ALBERTA SECURITIES COMMISSION

DECISION

Citation: Pulse Data Inc., Re, 2007 ABASC 895 **Date: 20071130**

Pulse Data Inc.
Take-over Bid by 6818862 Canada Inc.

Panel:	Glenda A. Campbell, QC Karen A. Prentice, QC
Appearing:	Samuel Rickett and Murray Braithwaite for 6818862 Canada Inc.
	Steven Leitl and Andrew Love, QC for Pulse Data Inc.
	Cynthia Martens and Cathy Watkins for Commission Staff
Date of Hearing:	26 September 2007
Date of Oral Decision:	27 September 2007
Date of Written Decision:	30 November 2007

I. INTRODUCTION

[1] These applications resulted from a take-over bid arising from an offer (the Offer) to purchase all of the issued and outstanding common shares (the Pulse Shares or Shares) of Pulse Data Inc. (Pulse) made by 6818862 Canada Inc. (the Offeror), an indirect wholly-owned subsidiary of Seitel, Inc. (Seitel). Seitel is controlled by ValueAct Capital Master Fund, L.P. (ValueAct Capital). Seitel, ValueAct Capital and ValueAct Capital Master Fund III, L.P. (ValueAct Capital III) were acting jointly or in concert with the Offeror in connection with the Offer (we refer to the Offeror, Seitel, ValueAct Capital and ValueAct Capital III collectively as ValueAct, and we refer to ValueAct Capital and ValueAct Capital III collectively as the ValueAct Entities). The Offer's terms and conditions were set out in the Offeror's Offer to Purchase and Circular dated 10 August 2007 (the Offer to Purchase and Circular), as amended by the Offeror's Notice of Variation dated 22 August 2007 (the Notice of Variation) and the Offeror's Notice of Extension dated 18 September 2007 (the Notice of Extension) (we refer to the amended Offer to Purchase and Circular as the Amended Offer to Purchase and Circular).

[2] On 18 September 2007, the Offeror applied to the Alberta Securities Commission (the Commission) for relief that included the following:

> (a) an order under section 198 of the *Securities Act*, R.S.A. 2000, c. S-4 (the Act), that trading cease permanently in respect of any securities issued or to be issued under or in connection with the Shareholder Rights Plan Agreement adopted by the board of directors of Pulse (the Pulse Board) on 13 August 2007 and amended on 10 September 2007 (the Rights Plan), including without limitation in respect of the rights issued under the Rights Plan (the Rights) and the Pulse Shares to be issued on the exercise of the Rights; and
>
> (b) an order under section 198 of the Act permanently removing prospectus exemptions in respect of the distribution of the Rights on the occurrence of the "Separation Time", as defined in the Rights Plan, and in respect of the exercise of the Rights and the issuance of Pulse Shares on such exercise.

[3] On 25 September 2007, Pulse made a cross-application for orders under section 198 of the Act:

> (a) requiring ValueAct to comply with sections 158(7) and 170(2) of the Act in respect of the time that any future extensions of the Offer must be outstanding;
>
> (b) requiring ValueAct to disclose the number of Pulse Shares that had been tendered to the Offer;

(c) enjoining ValueAct from making further misleading representations in respect of the amount being offered to shareholders of Pulse (the Pulse Shareholders or Shareholders) under the Offer; and

(d) requiring ValueAct to comply with sections 182(1) and (2) of the Act as a result of its inaccurate public disclosure of its interests in Pulse.

[4] These applications were heard on 26 September 2007 (the Hearing), two days before the Offer was scheduled to terminate at 5:00 p.m. (Toronto time) on 28 September 2007. In the Hearing, we heard from counsel for the Offeror and for Pulse, and from staff of the Commission (Staff), and we considered written submissions provided by each. We also received affidavit evidence of and heard testimony from the president and chief executive officer of Seitel, Robert Monson (Monson). Pulse abandoned its request for an order requiring ValueAct to comply with sections 182(1) and (2) of the Act.

[5] In view of the urgent nature of these applications, we rendered our decision and oral reasons on 27 September 2007 and indicated that our written reasons would follow. These are those written reasons, which elaborate on and finetune our oral reasons without changing the substance of our oral conclusions and reasons.

