

**BRITISH COLUMBIA SECURITIES COMMISSION**

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

Citation: Re BridgeMark Financial, 2019 BCSECCOM 14

20190115

**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., Beleave Inc., Liht Cannabis Corp. (formerly known as Marapharm Ventures Inc.), PreveCeutical Medical Inc., Speakeasy Cannabis Club Ltd., and Abattis Bioceuticals Corp.**

<b>Panel</b>	Nigel P. Cave	Vice Chair
	Judith Downes	Commissioner
	Audrey T. Ho	Commissioner

**Hearing date** December 7, 2018

**Submissions Completed** December 12, 2018

**Decision date** January 15, 2019

**Appearing**

Graham MacLennan	For the Executive Director
James Torrance	
Nicholas Isaac	

H. Roderick Anderson	For New Point Exploration Corp., Cryptobloc Technologies Corp.; Tavistock Capital Corp., Robert John Lawrence; Sway Capital Corp., David Matthew Schmidt, Jason Christopher Shull, Platinum Capital Corp., 658111 B.C. Ltd.; Robert William Boswell, Bertho Holdings Ltd. and Abattis Bioceuticals Corp.
Patrick J. Sullivan	For BridgeMark Financial Corp., Jackson & Company Professional Corp., Anthony Kevin Jackson and Kootenay Zinc Corp.
Patricia A. A. Taylor	For Simran Singh Gill
Peter Senkpiel Emily Hansen	JCN Capital Corp. and John Rosarino Bevilacqua
Brigeeta Richdale Danielle DiPardo	For Tryton Financial Corp., Abeir Haddad, Saiya Capital Corporation, and Tara Kerry Haddad
Shane D. Coblin	For Jarman Capital Inc. and Scott Jason Jarman
Abbas Sabur	For Northwest Marketing and Management Inc., Denise Marie Trainor, Aly Babu Husein Mawji and Rufiza Babu Husein Mawji-Esmail
Desmond Balakrishnan Sasha Jarvis	For Green 2 Blue Energy Corp. and Affinor Growers Inc.
Samuel K. A. Osei	For Liht Cannabis Corp. (formerly known as Marapharm Ventures Inc.)
Jonathon Lotz R. Barry Fraser	For PreveCeutical Medical Inc.
Steve Warnett	For Speakeasy Cannabis Club Ltd.
Teresa Tomchak	For Randy White; Escher Invest SA, Hunton Advisory Ltd. and Kendl Capital Limited
Sean K. Boyle	For Detona Capital Corp. and Danilen Villanueva
Alan P. Gardner	For Beleave Inc.
Andrew Crabtree	For Rockshore Advisors Ltd. (formerly known as Cam Paddock Enterprises Inc.) and Cameron Robert Paddock

David Church, Q.C. Alex Evans	For 727 Capital, David Raymond Duggan, Viral Stocks Inc. and 10X Capital
J. Kenneth McEwan, Q.C.	For Lukor Capital Corp. and Justin Edgar Liu
Tam Boyar	For Von Rowell Torres
Ronald Josephson	For Haight-Ashbury Media Consultants Ltd. and Ashkan Shahrokhi

## **Decision**

### **I. Introduction**

- [1] On November 26, 2018, the Executive Director issued temporary orders and a notice of hearing against the respondents. In this decision we will refer to Cryptobloc Technologies Corp., New Point Exploration Corp., Green 2 Blue Energy Corp., BLOK Technologies Inc., Kootenay Zinc Corp., Affinor Growers Inc., Beleave Inc., Liht Cannabis Corp. (formerly known as Marapharm Ventures Inc.), PreveCeutical Medical Inc., Speakeasy Cannabis Club Ltd., and Abattis Bioceuticals Corp., collectively as the “Issuers”. All respondents, other than the Issuers, will be referred to as the “Non-Issuer Respondents”.
- [2] In the notice of hearing, the executive director alleges that:
- (a) members of the Non-Issuer Respondents entered into agreements to provide consulting services to the Issuers,
  - (b) members of the Non-Issuer Respondents paid for free-trading securities of the Issuers through private placements,
  - (c) the Issuers issued securities through private placements to members of the Non-Issuer Respondents relying on the consultant exemption to the prospectus requirement in section 2.24 of National Instrument 45-106 (Consultant Exemption),
  - (d) members of the Non-Issuer Respondents purported to be consultants under the Consultant Exemption but were not,
  - (e) the Issuers paid most of the private placement funds back to members of the Non-Issuer Respondents and kept very little of the money raised,
  - (f) members of the Non-Issuer Respondents sold securities of the Issuers in the market, often at prices below the private-placement acquisition cost,

