

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: LAMBERT, Re, 2013 ABASC 338

Date: 20130731
Docket: ENF-008309

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

Anthony Maurice Lambert

Agreed Facts

Introduction

1 Staff of the Alberta Securities Commission (**Staff** and the **Commission**, respectively) conducted an investigation into allegations that Anthony Maurice Lambert (**Lambert**) breached Alberta securities laws or acted contrary to the public interest by purchasing securities of Daylight Energy Ltd. (**Daylight**) with knowledge of an undisclosed material fact about Daylight.

2 Lambert acknowledges that it is in the public interest that he make the payments and undertakings referred to in paragraphs 25 and 26 having regard to his purchase of Daylight securities in the circumstances described herein.

3 Solely for securities regulatory purposes in Alberta, and elsewhere, and as the basis for the payments and undertakings referred to in paragraphs 25 and 26, Lambert agrees to the facts and circumstances set out in this Settlement Agreement and Undertaking (**Agreement**).

4 Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Circumstances

5 Lambert is a resident of Calgary, Alberta, and was at all material times the President and Chief Executive Officer of Daylight.

6 BM was at all material times the Global Head of Energy with Canaccord Financial, who provided investment banking and advisory services to Daylight with respect to the acquisition described below.

7 Daylight was an Alberta corporation, with its head office and registered office located in Calgary, Alberta. Daylight's shares were listed for trading on the Toronto Stock Exchange under the symbol DAY.

8 Daylight was engaged in the business of oil and gas exploration, development and production, operating primarily in Alberta and British Columbia.

9 On December 23, 2011, Daylight announced the completion of a Plan of Arrangement (**Arrangement**) with Sinopec International Petroleum Exploration and Production Corporation (**SIPC**). Pursuant to the Arrangement, SIPC indirectly acquired all Daylight's outstanding securities, paying a substantial premium to the pre-announcement trading price (**Daylight Acquisition**).

10 SIPC is a wholly owned subsidiary of China Petrochemical Corporation (**Sinopec Group**), a Chinese state-owned producer and supplier of petrochemical products.

11 In July, 2011 Canaccord and SIPC had some very general discussions about the possibility of SIPC undertaking a transaction of some kind with Daylight, possibly even involving an acquisition of Daylight by SIPC. Canaccord informed Lambert of those discussions and Lambert indicated that he would be receptive to considering proposals that SIPC might put forward, if any.

12 On August 4, 2011, the day following the termination of a scheduled quarterly trading blackout, Lambert purchased securities of Daylight on the market because he considered that Daylight's securities were undervalued. His intention was to purchase additional Daylight securities if those circumstances persisted.

13 On the morning of August 5, 2011, BM forwarded to Lambert's attention an unsolicited letter from SIPC to Daylight which referred to the possibility of exploring "a major strategic investment transaction" between SIPC and Daylight (**August 5 Letter**). At that point in time, Canaccord had not been retained by Daylight to broker any transactions, solicit offers or provide any services in that respect.

14 An email from a Canaccord representative based in Asia (**the Email**) accompanying the August 5 Letter suggested that "SIPC is interested in discussion of acquiring the whole company".

15 Lambert did not regard the August 5 Letter or the Email to be material information, but he forwarded them to Daylight's Vice President and General Counsel (**General Counsel**) immediately upon receipt and enquired of him whether they raised any issues about further trading by Lambert. The General Counsel responded to Lambert that they did not.

16 Though he considered them immaterial and had advised Lambert accordingly, the General Counsel also sent the August 5 Letter and the Email to Daylight's external legal counsel that day and discussed with them whether they contained material information. The external counsel advised the General Counsel that it was not necessary to impose a trading blackout of any kind.

17 The General Counsel also transmitted the August 5 Letter and the Email to the Chair of Daylight's Governance Committee on August 5, 2011, and discussed with him whether they were material, merited the imposition of a blackout or whether the Board of Directors of Daylight (**Board**) should be notified. The Governance Chair expressed the view that the

information was immaterial, a blackout was unnecessary and that it was not necessary to advise the Board.

18 The circumstances under which the General Counsel, the Governance Chair, outside counsel and Lambert formed their views about the immateriality of the August 5 Letter and the Email included that:

- (i) directly or through investment banks or agents, Daylight had previously received several other expressions of interest from various parties about possible business transactions of a potentially significant nature, none of which proceeded beyond preliminary or introductory stages;
- (ii) the August 5 Letter from SIPC was unsolicited and contained no reference to any terms, price or the nature of a possible transaction;
- (iii) Daylight was not “in play” and had not retained Canaccord or other financial advisors to solicit or locate potential purchasers or partners.

