

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, CHAPTER S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
DAVID WATSON, NATHAN ROGERS, AMY GILES, JOHN SPARROW,
LEASESMART, INC., ADVANCED GROWING SYSTEMS, INC. (a Florida
corporation), PHARM CONTROL LTD., THE BIGHUB.COM, INC, UNIVERSAL
SEISMIC ASSOCIATES INC., POCKETOP CORPORATION, ASIA TELECOM LTD.,
INTERNATIONAL ENERGY LTD., CAMBRIDGE RESOURCES CORPORATION,
NUTRIONE CORPORATION AND SELECT AMERICAN TRANSFER CO.**

- AND -

**IN THE MATTER OF
STANTON DE FREITAS**

**REASONS AND DECISION
(Section 127 of the *Securities Act*)**

Hearing: December 5, 2007

Decision: January 9, 2008

Panel: James E.A. Turner - Vice-Chair (Chair of the Panel)
Suresh Thakrar Commissioner

Counsel: Pamela Foy - for Staff of the Ontario Securities
Dustin Down Commission

Kevin Richard - for Stanton De Freitas
Kellie Seaman

DECISION AND REASONS

I. OVERVIEW

(a) Stanton De Freitas

[1] This was a hearing before the Ontario Securities Commission (the “Commission”) pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) to consider whether it is in the public interest to extend the temporary cease trade order against Stanton De Freitas (the “De Freitas Temporary Order Hearing”).

[2] On May 30, 2007, an *ex parte* temporary cease trade order was issued by the Commission pursuant to subsections 127(1) and 127(5) of the Act ordering that all trading in any securities by Stanton De Freitas (“De Freitas”) shall cease and that any exemptions contained in Ontario securities law shall not apply to him (the “De Freitas Temporary Order”).

[3] On June 13, 2007, the De Freitas Temporary Order was extended until June 25, 2007 or until further order of the Commission, except that the part of the order that ordered that any exemptions contained in Ontario securities law shall not apply to De Freitas was not extended (the “Amended De Freitas Temporary Order”).

[4] The Amended De Freitas Temporary Order was further extended on June 25, 2007, September 28, 2007, November 29, 2007, December 3, 2007 and December 4, 2007, at which point the current hearing was scheduled. On December 5, 2007, the Amended De Freitas Temporary Order was further extended until the Commission releases its decision and reasons on the De Freitas Temporary Order Hearing or until further order of the Commission.

[5] Staff of the Commission (“Staff”) seeks an extension of the Amended De Freitas Temporary Order under subsection 127(8) and clause 2 of subsection 127(1) of the Act until the completion of Staff’s investigation.

[6] Counsel for De Freitas submits there is insufficient evidence to justify extending the Amended De Freitas Temporary Order. Alternatively, he submits the order, if extended, should be further amended to include a personal trading carve-out.

(b) Select American Transfer Co.

[7] This hearing relates to an ongoing proceeding involving *Select American Transfer Co.* (“Select American”) and other respondents.

[8] The relevant provisions of the Act governing the conduct being investigated by Staff include section 25 (registration required for trading), section 53 (prospectus required for a distribution) and section 126.1 (fraud and market manipulation).

[9] On May 18, 2007, the Commission issued a temporary order pursuant to subsections 127(1) and 127(5) of the Act in *Re Jason Wong, David Watson, Nathan Rogers, Amy Giles, John Sparrow, Kervin Findlay, LeaseSmart, Inc., Advanced Growing Systems, Inc., Pharm Control Ltd., The Bighub.com Inc., Universal Seismic Associates Inc., Pocketop Corporation, Asia*

Telecom Ltd., International Energy Ltd., Cambridge Resources Corporation, NutriOne Corporation and Select American Transfer Co. The terms of the temporary order were that the individual respondents shall cease trading in any securities, that trading in the securities of any of the company respondents shall cease, and that any exemptions contained in Ontario securities law shall not apply to the company respondents. No order was made with respect to Select American at that time, but a temporary order issued on May 22, 2007 cease-traded the securities of Select American and ordered that any exemptions contained in Ontario securities law shall not apply to Select American.