II. FACTS

A. Introduction

[6] The facts material to these applications, derived from the written and oral submissions and the evidence, were as follows:

B. ValueAct and Pulse

[7] The Offeror, a corporation incorporated under the laws of Canada, is an indirect wholly-owned subsidiary of Seitel that was incorporated for purposes of acquiring all of the Pulse Shares and making the Offer. As at 27 September 2007, the Offeror had not carried on any other business. The Offeror's registered office is located in Calgary, Alberta.

[8] Seitel, a Delaware corporation with its principal and head offices located in Houston, Texas, is a provider of seismic data to the oil and gas industry in North America, including western Canada. It owns an extensive library of proprietary onshore and offshore seismic data that it licenses to a wide range of oil and gas companies. Seitel is controlled by ValueAct Capital.

[9] ValueAct Capital and ValueAct Capital III are British Virgin Islands limited partnerships focused primarily on acquiring significant ownership stakes in publicly traded companies, along with a select number of control investments through both open-market purchases and negotiated transactions.

[10] Pulse, a corporation incorporated under the laws of Canada with its principal, head and registered offices located in Calgary, Alberta, specializes in acquiring seismic data and in marketing and licensing it to the western Canadian energy sector. Through its Terrapoint business unit (Terrapoint), Pulse also engages in airborne and surface digital mapping. On 5 September 2007, Pulse issued a news release announcing that it had signed a letter of intent to sell the assets of Terrapoint to a management-led group of Terrapoint, with a scheduled closing date of 28 September 2007 (the Terrapoint Disposition). Pulse noted that, on completion of the Terrapoint Disposition, it would have a total of approximately 25 employees.

[11] Pulse's authorized share capital consists of an unlimited number of Pulse Shares and an unlimited number of preferred shares, issuable in series. As at 24 August 2007, there were 54,456,753 Pulse Shares and no preferred shares issued and outstanding. As at 27 July 2007, there were 4,121,255 options outstanding to purchase Pulse Shares. The Pulse Shares are listed on the Toronto Stock Exchange (the TSX).

[12] As at 27 September 2007, neither the Offeror nor Seitel owned any Pulse Shares, but the ValueAct Entities owned 7,360,500 Pulse Shares – purchased between 7 June and 3 August 2007 – representing approximately 13.5% of the Pulse Shares.

[13] Seitel and Pulse are competitors.

C. Pre-Offer Indications of Interest and Valuations

1. Seitel

[14] On 26 July 2005, Seitel made a written proposal to Pulse to acquire all of the Pulse Shares pursuant to a take-over bid or plan of arrangement for total consideration of $119.9 million (approximately $2.60 per Share), up to $50 million of which could be paid, if the transaction was effected as a plan of arrangement, in the form of shares exchangeable on a one-to-one basis for common shares of Seitel (the 2005 Seitel Proposal). The 2005 Seitel Proposal was subject to satisfactory completion of due diligence and other conditions.

[15] In late July or early August 2005, Seitel was informed that the Pulse Board was not interested in the 2005 Seitel Proposal.

2. Private Equity Fund

[16] On 2 October 2006, Dundee Securities Corporation made a confidential presentation (the Dundee Presentation) to the Pulse Board concerning the merits of Pulse's conversion to an income trust structure. The Dundee Presentation included a preliminary analysis of Pulse's then market valuation of $120 million (approximately $2.50 per Share) and concluded that the Pulse Shares were undervalued when compared with their intrinsic value, market comparables and other valuation benchmarks. The Dundee Presentation also included a preliminary indicative range of values respecting

Pulse's market capitalization under an income trust structure, based on then market conditions and 2007 projections, from $170 million to $202 million (approximately $3.54 to $4.22 per Share).

[17] In December 2006, Pulse was approached on a confidential basis by a private equity fund (the Fund) about the possibility of a going private transaction. Preliminary discussions ensued among management of Pulse (Pulse Management), the Pulse Board and the Fund.

[18] On 10 January 2007, Pulse and the Fund entered into a confidentiality and standstill agreement, following which the Fund was granted access to certain non-public information of Pulse.

