

ALBERTA SECURITIES COMMISSION

NOTICE OF APPLICATION

Citation: Re Saint Jean Carbon Inc., 2017 ABASC 50

**Date: 20170320
Docket: ENF-011434**

To: Paul Cooper, Barry Allan Pearson, David Edward Da Rin, David Madill, Dick van Wyck, Donald George MacIntyre, Donald George Snyder, Paul Ogilvie, William Elmer Pfaffenberger (the Respondents)

NOTICE:

1. An application will be made to the Alberta Securities Commission (**ASC**) by Litigation Counsel of the Commission (**Staff**) on Tuesday, the 21st day of March, 2017, at 10:00 a.m. for an Interim Order pursuant to Sections 33 and 198 of the *Securities Act*, RSA 2000 c S-4, as amended (*Act*):
 - (a) That service be abridged to that time actually given;
 - (b) That all trading in the securities of Saint Jean Carbon Inc. (the **Company**) by the Respondents cease for a period of 15 days;
 - (c) That all trading in the securities of the Company by "reporting insiders", as that term is defined at section 1.1 of National Instrument 55-104, *Insider Reporting Requirements and Exemptions (NI 55-104)* of the Company cease for a period of 15 days unless extended by the ASC;
 - (d) That service of an Application to extend the Interim Cease Trade Order may be effected on the Respondents by service on legal counsel for the Company;
 - (e) That service of an Application to extend the Interim Cease Trade Order may be effected on "reporting insiders" by way of a public notice, posted on the ASC website, 5 business days before the date of the Application; and
 - (f) Any other relief as the ASC deems appropriate in the public interest.
2. A draft form of Interim Order is attached hereto at **Tab A**.

GROUNDS FOR APPLICATION:

3. In support of the application, Staff will rely on the below grounds.

Corporate Background

4. The Company is registered under the laws of Alberta and has a registered office in Calgary, Alberta.
5. The Company is purportedly a carbon science company engaged in the design and build of green energy storage, green energy creation and green re-creation through carbon materials, and recently started the design and build of a graphene based lithium-ion battery.
6. The Directors of the Company are:
 - (a) Pearson, Barry Allan (**Pearson**): Chief Executive Officer, Chairman and Director;
 - (b) Pfaffenberger, Dr. William Elmer (**Pfaffenberger**): President and Director;
 - (c) Snyder, Donald George (**Snyder**): Director and Chairman of the Audit Committee;
 - (d) Madill, Dr. David (**Madill**): Director;
 - (e) MacIntyre, Dr. Donald George (**MacIntyre**): Director; and
 - (f) Da Rin, David Edward (**Da Rin**): Director.
7. Issued and outstanding securities in the Company include common shares, options and warrants, all of which are securities, as the term "security" is defined at section 1(ggg)(i) and (v) of the *Act*.
8. The Company is listed for trading in Canada on the TSX Venture Exchange (**TSXV**), under the symbol "SJL".
9. The Company is quoted for trading in the United States on the OTC Link, specifically the OTCQB, under the symbol "TORVF".
10. The Company is listed for trading in Germany on the Frankfurt Exchange, under the symbol "WNFN".
11. The Company is a reporting issuer, as that term is defined at section 1(ccc) of the *Act*.

Company Issued Press Releases

Press Release Feb 28

12. The Company filed with SEDAR a Material Change Report on March 1, 2017, representing that the Company, as at February 28, 2017, had received its first order from "Panasonic Corporation" to supply graphite anode material to their manufacturing facility.

13. The Company issued a press release, picked up by the Globe Newswire on February 28, 2017 (the **Press Release (Feb 28)**), representing, among other things, that:
- (a) It had received its "first order" from Panasonic Corporation to supply graphite anode material;
 - (b) The order consisted of two specifications;
 - (c) The order was part of an offtake agreement to supply multiple tonnes of anode material monthly for a number of years; and
 - (d) That the deal was considered to be the Company's "greatest accomplishment; to be recognized and awarded with an order to supply one of the world's best technology companies, is a tremendous accomplishment for the team".

Press Release (Mar 3)

14. The Company issued a clarifying press release on the afternoon of March 3, 2017 (the **Press Release (Mar 3)**), at the request of, and pursuant to the guidance of, the TSXV, representing, among other things, that:
- (a) The Company received a "purchase order" from Panasonic Corporation to supply graphite anode material;
 - (b) "While the size and value of the order is nominal, both on its own and in comparison to the anticipated monthly orders under the provisions of the proposed offtake agreement, the order is significant as it marks the first order for material that has been re-engineered by the Company";
 - (c) The "first order" is to be shipped within 90 days from February 24, 2017; and
 - (d) "The supply is being out sourced as the Company's properties are not currently in production".

March 9 Halt

15. On March 9 at 7:43 a.m. EST, at the request of the Company pending further news, Investment Industry Regulatory Organization of Canada (**IIROC**) issued a trading halt against the Company on the TSXV, which has continued in force and effect as at the date of this Notice of Application.
16. It appears that trading on the OTCQB was halted around the same time.