[10] On June 1, 2007, the temporary orders dated May 18, 2007 and May 22, 2007 were extended until June 25, 2007 or until further order of the Commission, except that the part of the temporary orders that ordered that any exemptions contained in Ontario securities law shall not apply to the respondents identified in such orders was not extended (the “Select American Temporary Order”).

[11] On June 25, 2007, the Select American Temporary Order was further extended until September 28, 2007 or until further order of the Commission, except that the order was not extended against Jason Wong (“Wong”) and Kervin Findlay (“Findlay”), and the style of cause was amended by removing the names of Wong and Findlay (the “Amended Select American Temporary Order”).

[12] On September 28, 2007, the Amended Select American Temporary Order was further extended until November 29, 2007.

[13] On November 29, 2007, the Amended Select American Temporary Order was extended against all the respondents except Pharm Control Ltd. (“Pharm Control”) until June 24, 2008 or until further order of the Commission, provided that any party may, on 14 days notice, seek to vary the order pursuant to section 144 of the Act. Also on November 29, 2007, the Amended Select American Temporary Order against Pharm Control was extended until December 4, 2007.

[14] On December 4, 2007, the Amended Select American Temporary Order was extended against Pharm Control until December 5, 2007.

[15] At the outset of the De Freitas Temporary Order Hearing on December 5, 2007, Staff advised that Pharm Control consented to an extension of the Amended Select American Temporary Order against Pharm Control until June 24, 2008. The Commission issued an order to that effect on December 5, 2007.

II. THE ISSUES

[16] The issues in dispute are: (i) whether the Amended De Freitas Temporary Order should be extended; and (ii) if the answer to (i) is “yes”, whether the order should be amended to allow De Freitas a personal trading carve-out.

III. THE PARTIES' SUBMISSIONS

A. Staff

[17] Staff states that it is investigating potentially illegal distributions in Ontario and potentially manipulative and fraudulent trading activity by Select American, its principals and others, including De Freitas, in Ontario.

[18] In particular, Staff advises that its investigation concerns trading in securities of the following eight companies (the "eight companies"):

- the Bighub.Com, Inc. ("Bighub")/Advanced Growing Systems, Inc.;
- LeaseSmart, Inc.;
- Cambridge Resources Corporation;
- NutriOne Corporation;
- International Energy Ltd. ("International Energy");
- Universal Seismic Associates Inc./Pocketop Corporation;
- Asia Telecom Ltd. ("Asia Telecom"); and
- Pharm Control.

[19] Staff advises that no prospectus has been filed and therefore no receipt has been obtained by any of the eight companies, and neither Select American nor De Freitas is registered under the Act.

[20] Staff submits that from its investigation to date, there is evidence to demonstrate that:

(a) Select American is a Delaware corporation that was operating out of Toronto and was the transfer agent for the eight companies and others.

(b) Select American, its principals, former principals and others (the "Participants") appear to have engaged in a series of trading schemes with respect to the securities of the eight companies, as follows:

(i) The Participants would incorporate a company with the same name as a dormant or inactive publicly traded company in the U.S.;

(ii) Select American or the Participants would change the name of the newly incorporated company, obtain a new trading identification or "CUSIP" number for its securities, and effect a reverse stock split of the company's shares on a 1 for 1,000 basis;

(iii) Select American, through the Participants, would then file documents with NASDAQ to reflect these changes and activate trading on the Pink Sheets LLC as if the newly incorporated company was the legal successor to the dormant publicly traded company; and

(iv) Select American would then issue share certificates for shares of the newly incorporated company as if they were shares of the original publicly traded company. These shares were then traded and contributed to temporarily high trading volumes and prices of the shares. For instance, with respect to Bighub and International Energy, Select American appears to have issued in excess of 1 billion shares of each company.

(c) The Participants have taken steps to hide their identities and their involvement in these schemes by creating fictitious identities or by using nominees.

[21] In support of the extension of the Amended De Freitas Temporary Order, Staff relies on the affidavit of Stephen Carpenter (“Carpenter”), a Staff investigator, sworn on May 29, 2007; the affidavit of Craig Gallacher (“Gallacher”), another Staff investigator, sworn on May 30, 2007; Gallacher’s supplementary affidavit, sworn on November 27, 2007; and seven volumes of exhibits introduced by way of the affidavits. Carpenter and Gallacher testified at the De Freitas Temporary Order Hearing.

