



British Columbia Securities Commission

Citation: 2013 BCSECCOM 231

## Temporary Order and Notice of Hearing

**Bank Gutenberg AG**

**(the Respondent)**

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

- ¶ 1 The Commission will hold a hearing at which the Executive Director will tender evidence, make submissions and apply for orders against Bank Gutenberg AG (Bank Gutenberg) under sections 161, 162, and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

#### **Background**

1. Bank Gutenberg, formerly CAT Brokerage AG, is a Swiss private bank and investment dealer. It has never been registered in any capacity under the Act.
2. Through its website, Bank Gutenberg promotes itself as providing offshore securities brokerage services.
3. The website posts no restrictions or limitations on who may open accounts, or use the advertised services. The restriction on who may access the website is not prominently displayed, and does not expressly identify the jurisdictions in which Bank Gutenberg is qualified to offer services.

#### **Bank Gutenberg facilitates suspicious trading in British Columbia**

4. Bank Gutenberg employs two former BC registrants with regulatory enforcement histories on their night desk to trade on the TSX Venture Exchange.
5. As of February 2013, Bank Gutenberg held sixteen trading accounts, all in its own name, with six different Vancouver brokerage firms. Bank Gutenberg used these accounts to trade securities of BC reporting issuers on the TSX Venture Exchange.
6. Bank Gutenberg representatives conduct trips to Vancouver to meet with BC registrants and other BC market participants.
7. To date, Staff have uncovered two BC residents who traded BC reporting issuers listed on the TSX Venture Exchange, through offshore corporations they controlled that had accounts with Bank Gutenberg.



### **The investigation has been frustrated**

8. Staff strongly suspect that there are other BC residents who trade through Bank Gutenberg, but have been frustrated in their attempts to advance this investigation because:
  - Bank Gutenberg refuses to answer Staff's direct enquiries, claiming that Swiss secrecy laws do not permit them to directly provide the requested information, and Swiss criminal laws prohibit them from complying with orders or requests from foreign authorities
  - the Swiss regulator claims that direct requests by Staff to Bank Gutenberg are prohibited under Swiss criminal law
  - when Staff requested that the Swiss regulator compel Bank Gutenberg to provide the names of all their BC resident clients, the Swiss regulator declined to process the request because it was too broad, as "all British Columbia residents with a Bank Gutenberg account are affected, no matter if there is a suspicion against these individuals or not".
9. Staff continues to work with the Swiss regulator to obtain the requested information, but cannot be certain when and if the Swiss regulator will obtain it from Bank Gutenberg and relay it to Staff.

### **Misconduct**

10. By offering or soliciting trades of securities through its website:
  - (a) without posting a prominently displayed disclaimer that expressly identifies the foreign jurisdictions in which the offering or solicitation is qualified to be made; and
  - (b) without taking reasonable precautions not to sell to BC residents

Bank Gutenberg held itself out as being in the business of trading and advising in securities and carried out both activities without being registered to do so, contrary to section 34 of the Act.

11. By trading in securities of BC issuers on behalf of two BC residents without being registered to do so, Bank Gutenberg breached section 34 of the Act.
12. Bank Gutenberg's refusal to provide the BCSC with the names, account information, and account statements for all British Columbia residents who have directly or beneficially held accounts with it makes Bank Gutenberg unsuitable to engage in securities related activities in, or connected with, British Columbia.



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

#### **Orders Sought**

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

#### **Temporary Order**

¶ 2 The Executive Director, considering the length of time to hold a hearing under section 161(2) of the Securities Act to be prejudicial to the public interest, orders under section 161(1)(b) and section 161(1)(d)(v) of the Securities Act that (the Temporary Order):

(a) that Bank Gutenberg cease trading in, and is prohibited from purchasing, any securities; and

(b) Bank Gutenberg is prohibited from engaging in investor relations activities;

until August 22, 2013 at 10 am.

#### **Hearing Process**

¶ 3 A hearing will be held in the 12<sup>th</sup> Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **August 22, 2013, at 10 am**, at which time the Executive Director will ask the Commission to extend the temporary order until a hearing is held and a decision is rendered.

¶ 4 At the Hearing, the Respondent may be represented by counsel, make submissions and tender evidence. The Respondent is 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.

¶ 5 If the Respondent or his counsel does not appear at the Hearing, the Executive Director may apply to have questions of liability and sanction heard at the same time and determinations adverse to the Respondent may be made.

¶ 6 August 7, 2013.

Paul C. Bourque

¶ 7 Paul C. Bourque, Q.C.  
Executive Director