

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: Re Chan, 2015 ABASC 994

Date: 20151222
Docket: ENF-010687

Securities Act, R.S.A. 2000, c. S-4, as amended (“Act”)

MICHAEL WING-FAI CHAN
(hereafter, “THE RESPONDENT”)

Introduction

1. Staff of the Alberta Securities Commission (respectively, **Staff** and **Commission**) investigated certain matters concerning disclosure of information relating to securities of Canexus Corporation (**Canexus**) in and around March, 2015 (the **Investigation**). The Investigation has led to evidence supporting the facts and admissions set out in this Settlement Agreement and Undertaking (the **Agreement**).
2. Terms used in the Agreement have the same meaning as provided for in Alberta securities laws, a defined term in the *Act*.
3. Solely for securities regulatory purposes in Alberta and for the purposes of regulatory proceedings by other regulators, and as the basis for the settlement and undertakings described in paragraphs 17 and 18, the Respondent makes the admissions and accepts the undertakings set out below in the Agreement.

Agreed Facts

4. In and about early 2015 the Respondent was employed with Canexus within the Information Technology department. By virtue of his position, he had access to executive management e-mails and information stored digitally in restricted network locations, including financial reporting information.
5. In March, 2015, the Respondent accessed and reviewed information contained within executive management emails and restricted network locations. The information included facts regarding earnings being below expectations, an impending cut to the dividend payable on common shares of Canexus, the impending departure of certain senior management personnel, anticipated asset write-downs in the Q4 financials, and the impending sale of a core Canexus asset (**the Information**).

6. The Information was material.
7. At the time the Respondent acquired the Information, although there was some public speculation that Canexus earnings would not meet expectations, that it may cut its dividend, that some senior management or directors may resign, and that it may write down or sell certain assets, the Information had not been publicly disclosed by or on behalf of Canexus.
8. After acquiring the Information, the Respondent disclosed the Information on an online discussion group – a publicly accessible website – in posts made on March 12, 2015, March 15, 2015, and March 19, 2015. In each case, the Respondent’s posts disclosed material information before that information was generally disclosed by or on behalf of Canexus.

Other Relevant Circumstances

9. The Respondent states that:
 - a. he accessed and reviewed the Information out of concern about potential layoffs at Canexus, in order to understand what was happening with the company and whether his employment would be impacted.
 - b. he participated in the online discussion group in an attempt to find out more information about Canexus from other participants in the group; and
 - c. he is not a sophisticated or experienced investor, and in and about March, 2015 was not familiar with Alberta securities laws respecting disclosure of material, non-public information.
10. The Respondent did not himself purchase or trade shares of Canexus in advance of the Information being publicly disclosed.
11. The Respondent has not been sanctioned previously by the Commission.
12. The Respondent is no longer employed with Canexus.
13. The Respondent cooperated with ASC staff’s investigation, and promptly accepted responsibility for his actions described in the Agreement.
14. The Agreement has saved the Commission the time and expense associated with further investigation and a contested hearing under the *Act*.

Admissions

15. The Respondent admits that he breached s.147(4) of the *Act* by informing other persons of material facts or material changes with respect to Canexus that had not been generally disclosed, while he was in a special relationship with Canexus.

16. The Respondent admits that his actions as described in the Agreement are contrary to the public interest.

Settlement Payments and Undertakings

17. Based on the agreed facts and admissions set out above, the Respondent agrees and undertakes to the Executive Director of the Commission as follows:
 - a. To pay the total amount of \$8,000.00; and
 - b. To cease trading in and purchasing securities or derivatives for a period of three years from the execution of the Agreement, except that:
 - i. The Respondent is permitted to trade or purchase, through one Registered Retirement Savings Plan and one Tax Free Savings Account (as defined in the Canadian *Income Tax Act*), in securities or derivatives listed and posted for trading on the Toronto Stock Exchange, the TSX Venture Exchange or the New York Stock Exchange or issued by a mutual fund which is a reporting issuer, provided that such trading is through a registrant who has been given a copy of this Agreement; and
 - ii. The Respondent may purchase shares in an issuer whose shares are not distributed to the public.
18. Based on the agreed facts and admissions set out above, the Respondent further agrees and undertakes to the Regulator and Securities Regulatory Authority in each province and territory in Canada other than Alberta, to cease trading in and purchasing securities or derivatives for a period of three years from execution of this Agreement, with the same exceptions as set out in the previous paragraph.

Administration

19. The Respondent acknowledges that he has voluntarily made the admissions herein and that the admissions are true.
20. The Respondent waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
21. The Respondent acknowledges that this Agreement may be referred to in any other proceedings under the *Act*, and in securities regulatory proceedings involving other securities regulators in other jurisdictions, but for no other purpose.
22. With the exception that the Respondent may be compelled to give evidence in accordance with Alberta securities laws, the Agreement resolves all issues involving the Respondent relating to the conduct described herein, and Staff will seek no further sanction against the Respondent arising from these facts.

23. The Agreement may be executed in counterpart.

Signed by Michael Chan at Calgary,)
Alberta this 16th day of)
December, 2015 in the presence of:)
) “Original Signed By”
WITNESS NAME) MICHAEL WING-FAI CHAN
WITNESS NAME)
)
“Original Signed By”
SIGNATURE

) ALBERTA SECURITIES COMMISSION
)
Calgary, Alberta, this 22nd day of)
December, 2015.)
) “Original Signed By”
) David Linder, QC
) Executive Director