[19] The Fund presented Pulse with a letter of interest dated 12 February 2007 indicating its willingness to proceed with a possible going private transaction. In response, the Pulse Board formed an independent committee of directors (the Independent Committee) comprising Graham Weir (Weir), Don West (West) and Clark Zentner, whose mandate included dealing with the Fund's and any other forthcoming expressions of interest and making recommendations to the Pulse Board as to whether alternative acquisition proposals should be solicited and whether any proposed transaction was in the best interests of Pulse. The Independent Committee was also authorized to retain independent legal, financial and other advisors, including an independent valuator for the purposes of Ontario Securities Commission Rule 61-501 – *Insider Bids, Issuer Bids, Business Combinations and Related Party Transactions*.

[20] On 1 March 2007, the Independent Committee retained Macleod Dixon LLP as its independent legal counsel. On 2 and 3 April 2007, the Independent Committee also retained William Blair & Company (William Blair) as its independent financial advisor, purportedly because William Blair had been involved in the 2006 sale of Seitel – ultimately, to ValueAct Capital – and thus had familiarity with the seismic data business and the market for prospective bidders in a corporate sale process.

[21] On 10 April 2007, the Fund proposed an all-cash take-over bid for $3.10 per Share (the Fund Offer). The terms and conditions of the Fund Offer included:

(a) a restriction on Pulse's ability to declare and pay dividends; and

(b) a 30-day go-shop period during which Pulse would be permitted to solicit alternative acquisition proposals.

[22] The Fund also indicated that it was unwilling to participate in a public auction process involving Pulse.

[23] The Independent Committee's view of the Fund Offer was that:

(a) the bid price of $3.10 per Share was too low, especially in light of the restriction on the payment of dividends; and

(b) the 30-day go-shop period was insufficient to conduct a meaningful solicitation process.

[24] In mid-April 2007, the Independent Committee retained Raymond James Ltd. (Raymond James) as independent valuator, to conduct an independent valuation of the Pulse Shares in addition to the valuation being conducted by William Blair.

[25] At meetings of the Independent Committee on 20 and 21 April 2007, William Blair presented its preliminary valuation analysis for the Pulse Shares, containing a number of indicative valuation ranges based on different valuation methodologies, after which the Independent Committee authorized William Blair to respond to the Fund with a price at which the Independent Committee would be willing to entertain further discussions.

[26] The Fund then agreed to increase its bid price to $3.15 per Share but did not agree to remove the restriction on declaring and paying dividends. Other aspects of the Fund Offer were also revised.

[27] On 8 May 2007, Raymond James presented the Independent Committee with its draft valuation analysis, which valued the Pulse Shares as at 31 March 2007 between $2.90 and $3.50 per Share.

[28] When the Pulse Board met on 9 May 2007, it received an update from the Independent Committee on the status of negotiations and an updated valuation analysis from William Blair, and Raymond James presented its draft valuation analysis. The Independent Committee advised the Pulse Board of its views on the valuation range and outlined the outstanding issues raised by the Fund Offer, principal among them being:

(a) the bid price of $3.15 per Share being at the low end of the valuation range provided by Raymond James;

(b) the restriction on Pulse's ability to declare and pay dividends effectively reducing the bid price to $3.1125 per Share;

(c) the length of the go-shop period being insufficient to provide a meaningful post-signing market check; and

(d) the Fund's refusal to agree to a provision in the support agreement allowing the Pulse Board to change its recommendation to Pulse Shareholders on the Fund Offer in light of changed circumstances.

[29] The Independent Committee advised the Pulse Board that it was not prepared to recommend that the Fund Offer be accepted unless the principal outstanding issues could be resolved satisfactorily, and the Pulse Board concurred with this position.

[30] On 10 May 2007, the Independent Committee advised the Fund of Pulse's position on the principal outstanding issues. The Fund advised the Independent Committee that it was not prepared to negotiate further on these issues, and further discussions with the Fund then terminated.

