funds raised were already committed to paying consultants. As was stated in *New Point,* we do not have evidence to substantiate if specific investors lost money because they decided to buy shares of BLOK or decided not to sell shares of BLOK based on the misleading information presented. However, we conclude that both individual investors and the market generally are harmed when misleading disclosure undermines their confidence in the integrity of public markets.

D. Mitigating or aggravating factors

[19] There are no mitigating or aggravating factors.

E. Risk to investors and the capital markets

[20] BLOK is currently ceased traded and is in the process of being dissolved. However, there is some risk that BLOK will attempt to revive itself and resume trading, so some risk to investors remains.

F. Past misconduct

[21] The cease trade order is a relevant factor. However, the cease trade order results from BLOK's failure to file required disclosure under the Act, not the conduct leading to this proceeding. It is relevant because it both demonstrates BLOK's previous misconduct, and because BLOK is currently prohibited from trading securities

G. Specific and general deterrence

[22] As the executive director has submitted, given that BLOK is in the process of being dissolved, and its directors and officers during the relevant period are no longer involved with BLOK, general deterrence is the primary consideration.

[23] The Supreme Court of Canada in *Cartaway Resources Corp. (Re)*, 2004 SCC 26, stated, at paragraph 55, that it was reasonable to assume "that general deterrence has a proper role to play in determining whether to make orders in the public interest and, if they choose to do so, the severity of those orders." The Court continued, at paragraph 60, that "it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative."

[24] The Court in *Cartaway* stated, at paragraph 61, that "The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act."

[25] The Commission in *Re Stock Social,* 2023 BCSECCOM 372, paragraph 39 said:

> …we conclude from the cases and the statutory provisions that, if warranted, it is permissible and in keeping with the purpose of sections 161(1) and 162 to impose sanctions on respondents for the purpose of general deterrence, even in circumstances where specific deterrence is not a significant consideration.

> However, we must not give unreasonable weight to general deterrence, and we must craft sanctions that, taken globally, are reasonable and proportionate to the misconduct of the respondents and the circumstances. The pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on any given respondent.

[26] While specific deterrence is less significant than general deterrence in this case given the status of BLOK, it is still relevant to the sanction we impose below as the company could take steps to revive itself.

H. Fitness to be a registrant, risk to investors

[27] Given the seriousness of the misconduct of BLOK, the company is not fit to participate in the capital markets and needs to be prohibited from doing so for some period of time.

I. Prior decisions

[28] The executive director has cited a number of cases in support of its position that BLOK should be subject to a market ban. We find the cases where the company committed misrepresentations to be the most compelling. Of those cases, we find those where the corporate respondent did not act independently of management to be of limited assistance.

[29] *New Point* is the most relevant case given that it was also about misrepresentations by omission in public disclosure documents. The contraventions in *New Point* were more serious than this case to the extent that they involved two news releases and two material change reports whereas this case relates to a single news release.

[30] The Commission in *New Point* held that it was not in the public interest to impose a penalty against the corporate respondent for a number of reasons including that the breaches were the result of specific decisions by individuals and those individuals were held responsible for the breaches. It was also noted that the company was under new management with a new board of directors.

[31] The Commission found that New Point's president, CEO, director and primary decision-maker authorized, permitted or acquiesced in New Point's contravention and therefore, by operation of section 168.2 of the Act, also made the same contraventions. The panel imposed an administrative penalty of $40,000 and market prohibitions for a period of six years, against the individual respondent.

[32] In *Re Brookmount Explorations Inc.,* 2012 BCSECCOM 445, the Commission found that the corporate respondent, a junior mining company, grossly exaggerated the value of its mining property in a news release contrary to section 50(1)(d). The panel said that it was "…hard to imagine a more serious and flagrant case of misrepresentation". It ordered a permanent prohibition against Brookmount.

[33] The case of *Re Mountainstar Gold Inc.,* 2019 BCSECCOM 123 also involved a junior mining company that repeatedly contravened section 168.1(1)(b) by making disclosures in public documents about mining claims that were false or misleading. The Commission imposed a permanent cease trade order against Mountainstar and various bans and an administrative penalty against the director/CEO.

[34] *Brookmount* and *Mountainstar* are both more serious than this case given that they involved false statements. In this case, while the misrepresentations were serious, they were by omission rather than false statements of fact.

IV. Conclusions regarding appropriate sanctions

A. Market prohibitions

[35] We conclude that it is in the public interest to order market prohibitions against BLOK. Timely and accurate disclosure is a core obligation on public issuers and a key expectation of investors. The company failed in its obligations to ensure that the public had accurate and complete information in order to make informed investment decisions. This failure was intentional and would naturally reduce the confidence which investors have in public markets.

[36] While there is a small risk that BLOK would commit a similar contravention given its status, there is a risk all the same and our decision is designed to minimize that risk.

[37] In any event, the principle of general deterrence requires an appropriate sanction.

[38] The executive director has submitted that a market prohibition of six years against BLOK is the appropriate length of time. While this is the same duration as the market prohibitions ordered by the Commission in *New Point*, that order was made against the former president, director and CEO. The facts in *New Point* were more significant and serious than this case and accordingly, also resulted in an administrative penalty against the former CEO.

[39] The panel in *New Point* did not order any sanctions against the corporate entity. *New Point* can also be distinguished because the corporate respondent participated in the hearing process, agreed to facts and legal conclusions in advance of the hearing, and the executive director did not seek market prohibitions against it. Those circumstances do not exist before us.

[40] The circumstances in this case are significantly different from those in *New Point* and a market prohibition against the corporate respondent is appropriate. However, we do not think that a market prohibition of six years would capture the seriousness of the misconduct. While the corporate respondent is not active and therefore unlikely to benefit from specific deterrence, we find that there is general deterrent value in imposing a longer market prohibition. We find that a market prohibition of eight years is appropriate in these circumstances.

B. Administrative penalties

[41] The executive director has not sought an administrative penalty. We agree with that position. There is little to be gained by imposing an administrative penalty on a respondent that likely does not have the ability to pay.

V. Orders

[42] Considering it to be in the public interest, and pursuant to section 161 of the Act, we order that:

BLOK

1. BLOK is prohibited for a period of eight years:

a) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives;

b) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of:

   (A) an issuer, security holder or party to a derivative, or

   (B) another person that is reasonably expected to benefit from the promotional activity;

May 17, 2024

For the Commission

Deborah Armour, KC
Commissioner

Gordon Johnson
Vice Chair

Jason Milne
Commissioner

NOTICE: The orders made against the respondent in this matter may automatically take effect against them in other Canadian jurisdictions, without further notice to them.