

ALBERTA SECURITIES COMMISSION

Citation: Re Perpetual Industries Inc., 2020 ABASC 142

Docket: CFR-006977

Date: 20200828

COMPLIANCE SETTLEMENT AGREEMENT

Perpetual Industries Inc.

Regulatory Message

A Cease Trade Order (CTO) may be issued by the Alberta Securities Commission (**Commission**) under section 33.1 of the *Securities Act*, R.S.A. 2000, c. S-4, as amended (the *Act*), where filing requirements under Alberta securities laws have not been met. CTOs are an important tool used by the Commission in such circumstances to prevent harm to the investing public that might otherwise arise when securities are traded in the face of a deficient public information record.

Multilateral Instrument 51-105 – *Issuers Quoted in the U.S. Over-the-Counter Markets (MI 51- 105)* applies in every jurisdiction of Canada except Ontario. MI 51-105 designates or determines as a reporting issuer (**OTC reporting issuer**) in a jurisdiction of Canada, including Alberta, an issuer that has a class of securities quoted on any of the over-the-counter markets in the U.S. and has a significant connection to that jurisdiction. OTC reporting issuers are required to file an annual information form and must also comply with Canadian public company disclosure, audit committee, certification and corporate governance obligations as defined by National Instrument 51-102 – *Continuous Disclosure Obligations (NI 51-102)*.

Agreed Facts

Introduction

1. Staff of the Commission (**Staff**) conducted a review of Perpetual Industries Inc.'s (**Perpetual**) disclosure records in accordance with section 60.2 of the *Act* to determine if Alberta securities laws had been breached.
2. The review confirmed and Perpetual admits that it breached section 93.1 of the *Act* and that it acted contrary to the public interest.
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement referred to in paragraph 24 and for no other use or purpose, Perpetual agrees to the facts and consequences set out in this Compliance Settlement Agreement (**Agreement**).
4. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Party

5. Perpetual was incorporated under the laws of the State of Nevada, United States of America on January 25, 2005. Perpetual's stated business purpose is research and development of new and innovative energy efficient products.
6. Perpetual's head office was previously located in Calgary, Alberta. As of March 1, 2019, Perpetual relocated its head office and operations to Auburn, Indiana.
7. Perpetual is a reporting issuer in Alberta and British Columbia.
8. Perpetual does not currently have, nor has Perpetual ever had, any of its securities listed or posted on a Canadian stock exchange or Canadian stock trading system.
9. The authorized share capital of Perpetual is comprised of up to 100,000,000 common shares with par value (**Common Shares**). As of September 25, 2019, there was a total of 39,491,400 issued and outstanding Common Shares in Perpetual.
10. Perpetual is an OTC reporting issuer under MI 51-105 due to fact that it is an "OTC issuer" as defined in section 1 of MI 51-105, and it has a significant connection to Alberta; its business is being directed or administered in or from Alberta pursuant to section 3 of MI 51-105.

Circumstances

11. Contrary to the OTC reporting issuer requirements, Perpetual failed to file its annual audited financial statements, annual management's discussion and analysis, certification of annual filings and annual information form for the year ended July 31, 2015, (**CD Materials**) as per part 4 of NI 51-102 and sections 5(a), (b) and (c) of MI 51-105.
12. On December 4, 2015, the Commission issued a CTO, ordering that trading or purchasing cease in respect of any security of Perpetual until the order was revoked or varied. The CTO was issued because of Perpetual's failure to comply with continuous disclosure reporting requirements for the year ending July 31, 2015, in accordance with MI 51-105.
 - 12.1 Upon the issuance of this CTO, all trading in Perpetual securities was blocked until the information deficiency was remedied and all investors were in a position to make informed investment decisions.
13. Perpetual stated it was unable to fund the expenses associated with producing the CD Materials due to financial difficulties.
14. On May 5, 2019, the Commission granted Perpetual a Partial Revocation Order in order to complete a private placement (the **Private Placement**) of an amount of up to a maximum of \$200,000 USD by way of issuance of the Common Shares. Perpetual advised the purpose of the Private Placement was to cover all costs and fees (including audit fees, professional fees, late filing fees and other applicable fees) associated with bringing Perpetual's continuous disclosure up to date.

