

ALBERTA SECURITIES COMMISSION

Citation: Re Kilimanjaro Capital Ltd., 2019 ABASC 181

Docket: ENF-009991

Date: 20191210

AMENDED NOTICE OF HEARING

To: Kilimanjaro Capital Ltd. now known as N1 Technologies Inc.
Ashmit S. Patel
Jonathan Harris Levy
Zulfikar Hussein Rashid, and
^
^
^
Gregory Scott Buczynski

(collectively referred to as the **Respondents**)

Notice: The Alberta Securities Commission (the **Commission**) will convene at 1:00 p.m. on Wednesday, December 13, 2017, at Calgary, Alberta, to set a date for hearing regarding the allegations in this Notice (the **Set Date**). 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 ^Carson Pillar, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: ^403.297.2427, email: ^carson.pillar@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 the Set Date, 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. Kilimanjaro Capital Ltd. (**Kilimanjaro**) was incorporated under the laws of Belize on May 25, 2011. At all material times it maintained an office address and management presence in Calgary, Alberta. Kilimanjaro ultimately changed its name to N1 Technologies Inc. (**N1 Technologies**) on or about February 11, 2015.
2. Kilimanjaro was incorporated at the direction of Ashmit S. Patel (**Patel**) and Jonathan Harris Levy (**Levy**). Patel, among others, recruited Zulfikar Hussein Rashid (**Rashid**) to be a nominal director and officer of Kilimanjaro.
3. The *de facto* control of Kilimanjaro at all material times rested in the hands of Patel and Levy.
4. At all material times Patel was a resident of Annapolis, Maryland. He now resides in Oakville, Ontario.
5. Levy is a resident of Hilton Head Island, South Carolina.
6. Rashid is a resident of Calgary, Alberta.
7. ^
8. ^
9. Gregory Scott Buczynski (**Buczynski**) is a resident of Peoria, Illinois. He was held out as the auditor for Kilimanjaro.

Former parties

- 9.1 John Charles Zang (**Zang**) is a lawyer and resident of Calgary, Alberta. He assisted Patel and Levy in recruiting Rashid and he was a control person in Kilimanjaro by virtue of shares he held or beneficially held in Kilimanjaro. The allegations against Zang have been withdrawn.
- 9.2 Richard Kenneth Moore (**Moore**) is a resident of Calgary, Alberta. He is a registrant pursuant to Alberta securities laws and at all material times was engaged as a dealing representative buying and selling securities for Zang. The allegations against Moore have been withdrawn.

Circumstances

Market Manipulation Scheme

10. In the latter part of 2012, Zang assisted Patel and Levy in finding and recruiting Rashid to stand as a nominee director and officer of Kilimanjaro. With Rashid's assistance, Patel and Levy created for Kilimanjaro the public façade of a philanthropic oil and gas company with primary involvement in future contingent oil and gas interests in regions of Africa seeking or purporting to seek self-determination. With Zang's assistance, Patel and Levy also created a façade of Kilimanjaro having secondary involvement in an Alberta oil and gas asset.
11. At all material times Kilimanjaro had no actual operational business under development. Rather, Patel and Levy, with the assistance of Rashid, Zang, and others, created and promoted an image of Kilimanjaro to manipulate trading activity and profit from artificial prices in Kilimanjaro securities.
12. Between approximately November 2012 and August 2014, Rashid provided material assistance to allow Patel and Levy to promote Kilimanjaro. Rashid's assistance included, at the direction of Patel and Levy, raising C\$45,000 from seed shareholders in Calgary and elsewhere in Alberta between approximately January 2013 and May 2013.
13. Rashid also permitted Patel and Levy to utilize his name, signature, credit card, email accounts, addresses, and Alberta companies or entities he owned or controlled in order to promote Kilimanjaro.
14. Between approximately November 2012 and August 2014, Rashid, under the control and direction of Patel and Levy, caused or acquiesced to filings made with the OTC Markets Group, GXG Markets, and other public disclosures and representations which were misleading as to the activities of Kilimanjaro and the value of its purported assets. The filings and disclosures included financial statements and reports:
 - 14.1 falsely portraying a private placement in Kilimanjaro equal to C\$8.116 million;
 - 14.2 falsely portraying Kilimanjaro's business operations;
 - 14.3 falsely stating the nature and value of Kilimanjaro's assets; and
 - 14.4 falsely certifying Rashid's managerial approvals.
15. In addition, on or about April 29, 2013, Patel and Levy arranged for Buczynski to provide an audit report of Kilimanjaro's financial statements which, at their direction, contained falsehoods and misrepresentations about the nature and value of Kilimanjaro's purported assets. Buczynski provided the audit report without actually conducting an audit.
16. During the months of February 2014 and March 2014, with the assistance of Moore and Rashid, Patel and Zang orchestrated the release of vast amounts of free-trading Kilimanjaro shares. The amount of free-trading Kilimanjaro shares was substantially increased by a

100:1 forward stock split engineered by Patel and Levy which took effect on March 3, 2014, resulting in a total of 500,000,000 shares outstanding.