3. Quantum

[31] By way of a newspaper advertisement on 19 June 2007, Quantum Yield Inc. (Quantum) made an unsolicited take-over bid to purchase all of the Pulse Shares (the Quantum Offer). The Quantum Offer was to expire on 25 July 2007 and offered each Pulse Shareholder an "aggregate principal amount of $3.05 in 10% aggregate, secured retractable debentures".

[32] On 18 June 2007, the last trading day prior to the announcement of the Quantum Offer, the closing price of the Pulse Shares on the TSX was $2.77 per Share.

[33] On 22 June 2007, the Pulse Board determined to apply to the Commission for an order cease trading the Quantum Offer and to unanimously recommend that Pulse Shareholders reject the Quantum Offer. On 25 June 2007, Pulse issued a news release to that effect.

[34] On 29 June 2007, Quantum withdrew the Quantum Offer.

4. Seitel

[35] On 20 June 2007, Pulse received a written proposal from ValueAct Capital on behalf of Seitel to acquire all of the equity interests of Pulse pursuant to a plan of arrangement for $3.10 per Share in cash, subject to the favourable completion of due diligence and other conditions (the 2007 Seitel Proposal).

[36] Between 29 June and 3 July 2007, Seitel was informed that Pulse was rejecting the 2007 Seitel Proposal.

[37] On 3 August 2007, the ValueAct Entities issued a news release and filed with Canadian securities regulators an early warning report indicating that, as of that date, they had acquired 7,360,500 Pulse Shares, representing approximately 13.5% of the Pulse Shares.

D. The Offer

[38] On 10 August 2007, the boards of directors of the Offeror and Seitel authorized and approved the making of the Offer. The same day, the Offeror:

(a) delivered to Pulse copies of the Offer to Purchase and Circular, the letter of acceptance and transmittal and the notice of guaranteed delivery referred to therein and related documents filed by the Offeror with Canadian securities regulators later that day; and

(b) requested from Pulse a list of Pulse Shareholders, Pulse optionholders and non-objecting beneficial owners of such securities.

[39] On 10 August 2007, the ValueAct Entities also issued a news release announcing the decision of the Offeror to make the Offer and filed with Canadian securities regulators an early warning report.

[40] On 9 August 2007, the last trading day prior to the ValueAct Entities' announcement of the Offeror's intention to make the Offer, the closing price of the Pulse Shares on the TSX was $3.00 per Share.

[41] On 13 August 2007, the Offeror and Seitel published advertisements in the Globe and Mail and in La Presse announcing the commencement on such date of the Offer.

[42] On 20 August 2007, Pulse delivered to the Offeror the requested list of Pulse Shareholders, Pulse optionholders and non-objecting beneficial owners of such securities.

[43] On 22 August 2007, the Offeror filed with Canadian securities regulators the Notice of Variation, a revised letter of acceptance and transmittal and a revised notice of guaranteed delivery – all reflecting the Pulse Board's adoption of the Rights Plan – and mailed the same together with the Offer to Purchase and Circular to Pulse Shareholders.

[44] On 18 September 2007, the original expiry date of the Offer, the Offeror issued a news release announcing an extended expiry date of 28 September 2007 and filed with Canadian securities regulators and mailed to Pulse Shareholders the Notice of Extension.

[45] In accordance with the Amended Offer to Purchase and Circular, the essential terms of the Offer were as follows:

(a) the Offer was for all of the Pulse Shares, and the associated Rights, other than the Pulse Shares beneficially owned by ValueAct;

(b) in return for each Share, the Offeror was offering $3.10 in cash (reduced by the dividend declared on 13 August 2007 to $3.0625 in cash); and

(c) the Offer was open for acceptance until 5:00 p.m. (Toronto time) on 28 September 2007.

[46] The Amended Offer to Purchase and Circular stated that the Offer was made at a premium to the market price of the Pulse Shares, calculated as follows:

> **The Offer is being made at a 11.9% premium to the market price of Pulse Data Common Shares based on the closing price of $2.77 of the Pulse Data Common Shares on the TSX on June 18, 2007, the last trading day prior to the announcement of an offer by Quantum to purchase all of the outstanding Pulse Data Common Shares, which offer was withdrawn on June 28, 2007 and cease traded on June 29, 2007 by the ASC. The Offer also represents a premium of approximately 14.8% over the price of $2.70 per share at which Pulse Data completed the Private Placement on July 27, 2007, and a premium of approximately 3.3% over the closing price of $3.00 of the Pulse Data Common Shares on the TSX on August 9, 2007, which was the last trading day prior to the date hereof.** [Emphasis in original.]

