

REASONS AND DECISION

- [1] Mr. Neher is a partner at a global law firm. He admits that he engaged in conduct contrary to the public interest by failing to read, understand and comply with his firm's policy requiring the pre-clearance of trades in securities. He has entered into a settlement agreement with Staff of the Commission. He and Staff submit jointly that it would be in the public interest for us to approve the agreement and to issue the requested order. We agree. We reach that conclusion for the following reasons.
- [2] Mr. Neher was the lead partner for a firm client, which was a public company. Without Mr. Neher's knowledge, that client had been placed on his firm's list of issuers that could not be traded. Mr. Neher purchased shares of the client while the client was on the list. Had he tried to pre-clear his intended purchases as required, he would have learned that the purchases were, in the words of the settlement agreement, 'expressly prohibited, due to the client having been placed on' the firm's list of prohibited issuers.
- [3] There is no allegation that Mr. Neher's failure to comply with the policy, or his purchases of the shares, contravened Ontario securities law. Specifically, there is no allegation that Mr. Neher was in possession of any material non-public information about the client at the time. There is no allegation that Mr. Neher engaged in any abusive, willful or knowing misconduct. There is no allegation that Mr. Neher knew any information that would explain why the client issuer had been placed on the firm's restricted list.
- [4] The law firm's policy is a prudent one, especially because the firm routinely advises clients about mergers and acquisitions. Professional services firms often come into possession of material non-public information about public issuers. Policies such as this one recognize the firm's gatekeeper role and contribute to the integrity of the capital markets. We note also that by virtue of subsection 76(5) of the *Securities Act*, RSO 1990, c S.5 (the "Act"), Mr. Neher was in a "special relationship" with the issuer, given that as lead partner he was engaging in professional activity on behalf of the issuer. Even though, as noted earlier, Mr. Neher did not possess any material non-public information about the issuer at the time of the trades, as someone in a special relationship with a publicly traded issuer Mr. Neher was under an obligation to be particularly cautious when dealing in securities of that issuer.
- [5] The proposed settlement between Staff and Mr. Neher calls for a voluntary payment, sanctions and costs. While those have been agreed to by the parties, we must decide whether the agreement should be approved. In making that decision, we recognize that the agreement is the product of negotiation between Staff and Mr. Neher, both ably represented by counsel. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties. This proposed settlement would resolve this matter promptly, efficiently and with certainty, saving the costs that would be incurred in a contested proceeding.
- [6] However, we must still be satisfied that the agreed-upon sanctions are reasonable in the circumstances, and that it would be in the public interest to

approve the settlement and to issue the order contemplated by the agreement and proposed by the parties.

- [7] It is noteworthy that the conduct underlying this settlement relates solely to a violation of a law firm policy and not of Ontario securities law. Counsel identified no previous Commission decision that is substantially similar to this case. Therefore, we are to some extent in uncharted territory. Having said that, the parties agree that the particular circumstances of this case do engage the animating principles of the Act, and therefore the Commission's public interest jurisdiction. It may be for another day, in other circumstances, that the limits of that jurisdiction in the context of a case like this are explored.
- [8] Staff and the respondents submit that this proposed settlement is in the public interest, and we agree. We consider that the agreed-upon terms will have both a specific and a general deterrent effect, and that the terms are reasonable in the circumstances. For all these reasons, we approve the settlement agreement as requested and we will issue an order substantially in the form of Schedule 'A' to that agreement.

Dated at Toronto this 16th day of May, 2017.

"Timothy Moseley"

Timothy Moseley

"Peter Currie"

Peter Currie

"Robert Hutchison"

Robert Hutchison