

ALBERTA SECURITIES COMMISSION

Citation: Re Baay, 2023 ABASC 69

Docket: ENF-012854

Date: 20230516

SETTLEMENT AGREEMENT AND UNDERTAKING

Paul Raymond Baay

Regulatory Message

It is a fundamental principle of securities regulation that all investors should have equal access to information necessary for informed investment decision making. Illegal insider trading generally refers to a person or company in a special relationship with an issuer purchasing or selling securities of the issuer while in possession of material, non-public information about the issuer.

Information about a company is non-public until it is disseminated to the capital markets and investors have had a reasonable period of time to react to the information. Selective disclosure of confidential material information — referred to as tipping — confers unfair informational advantages to particular investors and creates opportunities for insider trading. Tipping violates the fundamental principle of equal access to material information and undermines investor confidence in the market as a level playing field.

Illegal insider trading and tipping undermine the fairness of our capital market, thereby jeopardizing the confidence on which that market depends to survive and flourish. They are referred to as strict liability offences because there is no requirement to prove *mens rea* — motivation and intent are irrelevant. Additionally, there is no requirement that a tipper know or intend that the recipient will buy or sell the particular securities; the mere fact of informing another person of material non-public information is a breach of Alberta securities laws.

Officers and directors of publicly traded companies are expected to uphold a high standard of conduct in relation to Alberta securities laws. They must be vigilant when communicating with market professionals to ensure that selective disclosure of material corporate information does not occur.

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into Paul Raymond Baay (**Baay**) to determine if Alberta securities laws had been breached.

2. The investigation confirmed, and Baay admits, that he breached section 147(4) of the *Securities Act*, R.S.A. 2000, c S-4, as amended (*Act*).
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement referred to in paragraphs 23 and for no other use or purpose, Baay agrees to the facts and consequences set out in this Settlement Agreement and Undertaking (**Agreement**).
4. Terms used in this Agreement have the same meaning as provided in Alberta securities laws, a defined term in the *Act*.

Circumstances

5. Baay is an individual and a resident of Calgary, Alberta. Baay is president and chief executive officer (**CEO**) of Touchstone Exploration Inc. (**Touchstone**). He has served in this capacity since Touchstone was founded, including during the timeframe relevant to this Agreement.
6. Touchstone is an oil and gas exploration and production company active in Trinidad and Tobago (**Trinidad**). Touchstone maintains its head office in Calgary, Alberta. The Commission is Touchstone's principal regulator.
7. Touchstone is a reporting issuer and its common shares trade on the Toronto Stock Exchange (**TSX**) and the Alternative Investment Market (**AIM**) submarket of the London Stock Exchange under the symbol TXP.
8. Baay, as president and CEO, is a person in a special relationship with Touchstone within the meaning of the *Act*.
9. On six occasions between December 2019 and April 2021, Baay emailed draft Touchstone news releases to a registered dealing representative (the **Registrant**) who served retail clients at a registered investment dealer firm. The Registrant administered Touchstone's Employee Share Ownership Plan (**ESOP**). The Registrant was also a Touchstone shareholder. Baay and the Registrant have a business and a personal relationship that dates back 20 years.
10. Baay emailed the draft Touchstone news releases to the Registrant during the evening or on the weekend when both the TSX and AIM markets were closed.
11. Each of the six draft news releases that Baay sent to the Registrant contained material non-public information (**MNPI**) regarding Touchstone. The MNPI in the news releases related to the results of Touchstone's exploration drilling activity in Trinidad.
12. It was not necessary in the course of business for Baay to inform the Registrant of the MNPI contained in the draft news releases.
13. Touchstone distributed the final versions of the Touchstone news releases to the public before the TSX and AIM markets opened for regular trading on the next trading day.

14. Due to the timing of the emails, it was not possible for the Registrant, or any person with whom the Registrant might share the emails or the contents thereof, to trade in or purchase Touchstone securities with knowledge of the MNPI before the news releases were issued publicly. Staff's investigation did not identify any instances of trading on the MNPI.

Admitted Breaches of Alberta securities laws (Admitted Breaches)

15. On the basis of the Agreed Facts, Baay admits that he breached section 147(4) of the *Act* by informing the Registrant of material facts or material changes with respect to Touchstone, other than when necessary in the course of business, while he was a person in a special relationship with Touchstone and before the material facts or material changes were generally disclosed.

Circumstances Relevant to Settlement

16. Baay has demonstrated exemplary cooperation with the Commission in accordance with section 12(c) of ASC Policy 15-601 – *Credit for Exemplary Cooperation in Enforcement Matters* by agreeing to enter into this Agreement in a timely manner and prior to issuance of a Notice of Hearing. Credit was provided accordingly.
17. Baay did not trade on the MNPI.
18. Baay states he did not intend for the information he disclosed to be acted upon in breach of the *Act*. He states he did not obtain any benefit, nor did he intend to benefit, from his breach of the *Act*. He states he believed that he was permitted to provide the Registrant with the draft news releases in the course of business and is not aware of any person or company trading with the knowledge of the MNPI.
19. Upon learning his disclosure of the MNPI to the Registrant constituted tipping, Baay promptly accepted responsibility for his actions as described in this Agreement.
20. Baay has not been previously sanctioned by the Commission.
21. The Commission will ordinarily seek market access bans against directors and officers of public companies that engage in insider trading or tipping. However, due to the rather unique circumstances of this case including the early and significant degree of cooperation and acceptance of responsibility, as well as the absence of demonstrable harm to the capital market, bans have not been required in this case.
22. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement and Undertaking

23. Based on the Agreed Facts and Admitted Breach, Baay agrees and undertakes to the Executive Director of the ASC to:

23.1 Pay to the Commission a monetary settlement of \$40,000; and

23.2 Within 12 months of the signing of this Agreement, pursue and complete training in best practices for public company governance, as approved by the Executive Director of the Commission in writing.

Administration

- 24. Baay acknowledges that he received independent legal advice and has voluntarily made the admissions in this Agreement.
- 25. Baay waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
- 26. Baay acknowledges and agrees that the Commission may enforce this Agreement in the Court of King’s Bench or in any other court of competent jurisdiction.
- 27. Baay 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 him. Baay understands and acknowledges that he should contact the securities regulator of any other jurisdiction in which he may intend to engage in any securities-related activities.
- 28. Execution and fulfillment of the terms of this Agreement by Baay resolves all issues involving Touchstone and Baay relating to the conduct described above, and Staff will take no further steps against Touchstone or Baay arising from these facts.
- 29. This Agreement may be executed in counterpart.

Signed by Paul Raymond Baay at Calgary,)
 Alberta, this 16 day of May, 2023, in the)
 presence of:)

_____))
 WITNESS NAME)
 _____))
 WITNESS NAME)

_____))
 “Original signed by”)
 SIGNATURE)

_____))
 “Original signed by”)
 Paul Raymond Baay)

) ALBERTA SECURITIES COMMISSION
)

Calgary, Alberta, 16 May 2023)

) “Original signed by” _____)
) Samir Sabharwal)
) Executive Director)