[22] Staff submits that the evidence filed in support of an extension of the Amended De Freitas Temporary Order shows what “appears to be egregious and harmful conduct by De Freitas” contrary to sections 25, 53, and 126.1 of the Act. Staff submits that this conduct relates to the trading scheme described above, and includes the improper issuance of share certificates and manipulative trading in companies associated with Select American. Staff submits that there is evidence that De Freitas was involved in the creation and operation of Select American and the trading scheme described above. Staff submits that De Freitas has not provided Staff with sufficient information regarding his conduct so as to satisfy subsection 127(8) of the Act, and therefore, the Amended De Freitas Temporary Order should be extended.

B. The Respondent

[23] Counsel for De Freitas submits that Staff has not called sufficient evidence of conduct by De Freitas that is harmful to the public interest. In particular, he submits there is insufficient evidence linking him to the conduct under investigation. He submits that Staff’s case is based on mere suspicion or speculation. Accordingly, he submits that the Amended De Freitas Temporary Order should not be extended. Alternatively, if it is extended, De Freitas seeks a personal trading carve-out.

IV. THE LAW

A. The Commission's Power to Issue a Temporary Order

[24] The Commission's mandate is found in section 1.1 of the Act, which provides as follows:

The purposes of this Act are,

- (a) to provide protection to investors from unfair, improper or fraudulent practices; and
- (b) to foster fair and efficient capital markets and confidence in capital markets.

[25] The Supreme Court of Canada has recognized that the "primary goal of securities legislation is the protection of the investing public" and, to achieve this goal, the Commission is accorded "a very broad discretion to determine what is in the public interest" (*Pezim v. British Columbia (Superintendent of Brokers)* (1994), 114 D.L.R. (4th) 385 (S.C.C.) at pp. 406, 408).

[26] This broad discretion allows the Commission to intervene even where there is no specific breach of the Act: *Re Canadian Tire Corp.* (1987), 10 O.S.C.B. 857, 1987 LNONOSC 47, at p. 29 (QL), affirmed (1987), 10 O.S.C.B. 1771, 59 O.R. (2d) 79 (Div. Ct.), leave to appeal refused (1987), 35 B.L.R. xx (Ont.C.A.).

[27] Subsection 127(1) of the Act provides that the Commission may make one or more of the orders set out therein where "in its opinion it is in the public interest" to do so, provided that a hearing is held pursuant to subsection 127(4).

[28] Notwithstanding the hearing requirement in subsection 127(4), subsection 127(5) recognizes that the Commission may make a temporary cease trade order on an *ex parte* basis "if in the opinion of the Commission, the length of time required to conclude a hearing could be prejudicial to the public interest."

[29] A temporary cease trade order issued pursuant to subsection 127(5) "shall expire on the fifteenth day after its making unless extended by the Commission" and may be extended pursuant to subsection 127(7) "until the hearing is concluded if a hearing is commenced within the fifteen day period."

[30] Notwithstanding subsection 127(7), the Commission may, pursuant to subsection 127(8), extend a temporary cease trade order "for such period as it considers necessary if satisfactory information is not provided to the Commission within the fifteen-day period."

B. The Evidentiary Basis for Extending a Temporary Order

[31] The authority to issue and extend temporary cease trade orders is important in enabling the Commission to achieve its mandate of protecting investors and the capital markets. In *Re Mithras Management Inc* (1990), 13 O.S.C.B. 1600, at 1610, the Commission emphasized the nature of the Commission's public interest mandate:

. . . the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient after all. And in so doing, we may well conclude that a person's past conduct has been so abusive of the capital markets as to warrant our apprehension and intervention, even if no particular breach of the Act has been made out.

[32] Further, as stated by the Commission in *Re Valentine*:

. . . the Commission may be required to extend a Temporary Order before an investigation is completed. This authority enhances the Commission's capacity to protect the capital markets by allowing it to take preventative action; *Re C.T.C. Ltd.* (1987), 10 O.S.C.B. 857.

Re Valentine, (2002), 25 O.S.C.B. 5329 at 5331. See also: *Rodney Gold Mines* (1972), 7 O.S.C.B. 159 (S.C.) at 160, *Intercontinental Technologies Corp.* (1983), 6 O.S.C.B. 634, and *Oakwood Petroleums Ltd.* (1984), 7 O.S.C.B. 1919.