- (g) the Issuers issued news releases informing the market they raised the full amount of the private placement when they had only retained a small portion of the funds, and
  - (h) by engaging in this conduct, the Non-Issuer Respondents engaged in conduct that is abusive to the capital markets, and the Issuers illegally distributed securities, contravening section 61 of the Act.
- [3] The temporary orders imposed by the executive director are as follows:
- (a) under section 161(1)(b)(ii), that the Non-Issuer Respondents cease trading in, and are prohibited from purchasing, securities of the Issuers,
  - (b) under section 161(1)(c), that the Consultant Exemption does not apply to the Issuers for a distribution to a consultant, and
  - (c) under section 161(1)(c), that the Consultant Exemption does not apply to any issuer listed on the Canadian Securities Exchange (CSE) for a distribution to a Non-Issuer Respondent.
- [4] This was an application by the executive director to extend these temporary orders. The temporary orders were to expire on December 11, 2018. At the completion of the hearing, we extended them until we issued our decision on this application.
- [5] We find that all of the respondents received notice of the hearing pursuant to section 180 of the Act.
- [6] The executive director was applying to extend the temporary orders until a hearing is held and a decision rendered. The executive director filed affidavit evidence and provided written and oral submissions with respect to his application.
- [7] None of the respondents filed any evidence or took a position on the executive director's application to extend the temporary orders. Some of the respondents did not appear and were not represented at the hearing. Several of the respondents made oral submissions to the effect that we should set a date, sometime in early February 2019, upon which all parties should appear before the Commission to set hearing dates in respect of the allegations in the notice of hearing or to set the next procedural steps in that matter.
- [8] At the conclusion of the oral hearing, we expressed a concern that the form of the temporary order set out in subparagraph 3(c) above required notice to all issuers listed on the CSE (which had not been provided by the executive director). This concern arises from the reality that it is an issuer who makes use of an exemption from the prospectus requirements of the Act and not a subscriber. We indicated that if we were to consider an extension of that order it would be in the following form:

That the Non-Issuer Respondents be prohibited from purchasing any securities of a CSE listed issuer under the Consultant Exemption.

- [9] We gave all parties until the close of business on December 12, 2018 to provide further submissions specifically on this revised form of temporary order. The executive director provided confirmation that the revised form of order was acceptable to him. None of the respondents provided any further submissions.

## **II. Background Facts**

- a) *The Non-Issuer Respondents*
- [10] The executive director filed several affidavits. Those affidavits contained the following information on the Non-Issuer Respondents:
- a) BridgeMark Financial Corp. (BridgeMark) is a BC company incorporated on September 16, 2009. BridgeMark's registered office, records office and business address is 800 - 1199 West Hastings Street, Vancouver, BC.
  - b) Jackson & Company Professional Corp. (Jackson & Company) is a BC company incorporated on June 27, 2012. The registered and records office for Jackson & Company is listed at 800 - 1199 West Hastings Street, Vancouver, BC.
  - c) Anthony Jackson (Jackson) is a resident of West Vancouver, BC and is the sole director of both BridgeMark and Jackson & Company.
  - d) Lukor Capital Corp. (Lukor) was a BC company incorporated on May 23, 2014 and then dissolved for failing to file on April 25, 2017.
  - e) Justin Edgar Liu (Liu) is a resident of West Vancouver, BC. Liu was a director of Lukor. There is evidence that Liu is Jackson's partner and works from the BridgeMark's business office.
  - f) Rockshore Advisors Ltd. (formerly known as Cam Paddock Enterprises Inc.) (Cam Paddock Enterprises) is a BC company incorporated on November 9, 2017. On August 8, 2018, Cam Paddock Enterprises changed its name to Rockshore Advisors Ltd.
  - g) Cameron Robert Paddock (Paddock) is listed as the sole director of Cam Paddock Enterprises. Paddock is a resident of North Vancouver, BC. According to a Personal Information Form for Cam Paddock Enterprise's account at a financial institution, dated February 7, 2018, Paddock is a self-employed consultant with an employment address listed at 800 - 1199 West Hastings Street, Vancouver, BC. There is evidence that Paddock performs services for BridgeMark.
  - h) Simran Singh Gill (Gill) is a resident of Burnaby, BC. Gill is the sole director of a company called BridgeMark Management Ltd. and its registered and records

office is listed at 800 - 1199 West Hastings Street, Vancouver, BC. According to an account opening application form for Gill at a financial institution, BridgeMark is Gill's employer.