[47] As set out in the Amended Offer to Purchase and Circular, the Offer was subject to conditions to be satisfied or, where permitted, waived by the Offeror, including:

> (a) the Minimum Tender Condition; . . .
>
> (n) the Offeror shall have determined in its sole judgment that, on terms and conditions satisfactory to the Offeror, (i) the Shareholder Rights Plan [i.e., the Shareholder Rights Plan Agreement adopted by the Pulse Board on August 13, 2007] does not and will not adversely affect the Offer or the Offeror or the Joint Actors [i.e., Seitel and the ValueAct Entities] either before or on consummation of the Offer or the purchase of Pulse Data Common Shares under a Compulsory Acquisition or Subsequent Acquisition Transaction [as defined in section 7 of the Circular], (ii) the Pulse Data Board shall have redeemed all SRP Rights [i.e., rights issued under the Shareholder Rights Plan] or waived the application of the Shareholder Rights Plan to the purchase of Pulse Data Common Shares by the Offeror under the Offer, a Compulsory Acquisition and a Subsequent Acquisition Transaction, (iii) a final, binding and non-appealable cease trading order or an injunction shall have been issued that has the effect of prohibiting or preventing the exercise of the SRP Rights or the issue of Pulse Data Common Shares or other securities or property upon the exercise of the SRP Rights, (iv) a court of competent jurisdiction shall have made a final, binding and non-appealable order to the effect that the SRP Rights are illegal, of no force or effect or may not be exercised in relation to the Offer, a Compulsory Acquisition and a Subsequent Acquisition Transaction, or (v) the SRP Rights and the Shareholder Rights Plan shall otherwise have become or been held unexercisable or unenforceable in relation to the Pulse Data Common Shares with respect to the Offer, a Compulsory Acquisition and a Subsequent Acquisition Transaction.

[48] The Amended Offer to Purchase and Circular defined "Minimum Tender Condition" (the Minimum Tender Condition) as follows:

> "**Minimum Tender Condition**" means the condition to the Offer that there shall have been validly deposited under the Offer and not withdrawn at the Expiry Time that number of Pulse Data Common Shares that, when added to the Pulse Data Common Shares then owned by the Offeror, the Joint Actors [i.e., Seitel and the ValueAct Entities] or any of their respective affiliates, constitutes at least 66⅔% of the Pulse Data Common Shares outstanding (on a fully diluted basis) at the time the Pulse Data Common Shares are taken up.

[49] In his affidavit, Monson deposed to the Offeror's intent to satisfy, not waive, the Minimum Tender Condition:

> 70. . . . The Offeror fully intends to satisfy the Minimum Tender Condition, and is committed to acquiring all outstanding Shares through the Offer and a Compulsory Acquisition or a Subsequent Acquisition Transaction. However, if at the Extended Expiry Date the Minimum Tender Condition has not been satisfied and the Offeror waives that condition and takes up and pays for Shares deposited at that time, then the Offeror intends to extend the Offer. This would provide non-tendering Shareholders the ability to reconsider their decision to not deposit Shares under the Offer in light of the waiver of the Minimum Tender Condition.

[50] In the Hearing, counsel for the Offeror similarly asserted:

> [O]ur offer is for all of the shares for cash. And there's not been a decision made as to, depending on how many shares that have been tendered, what we would take up . . . . Our intention is not to have a creeping bid here. What we've said is that we want to buy the whole company at our price.

E. The Rights Plan

[51] Pulse issued three news releases on 13 August 2007. One announced that Pulse had received the Offer and, as a result, had cancelled its Q2 2007 conference call scheduled for 14 August 2007. Another announced that the Pulse Board had:

> (a) reviewed and considered the Offer and unanimously recommended that Pulse Shareholders not tender their Shares to the Offer;
>
> (b) appointed a special committee of directors comprising Weir, West and Arthur Dumont to review all strategic alternatives to enhance Shareholder value;
>
> (c) retained William Blair as its independent financial advisor to assist in this process; and
>
> (d) established an electronic data room for interested parties.