[33] The parties agree that a temporary cease trade order may be extended where there is sufficient evidence of conduct harmful to the public interest. However, they disagree on the application of that test. Staff submits that once the "sufficient evidence" threshold is met based on Staff's evidence, the onus shifts to the respondent to provide a satisfactory explanation to rebut that evidence, and an adverse inference may be drawn if the respondent fails to put forward any evidence.

[34] Counsel for De Freitas disagrees that an adverse inference may be drawn. He submits that the Commission must consider the entirety of the evidence when considering whether to extend a temporary order, including weighing the reliability of Staff's evidence. He relies on *Re Fairtide Capital Corp.*, 2002 LNBCSC 877 (B.C.S.C.), for the proposition that affidavits suggesting "little more than unsubstantiated suspicion" or "guilt by association" fall far short of providing the kind of evidence necessary to support these kinds of orders." In that case, the British Columbia Securities Commission found that the investigator's affidavit was "conclusory without the evidentiary foundation upon which she based her observations and beliefs."

[35] We agree that a temporary order may be extended based on sufficient evidence of conduct that may be harmful to the public interest. We note that subsection 127(8) of the Act permits extension of a temporary order "if satisfactory information is not provided to the Commission." We find that in making that determination, we must consider the apparent strength

of the evidence put forward by Staff as well as any evidence put forward by the Respondent. We adopt the following statement from *Re Valentine*:

In exercising its regulatory authority, the Commission should consider all of the facts including, as part of its sufficiency consideration, the seriousness of the allegations and the evidence supporting them. The Commission should also consider any explanations or evidence that may contradict such evidence. This will allow it to weigh the threat to the public interest against the potential consequences of the order.

Re Valentine, (2002), 25 O.S.C.B. 5329 at 5331.

V. REASONS AND CONCLUSIONS

A. Extension of the Amended De Freitas Temporary Order

[36] As this is an interlocutory hearing based on limited evidence, the only issue before us is whether the Amended De Freitas Temporary Order should be extended, based on sufficient evidence of conduct harmful to the public interest for which no satisfactory explanation has been provided by the Respondent.

[37] We note the following evidence, which was presented by Staff and not contradicted or satisfactorily explained by De Freitas:

i. De Freitas or a member of his family owned the properties from which Select American operated during certain periods.

ii. De Freitas approached Wong about setting up and operating Select American. Wong was the incorporating director of Select American, but resigned within four to five months of its incorporation. Upon Wong's resignation, all Wong's shares in Select American were transferred to De Freitas, and De Freitas was appointed the sole signing officer of Select American's bank accounts. De Freitas remained a signing officer of Select American throughout the period of its operation.

iii. While residing in Ontario, De Freitas established upwards of forty-two trading accounts as a "foreign affiliate" of Franklin Ross, a broker dealer in the U.S., purportedly on behalf of clients. Staff reviewed the trading in eight of these accounts during the period between December 2006 and May 2007. The trading showed a consistent pattern of wholesale or systematic liquidation of shares. Within that period, the trading in these accounts generated over US\$750,000, the majority of which is attributable to trading in securities of Pharm Control, International Energy, Asia Telecom and other issuers related to Select American.

iv. Virtually all of the proceeds from the eight accounts reviewed by Staff were transferred to correspondingly named bank accounts in Ontario which were

either owned or controlled by De Freitas.

[38] Counsel for De Freitas referred to several apparent gaps and inconsistencies in the affidavits sworn by Carpenter and Gallacher. He also made a number of submissions with respect to Wong's role at Select American and with respect to the conduct under investigation. He pointed out that Wong was subject to a cease trade order at an earlier stage in this proceeding, but the order was not extended after June 25, 2007. Counsel for De Freitas also suggested that others may be involved in a similar pattern of trading as seen in the eight accounts reviewed by Staff.

[39] Counsel for De Freitas introduced an updated version of the De Freitas & Associates webpage, and submitted that the trades in issue in this proceeding were trades in the ordinary course of De Freitas' business as a "financial and strategy consultant."

