

**ALBERTA SECURITIES COMMISSION**

**NOTICE OF HEARING**

**Citation: Skymark Media Group Ltd., Re, 2010 ABASC 401**

**Date: 20100823  
Docket: ENF-007369**

*Securities Act, R.S.A. 2000, c. S-4 (Act)*

**To: SKYMARK MEDIA GROUP LTD., MOMENTUM CONSULTANTS INC., JOHN BRUCE KIRK, BENJAMIN THOMPSON KIRK, DYLAN LESLIE BOYLE, AMANDA BALAK, DYLAN ELASH, DARYA FITSKO, JOSH KOSTYNUIK, KEVIN MIX, CHANDARA MOM, ANTHONY PARKER, SALLY TAYLOR, TRADESHOW MARKETING COMPANY LTD., and PACIFIC BLUE ENERGY CORP.**  
(the **Respondents**)

**Notice:** The Alberta Securities Commission (**Commission**) will convene on Thursday the 2<sup>nd</sup> day of September, 2010, at 9:00 a.m., for a hearing to consider whether it is in the public interest to extend the interim cease trade order granted in this matter on Friday, August 20, 2010.

**Location:** Alberta Securities Commission, 6<sup>th</sup> Floor, 300 – 5<sup>th</sup> Avenue SW, Calgary, Alberta.

**Procedure:**

1. You may obtain disclosure and particulars of the allegations in this Notice from Andrew Wilson, c/o Alberta Securities Commission, 4<sup>th</sup> Floor, 300 - 5 Avenue SW, Calgary, Alberta, T2P 3C4, telephone 403.297.2960.
2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence at the hearing.
3. If you or your counsel fail to attend on September 2, 2010, at 9:00 a.m., or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

*See also section 29 of the Act and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.*

## Allegations

### *Summary of Breaches*

Staff of the Commission (**Staff**) allege that:

1. The Respondents Skymark Media Group Ltd. (**Skymark**), Momentum Consultants Inc. (**Momentum**), John Bruce Kirk, Benjamin Thompson Kirk, Dylan Leslie Boyle, Amanda Balak, Dylan Elash, Darya Fitsko, Josh Kostynuik, Kevin Mix, Chandara Mom, Anthony Parker, and Sally Taylor have each acted as an adviser as that term is defined in the *Act*; without being registered to do so in accordance with Alberta securities laws, and without an applicable exemption;
2. The Respondents Skymark, Momentum, John Bruce Kirk, Benjamin Thompson Kirk, Dylan Leslie Boyle, Amanda Balak, Dylan Elash, Darya Fitsko, Josh Kostynuik, Kevin Mix, Chandara Mom, Anthony Parker, and Sally Taylor have made, or authorized the making of, prohibited representations in Alberta regarding the securities of Tradeshow Marketing Company Ltd. (**Tradeshow**) and Pacific Blue Energy Corp. (**PBEC**);
3. The Respondents Skymark, Momentum, John Bruce Kirk, Benjamin Thompson Kirk, Dylan Leslie Boyle, Amanda Balak, Dylan Elash, Darya Fitsko, Josh Kostynuik, Kevin Mix, Chandara Mom, Anthony Parker, and Sally Taylor have engaged in prohibited transactions in Alberta regarding the securities of Tradeshow and of PBEC;
4. The Respondents Tradeshow and PBEC knew, or in the circumstances ought to have known, that the market for their shares was being manipulated by the other Respondents, and each authorized or acquiesced in the wrongful conduct of the other Respondents; and
5. The Respondents have each acted contrary to the public interest.

### *Parties*

6. Skymark is a corporation incorporated pursuant to the laws of Alberta, with its registered office and place of business in Calgary, Alberta.
7. Momentum is a corporation incorporated pursuant to the laws of Alberta, with its registered office in Calgary, Alberta.
8. John Bruce Kirk (**John Kirk**) is an individual, who as far as Staff is aware resides in either Calgary, Alberta or Vancouver, British Columbia. John Kirk is the sole director of Skymark.
9. Dylan Leslie Boyle (**Boyle**) is an individual, who as far as Staff is aware resides in Calgary, Alberta. Boyle is the sole director of Momentum.
10. The Respondents Amanda Balak (**Balak**), Benjamin Thompson Kirk (**Ben Kirk**), Darya Fitsko (**Fitsko**), Josh Kostynuik (**Kostynuik**), Kevin Mix (**Mix**), Chandara Mom (**Mom**), Anthony Parker (**Parker**), and Sally Taylor (**Taylor**) are all individuals, and as far as

Staff is aware, each resides in Calgary, Alberta. These Respondents are the employees or agents of Skymark.

11. The Respondent Dylan Elash (**Elash**) is an individual who, as far as Staff is aware, resides in Edmonton, Alberta. Elash is an employee or agent of Skymark.
12. Tradeshow Marketing Company Ltd. (**Tradeshow**) is a corporation incorporated under the laws of the State of Nevada, and with its place of business in Bellevue, in the State of Washington. The sole officer and director of Tradeshow is Luniel De Beer (**De Beer**). Tradeshow was founded by Bruce Kirk, the father of the Respondents John Kirk and Ben Kirk.
13. Pacific Blue Energy Corp. (**PBEC**) is a corporation incorporated under the laws of the State of Nevada, and with its place of business in Flagstaff, in the State of Arizona. De Beer is the Chairman and largest shareholder of PBEC.