[52] Pulse's third news release of 13 August 2007 announced that the Pulse Board had adopted the Rights Plan. It read in part:

> The Plan was under consideration by the Board of Directors prior to the announcement of the unsolicited take-over bid by Seitel, Inc. on August 10, 2007 (the "Seitel Offer"). The Board of Directors did not adopt the Plan to prevent a takeover of the Corporation, to secure the continuance of management or the directors in their respective offices, or to deter fair offers for the Common Shares of the Corporation.
>
> The objectives of the Plan are, to the extent possible, to prevent a creeping takeover of the Corporation by requiring that any offer to acquire shares of the Corporation is made to all shareholders for all of their shares and cannot be completed unless shareholders holding at least 50% of the outstanding shares (other than the offeror and related parties) are tendered in favour of the offer and to ensure that all shareholders of the Corporation are treated equally and fairly in connection with any takeover bid for the Corporation. The Plan discourages discriminatory, coercive or unfair takeovers of the Corporation and gives the Board of Directors time if, in the circumstances, the Board of Directors determines it is appropriate to take such time, to pursue alternatives to maximize shareholder value in the event an unsolicited takeover bid (such as the Seitel Offer) is made for all or a portion of the outstanding shares of the Corporation.
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> In order to implement the adoption of the Plan, the Board of Directors of the Corporation authorized the issuance of one right in respect of each Common Share of the Corporation outstanding at the close of business on August 13, 2007 (the "Record Time"). In addition, the Board authorized the issuance of one Right in respect of each additional Common Share issued after the Record Time. The rights initially trade with and are represented by the Corporation's common share certificates, including certificates issued prior to the Record Time. Accordingly, until such time as the rights separate from the Common Shares and become exercisable, rights certificates will not be distributed to shareholders. With respect to the Seitel Offer, the Board of Directors has deferred the separation time of the Rights until August 28, 2007[.]
>
> If a person, or a group acting in concert, acquires (other than pursuant to an exemption available under the Plan) beneficial ownership of 20% or more of the outstanding shares of the Corporation, the rights (other than those held by such acquiring person which will become void) will permit the holder thereof to purchase Common Shares at a substantial discount to their then prevailing market price. At any time prior to the rights becoming exercisable, the Board of Directors may waive the operation of the Plan with respect to certain events before they occur.

[53] On 14 August 2007, Pulse filed with Canadian securities regulators the Rights Plan and a material change report concerning the adoption of the Rights Plan.

[54] On 15 August 2007, Computershare Trust Company of Canada, as agent for Pulse, announced the setting of a record date of 24 August 2007 in respect of a meeting of Pulse Shareholders to be held on 21 September 2007.

[55] On 21 August 2007, Pulse issued a news release announcing a special meeting of Pulse Shareholders to be held on 21 September 2007 for the purpose of approving the Rights Plan.

[56] On 23 August 2007, the Pulse Board met and approved its Directors' Circular (the Director's Circular), a Notice of Special Meeting of Shareholders (the Notice of Meeting) and the Management Information Circular (the Information Circular), all dated 24 August 2007, for the special meeting of Pulse Shareholders called for the purpose of considering and, if deemed fit, confirming the Rights Plan.

[57] On 28 August 2007, Pulse filed with Canadian securities regulators and mailed to its Shareholders the Directors' Circular, in which the Pulse Board unanimously recommended that Pulse Shareholders reject the Offer. The Directors' Circular described in some detail, *inter alia*, the pre-Offer indications of interest and valuations and the Rights Plan's objectives and terms and set out, with elaboration, the principal reasons for the Pulse Board's unanimous recommendation for Shareholder rejection of the Offer, prefaced as follows:

> **All of these reasons should be read with the general understanding that the Board is highly confident in the future of Pulse Data and the continued success of its business plan which is strongly supported by Pulse Data's experienced management team, top-performing sales force and excellent reputation within the oil and gas industry. The Board has also formed a Special Committee of independent directors to review strategic alternatives for Pulse Data to enhance shareholder value, and has retained William Blair & Company to act as financial advisors to solicit interest from other parties to determine if superior competing offers or alternative proposals are available.** [Emphasis in original.]