17. Between approximately March 2014 and October 2014, Patel, Levy, Zang, and Rashid, among others, conducted or contributed to a promotional campaign to create interest in and artificial value for Kilimanjaro securities and to inflate the prices and volumes traded of Kilimanjaro shares (the **Promotional Campaign**). Kilimanjaro was, at the time of the commencement of the Promotional Campaign, quoted for trading on the OTC Markets Group in the United States with the stock symbol KIMJF and on the GXG Markets First Quote in Europe with the stock symbol KCAP.
18. The Promotional Campaign included a number of promotional press releases created by Patel, Levy, Rashid and Zang, specifically concerning supposed letters of interest, memoranda of understanding and the signing of agreements. The Promotional Campaign also included the services of paid online promoters. As part of the Promotional Campaign, Kilimanjaro and the supposed merits of its fictional assets were touted approximately 97 times with at least US\$319,000 paid to online promoters.
19. At various times during or shortly following the Promotional Campaign, Patel, Zang and other insiders sold their Kilimanjaro shares for large profits to unsuspecting market purchasers. These sales of Kilimanjaro shares were timed to coincide with press releases and other promotional activity orchestrated by Patel, Levy, Rashid, and Zang, and others, to take advantage of the resultant increases in share prices. Eventually the Promotional Campaign ceased, and once the hype had diminished, the price for Kilimanjaro shares, and the volumes of shares traded, quickly crashed to almost nothing.
20. During the Promotional Campaign, Zang and Patel generated approximately US\$56,000 by the sale of approximately 78,500,000 Kilimanjaro shares in at least two of Zang's accounts when they dumped Kilimanjaro shares into the unsuspecting and artificially manipulated markets.
21. During the Promotional Campaign, Patel generated approximately US\$102,000 by the sale of approximately 34,000,000 Kilimanjaro shares in at least one of his accounts when he dumped Kilimanjaro shares into the unsuspecting and artificially manipulated markets.

Breach of Cease Trade Order

22. On April 3, 2014, the Commission issued an order pursuant to section 33.1 of the *Act* that trading or purchasing cease in respect of any security of Kilimanjaro until the order is revoked or varied (the **CTO**).
23. Except when the CTO was amended on February 19, 2015, to reflect Kilimanjaro's name change to N1 Technologies, the CTO has not been revoked or varied.
24. When Zang and Patel learned of the CTO on or about April 3, 2014, they conspired, with the assistance of Moore, to move their Kilimanjaro shares from Zang's Canadian brokerage accounts to U.S. brokerage accounts. Once that was effected on or about April 22, 2014,

Zang and Patel continued to trade and/or purchase Kilimanjaro securities to further the market manipulation scheme described above, for other purposes, or both.

25. Further, the actions of Kilimanjaro, Zang, Patel and Moore to transfer shares from Canadian to U.S. brokerage accounts were directly or indirectly in furtherance of trading or purchasing of Kilimanjaro shares subsequent to April 3, 2014.
26. Kilimanjaro, Zang, Patel, and Moore traded or purchased Kilimanjaro securities in violation of the CTO.

Obstruction of Justice and Making False Statements to Staff

27. Beginning on or about March 10, 2014, on several occasions Staff subpoenaed Rashid pursuant to their investigative authority under section 42 of the *Act* to produce documents and submit to an interview at a specified time and place. Rashid refused to attend. This eventually necessitated the issuance of a court order directing that Rashid produce and attend as directed by Staff failing which he would be cited in contempt of court.
28. Staff then conducted compelled interviews of Rashid, under oath, on September 24 and September 29, 2014.
29. During the interviews Rashid made statements which were misleading or not true, including:
 - 29.1 that he had not raised any money from other people to invest in Kilimanjaro;
 - 29.2 that he did not know any of the seed shareholders in Kilimanjaro; and
 - 29.3 that he was the only one who controlled Kilimanjaro.
30. The foregoing statements were intended by Rashid to conceal, or had the effect of concealing, from Staff the true nature of his involvement with Kilimanjaro and the related matters under investigation, and otherwise concealed or withheld information from Staff which was reasonably required for a hearing, review, examination or investigation under the *Act*.
31. The foregoing statements by Rashid pertained to material aspects of the matter under investigation and at the time and in light of the circumstances in which they were made, were misleading, untrue and did not state facts which were necessary to make them not misleading.
32. In a subsequent interview on October 9, 2014, Rashid admitted or it was otherwise revealed that the foregoing statements were untrue or misleading, including admitting that he had raised money from the seed shareholders, many of whom were his family members, friends and business associates.
33. ^

