

ALBERTA SECURITIES COMMISSION

Citation: Re Budzinski, 2019 ABASC 95

Docket: ENF-011290

Date: 20190607

NOTICE OF HEARING

To: Gerald Michael Budzinski (**Respondent**)

Notice: The Alberta Securities Commission (the **Commission**) will convene at 1:00 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 1:00 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. Gerald Michael Budzinski (**Budzinski**) is an individual resident in Edmonton, Alberta.

Trading Authority and Control

2. Budzinski exercised trading authority over four accounts at Raymond James Ltd. (**Raymond James**), each of which was set up for other individuals and entities (the **Accounts**). The beneficial owners of the securities in the Accounts were:
 - 2.1 Malachi 4 Foundation for Family Unity (**Malachi 4**): a charitable organization of which Budzinski was the managing director and guiding mind;
 - 2.2 Freedom Investors: an investment club comprised of members of a religious organization for which Budzinski acted as a pastor;
 - 2.3 L.P.: daughter-in-law of Budzinski and director of Malachi 4; and
 - 2.4 H.P.: brother of L.P. and president of Malachi 4.(collectively, the **Investors**)
3. Between August 31, 2015 and June 7, 2016 (the **Relevant Trading Period**), Budzinski would occasionally consult with the Investors regarding investments, but generally he made decisions on their behalf about purchasing securities. In almost all cases, he purchased securities for the Accounts through Raymond James.
4. During the Relevant Trading Period, Budzinski purchased millions of common shares of BCM Resources Corporation (**BCM**) for the Accounts. BCM is a Vancouver-based mineral exploration company. At all relevant times, its securities traded on the TSX Venture Exchange, and it was a reporting issuer as defined in the *Act*.

Market Manipulation by High Close and Uptick Trading

5. During the Relevant Trading Period, Budzinski regularly entered bids for BCM shares near the end of the trading day that would match an offer price higher than the last trade that occurred that day, resulting in a high close. As summarized below, at least 25 high close transactions took place in the Accounts during the Relevant Trading Period:

	Trade Date	Trade Time	Price	Volume	Tick Value	Name of Target Account	Target Account's Daily Buy Vol
1.	2016-01-21	15:58:02.320	0.205	1000	0.005	H.P.	45,000
2.	2016-02-19	15:56:49.472	0.20	11500	0.005	Malachi 4 - Fdn (Option)	35,000
3.	2016-02-26	15:57:34.827	0.20	10000	0.005	Freedom Investors	20,000
4.	2016-03-02	15:56:39.698	0.20	10000	0.015	Freedom Investors	15,000
5.	2016-03-03	15:57:21.046	0.205	1000	0.005	Malachi 4 - Fdn (Option)	23,000
6.	2016-03-15	15:52:01.984	0.225	5000	0.015	Malachi 4 - Fdn (Option)	51,000
7.	2016-03-17	15:53:05.394	0.23	2500	0.01	Malachi 4 - Fdn (Option)	25,000
8.	2016-03-18	15:55:14.254	0.235	5000	0.005	Malachi 4 - Fdn (Option)	15,000
9.	2016-03-23	15:57:20.195	0.235	9000	0.015	Freedom Investors	14,000
10.	2016-03-31	15:51:53.368	0.235	5000	0.005	Malachi 4 - Fdn (Option)	30,000
11.	2016-04-04	15:55:38.587	0.235	2000	0.005	Malachi 4 - Fdn (Option)	25,000
12.	2016-04-05	15:54:42.605	0.245	5000	0.005	Freedom Investors	35,000
13.	2016-04-08	15:55:03.648	0.25	8000	0.005	Malachi 4 - Fdn (Option)	20,000
14.	2016-04-12	15:55:34.501	0.24	9500	0.015	Freedom Investors	20,000
15.	2016-04-13	15:19:21.713	0.235	9000	0.01	Malachi 4 - Fdn (Option)	25,000
16.	2016-04-14	15:58:19.823	0.245	5000	0.005	Malachi 4 - Fdn (Option)	32,500
17.	2016-04-15	15:49:06.711	0.28	4500	0.01	Malachi 4 - Fdn (Option)	14,500
18.	2016-04-18	15:55:30.926	0.275	4000	0.005	Malachi 4 - Fdn (Cash)	10,000
19.	2016-04-21	15:58:19.229	0.29	10000	0.015	Malachi 4 - Fdn (Cash)	10,000
20.	2016-05-06	15:58:18.132	0.31	2000	0.01	Malachi 4 - Fdn (Cash)	3,500
21.	2016-05-20	15:58:12.606	0.30	1000	0.025	Malachi 4 - Fdn (Cash)	10,000
22.	2016-05-25	15:59:26.222	0.29	6000	0.005	Malachi 4 - Fdn (Cash)	15,000
23.	2016-05-30	15:20:13.730	0.26	2000	0.005	Malachi 4 - Fdn (Cash)	16,000
24.	2016-05-31	15:53:47.869	0.30	500	0.04	Malachi 4 - Fdn (Cash)	17,000
25.	2016-06-07	15:25:07.292	0.25	500	0.02	Malachi 4 - Fdn (Cash)	20,000