The Purchase Order and Purported Offtake Agreement

17. On March 6, 2017, Staff of the ASC received a copy of a document entitled "purchase order" issued by Panasonic Procurement Asia Pacific, Singapore (**PPAP**), to the Company, dated February 24, 2017 (the **Purchase Order**).

18. The Purchase Order:
- (a) Claimed a value of \$6.64 for a 5 kg quantity sample;
 - (b) Was for one specification, "Grade A Flakes"; and
 - (c) Was declared as having no commercial value.
19. Staff received on the same day a draft offtake agreement, unsigned, dated January 10, 2017, and a draft offtake agreement signed by Ogilvie on behalf of the Company, dated March 6, 2017, but not by Panasonic Corporation (the **Offtake Agreement**). The Offtake Agreement envisaged regular shipments of product from the Company to Panasonic Corporation.
20. On March 7, 2017, Staff of the ASC were informed by a representative of Panasonic Corporation that one of its entities had recently placed a minimal sample order with the Company, merely for the purposes of testing, and that there was no currently held intention to enter into the Offtake Agreement with the Company.
21. On March 16, 2017, Staff of the ASC received a copy of email communications between Ogilvie, to a Panasonic Corporation, dated February 23, 2017, wherein Ogilvie had expressly requested that the sample be provided under a form of "purchase order," with the custom and duty value marked as having no commercial value.

Concerning Content of the Press Release (Feb 28) and the Press Release (Mar 3)

22. The content of the Press Release (Feb 28) is *prima facie* concerning to Staff of the ASC for the following reasons:
- (a) The Company omitted to state that the "order" was for a mere 5 kg sample, provided for testing;
 - (b) The Company omitted to state that the "order" had no commercial value, and was declared on the "purchase order form" to have a value of \$6.64 for custom and duty purposes only;
 - (c) The Company misled investors by inflating the value of the sample provided to Panasonic Corporation and by ascribing to both parties a commitment of a future business relationship that was not in fact the case;
 - (d) The Company misled investors by misrepresenting that there was an "offtake agreement" with Panasonic Corporation, when in fact there was not.
23. The content of the Press Release (Mar 3) is *prima facie* concerning to Staff of the ASC for the following reasons:
- (a) The Company continued to mislead investors as to the true nature of the order, being a mere sample, with misleading statements that the order was "significant"

and marked the "first order for material that has been re-engineered by the Company"; and

- (b) The Company misled investors by representing that both companies were working to finalize the Offtake Agreement as soon as possible, contrary to representations from Panasonic Corporation to Staff of the ASC, that Panasonic had no intention to enter into the Offtake Agreement.

Trading Activity on the TSXV

24. Trading activity on the TSXV between February 26 to March 3 indicate that the *prima facie* materially misleading statements made by the Company in the Press Release (Feb 28) and the Press Release (Mar 3), in respect of the Purchase Order and the Offtake Agreement, had significant effects on market activity:

	Date	Last Price (\$ CDN)	Volume
(i)	Feb 21	.07	220,213
(ii)	Feb 22	.07	319,000
(iii)	Feb 23	.07	669,431
(iv)	Feb 24	.07	580,234
(v)	Feb 27	.075	2,075,250
(vi)	Feb 28	.185	62,973,813
(vii)	Mar 1	.295	79,556,096
(viii)	Mar 2	.255	23,234,919
(ix)	Mar 3	.15	39,163,188
(x)	Mar 6	.19	28,489,243
(xi)	Mar 7	.175	8,309,354
(xii)	Mar 8	.17	3,630,093

Suspicious Trades Following the Press Release (Feb 28) and Prior to the Press Release (Mar 3)

25. Following the Press Release (Feb 28), but before the Press Release (Mar 3), a number of suspicious trades occurred by "reporting insiders" and/or persons in a special relationship with "reporting insiders", as that term is defined at section 1.1 of NI 55-104.
26. Leona M Callihoo-Pearson (**Callihoo-Pearson**), is the spouse of Director, Pearson.
27. On March 1, 2017, Callihoo-Pearson sold on the public market 150,000 common shares for \$0.275, for total gross sale proceeds of \$41,250 CDN.
28. Jo Ann Madill (**J Madill**) resides at the same address as Director, Madill.
29. On March 2, 2017, J Madill sold on the public market 200,000 common shares for \$0.30, for total gross sale proceeds of \$60,000 CDN.
30. Dick van Wyck (**van Wyck**) is a self-reported insider of the Company *vis-à-vis* serving as a senior officer.
31. On March 1, 2017, van Wyck sold on the public market 600,000 common shares for \$0.22, and 300,000 common shares for \$0.21, for total gross sale proceeds of \$195,000 CDN.
32. The sale of substantial securities holdings by these reporting insiders and/or persons in a special relationship with reporting insiders immediately following the issuance of the Press Release (Feb 28), which in the *prima facie* submission of Staff contained material misrepresentations as to the nature, extent, significance and accuracy of the Purchase Order and the Offtake Agreement, gives rise to concerns about whether illegal insider trading and/or market manipulation may have occurred.
33. Staff of the ASC submit that it is in the public interest that all reporting insiders of the Company be estopped from trading in securities of the Company, in light of current substantial securities holdings by reporting insiders, the recent suspicious trades by reporting insiders and/or persons in special relationships with reporting insiders, and the *prima facie* material misrepresentations made by the Company to date, pending further investigation.

