



British Columbia Securities Commission

Citation: 2014 BCSECCOM 273

## Notice of Hearing

**Hon Seng Lum (also known as Victor Lum)  
and May Lee Chan Lum**

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

¶ 1 The British Columbia Securities Commission (Commission) will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against Hon Seng Lum (Hon Seng) and May Lee Chan Lum (May Lum) under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

#### **Background**

1. Mount Kellett Capital Management LP (MK Capital) is a global institutional investor that runs a number of regional research centers including Mount Kellett Capital (Hong Kong) Limited (MK Hong Kong).
2. Hon Seng is a citizen of Singapore and resided in Hong Kong. Hon Seng was employed by MK Hong Kong to analyze and evaluate natural resource investments for MK Capital, make investment recommendations and monitor the investments on an ongoing basis.
3. A condition of Hon Seng's employment was that he not trade in companies that he was evaluating.
4. As a result of Hon Seng's trading activities described below, he was terminated with cause in November 2012.
5. Hon Seng has never been registered under the Act.
6. May Lum, who is Hon Seng's older sister, resides in Singapore. May Lum is trained as a lawyer. She has never been registered under the Act.
7. Baja Mining Corp. (Baja) is a BC-prime reporting issuer with its head office and management located in Vancouver, British Columbia. At all material times, Baja had its securities listed on the Toronto Stock Exchange and was quoted on the OCTQX.
8. Baja's sole asset was a joint venture interest in the Boleo copper mine project located in Baja California Sur, Mexico (Boleo Project).



9. In May of 2012, MK Capital beneficially held 19.9% of the issued and outstanding common shares of Baja.

### **Misconduct**

#### ***Baja discloses a cost overrun for the Boleo Project***

10. On April 23, 2012, Baja disclosed a projected cost overrun of approximately \$246 million for the Boleo Project. In two days of trading following the announcement, Baja share price dropped from \$0.95 to \$0.38 representing a loss of 60% of its market value.
11. In response to the cost overrun disclosure, MK Capital commenced an intense diligence on Baja to assess the full extent of the cost overrun and state of completion of the mine with a view to determining if MK Capital should inject further equity or debt capital into Baja.

#### ***Hon Seng finds out the cost overrun is much larger than previously disclosed***

12. Between May 15 and 17, 2012, Hon Seng, as a representative of MK Capital, participated in an on-site visit with management at the Boleo Project. Pursuant to a non-disclosure agreement, Hon Seng was allowed access to detailed information regarding the cost overrun that had not been publicly disclosed.
13. Hon Seng determined that the actual cost overrun was more significant than had been initially disclosed on April 23, 2012. In fact, the cost overrun had ballooned to \$395 million and, despite half the budget having been spent, the project was only 30-35% complete.

#### ***Hon Seng and May sell their Baja shares***

14. Through a series of text messages on Friday, May 18, 2012, Hon Seng told May Lum to place a sell order on Baja shares, instructing her to "... sell the baja shares tonite" ... "so that half of our position is sold" and stressing to her that he "was counting on u."
15. On the same date, May Lum sold half of their position in Baja (182,500 shares) at an average price of \$0.26. May Lum sold the shares through a brokerage account in Singapore of a British Virgin Islands company controlled by May Lum (Account), of which she was the sole beneficial account holder, thereby concealing Hon Seng's connection to the trades. Hon Seng also failed to report to his employer that he was trading in Baja shares.
16. On Monday, May 20, 2012, MK Capital reduced its valuation of Baja by half.



***Baja discloses the larger cost overrun***

17. In a news release on June 21, 2012, Baja publicly disclosed that the total estimated cost overrun was now closer to \$400,000,000USD and, for the first time, provided details of the cost overrun, which details Hon Seng had been privy to on his visit.
18. In response to the news release, Baja's share price dropped from \$0.25 to \$0.14 in the next 15 trading days after the news release, losing a further 44% of its market value.
19. The details of the cost overrun were material facts.

***Loss avoided***

20. By selling shares on May 18, 2012, before material information about Baja publicly disclosed the details of the cost overrun, the Respondents avoided a loss of approximately \$8,500.

***The Respondents traded in other MK Capital companies***

21. Between May and November, 2012, Hon Seng sent numerous text messages to May Lum with instructions to trade in securities of companies in MK Capital's portfolio of investments, some of which Hon Seng had been involved in assessing the investment potential.
22. Hon Seng would instruct his sister May Lum to buy or sell a certain number of shares at a specified price and May Lum would trade exactly as directed.
23. As Hon Seng's sister, May Lum would have known the nature of Hon Seng's employment and that his trading instructions were based on inside information. If she was unaware of his employment situation, she should have made inquiries given the specific nature of his directions and she should not have executed the trades on his behalf.

**Insider Trading and Tipping**

24. While in a special relationship with Baja and with knowledge of material information with respect to Baja that was not generally disclosed, Hon Seng entered into a transaction involving a security of Baja, contrary to section 57.2(2) of the Act.
25. While in a special relationship with Baja and with knowledge of material information with respect to Baja that was not generally disclosed, Hon Seng recommended or encouraged May Lum to enter into a transaction involving a security of Baja, contrary to section 57.2(5) of the Act.



### **Public Interest**

26. The Respondent's conduct described in this Notice of Hearing is contrary to the public interest.

27. It is in the public interest that the Commission issue orders under sections 161 and 162 of the Act.

### **Hearing Process**

- ¶ 2 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **Tuesday, September 2, 2014, at 9:00 a.m.** if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 3 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Secretary to the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: [commsec@bcsc.bc.ca](mailto:commsec@bcsc.bc.ca).
- ¶ 4 If the Respondents or their counsel do not appear at the Hearing, the Executive Director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.

Paul C. Bourque  
Jul 10 2014 1:41 PM

- ¶ 5 Paul C. Bourque, Q.C.  
Executive Director