- i) JCN Capital Corp. (JCN) is a BC company incorporated on February 20, 2018. JCN has its registered and records office listed at 800 - 1199 West Hastings Street, Vancouver, BC.
- j) John Rosarino Bevilacqua (Bevilacqua) is the sole director of JCN. Bevilacqua is a resident of Vancouver, BC.
- k) Essos Corporate Services Inc. (Essos) is a BC company incorporated on November 9, 2017. Essos' registered and records office is listed at 800 - 1199 West Hastings Street, Vancouver, BC.
- l) Sway Capital Corp. (Sway) is a BC company incorporated on December 21, 2015. Sway's registered and records office is listed at 800 - 1199 West Hastings Street, Vancouver, BC.
- m) Von Rowell Torres (Torres) is the sole director of Essos and Sway. Torres is a resident of Surrey, BC. There is evidence that Torres conducts corporate secretary services for BridgeMark.
- n) According to the new client application form for a Sway account at a financial institution, Sway is beneficially owned by David Mathew Schmidt (Schmidt). Schmidt is a resident of Surrey.
- o) Detona Capital Corp. (Detona) is a BC company incorporated on November 10, 2017. Detona's registered and records office is listed at 800 - 1199 West Hastings Street, Vancouver, BC.
- p) Danilen Villanueva (Villanueva) is the sole director, president and beneficial owner of Detona. There is evidence that Villanueva conducts corporate services for BridgeMark.
- q) Natasha Jon Emami (Emami) is a resident of North Vancouver, BC. There is evidence that Emami is employed by Jackson & Company.
- r) Altitude Marketing Corp. (Altitude) is a BC company incorporated on April 24, 2017.
- s) Ryan Peter Venier (Venier) is the sole director of Altitude. Venier is a resident of West Vancouver, BC.
- t) Platinum Capital Corp. (Platinum) was created on October 1, 2014 as a result of an amalgamation between 0709845 B.C. Ltd. and Platinum.

- u) 658111 B.C. Ltd. (658111 BC) is a BC company incorporated on November 6, 2002.
- v) Jason Christopher Shull (Shull) is the sole director of Platinum and 658111 BC. Shull is a resident of West Vancouver, BC.
- w) Tryton Financial Corp. (Tryton) is a BC company incorporated on June 11, 2009.
- x) Abeir Haddad (A. Haddad) is the sole director of Tryton. A. Haddad is a resident of West Vancouver, BC.
- y) Tavistock Capital Corp. (Tavistock) is a BC company incorporated on October 8, 2013.
- z) Robert John Lawrence (Lawrence) is the sole director of Tavistock. Lawrence is a resident of Vancouver, BC.
- aa) Jarman Capital Inc. (Jarman) is a BC company incorporated on January 24, 2018.
- bb) Scott Jason Jarman (Scott Jarman) is the sole director of Jarman. Scott Jarman is a resident of Vancouver, BC.
- cc) Northwest Marketing and Management Inc. (Northwest) is a BC company incorporated on August 7, 2015.
- dd) Rufiza Babu Husein Mawji-Esmail (Esmail) is the sole director of Northwest. Esmail is a resident of Coquitlam, BC.
- ee) Denise Trainor (Trainor) is the sole officer of Northwest. Trainor is a resident of West Vancouver, BC. The BC Company Summary for Northwest shows that the mailing and delivery address for Trainor is at a property jointly owned by Jackson with another individual with the last name Jackson.
- ff) Aly Babu Husein Mawji (Mawji) is Esmail's brother and Trainor's husband. He is a resident of Coquitlam, BC. There is evidence that Mawji consults for and manages Northwest.
- gg) Escher Invest SA's (Escher) legal address is in Majuro, Marshall Islands, with an alternate mailing address in Mississauga, Ontario.
- hh) Hunton Advisory Ltd. (Hunton) was incorporated in the Republic of the Marshall Islands on January 19, 2015.

- ii) Randy White (White) resides in the Czech Republic. White is a director and beneficial owner of both Escher and Hunton.
- jj) Kendl Capital Limited (Kendl) is a Hong Kong incorporated company.
- kk) There is evidence that all of Escher, Hunton and Kendl share the same email address for contact and their local telephone contact number is the same as that of BridgeMark.
- ll) 1153307 B.C. Ltd. (1153307 BC) is a BC company incorporated on February 19, 2018.
- mm) Russell Grant Van Skiver (Van Skiver) is the sole director of 1153307 BC. Van Skiver is a resident of Langley, BC.
- nn) Bertho Holdings Ltd. (Bertho) is a BC company incorporated on September 14, 2011.
- oo) Robert William Boswell (Boswell) is the sole director and officer of Bertho. Boswell is a resident of Vancouver, BC.
- pp) Haight-Ashbury Media Consultants Ltd. (Haight-Ashbury) is a BC company incorporated on September 6, 2017.
- qq) Ashkan Shahrokhi (Shahrokhi) is the sole director of Haight-Ashbury. Shahrokhi is a resident of Vancouver, BC.
- rr) Saiya Capital Corporation (Saiya) is a BC company incorporated on April 13, 2018.
- ss) Tara Kerry Haddad (T. Haddad) is the sole director of Saiya. T. Haddad is a resident of West Vancouver, BC, and lives at the same address as A. Haddad. There is evidence that T. Haddad is an associate partner at Jackson & Company.
- tt) Keir Paul MacPherson (MacPherson) is a resident of Sechelt, BC.
- uu) Tollstam & Company Chartered Accountants (Tollstam & Company) is a Vancouver, BC based sole proprietorship registered on October 24, 2011. Tollstam & Company's business address is at 800- 1199 West Hastings Street, Vancouver, BC.
- vv) Albert Kenneth Tollstam (Tollstam) is the sole proprietor of Tollstam & Company. Tollstam is a resident of North Vancouver, BC.
- ww) 727 Capital became registered in the Cayman Islands on September 30, 2016.



