

BRITISH COLUMBIA SECURITIES COMMISSION

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

Citation: Re BridgeMark Financial, 2019 BCSECCOM 218

20190617

BridgeMark Financial Corp., Jackson & Company Professional Corp., Anthony Kevin Jackson, Lukor Capital Corp., Justin Edgar Liu, Rockshore Advisors Ltd. (formerly known as Cam Paddock Enterprises Inc.), Cameron Robert Paddock, Simran Singh Gill, JCN Capital Corp., John Rosarino Bevilacqua, Essos Corporate Services Inc., Sway Capital Corp., Von Rowell Torres, David Matthew Schmidt, Detona Capital Corp., Danilen Villanueva, Natasha Jon Emami, Altitude Marketing Corp., Ryan Peter Venier, Platinum Capital Corp., 658111 B.C. Ltd., Jason Christopher Shull, Tryton Financial Corp., Abeir Haddad, Tavistock Capital Corp., Robert John Lawrence, Jarman Capital Inc., Scott Jason Jarman, Northwest Marketing and Management Inc., Aly Babu Husein Mawji, Rufiza Babu Husein Mawji-Esmail, Denise Marie Trainor, Randy White, Escher Invest SA, Hunton Advisory Ltd., Kendl Capital Limited, 1153307 B.C. Ltd., Russell Grant Van Skiver, Bertho Holdings Ltd., Robert William Boswell, Haight-Ashbury Media Consultants Ltd., Ashkan Shahrokhi, Saiya Capital Corporation, Tara Kerry Haddad, Keir Paul MacPherson, Tollstam & Company Chartered Accountants, Albert Kenneth Tollstam, 727 Capital, David Raymond Duggan, Viral Stocks Inc., 10X Capital, Cryptobloc Technologies Corp., New Point Exploration Corp., Green 2 Blue Energy Corp., BLOK Technologies Inc., Kootenay Zinc Corp., Affinor Growers Inc., Liht Cannabis Corp. (formerly known as Marapharm Ventures Inc.), PreveCeutical Medical Inc., Speakeasy Cannabis Club Ltd., and Abattis Bioceuticals Corp.¹

Panel	Nigel P. Cave Judith Downes Audrey T. Ho	Vice Chair Commissioner Commissioner
Decision date	June 17, 2019	

Reasons for Decision

- [1] On April 17, 2019, a media representative applied for access to certain exhibits and transcripts in this proceeding. The Commission Secretary sent the application to the parties to the proceeding, seeking their position thereon.
- [2] David Raymond Duggan, Viral Stocks Inc., 727 Capital and 10X Capital objected to the Commission providing any access to the materials on the basis that the applicant had not

¹ The original style of cause in this matter included Beleave Inc. On June 11, 2019, considering it would not be prejudicial to the public interest, the Executive Director discontinued the proceedings against Beleave, Inc. Therefore, the style of cause has been amended to refer only to the remaining respondents.

provided details about the intended use of the materials, that the disclosure of the exhibits was prejudicial to the subjects of the investigation and the investigation itself, and that section 11 of the Securities Act requires that information obtained or provided under the Act be kept confidential.

