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Citation: Nicolas Blitterswyk (Re), 2018 ONSEC 21

Date: 2018-04-30

File No. 2018-12

**IN THE MATTER OF  
NICOLAS BLITTERSWYK**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT  
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)**

**Hearing:** April 30, 2018

**Decision:** April 30, 2018

**Panel:** D. Grant Vingoe      Vice Chair and Chair of the Panel  
Robert P. Hutchison      Commissioner  
Deborah Leckman      Commissioner

**Appearances:** Raphael T. Eghan      For Staff of the Commission  
Andrew Faith      For Nicolas Blitterswyk

## ORAL REASONS FOR APPROVAL OF A SETTLEMENT

*The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.*

- [1] The parties have jointly submitted that it would be in the public interest for the Panel to issue an order approving the Settlement Agreement and imposing certain sanctions on the respondent, Nicolas Blitterswyk. After considering the submissions of the parties, and for the following reasons, the Panel agrees that the requested order is in the public interest.
- [2] A detailed description of the facts is provided in the Settlement Agreement, which is publicly available, so we will be brief in describing the background and the conduct at issue.
- [3] Mr. Blitterswyk is the founder, Chief Executive Officer, and a director of UGE International Ltd. (**UGE**). UGE is a reporting issuer in Ontario, and trades on the TSX Venture Exchange and over-the-counter in the United States. As a director and officer of UGE, Mr. Blitterswyk is considered an “insider” of UGE pursuant to the Ontario *Securities Act* (the **Act**).<sup>1</sup>
- [4] The conduct at issue in this proceeding relates to the time period from August 2014 to May 2016 (the **Material Time**). During the Material Time, Mr. Blitterswyk was aware that the secondary market for UGE shares was comparatively illiquid and that there were days on which no trades occurred. In this context, he adopted a course of action using three separate trading accounts to place orders to buy or sell small quantities of UGE shares on numerous trading days. These transactions were aimed at creating the appearance of liquidity in the limited-volume market for UGE shares by ensuring that UGE could display some volume of trading activity to the market.
- [5] Mr. Blitterswyk admits that, by engaging in this course of conduct, he breached Ontario securities law and acted contrary to the public interest. His numerous transactions in UGE shares had the effect of creating a misleading appearance of trading activity, contrary to subsection 126.1(a) of the Act. This subsection prohibits conduct that results in, or contributes to, a misleading appearance of trading activity in, or an artificial price for, a security. The parties submit that Mr. Blitterswyk’s conduct, though misleading, was not aimed at manipulating the price of UGE shares. In fact, the market price for UGE shares was generally trending downward during the Material Time.
- [6] Mr. Blitterswyk also admits that he bought and sold UGE shares without reporting his trades as an insider, contrary to subsection 107(2) of the Act and National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (**NI 55-104**). Insiders of a reporting issuer are required to file reports disclosing changes in the direct or indirect beneficial ownership of, or control or direction over, shares of the issuer. Insider reporting requirements serve a number of functions, including deterring improper insider trading based on material

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<sup>1</sup> RSO 1990, c S.5, s 1(1).

undisclosed information and increasing market efficiency by providing investors with information concerning the trading activities of insiders of the issuer.<sup>2</sup>

- [7] Finally, Mr. Blitterswyk admits that, as a director and officer of an issuer, he failed to adhere to the high standards expected of him.
- [8] As part of the Settlement Agreement, Mr. Blitterswyk and Staff jointly propose the following sanctions and costs against Mr. Blitterswyk:
  - a. an administrative penalty in the amount of \$10,000;
  - b. a payment of Staff's costs in the amount of \$5,000;
  - c. a two-year ban on trading or acquiring any securities of any issuer of which Mr. Blitterswyk is an officer or director, unless carried out through a blind trust (or with the prior approval of Staff), and except that he may receive options as part of his compensation;
  - d. a two-year prohibition from relying on exemptions contained in Ontario securities law,
  - e. a one-year prohibition from becoming or acting as a director or officer of any issuer, except that Mr. Blitterswyk will be permitted to act as a director or officer of UGE;
  - f. a requirement that Mr. Blitterswyk successfully complete either the Directors Education Program of the Institute of Corporate Directors, or the Partners, Directors and Senior Officers Course of the Canadian Securities Institute within one year; and
  - g. a reprimand.
- [9] The role of the Panel is to decide whether the proposed Settlement Agreement, as presented and agreed to, falls within an acceptable range and should be approved as being in the public interest. It is important to note, however, that the agreed sanctions need not be the sanctions that the Panel might have imposed after a hearing on the merits. A settlement is based on the facts admitted by the respondent and agreed to by Staff, which may or may not be the facts that a panel would have found after a contested hearing.
- [10] In determining that the approval of the Settlement Agreement is in the public interest, we take note of the following mitigating factors:
  - a. Mr. Blitterswyk is a novice director and officer, who has never been registered with a securities regulatory authority;
  - b. Mr. Blitterswyk earned no profit from his misconduct, the impugned trading activity;
  - c. After the Material Time, Mr. Blitterswyk initiated certain corporate governance changes within UGE. These include:
    - i. hiring external counsel to review UGE's insider trading policies,
    - ii. adding a requirement that all UGE officers and directors certify compliance with the insider trading policies annually,

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<sup>2</sup> NI 55-104, s 1.3(1).

- iii. appointing an independent Chairperson of UGE's Board of Directors, and
  - iv. establishing an independent committee responsible for pre-approving trades in UGE securities by UGE insiders;
- d. Mr. Blitterswyk has filed insider reports on the System for Electronic Disclosure by Insiders in respect of all of his unreported trades in UGE shares during the Material Time; and
- e. Mr. Blitterswyk has cooperated fully with Enforcement Staff.

- [11] In our view, the sanctions proposed by the parties take into consideration the seriousness of the misconduct and the appropriate mitigating factors. The settlement is reasonable and its approval is in the public interest. An order will be issued following this hearing in substantially the form proposed by the parties.
- [12] Mr. Blitterswyk, as stated, the terms of your settlement with the Commission and the order that will be issued contemplate a reprimand of you. You are hereby reprimanded. We recognize that you have taken steps to come into compliance with our rules. We appreciate the fact that you attended today.

Dated at Toronto on this 30th day of April, 2018.

*"D. Grant Vingoe"*

D. Grant Vingoe

*"Robert P. Hutchison"*

Robert P. Hutchison

*"Deborah Leckman"*

Deborah Leckman