xx) David Raymond Duggan (Duggan) is an officer of 727 Capital. Duggan is a resident of North Vancouver, BC.

yy) Viral Stocks Inc. (Viral) became registered in the Cayman Islands on September 30, 2016.

zz) 10X Capital (10X) became registered in the Cayman Islands on September 30, 2016.

b) *The Issuers*

[11] The affidavits contained the following information on the Issuers:

- a) Cryptobloc Technologies Corp. (Cryptobloc) is a reporting issuer in BC and is listed on the CSE, Frankfurt Stock Exchange (FSE) and quoted on the OTC Markets Group (OTC) in the United States. Cryptobloc has a registered office in Vancouver, BC and was incorporated in BC on January 16, 2015.
- b) New Point Exploration Corp. (New Point) is a reporting issuer in BC and is listed on the CSE, FSE and quoted on the OTC. New Point has a registered office in Vancouver, BC and was incorporated in BC on March 10, 2017.
- c) Green 2 Blue Energy Corp. (Green 2) is a reporting issuer in BC and is listed on the CSE, FSE and quoted on the OTC. Green 2 was amalgamated on March 3, 2017 pursuant to the *Business Corporations Act* of BC. Green 2 has a registered office in Vancouver, BC.
- d) BLOK Technologies Inc. (BLOK) is a reporting issuer in BC and is listed on the CSE, FSE and quoted on the OTC. BLOK has a registered office in Vancouver, BC and was incorporated in BC on September 19, 2013.
- e) Kootenay Zinc Corp. (Kootenay) is a reporting issuer in BC and is listed on the CSE, FSE and quoted on the OTC. Kootenay has a registered office in Vancouver, BC and was incorporated in BC on March 23, 2015.
- f) Affinor Growers Inc. (Affinor) is a reporting issuer in BC and is listed on the CSE, FSE and quoted on the OTC. Affinor has a registered office in Vancouver, BC and was incorporated federally on August 27, 1996. Affinor was continued into BC on February 1, 2016.
- g) Beleave Inc. (Beleave) is a reporting issuer in BC and is listed on the CSE and quoted on the OTC. Beleave was amalgamated on May 26, 2000 pursuant to the provisions of the *Business Corporations Act* of Ontario. Beleave's head and registered office is in North Flamborough, Ontario.

- h) Liht Cannabis Corp. (formerly known as Marapharm Ventures Inc.) (Liht) is a reporting issuer in BC and is listed on the CSE, FSE and quoted on the OTC. Liht has a registered office in Kelowna, BC and was incorporated in BC on April 24, 2007. On October 24, 2018, Liht changed its name to Liht Cannabis Corp.
- i) PreveCeutical Medical Inc. (PreveCeutical) is a reporting issuer in BC and is listed on the CSE, FSE and quoted on the OTC. PreveCeutical was amalgamated on July 31, 2017 pursuant to *Business Corporations Act* of BC. PreveCeutical has a registered office in Vancouver, BC.
- j) Speakeasy Cannabis Club Ltd. (Speakeasy) is a reporting issuer in BC and is listed on the CSE and FSE. Speakeasy's registered office is in Toronto, Ontario and was incorporated in Ontario on March 26, 2010.
- k) Abattis Bioceuticals Corp. (Abattis) is a reporting issuer in BC and is listed on the CSE, FSE and quoted on the OTC. Abattis has a registered office in Vancouver, BC and was incorporated in BC, on June 30, 1997.

c) *The transactions*

[12] The executive director submitted that his investigation into this matter was in its early stages. However, with respect to four of the Issuers (Cryptobloc, New Point, Green 2 and BLOK), Commission investigators had obtained (in addition to publicly available information relating to private placements and news releases) banking records of the Issuers, trading records of certain of the Non-Issuer Respondents, consulting agreements, invoices for consulting services (in some cases) and had conducted interviews with representatives of the Issuers (in some cases).