### *Circumstances*

#### Respondents' Acting as Advisers

14. Skymark holds itself out to be an independent securities research firm. Skymark maintains a website at the URL [www.skymarkresearch.com](http://www.skymarkresearch.com) (the **Skymark Website**). The Skymark Website solicits users to subscribe to be members of the Skymark Website. Subscribers can sign up for a free trial membership or a paid membership. Members gain full access to the Skymark Website and receive emails from Skymark promoting various securities (the **Skymark Emails**). In addition, paid members are contacted by telephone by Skymark employees.
15. Through the Skymark Emails, and through telephone communications with subscribers by Skymark employees, Skymark offers and gives advice to recipients about investing in and buying specific securities. The recipients of the emails are all given the same advice, regardless of their circumstances or investment objectives. The advice given, however, is purported to be appropriate to the investors' needs and circumstances. Furthermore, the advice is given for the purpose of generating specific trades in the securities in question.
16. Skymark began acting as an advisor in or about November, 2009. In or about June 2010, the Skymark Emails began including a message that the Skymark Emails are being sent from Skymark by Momentum.
17. None of Skymark, Momentum or the individual Respondents (all of whom are the directors, officers, employees or agents of Skymark or Momentum) are registered in accordance with Alberta securities laws to act as an adviser, as that term is defined in the *Act*. In addition, no valid exemption to this requirement applies to any of the Respondents.

Prohibited Representations regarding Tradeshow

18. Commencing in or about February 2010, the Skymark Emails began promoting the securities of Tradeshow (the **Skymark Tradeshow Emails**).
19. Skymark, its agents and employees, through the Skymark Tradeshow Emails, made statements to investors that they knew, or ought reasonably to have known, were misleading or untrue, or which failed to state a fact required to be stated or that was necessary to make the statement not misleading.
20. Particulars of these prohibited representations in the Skymark Tradeshow Emails include:
  - (a) predicting the future price of Tradeshow securities, where there was no, or no reasonable, basis for the prediction;
  - (b) predicting the future price of Tradeshow securities without fully or properly setting out the assumptions upon which the predicted price was based, or fairly setting out the risks associated with purchasing Tradeshow securities;
  - (c) stating that Tradeshow shares could earn Skymark subscribers “massive returns”, with no reasonable basis for making the statement, and failing to disclose the associated risks in purchasing Tradeshow securities; and
  - (d) stating that Tradeshow “is on the verge of a major breakout in the very near future”, with no reasonable basis for making the statement, and failing to disclose the associated risks in purchasing Tradeshow securities.
21. The statements referred to in paragraph 20 would reasonably be expected to have a significant effect on the market price or value of Tradeshow’s securities.
22. In addition, the statements in the Skymark Tradeshow Emails were made without Skymark, or its employees or agents, also stating the following facts:
  - (a) John Kirk, the sole Director of Skymark, held a significant number of shares in Tradeshow at the time, either directly or beneficially; and
  - (b) John Kirk and Ben Kirk, a Skymark employee, are the sons of the founder of Tradeshow, Bruce Kirk, who also held a significant number of shares in Tradeshow.
23. These facts were required to be stated by Skymark and its employees and agents, or it was necessary that these facts were stated in order to make the statements in the Skymark Tradeshow Emails not misleading.
24. Furthermore, at the end of some, but not all, of the Skymark Tradeshow Emails, in very fine print compared to the body of the email, the Skymark Tradeshow Emails state that Skymark has been paid \$5,000 by a third party to research and promote Tradeshow. Skymark was required to properly draw the readers’ attention to this passage, and to

disclose the identity of the third party and its shareholdings in Tradeshow, in order to make the Skymark Tradeshow Emails as a whole not misleading. Furthermore, it was necessary for Skymark to include this information in all the Skymark Tradeshow Emails, in order to make the Skymark Tradeshow Emails as a whole not misleading.

Prohibited Representations regarding PBEC

25. Commencing in or about May 2010, the Skymark Emails began promoting the securities of PBEC (the **Skymark PBEC Emails**).
26. Skymark, its agents and employees, through the Skymark PBEC Emails, made statements to investors that they knew, or ought reasonably to have known, were misleading or untrue, or which failed to state a fact required to be stated or that was necessary to make the statements not misleading.
27. Particulars of these prohibited representations in the Skymark PBEC Emails include:
  - (a) predicting the future price of PBEC securities, where there was no, or no reasonable, basis for the prediction;
  - (b) predicting the future price of PBEC securities without fully or properly setting out the assumptions upon which the predicted price is based, or fairly setting out the risks associated with purchasing the securities of PBEC;
  - (c) predicting PBEC securities will “deliver 100-500% gains from its current price”, without fully or properly setting out the assumptions upon which the predicted return is based, or fairly setting out the risks associated with the purchase of the PBEC securities; and
  - (d) claiming in the Skymark PBEC Emails and on the Skymark website that Skymark was “independent”, that it did “not accept compensation for research coverage from companies”, and that Skymark, its employees and associates “do not hold any positions, shares or beneficial interest in the company” when this was not the case, in that Skymark was not independent, Skymark did accept compensation for research and coverage from companies, and certain Skymark directors, officers, employees and agents held shares or beneficial interests in PBEC.
28. The statements referred to in paragraph 27 would reasonably be expected to have a significant effect on the market price or value of PBEC’s securities.
29. The Skymark PBEC Emails also failed to disclose the following facts, which were required to be stated or necessary to make the Skymark PBEC Emails not misleading, and would reasonably be expected to have a significant effect on the market price or value of securities in PBEC:
  - (a) Skymark or Momentum are paid by a third party to research and promote the securities of PBEC;