34. ^

35. ^

Conduct Contrary to the Public Interest

36. Further, or in the alternative, the Respondents' conduct, as described in paragraphs 10 to 26 above, constitutes conduct contrary to the public interest.
37. By engaging in conduct as described in paragraphs 10 to 26 above, the Respondents acted in a manner which was incompatible with a fair and efficient capital market, operating on the basis of accurate information and genuine supply and demand.
38. Without limiting the generality of the foregoing, the market manipulation scheme, including the presence of an Alberta nominee, the creation of seed shareholders, the forward stock split, the artificially created interest and false impression of value in Kilimanjaro, the circumvention of the CTO, and sales of vast amounts of Kilimanjaro shares to the unsuspecting public, was contrary to the public interest.
39. Without limiting the generality of the foregoing, by allowing himself to be used as a nominee director and officer, Rashid engaged in conduct contrary to the public interest by participating in a false or misleading appearance of Alberta direction and control of the capital market and business activities of Kilimanjaro. Furthermore, by submitting to the control of Patel, Levy, and others, and by taking no steps as a director and officer of Kilimanjaro to correct the false impressions created by the Promotional Campaign instigated by Patel, Levy, and others, Rashid abdicated the responsibilities of his office in a reporting issuer. This led to investors losing their investments in the crash of Kilimanjaro's stock price, and the potential loss of investor confidence in the capital markets and the affairs of an Alberta-based OTC-reporting issuer under *Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-The-Counter Markets*, all of which was contrary to the public interest.
40. Without limiting the generality of the foregoing, Patel ^ acted in a manner which was contrary to the public interest by transferring Kilimanjaro shares owned or controlled by Zang to a brokerage outside of Canada so they could be traded, contrary to the CTO.

Breaches

41. As a result of the above, Staff allege that:
- 41.1 All Respondents, and each of them, breached section 93(a)(i) and/or (ii) of the *Act* by directly or indirectly engaging ^ or participating in or attempting to engage or participate in an act, practice or course of conduct relating to Kilimanjaro securities that they knew or reasonably ought to have known may result in or contribute ^ to a false or misleading appearance of trading activity in and/or an artificial price for those securities. For greater specificity:

- 41.1.1 Kilimanjaro breached both sections 93(a)(i) and (ii) as the issuer of securities subject to false or misleading trading activity and artificial pricing;
 - 41.1.2 Patel and Levy breached both sections 93(a)(i) and (ii) as the architects and masterminds of the entire market manipulation scheme;
 - 41.1.3 Rashid breached both sections 93(a)(i) and (ii) as a willing pawn of Patel and Levy by recruiting seed shareholders and other funding, signing off on false regulatory filings, making false public statements, and allowing the use of his name, personality, contact and entities to enable Patel, Levy ^ and others to trade in Kilimanjaro's shares and give Kilimanjaro a false air of legitimacy;
 - 41.1.4 ^
 - 41.1.5 ^
 - 41.1.6 Buczynski breached section 93(a)(ii) by providing a false audit of Kilimanjaro under the direction of Patel and Levy;
 - 41.2 Kilimanjaro and Patel ^ breached section 93.1 of the *Act* by trading in securities of Kilimanjaro contrary to the CTO that had been issued by the Commission pursuant to the authority of section 33.1 of the *Act*;
 - 41.3 Rashid ^ breached section 93.4 of the *Act* by concealing or attempting to conceal or withholding or attempting to withhold information, property or things reasonably required for a hearing, review or investigation under the *Act* at a time when Rashid knew or reasonably ought to have known that a hearing, review or investigation was being, or was likely to be, conducted; and
 - 41.4 Rashid ^ breached section 221.1(2) of the *Act* by making statements in providing evidence to the Commission that were, in a material respect and at the time and in light of the circumstances in which they were made, misleading or untrue or did not state a fact required to be stated or that is necessary to make the statements not misleading.
42. Staff further allege that the Respondents' foregoing breaches of the *Act* constitute conduct that is contrary to the public interest.

43. Further, or in the alternative, if the Respondents or any of them are not found to be in breach of specific provisions of Alberta securities laws as alleged in paragraphs 41.1 and 41.2, Staff allege that the Respondents are nevertheless deserving of sanctions and other orders under the *Act* as their conduct, as described in paragraphs 10 through 26 and 36 through 40, was contrary to the public interest.

Amended in Calgary, Alberta, 10
December, 2019.

) ALBERTA SECURITIES COMMISSION

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) *“Original signed by”*

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David C. Linder, Q.C.

) Executive Director