[13] That evidence reveals that the following occurred with respect to each of these four Issuers:

- each of the four Issuers carried out private placements for gross proceeds of between \$4.2 million and \$4.7 million where certain of the Non-Issuer Respondents comprised all (or virtually all) of the subscribers;
- the Issuers purported to use the Consultant Exemption in connection with their distributions to the subscribers;
- the Issuers entered into consulting agreements with the subscribers and with certain other Non-Issuer Respondents who were not subscribers;
- in most cases, the consulting agreements provided for prepayment, or a one-time payment, of the consulting fees;
- banking records of the Issuers indicate that cash payments, either immediately prior to, on the same day as, or within a few days after, the closing date of the

private placements were made to certain of the Non-Issuer Respondents (both subscribers and not) by the Issuers, consuming the vast majority of the proceeds of the private placements;

- in many cases, the cash payments by the Issuers under the consulting agreements and the payments by the subscribers (who were the same person as the consultant) to the Issuers were effectively “cash swaps”, in full or in part; and
- most of the subscribers in the private placements, although not all of the subscribers, sold all (or virtually all) of the shares they acquired from the four Issuers soon after the closing of the private placements at an average selling price (in all but one circumstance) which was a substantial discount from the price at which those shares were acquired in the private placements.

[14] With respect to the other seven Issuers (Kootenay, Affinor, Beleave, Liht, PreveCeutical, Speakeasy and Abattis), the executive director had obtained (in addition to publicly available information relating to private placements and news releases) trading records of certain of the Non-Issuer Respondents.

[15] That information reveals that the following occurred with respect to each of these seven Issuers:

- each of the seven Issuers carried out private placements where certain of the Non-Issuer Respondents comprised all (or virtually all) of the subscribers;
- these Issuers purported to use the Consultant Exemption (in all but a few instances) in connection with their distributions to the subscribers; and
- most of the respondent subscribers in the private placements, although not all of them, sold all of the shares they acquired from the seven Issuers soon after the closing of the private placements at an average selling price (in all but a few instances) which was a substantial discount from the price at which those shares were acquired in the private placements.

[16] With respect to three of these seven issuers (Affinor, Beleave and Liht) there was information in their interim financial statements that, during the financial period in which they carried out their private placements, they also paid out substantial amounts in furtherance of management and consulting fees – although to whom, in what specific amounts and for what services is not clear.

[17] The evidence relating to the involvement of each Non-Issuer Respondent in connection with the activities described above with respect to the Issuers will be described below.

[18] There was evidence of a private placement transaction with one further issuer (not a respondent) listed on the CSE involving Non-Issuer Respondents and pre-paid consulting

agreements. The evidence was that the completion of that transaction may have been interrupted as a result of Commission investigators making enquiries of the issuer as to the circumstances of the transaction.

### **III. Analysis**

- [19] Section 161(2) of the Act provides that if the Commission or the Executive Director considers that the length of time required to hold a hearing under section 161(1) could be prejudicial to the public interest, they may make a temporary order, without a hearing, to have effect for not longer than 15 days after the date the temporary order is made. This is the provision under which the temporary orders in this matter were originally made.
- [20] Section 161(3) of the Act provides that the Commission, with or without a hearing, may make an order extending a temporary order if it considers it necessary and in the public interest. The order may be extended until a hearing is held and a decision is rendered.
- [21] The decision of this Commission in *Re Fairtide Capital Corp.*, 2002 BCSECCOM 993 considered these sections and set out the following explanation of the sections and the operative test to extend a temporary order as follows:

25. An extension order made under section 161(3) is not limited to a specific period as in section 161(2), but can be made until the hearing under section 161(1) is held and a decision is rendered. Again this discretion is not open ended. The Commission may make an extension order only if it meets the two-pronged test of being ‘necessary and in the public interest’. The evidentiary threshold to conclude that an extension order is ‘necessary and in the public interest’ is obviously greater than that necessary to conclude (when first issuing the temporary order) that the length of time to hold a hearing ‘could be prejudicial to the public interest’.

...

27. Furthermore, we recognize that the power to intrude upon, and disrupt, persons’ lives and businesses by issuing section 161(1) enforcement orders before a hearing is held, is a significant one and must be justified. Affidavits that suggest ‘little more than unsubstantiated suspicion’ or ‘guilt by association’ fall far short of providing the kind of evidence necessary to support these kinds of orders. See: *Pessel v. BCSC* [1992] B.C.C.J. No. 2702 (B.C.C.A.).

28. What then is required for the Commission to conclude that extending temporary orders without a hearing is ‘necessary and in the public interest’?

29. In our view, there is no bright line test. The Commission considers evidence using its expertise and specialized understanding of the markets and the securities related activities it supervises, to determine what is in the public interest in any given circumstance. See: *Pezim supra*.

30. The three Commission decisions referred to us by Commission staff are examples of applications where we determined that it was necessary and in the public interest to extend the temporary orders. See: *Re: Axagon Resources Inc.* [1993] 25 BCSC Weekly Summary 34, *Re: DiCimbriani* [1995] 5 BCSC Weekly Summary 4 and *Re: Eron Mortgage Corp.* [1997] 48 BCSC Weekly Summary 134.

