



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Volk (Re), 2018 ONSEC 31

Date: 2018-06-13

File No. 2018-27

**IN THE MATTER OF
PETER VOLK**

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

Hearing: June 13, 2018

Decision: June 13, 2018

Panel: Mark J. Sandler
AnneMarie Ryan
M. Cecilia Williams
Chair of the Panel
Commissioner
Commissioner

Appearances: Raphael T. Eghan
Kevin Richard
For Staff of the Commission
For Peter Volk

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 in the Hearing, and as edited and approved by the panel, to provide a public record.

- [1] This matter concerns the trading in Pacific Rubiales Energy Corporation's debentures by Pacific's General Counsel, Peter Volk, when Pacific was involved in a due diligence process regarding its potential acquisition with two potential purchasers. Pacific is now known as Frontera Energy Corporation.
- [2] Commission Staff and Mr. Volk have come to a settlement agreement in relation to the matter. That settlement agreement has been filed with the Commission. Part III of that settlement agreement sets out the agreed facts which I need not repeat in these brief oral reasons.
- [3] Based on those agreed facts, we are satisfied (and Mr. Volk admits) that:
- a. As Pacific's general counsel, he was the person who supervised Pacific's Insider Trading Policy, which allowed him to self-assess whether he was in possession of material, generally-undisclosed information when contemplating a trade in Pacific's securities. As such, he was in a position of responsibility and trust and was subject to a high professional standard to avoid any appearance of conflicts of interest and any appearance of misuse of confidential information related to Pacific.
 - b. The prudent course of action as Pacific's general counsel would have been to err on the side of caution given his knowledge of what the parties describe as the "Harbour facts" and the "ALFA facts." The Harbour facts involve a non-binding expression of interest received from Harbour Energy Ltd. on January 8, 2015, the ongoing Harbour due diligence process, and meetings between Harbour and Pacific related to the due diligence. The ALFA facts involve a February 4, 2015 confidentiality agreement entered into between Pacific and ALFA S.A.B. de C.V. , which allowed ALFA to have access to non-public Pacific information for the purposes of conducting a due diligence review for the potential acquisition of Pacific by ALFA, although ALFA had not yet commenced its due diligence investigations.
 - c. Mr. Volk's conduct was contrary to the public interest as he failed to adhere to the high standard of conduct expected of him in the circumstances.
- [4] The terms of settlement involve the following:
1. An undertaking entered into by Mr. Volk to the Commission, which includes his undertaking to
 - a. make a voluntary payment, at the time of today's hearing, in the amount of \$30,000 to be designated for allocation or use by the Commission in accordance with sub clause (i) or (ii) of clause 3.4(2)(b) of the Securities Act (the **Act**¹);

¹ RSO 1990, c S.5

- b. obtain external legal advice in regard to any and all future trades by Mr. Volk in securities of issuers of which he is an insider, in circumstances where he is required to self-assess at the time of the trade whether he is in possession of material, generally-undisclosed information related to the issuer, for a period of two years from our order approving the settlement agreement; and
 - c. successfully complete an educational program as set out in the undertaking within two years of our order approving the settlement agreement, and report his completion to Staff.
 - 2. Mr. Volk be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and
 - 3. Mr. Volk pay costs of \$10,000 pursuant to s. 127.1 of the Act.
- [5] It was further agreed that these costs, together with the \$30,000 voluntary payment were to be paid by bank drafts at this hearing, if we approved the settlement agreement.
- [6] The Commission is only to disapprove a settlement agreement in exceptional circumstances. This deference is explained, in part, by the high desirability of encouraging settlement agreements between Staff and respondents, and promoting certainty in the industry. In our view, this settlement agreement falls within the range of reasonable dispositions available in the circumstances, and most importantly, is in the public interest. In particular, it appropriately addresses both general and specific deterrence, and takes into consideration a number of mitigating factors identified in the settlement agreement. These include, but are not limited to the following:
- a. Mr. Volk made a good faith decision not to impose a blackout at the material time based on his assessment of materiality, and held a good faith belief that he did not have material undisclosed information at the purchase date. The latter point is reinforced by the fact that Mr. Volk, as general counsel, was not only responsible for self-assessing his own trades, but also the trades of all insiders. Between the end of one blackout in November 2014 and the commencement of another in March 2015, a number of trades were proposed and executed by insiders after assessment by Mr. Volk. In all cases, he was of the opinion that no material, undisclosed information existed at the time of the trades, an assessment that he applied to his own subject trades as well. Accepting, as urged upon us, that Mr. Volk acted in good faith, he nonetheless was seriously mistaken about what he should have done in the circumstances, given his position of high responsibility and trust and the professional standards applicable to him, described earlier;
 - b. He cooperated with Staff, and previously enjoyed an excellent regulatory reputation; and
 - c. Mr. Volk earned no profit from his trading activities in the subject Notes and in fact lost almost the entire value of the Notes due to Pacific entering Companies' Creditors Arrangement Act proceedings;

- [7] For these reasons, we approve of the settlement agreement in the terms proposed by the parties.
- [8] Mr. Volk, as Pacific's general counsel, you are in a position of high responsibility and trust. You are subject, as you know, to a high professional standard to avoid any appearance of conflicts of interest and any appearance of misuse of confidential information which you acquire. You failed to adhere to the high standard of conduct expected of you in the circumstances.
- [9] Such failures have the potential of undermining confidence in the integrity of our capital markets. Your failure could also have jeopardized the unblemished reputation which you have acquired over many years. We expect that this experience has served, among other things to reinforce for you the seriousness of the situation. We expect that you will govern yourself accordingly in the future. In accordance with paragraph 6 of subsection 127(1) of the Act, the Commission hereby reprimands you for the conduct which is the subject matter of this proceeding.

Dated at Toronto this 13th day of June, 2018

"Mark J. Sandler"
Mark J. Sandler

"AnneMarie Ryan"
AnneMarie Ryan

"M. Cecilia Williams"
M. Cecilia Williams