19 On August 7, 2011, the General Counsel prepared a form of confidentiality agreement (**Confidentiality Agreement**) in respect of discussions with SIPC. On August 8, 2011, Lambert executed a letter on behalf of Daylight stating that Daylight was interested in exploring potential business opportunities with SIPC, which was forwarded to SIPC along with the draft form of Confidentiality Agreement.

20 On August 8, 2011, having enquired of the General Counsel as aforesaid in compliance with Daylight’s policies, Lambert purchased 60,000 Daylight shares at \$7.70 per share for a total price of \$462,000. This purchase was properly disclosed and reported on SEDI on August 8, 2011. When SIPC subsequently purchased those shares as part of the Daylight Acquisition on December 23, 2011, Lambert realized a profit of approximately \$129,000 therefrom.

21 Subsequently, discussions between Daylight and SIPC ensued, eventually culminating in the completion of the Daylight Acquisition on December 23, 2011. The process included:

- (i) On August 15, 2011, SIPC signed the Confidentiality Agreement;
- (ii) On August 16, 2011, Daylight opened a data room for SIPC;
- (iii) On August 23, 2011, Lambert and other senior officers of Daylight made a formal presentation to SIPC in Beijing, where the possibility of a corporate acquisition of Daylight was proposed by SIPC;
- (iv) On August 26, 2011, Daylight imposed a trading blackout on those personnel with knowledge of a possible SIPC acquisition, including Lambert;
- (v) On September 6, 2011, Daylight imposed a trading blackout on the Board;

(vi) On September 30, 2011, Daylight received a non-binding letter of intent from SIPC proposing an acquisition of Daylight's shares for \$10.08 per share, which represented a substantial premium above Daylight's closing share price of \$5.25 on September 29, 2011;

(vii) On October 9, 2011, Daylight and SIPC issued a joint news release announcing the execution of a binding agreement in respect of the Daylight Acquisition;

(viii) The Daylight Acquisition was completed on December 23, 2011.

22 Lambert recognizes that as Daylight's President and Chief Executive Officer he occupied a position of high responsibility and trust, and was obliged to be carefully attuned to trading issues and the possible materiality of information that came to his attention.

23 Notwithstanding that Lambert's purchase of Daylight's securities on August 8, 2011, was not motivated by the August 5 Letter or the Email, that he did not believe himself to be in possession of material undisclosed information and he made enquiries in that regard as aforesaid, he acknowledges that he made an error in judgment in purchasing Daylight securities at that time.

24 Lambert agrees that the prudent course of action as Daylight's President and Chief Executive Officer would have been to err on the side of caution in the circumstances and refrain from any further trading in Daylight securities after the events described in paragraphs 11, 13 and 19 above. Further, Lambert agrees that it would have been prudent for him to confirm with the General Counsel on August 8, 2011, that it remained permissible for him to trade on that day. Lambert agrees that in those circumstances it is in the public interest that he make the payments and undertakings in paragraphs 25 and 26.

Settlement Payments and Undertakings

25 Lambert will pay to the Commission upon execution of this Agreement:

25.1 \$129,000 representing the profit from the sale of the Daylight securities he purchased on August 8, 2011;

25.2 \$100,000 towards investigation and hearing costs.

26 Further, Lambert undertakes to the Commission:

26.1 to refrain from becoming a director or officer of any reporting issuer for a period of 2 years;

26.2 to refrain from trading or purchasing securities of any reporting issuer for 2 years except trades made through a registered representative, who has been given a copy of this Agreement, in:

(i) an RRSP in which he alone has a beneficial interest; or

(ii) blind accounts managed on a completely discretionary basis by the registered representative and in which Lambert shall not recommend, instruct, approve, disapprove or discuss any trades with the registered representative.

27 Lambert acknowledges that he has sought and received independent legal advice and that he has voluntarily agreed to the payments and undertakings herein.

28 Lambert waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

29 Lambert acknowledges that this Agreement may be referred to solely for securities regulatory purposes in Alberta and elsewhere.

30 This Agreement resolves all issues referred to in a Notice of Hearing dated April 18, 2013, and Staff will take no further steps against him or the other respondents arising from these facts or the matters referred to therein.

Signed by Anthony Maurice Lambert at)
Calgary, Alberta this 31 day of)
July 2013, in the presence of:)

WITNESS NAME)
WITNESS NAME)

"Original Signed By")
SIGNATURE)

"Original Signed By"
Anthony Maurice Lambert

) ALBERTA SECURITIES COMMISSION
)

Calgary, Alberta, 31 July 2013)

) "Original Signed By"
) W.E. Brett Code, Q.C.
) Director, Enforcement