

ALBERTA SECURITIES COMMISSION

Citation: Re Imagine Research and Technology Inc., 2019 ABASC 87 **Docket:** ENF-011684
Date: 20190527

NOTICE OF HEARING

To: Imagine Research and Technology Inc.
Douglas Alexander Whyte, and
Brian Michael Jones
(**Respondents**)

Notice: The Alberta Securities Commission (the **Commission**) will convene at 1:30 PM on Thursday, July 25, 2019, at Calgary, Alberta, to set a date for hearing regarding the allegations in this Notice. At the hearing, the Commission will consider whether it is in the public interest to make orders against you under sections 198, 199, and 202 of the *Securities Act*, RSA 2000, c. S-4, as amended (*Act*).

Location: Alberta Securities Commission, 5th Floor, 250 – 5 Street SW, Calgary, Alberta.

Procedure:

1. You may obtain disclosure and particulars of the allegations in this Notice from Adam Karbani, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.592.8183, email: adam.karbani@asc.ca.
2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence.
3. If you or your counsel fail to attend on Thursday, July 25, 2019, at 1:30 PM, or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See attached sections 29, 198, 199, and 202 of the Act, and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.

Reciprocation: Take notice that orders or settlements made by the Commission may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to you. If an order is made or a settlement agreement is reached in relation to this Notice, you should contact the securities regulator of any other jurisdiction in which you may intend to engage in any securities related activities.

Allegations

Parties

1. Imagine Research and Technology Inc. (**Imagine**) was incorporated under federal legislation in Canada and was subsequently registered in Alberta on or about March 5, 2013 with its head office in Edmonton.
2. Douglas Alexander Whyte (**Whyte**) is an individual resident in Edmonton, Alberta. Whyte is the founder, Chief Executive Officer, guiding mind, and a director and shareholder of Imagine.
3. Brian Michael Jones (**Jones**) is an individual resident in Edmonton, Alberta. Jones is the Chief Financial Officer, and a director and shareholder of Imagine.

Circumstances

Background

4. Imagine held itself out as being in the business of developing a product to improve the functionality of electronic circuits.

Illegal Distributions

5. Between June 2013 and January 2018 (the **Relevant Period**), Imagine raised approximately \$1.5 million by selling common shares to approximately 206 investors, approximately 153 of whom were Alberta residents (the **Distributions**).
6. Imagine raised approximately \$323,120 from investors in 2014; \$716,120 in 2015; \$35,400 in 2016; \$357,500 in 2017; and \$13,000 in 2018.
7. The shares were each a “security” as defined in the *Act* and, as trades in securities of an issuer that had not been previously issued, the sales of the shares were “distributions” as defined in the *Act*.
8. At no material point in time did Imagine file a preliminary prospectus or prospectus with the Executive Director of the Commission, or receive a receipt for same, in respect of the Distributions.
9. The Respondents purportedly relied upon the prospectus exemptions under National Instrument 45-106, Prospectus Exemptions, and in particular the family, friends and business associates exemption, but failed to qualify investors for these exemptions in connection with the Distributions.
10. For many of the Distributions, prospectus exemptions were not available.

Misrepresentations

11. During the Relevant Period, the Respondents made statements that they knew or reasonably ought to have known were, in a material respect, misleading or untrue or failed to state a fact that was required to be stated or was necessary to make the statements not misleading.
12. Whyte, as CEO of Imagine, made statements to existing or prospective investors as follows:

12.1 In correspondence sent in approximately 2015:

The reason the income figures discussed below are so staggering is because we are not dealing with the general public in sales; the process is not intended to be sold via storefront operations. It is used on the production line. This is very important to understand. Our clients are international level manufacturers who will use it in their electronic products during the manufacturing process, and who will pay us a royalty per unit treated....

Returns

These numbers are considered quite conservative. These figures are projections only but are based on our analysis of the potential market for this process.

1. Considering Quantum Pooling only, we are targeting our first potential contract with industry clients to initially generate between \$140M and \$1 Billion per year net income...

3. We anticipate that this potential contract may grow to 4 or 5 times its initial level within three years, at a minimum of \$500 - \$600M and possibly as high as \$3.5B...

6. All considered, we are comfortable targeting \$5 – 10B in annual sales within 5 years. This translates to about \$16-18,000 in annual dividends per \$10 share at a \$5B sales level.

12.2 In an email sent on or about October 2, 2016:

5. Share Pricing

The value of the company has increased and that is why the share price is higher. We now have patents and a licensing agreement plus a potential industry partner. This is the time when venture capitalists usually come in to buy out all the original shareholders at a premium. We don't want that so we are going

to the original shareholders who supported us and offer them the opportunity to acquire the remaining shares.

12.3 In an email sent on or about October 17, 2017:

Initial Public Offering

On the website we talk extensively about our plans to introduce the products to market. We reasonably project our annual sales growing to \$11 Billion within 5-8 years starting from our first contracts, which we are working towards now. From there, sales are expected to continue to increase over the life of the patents and also as new products are introduced. Based on these first two products alone, we estimate our income over the 20 year life of the patents to be in excess of \$300 Billion.

13. Whyte and Imagine made the statements in paragraph 12 when they knew or reasonably ought to have known that at that time:
 - (a) Imagine had no signed contracts;
 - (b) Imagine did not earn any revenue at any time;
 - (c) Imagine did not have any patents and only had a patent pending for the Quantum Pooling product;
 - (d) Imagine had not developed a marketable product, and significant funds and testing were still required to develop a marketable product; and
 - (e) there was no other reasonable basis for the financial projections referred to in paragraph 12.
14. Staff further allege that Jones authorized, permitted or acquiesced in the misrepresentations to investors, as particularized in paragraph 12.
15. The foregoing statements and omissions would reasonably be expected to have a significant effect on the market price or value of the securities. Collectively and individually, these statements and omissions created a significantly inaccurate picture as to the risk level of the investment, in terms of the likelihood of success of the business, and the uses to which investor funds would be put.

Breaches

16. As a result of the above, Staff allege that the Respondents:
- 16.1 breached section 110(1) of the *Act* by distributing, or participating in distributions of, securities of Imagine without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some or all of the relevant distributions of securities; and
- 16.2 breached section 92(4.1) of the *Act* by making representations, by act or omission, which they knew or reasonably ought to have known were materially misleading or untrue, or both, and that would reasonably be expected to have a significant effect on the market price or value of a security.

Calgary, Alberta, 27 May, 2019.

) ALBERTA SECURITIES COMMISSION
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) *“Original signed by”*
) _____
) David C. Linder, Q.C.
) Executive Director