- (b) the third party holds PBEC securities; and
  - (c) the principals of Skymark and Momentum hold PBEC securities, either directly or beneficially.
30. In addition to the Skymark PBEC Emails, Fitsko, a Skymark employee, made the following prohibited representations over the telephone to a member of the ASC Staff, whom she believed was an Alberta investor:
- (a) PBEC is currently their only recommendation at this time, it is also their top pick.
  - (b) With respect to potential earning, the investor should be able to purchase PBEC at \$0.85 per share, potentially it could go up to \$20 per share in 2 to 5 years.
  - (c) This is a long-term investment with a potential return of 20 times the investment.
  - (d) She predicts the stock price will go up 2 to 3 times by the end of the summer.
  - (e) The market is huge and has a lot of potential.
31. The above statements were made without disclosing the risks associated with the purchase of the securities, and there was no reasonable basis for Fitsko making the predictions she did as to PBEC's future share price or return on investment.

#### Prohibited Transactions

32. Skymark, Momentum and the individual Respondents, in sending the Skymark Tradeshow Emails and Skymark PBEC Emails, and by making the representations over the telephone to investors, knew or reasonably ought to have known they were perpetrating a fraud on investors. The particulars of which include:
- (a) Skymark, Momentum and the individual Respondents knew, or reasonably ought to have known, that Skymark and Momentum were being paid to promote Tradeshow and PBEC for the purpose of artificially inflating their respective share price;
  - (b) in addition or alternatively, Skymark and Momentum were promoting Tradeshow and PBEC to artificially increase their respective share price so that Skymark, Momentum or their principals, employees or agents, could sell their respective shareholdings in Tradeshow or PBEC;
  - (c) Skymark, Momentum and the individual Respondents knew, or reasonably ought to have known, that those paying Skymark and Momentum to promote Tradeshow or PBEC were doing so for the deliberate purpose of artificially inflating the value of their shareholdings in Tradeshow or PBEC, to their benefit and to the detriment of investors persuaded to purchase shares in Tradeshow or PBEC; and

- (d) John Kirk, as a shareholder, or alternatively beneficial shareholder, of Tradeshow and PBEC, knew that Skymark was promoting Tradeshow and PBEC for the deliberate purpose of artificially inflating the value of the securities of Tradeshow and PBEC, to his benefit and to the detriment of investors persuaded by the Skymark Emails and telephone communications to purchase shares in Tradeshow or PBEC, or both.

### *Breaches*

- 33. As a result of the above, Staff alleges the following:
  - (a) The Respondents Skymark, Momentum, John Bruce Kirk, Benjamin Thompson Kirk, Dylan Leslie Boyle, Amanda Balak, Dylan Elash, Darya Fitsko, Josh Kostynuik, Kevin Mix, Chandara Mom, Anthony Parker, and Sally Taylor each breached section 75 of the *Act* by acting as an adviser regarding the securities of Tradeshow and PBEC, as that term is defined in the *Act*, without being registered to do so under Alberta securities laws, and without an applicable exemption from this requirement;
  - (b) The Respondents Skymark, Momentum, John Bruce Kirk, Benjamin Thompson Kirk, Dylan Leslie Boyle, Amanda Balak, Dylan Elash, Darya Fitsko, Josh Kostynuik, Kevin Mix, Chandara Mom, Anthony Parker, and Sally Taylor each breached section 92(4.1) of the *Act* by making, or authorizing the making of, prohibited representations in Alberta regarding the securities of Tradeshow and PBEC;
  - (c) The Respondents Skymark, Momentum, John Bruce Kirk, Benjamin Thompson Kirk, Dylan Leslie Boyle, Amanda Balak, Dylan Elash, Darya Fitsko, Josh Kostynuik, Kevin Mix, Chandara Mom, Anthony Parker, and Sally Taylor have each breached section 93 of the *Act* by directly or indirectly engaging or participating in prohibited transactions in Alberta regarding the securities of Tradeshow and PBEC; and
  - (d) The Respondents Tradeshow and PBEC have each breached section 93 of the *Act* by directly or indirectly engaging or participating in prohibited transactions in Alberta regarding their respective securities.

34. Staff further alleges that the Respondents' misconduct described above constitutes conduct that is contrary to the public interest.

Calgary, Alberta, 23 August 2010.

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) \_\_\_\_\_  
) David Linder  
) Executive Director