

ALBERTA SECURITIES COMMISSION

Citation: Re Saint Jean Carbon Inc., 2020 ABASC 184

Docket: ENF-011434

Date: 20201201

SETTLEMENT AGREEMENT AND UNDERTAKING

Saint Jean Carbon Inc.

Regulatory Message

Full and accurate disclosure is one of the key underpinnings of the securities regulatory system. Section 92(4.1) of the *Securities Act*, RSA 2000 c S-4 provides in part that no person or company shall make statements that the person or company knows, or reasonably ought to know, are misleading or untrue in a material respect, or fail to state a fact necessary to make a statement not misleading and which would reasonably be expected to have a significant effect on the market price or value of a security. Announcements of material information must be factual and balanced, neither overemphasizing favourable news nor underemphasizing unfavourable news.

Disclosure facilitates the broad objective of creating and maintaining confidence in the Alberta capital market by providing a reliable information base from which investment decisions can be made. A news release provides for a wide dissemination of information. When a statement in a news release by an issuer is misleading, investors are potentially exposed to it and might make investment decisions relying on it, which can lead to financial losses as well as loss of investor confidence in our capital markets.

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into potential breaches of Alberta securities laws by Saint Jean Carbon Inc. (**SJL**).
2. After conducting the investigation, Staff issued a Notice of Hearing on June 19, 2020, alleging that SJL breached Alberta securities laws by making misleading statements in news releases issued on February 28, 2020 and March 3, 2020, contrary to section 92(4.1) of the *Securities Act*, R.S.A. 2000, c. S-4, as amended (*Act*).

3. The investigation confirmed, and SJL admits, that it made the misleading statements referred to in this Settlement Agreement and Undertaking (**Agreement**), and acted contrary to the public interest.
4. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 23, and for no other use or purpose, SJL agrees to the facts and consequences set out in this Agreement.
5. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

Parties

6. 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.

Circumstances

7. 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 pending an announcement.
8. At 10:00 a.m. that day, SJL issued a news release titled *Saint Jean Carbon Receives Order from Panasonic (First Release)*. The shares of SJL resumed trading at 10:30 a.m.
9. The First Release contained the following statements:

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.

...

Paul Ogilvie, CEO, commented: “After more than two years of working on material specifications, sampling and reworking, we could not be more pleased than to finally ship finished material to our customer. 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.

10. On February 27, the day prior to the First Release, the shares of SJL had closed trading at \$0.075. On February 28, the date of the halt and First Release, SJL shares closed trading at \$0.185 on significantly increased trading volumes (63 million shares traded versus a 30 day average of approximately 1.3 million). The next day, March 1, SJL shares closed trading at \$0.295 on 80 million shares traded.
11. On March 2, at 10:58 a.m., trading in the shares of SJL was again halted pending an announcement.
12. At 9:16 a.m. on March 3, SJL issued a news release titled *Saint Jean Carbon Clarifies Panasonic Order (Second Release)*. The Second Release described the size and value of the Panasonic “order” as nominal, and indicated that the offtake agreement had not been signed. It also 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.

...

Both companies are working to finalize the proposed offtake agreement as soon as possible.

The Company has received numerous requests for information related to 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.

13. Trading in the shares of SJL resumed approximately 30 minutes later on March 3. The SJL shares, which had closed at the halt the previous day at a price per share of \$0.255, resumed trading down at \$0.185. Later on March 3, the SJL shares closed down further still at \$0.15.
14. On March 9, at 7:43 a.m., trading in the shares of SJL was again halted pending an announcement.
15. On March 20, at 7:54 p.m., SJL issued a news release titled *Saint Jean Provides Update on Anode Material Order (Third Release)*. 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.

...

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.

16. The following morning, March 21, trading in the shares of SJL resumed. The shares had last traded at the halt on March 8, prior to the Third Release, at \$0.17. The shares resumed trading on March 21 down at \$0.11, and closed later that day down further still at \$0.095.
17. On March 21, the Commission issued an order that all trading in securities of SJL cease. On April 4, the Commission extended that order, expressly directing 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. The extension was to last until any proceeding arising from the investigation and initiated pursuant to the *Act* was finally determined or otherwise concluded.
18. SJL knew the statements in the First Release and Second Release were, in a material respect and in light of the circumstances in which they were made, either misleading or untrue or failed to state facts necessary to make the statements not misleading; and would reasonably be expected to have a significant effect on the market price or value of SJL's securities. Particulars of the statements made and the misleading and untrue nature, or failure to state a required fact, are as follows:
 - 18.1 Reference to an "order:" the material supplied was a "minimal sample order" (5 kg) for testing purposes, and Panasonic did not pay for the sample (valued for customs purposes at \$6.64 USD);
 - 18.2 The "order" was part of an offtake agreement: there was no offtake agreement executed by SJL and Panasonic, and the agreement being negotiated did not oblige Panasonic to buy any amount of graphite at any time;
 - 18.3 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;

- 18.4 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 and no commitment by Panasonic to take any amount of graphite at any time; and
- 18.5 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.”

Admitted Breach of Alberta Securities Laws (Admitted Breach)

19. Based on the Agreed Facts, SJL admits it breached section 92(4.1) of the *Act* by making statements in the First Release and Second Release that it knew were, in a material respect and in light of the circumstances in which they were made, either misleading or untrue or which failed to state facts necessary to make the statements not misleading; and which would reasonably be expected to have a significant effect on the market price or value of SJL’s securities.

Circumstances Relevant to Settlement

20. SJL has not been previously sanctioned by the Commission.
21. SJL cooperated with Staff during the investigation.
22. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement and Undertakings

23. Based on the Agreed Facts and Admitted Breach, SJL agrees and undertakes to the Executive Director of the Commission:
- 23.1 To pay to the Commission a monetary settlement of \$50,000 and an additional \$12,500 for costs;
- 23.2 That all news releases issued by SJL for the next four years be authorized by at least two persons who are officers or directors, or both, of SJL; and
- 23.3 To provide Staff of the Commission, upon request, with the authorizations granted to issue SJL’s news releases for the next four years.

Administration

24. SJL acknowledges that it received independent legal advice and has voluntarily made the admissions and undertakings in this Agreement.
25. SJL waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

26. SJL 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.
27. SJL 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 them. SJL 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.
28. Execution and fulfillment of the terms of this Agreement by SJL resolves all issues involving SJL relating to the conduct described above, and Staff will take no further steps against SJL arising from these facts.
29. This Agreement may be executed in counterpart. Signed signature pages may be transmitted by electronic mail, and any such signature shall have the same legal effect as an original.

Signed by the duly authorized signatory of)	
SAINT JEAN CARBON INC. at)	SAINT JEAN CARBON INC.
Victoria, BC this 28 day of November,)	
2020, in the presence of:)	
)	
<u>WITNESS NAME</u>)	
WITNESS NAME)	
)	Per: <u>“Original signed by”</u>
<u>“Original signed by”</u>)	William Pfaffenberger
SIGNATURE)	
)	
)	ALBERTA SECURITIES COMMISSION
)	
Calgary, Alberta, 1 December 2020)	
)	<u>“Original signed by”</u>
)	David C. Linder, Q.C.
)	Executive Director