

ALBERTA SECURITIES COMMISSION

Citation: Re Saint Jean Carbon Inc., 2020 ABASC 99

Docket: ENF-011434

Date: 20200619

NOTICE OF HEARING

To: Saint Jean Carbon Inc. and Paul Anthony Ogilvie (**Respondents**)

Notice: The Alberta Securities Commission (the **Commission**) will convene at 1:00 p.m. on August 12, 2020, or as otherwise directed (the **Set Date Hearing**), at Calgary, Alberta, to set a date or dates for the conduct of a hearing regarding the allegations in this Notice (the **Merits Hearing**). At the Merits Hearing, the Commission will consider whether the allegations have been proven. If so, the Commission will subsequently 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 (the *Act*).

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

Procedure:

1. You may obtain document disclosure and further information about particulars of the allegations in this Notice from Don Young, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.297.2642, email: Don.Young@asc.ca.
2. You may be represented by legal counsel or represent yourself. You or your legal counsel may make representations at the Set Date Hearing as part of the process for scheduling the Merits Hearing and the hearing management sessions that will take place between the Set Date Hearing and the Merits Hearing. At the Merits Hearing, you or your legal counsel may make representations and introduce relevant evidence regarding the allegations in this Notice.
3. If you or your legal counsel fail to attend the Set Date Hearing, the scheduling of the Merits Hearing and the hearing management sessions may proceed in your absence without further notice, and the Merits Hearing itself may proceed in your absence without further notice, following which orders may be made against you.

See attached sections 29, 92(4.1), 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

1. Staff allege that Saint Jean Carbon, Inc. (**SJL**) and Paul Anthony Ogilvie (**Ogilvie**) breached section 92(4.1) of the *Act* by making a statement that it, he or they knew or reasonably ought to have known—in any material respect and at the time and in the light of the circumstances in which it was made—was misleading or untrue, or did not state a fact required to be stated or necessary to make the statement not misleading, and would reasonably be expected to have a significant effect on the market price or value of SJL’s securities.

Respondents

2. SJL is a self-described junior resource company with a head office in Calgary, Alberta. Its shares are listed for trading under the symbol “SJL” on the TSX Venture Exchange (**TSXV**) and on the Frankfurt Exchange. Its shares are also quoted on the US Over-the-Counter market. Trading referenced below refers to the TSXV and Canadian dollars.
3. Ogilvie is an Oakville, Ontario resident. He was, at all material times, the Chairman, CEO and a director of the board of SJL.

Circumstances

4. Ogilvie was responsible for, contributed content to or authorized, permitted or acquiesced in the making of news releases issued by SJL, and specifically those mentioned in this Notice.
5. On February 28, 2017, at 8:50 a.m. (all dates and times in 2017, Eastern Time and approximate), trading in the shares of SJL was halted by the TSXV pending an announcement.
6. That day, SJL issued a news release at 10:00 a.m. titled *Saint Jean Carbon Receives Order from Panasonic (First Release)*. The shares of SJL resumed trading at 10:30 a.m. The First Release contained the following statements:

After more than two years...we could not be more pleased than to finally ship finished material to our customer. The Company is pleased to announce that it has received their first order from Panasonic Corporation to supply graphite anode material to their manufacturing facility.

...

The order is part of an offtake agreement to supply multiple tonnes of anode material monthly for a number of years...We consider today as our greatest accomplishment; to be recognized and awarded with an order to supply one of the world’s best technology companies, is a tremendous accomplishment for the team.

...

The Company will ship the first order within 90 days.

7. Staff allege statements in the First Release were in a material respect and at the time and in the light of the circumstances in which they were made, misleading or untrue, or did not state a fact required to be stated or necessary to make the statements not misleading. Particulars include:
 - 7.1 Reference to an “order:” the material supplied was a “minimal sample order” (5kg) for testing purposes, and Panasonic did not even pay for the sample (valued for customs purposes at \$6.64 USD);
 - 7.2 Material was to be supplied to a testing, not “manufacturing,” facility for determining suitability;
 - 7.3 The “order” was part of an offtake agreement: there was no offtake agreement executed by SJL and Panasonic, and even the agreement being considered stated Panasonic was not obligated to buy any amount of graphite at any time;
 - 7.4 Reference to Panasonic as a “customer:” Panasonic requested a sample, did not pay for it, did not commit to taking additional graphite from SJL and did not execute the offtake agreement prepared by SJL; and
 - 7.5 The “order” being part of an offtake agreement “to supply multiple tonnes of anode material monthly for a number of years:” there was no order, no executed offtake agreement, Panasonic was not working to finalize SJL’s form of offtake agreement and there was no commitment by Panasonic to take any amount of graphite at any time.
8. Staff further allege the misrepresentations in the First Release would reasonably be expected to have a significant effect on the market price or value of the SJL securities.
9. SJL shares closed trading at \$0.075 on February 27, the day before the First Release.
10. On February 28, following the halt and the issuance of the First Release, SJL shares closed trading at \$0.185 on significantly increased trading volumes (63 million shares traded vs a 30 day average of approximately 1.3 million per day). The next day, March 1, SJL shares closed trading at \$0.295 on 80 million shares traded.
11. On March 1, SJL filed with the Commission a Material Change Report, summarizing the First Release.
12. On March 2, at 10:58 a.m., trading in the shares of SJL was again halted by the TSXV pending an announcement.