- [3] Bridgemark Financial Corp, Jackson and Company and Anthony Jackson adopted the submissions above. They also took the alternative position that if access were granted, certain redactions should be made.
- [4] Altitude Marketing Corp., Ryan Peter Venier, Tollstam & Company Chartered Accountants, and Albert Kenneth Tollstam requested that, if the application was granted, that the Commission provide them with the Commission's proposed redactions prior to the release of the materials, so that they could provide their comments.
- [5] The Executive Director requested that, if the application were granted, all parties be given the opportunity to review the proposed redactions and to make any submissions on those redactions prior to release of the materials.
- [6] On May 2, 2019, the panel decided that it would grant access to the requested exhibits and transcripts, redacted for sensitive financial and personal information. The panel advised that it was redacting that information and would circulate the redacted versions to the parties for their comment before providing access.
- [7] On May 14, 2019, the panel circulated the materials to the parties for their comment. Some parties made submissions in support of further redactions. On May 23, 2019, the panel provided a redacted form of the exhibits and transcripts to the applicant, which incorporated some, but not all, of the parties further requested redactions, with reasons to follow. These are our reasons.
- [8] Section 19 of the *Securities Regulation* requires that hearings before the Commission be open to the public unless a public hearing would be unduly prejudicial to a party or a witness, and it would not be prejudicial to the public interest to order that the public be excluded from all or part of the hearing. This is reflected in section 7.5 of BC Policy 15-601 *Hearings*.
- [9] As also set out in section 7.5 of BCP 15-601, hearing materials, including transcripts of a hearing and exhibits, are not published on the Commission website, but are available on application to the Commission Secretary.
- [10] While section 11 of the Securities Act requires every person acting under the authority of the Act to keep confidential all facts, information and records obtained or provided under the Act, there are exceptions to this requirement. One is that the person's public duty requires the person not to keep the information confidential. The Commission has a public duty to adhere to the requirement, set out in the *Securities Regulation* and consistent with principles of procedural fairness applicable to administrative tribunals,

that hearings before it be public. This public duty extends to making evidence submitted in hearings and transcripts public, subject to other considerations in the public interest.

- [11] In considering whether to grant access to hearing materials, the Commission balances the public interest in open hearings with the privacy and other interests of persons referred to in the materials.
- [12] This is consistent with the practice followed by other securities commissions in Canada based on the fundamental principle of open and accessible court proceedings.
- [13] The Supreme Court of Canada stated in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002], 2 SCR 522, at paragraph 52:

The importance of public and media access to the courts cannot be understated, as this access is the method by which the judicial process is scrutinized and criticized. Because it is essential to the administration of justice that justice is done and *seen* to be done, such public scrutiny is fundamental. The open court principle has been described as “the very soul of justice”, guaranteeing that justice is administered in a non-arbitrary manner: *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R.480 at para 22.

- [14] That decision and reasoning has been applied in securities enforcement proceedings. In *Re Mega-C Power Corporation et al.*, 2007 ONSEC 11 (at para 36), the Ontario Securities Commission stated:

The [OSC] is a public body, exercising its statutory powers in the public interest. It is important, in our view, that it fulfil its mandate as transparently as practically possible. This means that matters coming before the [OSC], including the details about those matters, be made public, to the broadest extent possible, absent special circumstances that would warrant some degree of confidentiality. Where such circumstances exist, the [OSC] should exercise its discretion narrowly, so as to provide the public with as much information about the proceedings before the [OSC] as possible in the circumstances.

- [15] The Alberta Securities Commission recently considered these decisions in an application to have all materials and evidence submitted in a proceeding held in confidence (*Re Lutheran Church-Canada*, 2019 ABASC 43). The ASC concluded, at paragraph 111, that “the salutary effects of a confidentiality order would not outweigh the deleterious effects on the public interest and the public’s confidence in the integrity of the ASC enforcement process”.
- [16] The panel considered the public interest of conducting its proceedings in public to be paramount in the application at hand and that this outweighed any potential prejudice to the parties or the current proceedings. However, to protect the privacy and other interests

of third parties, the Commission decided to redact the following types of information from the exhibits and transcripts before granting access to the applicant:

- a. personal information relating to the parties
- b. personal information relating to third parties
- c. sensitive financial information

[17] The panel considered the parties' requests for further redactions in light of these categories. To the extent the information a party requested be redacted fell within one of these categories, the panel agreed to the further redaction. After considering the submissions in favour of redacting other types of information, the panel concluded that the public interest in providing access to that information outweighed any prejudice to the parties.

June 17, 2019

For the Commission

Nigel P. Cave
Vice Chair

Judith Downes
Commissioner

Audrey T. Ho
Commissioner