

ALBERTA SECURITIES COMMISSION

Citation: Re Xfuels, Inc., 2023 ABASC 23

Docket: ENF-012635

Date: 20230222

SETTLEMENT AGREEMENT AND UNDERTAKING

**Xfuels Inc., carrying on business as Xfuels, Inc., and
Michael David McLaren**

Regulatory Message

A Cease Trade Order (CTO) may be issued by the Executive Director of the Alberta Securities Commission (ASC) 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 ASC in such circumstances to prevent harm to the investing public that might otherwise arise when securities are traded without the required continuous disclosure necessary for investors to make an informed decision as whether to buy, sell or hold the securities.

Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (MI 51-105) is a rule of the ASC. MI 51-105 deems an OTC issuer to be a reporting issuer (OTC reporting issuer) in Alberta, if

- (a) The issuer's business is directed or administered in or from Alberta, promotional activities are carried on in or from Alberta or the issuer has distributed securities to a person or company resident in Alberta before the issuer was assigned a ticker symbol; and
- (b) The issuer has a class of securities quoted on any of the over-the-counter markets in the U.S., but is not listed on a Canadian or U.S. exchange specified in MI 51-105.

OTC reporting issuers are required to comply with the continuous disclosure and corporate governance requirements applicable to reporting issuers that are venture issuers but must also file an annual information form and each of their directors, officers, promoters and control persons must file personal information forms. The ASC will take enforcement action where it determines a breach of MI 51-105 has occurred.

Agreed Facts

Introduction

1. Staff conducted an investigation into Xfuels Inc., carrying on business as Xfuels, Inc. (Xfuels) and Michael David McLaren (McLaren) to determine if Alberta securities laws had been breached.

2. After conducting the investigation, Staff issued a Notice of Hearing on September 19, 2022, alleging that Xfuels and McLaren breached Alberta securities laws by not complying with a CTO issued by the ASC, contrary to section 93.1 of the *Act*.
3. The investigation confirmed, and Xfuels and McLaren admit, that they breached the section of the *Act* referred to in this Settlement Agreement and Undertaking (**Agreement**).
4. Solely for securities regulatory purposes in Alberta and Canada, and as the basis for the settlement and undertakings referred to in paragraphs 28 and 29 and for no other use or purpose, Xfuels and McLaren agree 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. Xfuels is a corporation that was registered in the State of Nevada, United States of America under a predecessor name in approximately June 2010. Its shares have traded on the Over-the-Counter Market (**OTC Market**) in the U.S. since approximately April 2013.
7. Xfuels became a reporting issuer under the *Act* pursuant to MI 51-105 in approximately September 2015, and continued to be so throughout the relevant period, approximately April 2020 to March 2022 (the **Relevant Period**). Section 3(a) of MI 51-105 states that an OTC Market issuer is a reporting issuer under [Alberta] securities legislation if, on or after July 31, 2012, its business has been directed or administered in or from the local jurisdiction, i.e., Alberta.
8. During the Relevant Period, Xfuels carried on or aspired to carry on business in the energy industry, including in Alberta, and had a head office in Airdrie, Alberta.
9. McLaren, a resident of Airdrie, Alberta, was a director, an officer (president and CEO) and the guiding mind of Xfuels during the Relevant Period. He currently holds the same positions at Xfuels.

Circumstances

10. Contrary to the OTC Market reporting issuer requirements, Xfuels had failed to file periodic disclosure pursuant to section 146 of the *Act*, specifically, interim unaudited financial statements, interim management discussion and analysis and certification of interim filings for the interim period ending January 31, 2016 (the **Relevant Disclosure**).
11. On April 22, 2016, the ASC issued a CTO under section 33.1 of the *Act* (the **Order**), which ceased the trading or purchasing of each security of Xfuels until the Order was revoked or varied.
12. The Order was a decision of the Executive Director made under Alberta securities laws.