13. On March 3, at 9:16 a.m., SJL issued a news release titled *Saint Jean Carbon Clarifies Panasonic Order (Second Release)*. The Second Release contained the following statements:

The Company is pleased to clarify certain information in the press release dated February 28th, 2017 at the request, and pursuant to the guidance, of the TSX Venture Exchange.

The Company has received a purchase order from Panasonic Corporation to supply graphite anode material to their manufacturing facility. While the size and value of the order is nominal, both on its own and in comparison to the anticipated monthly orders under the provisions of the proposed formal offtake agreement, the order is significant as it marks the first order for material that has been re-engineered by the Company. Although the offtake agreement has not been signed at this time, the supply of the re-engineered material pursuant to the order is based upon the procedures and timelines contained in the proposed offtake agreement. The first order is anticipated to be delivered within 90 days from February 24th the date of the purchase order.... Both companies are working to finalize the proposed offtake agreement as soon as possible.

The Company has received numerous requests for information related to the amount of material per month, per year, how many years, how much the material is going to sell for, etc. At this time, that information is confidential. If at some point the Company receives authorization to release the information from the customer, the company will share the details.

14. Staff allege statements in the Second Release were in a material respect and at the time and in the light of the circumstances in which they were made—a clarification of the First Release—misleading or untrue, or did not state a fact required to be stated or necessary to make the statements not misleading. Particulars include:
- 14.1 Renewed and repeated reference to an “order;”
 - 14.2 The “order” being part of an offtake agreement that both companies “are working to finalize” as soon as possible;
 - 14.3 Renewed and repeated reference to Panasonic as a “customer;” and
 - 14.4 The “confidential” nature of information related to the “order:” there was no signed or other agreement to take any amount of anode material in the future by Panasonic and no information from Panasonic to “release.”
15. Staff further allege the misrepresentations in the Second Release would reasonably be expected to have a significant effect on the market price or value of the SJL securities.
16. Trading in the shares of SJL resumed at 9:45 a.m. that same day, March 3. The shares, which had closed at the halt the previous day at a price per share of \$0.255, resumed trading down at \$0.185. At the close of trading that day, SJL shares were down further at \$0.15.

17. On March 9, trading in the shares of SJL was again halted by the TSXV pending an announcement.
18. On March 20, at 7:54 p.m., SJL issued a news release titled *Saint Jean Provides Update on Anode Material Order (Third Release)*.
19. The Third Release contained the following statements:

At the time of the March 3 Press Release, the Company was proceeding on the basis that Panasonic and Saint Jean were working together to finalize the proposed offtake agreement. The Company was informed by regulatory authorities on March 8, 2017 that Panasonic had advised them that it was considering cancelling the Order and that Panasonic did not intend to enter into the Company's proposed offtake agreement. This information was inconsistent with the Company's understanding of the business relationship with Panasonic at the time. The trading of Saint Jean's stock was promptly halted and the Company took steps to seek clarification from Panasonic with respect to its intentions in this regard. On or about March 15, 2017, Panasonic confirmed the Order, requesting that the Company provide a 5 kg (approximately 11 lbs) sample of Anode Material for testing of its suitability for use in batteries.

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On or about March 13, 2017, Panasonic advised the Company that it will not sign the Company's proposed form of offtake agreement. When Panasonic reconfirmed its Order by email dated March 15, 2017, it also confirmed that in case of mass purchase of Anode Material from Saint Jean, Panasonic will do so under its own form of standard purchasing agreement. Even though Panasonic is proceeding with the Order, there can be no assurance that Panasonic will proceed with a large purchase of Anode Material from the Company, nor that Panasonic will enter into any other type of commercial agreement or arrangement with Saint Jean.

20. The next morning, March 21, trading in the shares of SJL resumed. The shares had closed trading on March 8, the last trading day prior to the halt and Third Release, at \$0.17. The shares resumed trading down at \$0.11 and closed that day down further at \$0.095.

21. On March 21, the Commission issued an order that all trading in securities of SJL by named individuals and all “reporting insiders” (as defined at section 1.1 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions*) cease. That order was extended on April 4, until any proceeding arising from the investigation and initiated pursuant to the *Act* is finally determined or otherwise concluded.

Calgary, Alberta, 19 June, 2020.

) ALBERTA SECURITIES COMMISSION

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) *“Original signed by”*

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David C. Linder, Q.C.

) Executive Director