31. In each of these cases, Commission staff produced evidence for the Commission to conclude that there was *prima facie* evidence of the misconduct alleged and that the extension order was necessary and in the public interest. The evidence produced was not simply staff's opinion or belief, given under oath, that a respondent breached the legislation or acted contrary to the public interest. Instead, staff appropriately produced the evidentiary foundation upon which we could independently assess whether there was *prima facie* evidence of a respondent's alleged misconduct and whether, in the circumstances, the extension order was necessary and in the public interest.

[22] The notice of hearing in this case alleges that:

- a) the Issuers distributed securities without a prospectus or an exemption from the prospectus requirements of the Act (i.e. that the Issuers could not rely upon the Consultant Exemption in connection with the distribution of shares in the private placements); and
- b) the Non-Issuer Respondents engaged in conduct that was contrary to the public interest.

[23] The Act requires that we determine that an extension of the temporary orders is "necessary and in the public interest". As set out in *Fairtide*, one of the ways in which to make that determination is if the executive director has established both that *prima facie* evidence of misconduct exists **and** that extending the orders is necessary and in the public interest. However, as will be discussed below, the *Fairtide* test is not necessarily the only manner in which we may determine that an extension of the temporary orders in this case is necessary and in the public interest. There must be some flexibility to extend temporary orders in the public interest.

[24] We find that the executive director has not provided *prima facie* evidence that the Issuers illegally distributed securities. In fact, with respect to Cryptobloc, New Point, Green 2 and BLOK, the evidence was that there were consulting agreements in place between the placees and those Issuers and that payments under those consulting agreements (in most cases) had been made by those Issuers. On its face, this would be *prima facie* evidence for the availability of the Consultant Exemption. To be clear, we are not making a definitive finding with respect to the availability of the exemption. Further evidence may ultimately establish whether the Consultant Exemption was or was not available in the circumstances, but, on the evidence before us, we do not find that a *prima facie* case has

been made out that the Consultant Exemption was not available or that any of the Issuers engaged in illegal distributions.

- [25] In this case, the notice of hearing does not allege that the Non-Issuer Respondents contravened a specific provision of the Act. Instead, they are alleged to have engaged in conduct that is contrary to the public interest. Conduct that is “contrary to the public interest” may be “misconduct”. The Supreme Court of Canada has made it clear that the Commission has the authority to make an order in the public interest without finding a contravention of the Act: *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37. There are a number of decisions of this Commission in which, in the enforcement context, the test for making such an order is that the conduct is abusive to the capital markets.
- [26] The test in *Fairtide* is logical in circumstances in which there are allegations that a respondent has contravened a specific provision of the Act. However, when the executive director seeks to extend orders against a respondent because that respondent has acted in a manner that is contrary to the public interest, we do not believe that the *Fairtide* test is the appropriate test. A determination that specific conduct is “abusive to the capital markets” (and, hence, misconduct) usually involves a complex weighing of the specific facts and circumstances of the case. That determination is not well suited to a preliminary application to extend a temporary order. Instead, in these circumstances, a test which is directed to determining if the conduct raises significant public interest concerns (without having to go further to determine if the conduct is *prima facie* abusive) will better assist in determining whether extending a temporary order is necessary and in the public interest.
- [27] Therefore, we do not need to make a definitive finding that the conduct, in whole or in part, as described in paragraph 13 above, is “abusive to the capital markets”. It is sufficient for the purposes of extending the temporary orders that we are satisfied that there is *prima facie* evidence of conduct (by those involved in it) that raises significant public interest concerns.
- [28] We do find that the totality of the transactions described in paragraph 13 establishes such public interest concerns, as a consequence of the following:
- the four Issuers involved appear to have actually retained far less money than they raised (following the cash payments to the Non-Insider Respondents);
  - in many cases, the subscribers engaged in what were essentially “cash swaps” with the four Issuers;
  - the four Issuers, very unusually, pre-paid substantial consulting fees; and
  - the subscribers (almost universally), very shortly after the closing of the private placements, sold all (or virtually all) of the shares acquired in the private placements at average prices substantially less than what they paid for the shares,

all of which were undisclosed to the investing public. What was disclosed to the public by the Issuers with respect to their private placements and the actual net benefit to the Issuers of completing those transactions were two very different things.