[40] In general, counsel for De Freitas submits that on key points the affidavits of Carpenter and Gallacher rely on the statements made by people they interviewed, including Wong, which may or may not be reliable. Counsel for De Freitas submits this undermines Staff's affidavit evidence.

[41] While counsel for De Freitas has raised a number of questions about Staff's evidence against De Freitas, we are not persuaded that they undermine Staff's case for an extension of the Amended De Freitas Temporary Order. We find that while Staff's evidence may fall short of what would be required in a hearing on the merits, that evidence is more than mere suspicion or speculation. We also note that the investigation concerns a consistent pattern of improper trading that presents a serious risk to investors and to the integrity of the capital markets. No satisfactory information has been provided to Staff or the Commission by De Freitas. We find that Staff has presented sufficient evidence that De Freitas may be involved in conduct harmful to the public interest, and that this evidence has not been explained or rebutted by De Freitas.

[42] Accordingly, we find that it is in the public interest to extend the Amended De Freitas Temporary Order to protect investors while the investigation is being completed. Gallacher testified that he has had numerous interviews, including interviews with 15 people from eight jurisdictions other than Ontario, and has collected about 17 or 18 boxes of documents, including brokerage records, telephone records and records from transfer agents. He also testified that additional interviews are planned, and that significant bank records and other documents will be required. He estimated that the investigation would be completed in six to nine months. Given the scope and complexity of the investigation, we find it appropriate to allow Staff the time it requires to obtain and assess this information.

[43] The ultimate outcome of any proceeding will be determined based on a hearing on the merits. In the meantime, we are persuaded that the public interest will be served by extending the Amended De Freitas Temporary Order until June 24, 2008 or until further order of the Commission.

B. Personal Trading Carve-Out

[44] Counsel for De Freitas submitted that if the Amended De Freitas Temporary Order is extended, a carve-out should be provided to allow De Freitas to trade in his own personal account. He submitted this would minimize the intrusion that results from a very broad temporary cease trade order issued before an investigation is complete.

[45] Staff opposed De Freitas request for a carve-out on the basis that such a carve-out would allow further improper conduct that is harmful to Ontario's capital markets.

[46] We have considered the submissions of Staff and counsel for De Freitas, and we conclude that a personal trading carve-out should be granted, subject to restrictive terms and conditions. We find that it is appropriate to allow a restricted personal trading carve-out given that Staff has not completed its investigation, has not issued a Statement of Allegations against De Freitas and has not proven its case. In our opinion, permitting trading on the basis ordered would be of little risk or harm to the public. Further, in our view, the reporting conditions set out in subparagraphs (ii) and (v) of paragraph 1 of the order will enable Staff to take such action as it considers necessary or appropriate in the circumstances.

VI. THE ORDER

[47] Accordingly, pursuant to subsection 127(8) of the Act, **IT IS ORDERED** that:

1. Pursuant to clause 2 of subsection 127(1), all trading by De Freitas directly or indirectly in any securities shall cease, except that he is permitted to trade in securities solely for his own account or for the account of a registered retirement savings plan or registered retirement income fund (as defined in the Income Tax Act (Canada)) in which he has sole legal or beneficial ownership, provided that:

(i) the securities consist only of securities that are listed and posted for trading on the Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;

(ii) De Freitas submits to Staff, at least five business days prior to the first trade made under this Order, a detailed written statement showing his direct or indirect legal or beneficial ownership of or control or direction over all securities referred to in paragraph (i), as of the date of this Order;

(iii) De Freitas does not have direct or indirect legal or beneficial ownership of or control or direction over more than one per cent of the outstanding securities of the class or series of the class in question;

(iv) De Freitas must trade only through a registered dealer and through accounts opened in his name only and must immediately close any trading

accounts that were not opened in his name only; and

(v) De Freitas must submit standing instructions to each registrant with whom he has an account, or through or with whom he trades any securities, directing that copies of all trade confirmations and monthly account statements be forwarded directly to Staff at the same time such documents are sent to De Freitas, and De Freitas must ensure that such instructions are complied with.

2. This order is in effect until June 24, 2008 or until further order of the Commission.

DATED at Toronto this 9th day of January, 2008.

“James E.A. Turner”

James E.A. Turner

“Suresh Thakrar”

Suresh Thakrar