"Insider" Securities Holdings as at March 17, 2017

34. As at March 17, securities held by self-reported "reporting insiders" of the Company were as follows:

	Name of Insider	Insider Relationship	Closing Balance Common Shares	Closing Balance Options	Closing Balance Warrants
(i)	Cooper, Paul K	Deemed Insider	300,000		
(ii)	Da Rin	Director	34,200	650,000	
(iii)	MacIntyre	Director		500,000	
(iv)	Madill	Director	651,800	975,000	106,500
(v)	Ogilvie	Senior Officer	6,946,423	2,470,689	6,862,423
(vi)	Pearson	Director and Senior Officer	3,447,487	2,630,000	1,500,000
(vii)	Pfaffenberger	Director and Senior Officer	10,059,230	2,630,000	2,350,000
(viii)	Snyder	Director	1,778,650	1,040,000	667,500
(ix)	van Wyck	Senior Officer	0	0	0

EVIDENCE IN SUPPORT OF APPLICATION:

35. In support of this application, Staff is relying upon:
- (a) the Affidavit of Myles MacPherson, with the ASC, sworn March 20, 2017;
 - (b) the Affidavit of Rob Young, with the ASC, sworn March 20, 2017; and
 - (c) and such further and other evidence as Staff may adduce and the ASC may permit.

LOCATION

36. The application will be made at the offices of the ASC, in a hearing room located on the 5th Floor, 250 – 5 Street SW, Calgary, AB T2P 0R4. Contact Jayne Lewis, Registrar of the ASC, by telephone at 403.294.4277, email at registrar@asc.ca, or facsimile at 403.297.4486 for further information.

Calgary, Alberta, March 20, 2017.) ALBERTA SECURITIES COMMISSION
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)
) *"Original Signed By"*
) _____
) Heather Currie
) Litigation Counsel

- TO: The Registrar**
- AND TO: Paul Cooper**
- AND TO: Barry Allan Pearson**
- AND TO: David Edward Da Rin**
- AND TO: David Madill**
- AND TO: Dick van Wyck**
- AND TO: Donald George MacIntyre**
- AND TO: Donald George Snyder**
- AND TO: Paul Ogilvie**
- AND TO: William Elmer Pfaffenberger**

TAB A

ALBERTA SECURITIES COMMISSION

INTERIM CEASE TRADE ORDER

Citation: Re Saint Jean Carbon Inc., 2017 ABASC ●

Date: 201703●

Docket: ENF-011434

Paul Cooper, Barry Allan Pearson, David Edward Da Rin, David Madill, Dick van Wyck, Donald George MacIntyre, Donald George Snyder, Paul Ogilvie, William Elmer Pfaffenberger (the Respondents)

Nature of Application

1. Staff (**Staff**) of the Alberta Securities Commission (the **ASC**) seek an interim order barring the Respondents and all “reporting insiders” as that term is defined at section 1.1 of National Instrument 55-104, *Insider Reporting Requirements and Exemptions (NI 55-104)*, of Saint Jean Carbon Inc. (the **Company**), from trading in securities of the Company.

Background

2. The ASC has received and considered documentary evidence and Staff submissions in respect of a Production Order granted March 6, 2017 and issued as a result of possible contraventions of Alberta securities laws and conduct contrary to the public interest on the part of the Respondents.

Order

3. Considering that the length of time required to conduct a hearing and render a decision could be prejudicial to the public interest and that it is in the public interest to make such orders, the ASC orders under sections 33(1) that 198(1) of the *Act* that:
 - (a) Service is abridged to that time actually given;
 - (b) All trading in the securities of the Company by the Respondents cease for a period of 15 days; and
 - (c) All trading in the securities of the Company by “reporting insiders” as that term is defined at section 1.1 of National Instrument 55-104 cease for a period of 15 days.
 - (d) Service of an Application to extend the Interim Cease Trade Order may be effected on the Respondents by service on, and accepted by, legal counsel for the Company.
 - (e) Service of an Application to extend the Interim Cease Trade Order may be effected on “reporting insiders” by way of a public notice, posted on the ASC website, 5 business days before the date of the Application.

4. Pursuant to section 33(2) of the *Act*, this order takes effect immediately and expires on April 5, 2017 unless extended by the ASC.

_____ March 2017

For the Commission:

Stephen Murison

Tom Cotter