- [29] Therefore, we find that the executive director has provided *prima facie* evidence that each of Cryptobloc, New Point, Green 2 and BLOK engaged in conduct that raises significant public interest concerns.
- [30] We are aware that the notice of hearing does not contain an allegation that these four Issuers engaged in “conduct that was contrary to the public interest”. It could be argued that they have not had proper notice of issues regarding their conduct over and above the allegation that they engaged in an illegal distribution. However, an extension of a temporary order under section 161(3) does not require that they receive notice. In addition, although this specific allegation was not set out in the notice of hearing, the conduct of these four Issuers was set out therein and the four Issuers were provided with the affidavit evidence produced in the hearing. More importantly, there is *prima facie* evidence that these Issuers engaged in conduct that raises significant public interest concerns and, as such, extending the temporary orders are necessary and in the public interest.
- [31] With respect to the remaining seven Issuers (Kootenay, Affinor, Beleave, Liht, PreveCeutical, Speakeasy and Abattis), we find that the executive director has not provided *prima facie* evidence of their having engaged in conduct contrary to the public interest. The evidence establishes that they completed private placements with certain of the Non-Issuer Respondents using the Consultant Exemption and that the subscribers then quickly sold most of their shares acquired in the private placements at an average price less than the subscription price. There is also evidence that three of these Issuers paid significant consulting fees during the same financial period as the private placements, but we have no evidence on the nature of these services and to whom they were paid. That is suspicious and involves elements of the transactions of the other four Issuers. However, this evidence is closer to the “unsubstantiated suspicion” described in *Fairtide* than *prima facie* evidence of misconduct. Therefore, we are not going to extend the temporary orders against these seven Issuers.
- [32] With respect to each of the Non-Issuer Respondents, the evidence of their involvement with the four Issuers (Cryptobloc, New Point, Green 2 and BLOK) differs.
- [33] With respect to each of Cam Paddock Enterprises, Gill, JCN Capital, Essos, Detona, 658111 BC, Altitude, , Sway, Travistock, Jarman Capital, Northwest Marketing, Lukor Capital, Escher, Hunton, Bertho, Kendl and MacPherson, there was evidence of these Non-Issuer Respondents doing each of the following things with respect to one or more of the four Issuers (Cryptobloc, New Point, Green 2 and BLOK):
- acting as a subscriber in a private placement (including the payment of cash in respect thereof);

- entering into a consulting agreement with the Issuer in connection with which they purchased shares in the private placement;
- receiving a significant cash payment from the Issuer (such that there was, in effect, a complete or partial cash swap on the transactions);
- the subsequent selling of all (or almost all) of the shares acquired in the private placements at an average price well below the subscription price of the private placement.

[34] With respect to Platinum, Haight-Ashbury, 1153307 BC, Tollstam & Co. and Tollstam (as Tollstam & Co. and Tollstam are legally one and the same for these purposes), there was evidence of these Non-Issuer Respondents doing each of the things set out in paragraph 33 other than the subsequent selling of their shares acquired in the private placement.

[35] Therefore, we find that the executive director has provided *prima facie* evidence that each of Cam Paddock Enterprises, Gill, JCN, Essos, Detona, 658111, Altitude, Platinum, Sway, Tavistock, Jarman, Northwest, Lukor, Escher, Hunton, Bertho, Kendl, Haight-Ashbury, 1153307 BC, Tollstam & Co., Tollstam and MacPherson engaged in conduct that raises significant public interest concerns.

[36] Pursuant to section 168.2 of the Act, a director or officer of a corporate issuer may be held liable for the contraventions of the corporation if the person authorizes, permits or acquiesces in the corporation's misconduct. The executive director has provided evidence that each of Paddock, Bevilaqua, Torres, Villanueva, Shull, Venier, Lawrence, Scott Jarman, Esmail, Trainor, White, Shahrokhi, Van Skiver and Boswell are the sole directors and/or officers of one of the corporate Non-Issuer Respondents listed in paragraph 33 or 34 above and Liu is a director of Lukor. Therefore, we find that the executive director has provided *prima facie* evidence of these individuals having engaged in conduct that raises significant public interest concerns.

[37] There was evidence that Jackson was directly involved with:

- at least two of the Issuers in pitching the idea of the private placement transactions set out in the notice of hearing;
- introducing certain of the Non-Issuer Respondents to the Issuers; and
- negotiating the terms of certain of the consulting agreements with the Issuers.

[38] That is *prima facie* evidence that Jackson engaged in conduct that raises significant public interest concerns.

[39] With respect to BridgeMark, Jackson & Company, Tryton, Saiya, Emami, 10X, Viral and 727 Capital, the only evidence of involvement in the transactions with the four Issuers was that they either (or both) entered into a consulting agreement with one or more of the Issuers or received a cash payment from one or more of the Issuers. There was no evidence that any of them participated in any of the private placements (and thereby were



a participant in the “cash swaps” with the Issuers) or sold shares of the Issuers at a discount. We do not find that the executive director has provided *prima facie* evidence of having engaged in conduct that raises significant public interest concerns with respect to these Non-Issuer Respondents. There was a significant body of evidence linking various Non-Issuer Respondents with BridgeMark, but evidence of those connections does not equate to BridgeMark, in and of itself, having engaged in particular conduct.