15. On May 9, 2019, Perpetual completed the Private Placement for the maximum of \$200,000 USD of Common Shares as permitted by the Partial Revocation Order.
16. While subject to the CTO, Perpetual:
 - 16.1 Issued a total of \$30,000 USD of convertible notes (the **Convertible Debentures**), which entitled the holder to convert convertible notes into Common Shares at a price of \$0.05 USD. A total of \$20,000 USD of convertible notes were forgiven or cancelled;
 - 16.1.1 As of September 25, 2019, no conversions were made on the remaining \$10,000 USD of convertible notes, and the holders of the Convertible Debentures agreed not to cause any conversions until the CTOs have been fully revoked;
 - 16.2 Issued 21,000,000 warrants (the **Warrants**), of which 16,000,000 were issued to entities resident outside of Canada, in relation to the forgiveness of \$2,040,000 USD in debt. The Warrants entitled the holders to convert the Warrants into Common Shares at a price of \$0.01 USD per Warrant; and
 - 16.3 Issued 4,900,000 of stock options (the **Options**) to management of Perpetual at an exercise price of \$0.10 USD per Option, of which 1,800,000 Options were issued to management outside of Canada.
 - 16.4 Issued an additional 450,000 of stock options to non-Alberta residents in 2019 after Perpetual made a revocation application to the Commission.

Admitted Breach of Alberta securities laws (Admitted Breach)

17. Based on the Agreed Facts, Perpetual admits it breached section 93.1 of the *Act* by failing to comply with a decision of the Executive Director made under Alberta securities laws.

Circumstances Relevant to Settlement

18. Perpetual remediated deficient filings and is currently up to date on all continuous disclosure requirements under Alberta securities laws, except any continuous disclosure that the Executive Director elected not to require as contemplated in sections 6 and 7 of National Policy 12-202 – *Revocation of Certain Cease Trade Orders*.
19. Perpetual has paid all outstanding fees, filed the CD Materials and has an up to date SEDAR profile and SEDI issuer profile supplement.
20. Perpetual acted in good faith and cooperated with Staff during the review and with respect to this Agreement. Perpetual self-reported the securities misconduct, was proactive and collaborative throughout the resolution of this matter.
21. Perpetual's breach did not result in any known investor losses.

22. Perpetual has not been previously sanctioned by the Commission.
23. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement

24. Based on the Agreed Facts and Admitted Breach, Perpetual agrees to pay to the Commission a monetary settlement of \$10,000.00.

Administration

25. All amounts in this Agreement are in Canadian dollars unless indicated otherwise.
26. Perpetual acknowledges that it received independent legal advice and has voluntarily made the admissions in this Agreement.
27. Perpetual waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
28. Perpetual acknowledges and agrees that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.
29. Perpetual understands and acknowledges that this Agreement may form the basis for securities related orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to it. Perpetual understands and acknowledges that it should contact the securities regulator of any other jurisdiction in which it may intend to engage in any securities related activities.
30. Execution and fulfillment of the terms of this Agreement by Perpetual resolves all issues involving Perpetual relating to the conduct described above, and Staff will take no further steps against it arising from these facts.

31. This Agreement may be executed in counterpart.

Signed by the duly authorized signatory of)	
Perpetual Industries Inc. at Calgary,)	Perpetual Industries Inc.
Alberta this 20 th day of August 2020, in)	
the presence of:)	
)	
<u>"witness name"</u>)	
WITNESS NAME)	Per: <u>"Original signed by"</u>
)	Brent W. Bedford
<u>"Original signed by"</u>)	Chief Executive Officer
SIGNATURE)	
)	
)	ALBERTA SECURITIES COMMISSION
)	
Calgary, Alberta, 28 August 2020)	
)	<u>"Original signed by"</u>
)	David C. Linder, Q.C.
)	Executive Director