6. During the Relevant Trading Period, Budzinski entered bids for BCM shares that were below an available offer but higher than the previous bid. These bids, summarized below, also occurred near the end of the trading day and caused an uptick of the bid price:

	Date	Time	Price	Volume	Bid-Ask (Before Order)	Bid-Ask (After Order)	Increase in Bid
1.	2016-04-29	15:59:20.305	0.25	2000	0.24 - 0.28	0.25 - 0.28	0.01
2.	2016-05-05	15:58:38.201	0.29	5000	0.28 - 0.30	0.29 - 0.30	0.01
3.	2016-05-17	15:59:32.229	0.28	500	0.24 - 0.295	0.28 - 0.295	0.04
4.	2016-05-20	15:58:14.842	0.265	500	0.245 - 0.30	0.265 - 0.30	0.02
5.	2016-05-31	15:59:27.139	0.26	500	0.235 - 0.30	0.26 - 0.30	0.025

7. Budzinski knew or ought to have known that his trading activity summarized above may result in or contribute to a false or misleading appearance of trading activity in BCM shares, or an artificial price for BCM shares.

Failure to Comply with Insider, Early Warning and Take-Over Bid Requirements

8. During the Relevant Trading Period, Budzinski purchased BCM shares for the Accounts. By September 30, 2015, the Accounts held 11.95% of the issued and outstanding common shares of BCM. By January 31, 2016, the Accounts held over 20% of the issued and outstanding common shares of BCM.
9. Despite acquiring direct or indirect ownership, control or direction over greater than 10% of the issued and outstanding common shares of BCM in the Accounts, at no time did Budzinski, or any person on Budzinski's behalf, file reports or make and file disclosure as required by National Instrument 55-104 *Insider Reporting Requirements and Exemptions (NI 55-104)*.
10. Despite acquiring direct or indirect ownership, control or direction over greater than 10% of the issued and outstanding common shares of BCM in the Accounts, at no time did Budzinski, or any person on Budzinski's behalf, issue and file a news release or file a report as required by the early warning regulations in National Instrument 62-104 *Take-Over Bids and Issuer Bids (NI 62-104)*.
11. Despite acquiring direct or indirect ownership, control or direction over greater than 20% of the issued and outstanding common shares of BCM in the Accounts, at no time did Budzinski, or any person on Budzinski's behalf, issue and file a news release, file a report, distribute a circular to all holders of common shares of BCM, or take other steps as required by the take-over bid regulations in NI 62-104.

Breaches

12. As a result of the above, Staff allege that Budzinski:
- 12.1 breached section 93(a) of the *Act* by directly or indirectly engaging or participating, or attempting to engage or participate, in an act, practice or course of conduct related to a security that he knew or reasonably ought to have known may result in or contribute to a false or misleading appearance of trading activity in a security, or an artificial price for a security;
 - 12.2 breached section 182 of the *Act* by failing to file reports and make disclosure as an insider of BCM in accordance with insider reporting requirements in Parts 3 and/or 4 of NI 55-104;
 - 12.3 breached section 182.1 of the *Act* by failing to make and file early warning disclosure in accordance with early warning requirements in Part 5 of NI 62-104; and
 - 12.4 breached section 159 of the *Act* by making a take-over bid that was not in accordance with take-over bid requirements in Part 2 of NI 62-104.

Calgary, Alberta, 7 June, 2019.

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