- [40] The only evidence relating to A. Haddad, T. Haddad and Duggan was that they are directors and/or officers of one or more of the entities referred to in paragraph 39. As a consequence, we do not find that the executive director has provided *prima facie* evidence of engaging in conduct that raises significant public interest concerns with respect to these three individuals.
- [41] The only remaining respondents are Schmidt and Mawji.
- [42] The only evidence relating to Schmidt is that he is the beneficial owner of the shares of Sway. There was no evidence that he was a director or officer of that company nor that he had any direct involvement with any of the four Issuers. Therefore, we do not find that the executive director has provided *prima facie* evidence of engaging in conduct that raises significant public interest concerns with respect to Schmidt.
- [43] The evidence related to Mawji was that he is related to Esmail and Trainor, and he visited BridgeMark’s office. In an interview in another proceeding, held several months prior to the relevant period in this matter, he indicated that he provided consulting services to Northwest and that he “managed” the company. There was also evidence that he and Jackson were involved in pitching the transaction described in paragraph 18 above. Agents of a corporate issuer who permit or acquiesce to a corporation’s misconduct may be held liable for that corporation’s misconduct under section 168.2 of the Act. We have *prima facie* evidence that Mawji is an agent of Northwest and has knowledge of transactions of the type that are at the heart of the matters in the notice of hearing. Therefore, we find that the executive director has provided *prima facie* evidence of Mawji having engaged in conduct that raises significant public interest concerns.
- [44] Having made an assessment of whether the executive director has provided *prima facie* evidence of misconduct or in conduct that raises significant public interest concerns (or not) with respect to each respondent, the only remaining issue is whether extending the orders is necessary and in the public interest. Firstly, we would note that the temporary orders are highly specific and targeted. They are not overly broad and are directed at the specific public interest issues raised by the circumstances. Secondly, the pattern of misconduct has been repeated on at least four occasions. Investigations by Commission staff may have interrupted one additional attempt to complete a similar set of transactions. The dollar amounts involved in each case are significant and collectively, very large. The potential harm to the markets is therefore magnified. We find that extending the temporary orders (modified, as described above) is both necessary and in the public interest.

[45] Therefore, we find that the temporary orders, as described and modified above, should be extended against each respondent other than Kootenay, Affinor, Beleave, Liht, PreveCeutical, Speakeasy, Abattis, BridgeMark, Jackson & Co., Schmidt, Tryton, A. Haddad, Saiya, T. Haddad, Emami, 10X, Viral, 727 and Duggan.

#### **IV. Order**

[46] We consider it necessary and in the public interest to extend the temporary orders (in the case of subparagraphs (a) and (b) below) and to extend and amend the order in paragraph (c) below as follows:

- (a) under section 161(1)(b)(ii), that Jackson, Lukor, Liu, Cam Paddock Enterprises, Paddock, Gill, JCN, Bevilacqua, Essos, Sway, Torres, Detona, Villanueva, Altitude, Venier, Platinum, 658111 BC, Shull, Tavistock, Lawrence, Jarman, Scott Jarman, Northwest, Esmail, Trainor, Mawji, Escher, Hunton, White, Kendl, 1153307 BC, Van Skiver, Bertho, Boswell, Haight-Ashbury, Shahrokhi, MacPherson, Tollstam & Company and Tollstam, cease trading in, and are prohibited from purchasing, securities of Cryptobloc, New Point, Green 2 and BLOK ;
- (b) under section 161(1)(c), that the exemption under section 2.24 of National Instrument 45-106 does not apply to Cryptobloc, New Point, Green 2 and BLOK for a distribution to a consultant; and
- (c) under section 161(1)(b)(ii), that Jackson, Lukor, Liu, Cam Paddock Enterprises, Paddock, Gill, JCN, Bevilacqua, Essos, Sway, Torres, Detona, Villanueva, Altitude, Venier, Platinum, 658111 BC, Shull, Tavistock, Lawrence, Jarman, Scott Jarman, Northwest, Esmail, Trainor, Mawji, Escher, Hunton, White, Kendl, 1153307 BC, Van Skiver, Bertho, Boswell, Haight-Ashbury, Shahrokhi, MacPherson, Tollstam & Company and Tollstam, be prohibited from purchasing any securities of an issuer listed on the CSE that are distributed using the exemption set out in subparagraph (b) above.

[47] We are of the view that it is in the public interest to not proceed with the hearing until Commission staff conclude their investigation. However, a number of the respondents raised concerns about the time and costs of being involved in a hearing with such a large number of respondents and with an indefinite time period associated with the completion of the Commission's investigations. We have some sympathy for those submissions and wish to assess how this matter is proceeding. Therefore, we are also of the view that the temporary orders should be extended, for now, to a date certain. To accomplish both

these goals, the hearing is adjourned until 10:00am on April 9, 2019. The temporary orders will expire on April 10, 2019, unless further extended by application of the executive director or on our own motion.

January 15, 2019

**For the Commission**

Nigel P. Cave  
Vice Chair

Judith Downes  
Commissioner

Audrey T. Ho  
Commissioner