13. Xfuels and McLaren were served with the Order on April 22, 2016. McLaren knew or ought to have known about the Order, including its terms, on or about that same date, and, in any event, before and during the Relevant Period. The Order was announced on the OTC Market's website on April 28, 2016.
14. The Order was never revoked or varied.
15. During the Relevant Period, and in breach of the Order, Xfuels issued securities to numerous individuals and entities, including but not limited to:
 - 15.1 Preferred stock issued to McLaren;
 - 15.2 Common stock issued to McLaren;
 - 15.3 Common stock issued to McLaren's mother, an Alberta resident;
 - 15.4 Common stock issued to McLaren's sister, an Alberta resident;
 - 15.5 Common stock issued to other directors and officers of Xfuels, at least one of whom was an Alberta resident; and
 - 15.6 Common stock issued to other Alberta and Canadian residents or entities.
16. The securities that Xfuels issued during the Relevant Period (the **Relevant Trades**) were trades within the meaning of section 1(jjj) of the *Act*.
17. The Relevant Trades were in violation of Alberta securities laws because they breached the Order.
18. McLaren approved all issuances of Xfuels securities during the Relevant Period.
19. During the Relevant Period, and in breach of the Order, Xfuels and McLaren also engaged in numerous acts, advertisements, solicitations, types of conduct or negotiations in furtherance of trades in securities of Xfuels within the meaning of section 1(jjj)(vi) of the *Act*, including but not limited to:
 - 19.1 Issuing news releases and other public statements about issuances or prospective issuances of securities of Xfuels; and
 - 19.2 Executing agreements and other corporate documents involving issuances or prospective issuances of securities of Xfuels.
20. McLaren authorized, permitted or acquiesced in all of the trades and acts in furtherance of trades in securities that Xfuels engaged in during the Relevant Period.
21. During the Relevant Period, Xfuels issued news releases in November 2021 and in March 2022 which indicated that it would not be proceeding with two of the trades set out in earlier releases.

Admitted Breach of Alberta Securities Laws (Admitted Breach)

22. Based on the Agreed Facts, Xfuels and McLaren admit they breached section 93.1 of the *Act* by issuing securities in breach of the Order, thereby failing to comply with a decision of the Executive Director made under Alberta securities laws.

Circumstances Relevant to Settlement

23. Xfuels and McLaren have made an effort to demonstrate exemplary cooperation with the ASC 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 more than 61 days prior to the commencement of the scheduled hearing, and credit was provided accordingly.
24. The breach did not result in any known investor losses.
25. Xfuels and McLaren have not been previously sanctioned by the ASC.
26. The Relevant Disclosure was never filed with the ASC on SEDAR, as required by Alberta securities laws, including section 146 of the *Act* and National Instrument 51-102. A Form 10-Q containing some of the Relevant Disclosure was filed with the U.S. Securities and Exchange Commission on EDGAR on May 20, 2016.
27. This Agreement has saved the ASC the time and expense associated with a contested hearing under the *Act*.

Settlement and Undertakings

28. Based on the Agreed Facts and Admitted Breach, Xfuels agrees and undertakes to the Executive Director of the ASC to:
- 28.1 Pay to the ASC a monetary settlement of \$20,000; and
- 28.2 Cancel all shares issued by Xfuels to McLaren and his family members between April 2020 and March 2022, without paying any consideration, by no later than March 31, 2023.
29. Based on the Agreed Facts and Admitted Breach, McLaren agrees and undertakes to the Executive Director of the ASC to:
- 29.1 Resign all positions he may have as a director or officer of any reporting issuer;
- 29.2 Be prohibited from acting as a director or officer, or both, of any reporting issuer for a period of two years from the date of this Agreement, unless the undertaking set out in subparagraph 29.3 has not yet been fulfilled, in which case, the prohibition continues until that undertaking has been fulfilled; and

- 29.3 Pursue and complete training in best practices for public company governance and disclosure, as approved by the Executive Director of the ASC in writing upon satisfactory completion.

Administration

30. Xfuels and McLaren acknowledge that they received independent legal advice and have voluntarily made the admissions and undertakings in this Agreement.
31. Xfuels and McLaren waive any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
32. Xfuels and McLaren acknowledge and agree that the ASC may enforce this Agreement in the Court of King's Bench or in any other court of competent jurisdiction.
33. Xfuels and McLaren understand and acknowledge 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. Xfuels and McLaren understand and acknowledge that they should contact the securities regulator of any other jurisdiction in which they may intend to engage in any securities-related activities.
34. Execution and fulfillment of the terms of this Agreement by Xfuels and McLaren resolves all issues involving McLaren and Xfuels, its officers and directors relating to the conduct described above, and Staff will take no further steps against them arising from these facts.

35. This Agreement may be executed in counterpart.

Signed by the duly authorized signatory of) Xfuels, Inc.
 Xfuels, Inc. at Calgary, Alberta, this 22)
 day of February 2023, in the presence of:)
)
 _____)
 WITNESS NAME)
 WITNESS NAME)
)
 _____)
 "Original signed by")
 SIGNATURE) Per: "Original signed by" _____
) Michael David McLaren

Signed by Michael David McLaren at)
 Calgary, Alberta, this 22 day of February)
 2023, in the presence of:)
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 _____)
 WITNESS NAME)
 WITNESS NAME)
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 "Original signed by")
 SIGNATURE) "Original signed by" _____
) Michael David McLaren

) ALBERTA SECURITIES COMMISSION

Calgary, Alberta, 22 February 2023)
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 _____)
 "Original signed by")
) David C. Linder, K.C.
) Executive Director