[58] The principal reasons given for the Pulse Board's unanimous recommendation for Shareholder rejection of the Offer were:

1. The Offer Price stated in the Offer Documents is incorrect and thus misleading.

2. The Offer Price is financially inadequate.

3. The Seitel Offer fails to adequately compensate Shareholders for the value of Pulse Data's record first half 2007 seismic data sales revenues and Cash EBITDA.

4. The Seitel Offer does not adequately reflect and value Pulse Data's recent 3D seismic data acquisition from Arcis Corporation and the 3D participation survey that is in progress.

5. The Seitel Offer does not adequately reflect the anticipated disposition of Terrapoint.

6. The Seitel Offer is opportunistic.

7. The purported premium to the share price prior to the Quantum Offer included in the Seitel Offer is based upon price data that is outdated and meaningless.

8. The purported premium to the recent private placement price is misleading.

9. The Seitel Offer is highly conditional and a majority of Pulse Data Shareholders have indicated to Pulse Data their intention to reject the offer.

[59] Also on 28 August 2007, Pulse issued a news release announcing the filing and mailing of the Directors' Circular and filed with Canadian securities regulators the four valuation analyses referred to in the Directors' Circular.

[60] On 31 August 2007, Pulse filed with Canadian securities regulators the Notice of Meeting, the Information Circular and the form of proxy to be used in connection with the special meeting of Pulse Shareholders on 21 September 2007.

[61] On 10 September 2007, Pulse issued a news release announcing that it had made two technical amendments to the definitions of "associate" and "controlled" in the Rights Plan as a result of discussions with Institutional Shareholder Services Canada Corp. (ISS), which would then be recommending to its institutional shareholder clients that they vote in favour of the Rights Plan. The next day, Pulse filed with Canadian securities regulators the amending agreement to the Rights Plan.

[62] In its recommendation of the Rights Plan dated 7 September 2007, ISS stated:

> The company claims that adopting the rights plan is in the best interests of shareholders, ensuring their fair treatment in a takeover bid. Given the company's commitment to amend the plan to conform to 'new generation' plans, ISS believes that the plan will provide the board and management with the right to act in a takeover bid situation without diminishing shareholders' control so they may sufficiently safeguard their interests. Our guidelines support rights plans that allow shareholders to decide who will own the company, with the board and management offering assistance in advice and negotiations. We believe that this plan will be structured to facilitate that goal.

[63] On 20 September 2007, following the Offeror's extension of the expiry date of the Offer, Pulse issued another news release recommending that Pulse Shareholders reject the Offer.

[64] The Rights Plan, which, if confirmed at the special meeting of Pulse Shareholders on 21 September 2007 and reconfirmed at the annual meeting of Pulse Shareholders in 2010, would remain in effect until 2013, defined "Permitted Bid" (a Permitted Bid) as a take-over bid that complies with several provisions, including:

(ii) no Voting Shares are taken up or paid for pursuant to the Take-over Bid unless more than 50% of the Voting Shares held by Independent Shareholders . . . shall

have been deposited or tendered pursuant to the Take-over Bid and not withdrawn . . . ;

[65] The Rights Plan defined "Independent Shareholders" as follows:

> (bb) "**Independent Shareholders**" shall mean holders of Voting Shares, other than:
>
> (i) any Acquiring Person;
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> (ii) any Offeror, other than a Person referred to in Clause 1.1(f)(B);
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> (iii) any Affiliate or Associate of such Acquiring Person or Offeror;
>
> (iv) any Person acting jointly or in concert with such Acquiring Person or Offeror; and
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> (v) any employee benefit plan, deferred profit sharing plan, stock participation plan and any other similar plan or trust for the benefit of employees of the Corporation or a Subsidiary of the Corporation, unless the beneficiaries of the plan or trust direct the manner in which the Voting Shares are to be voted or direct whether the Voting Shares are to be tendered to a Take-over Bid; . . .

[66] Among Pulse Shareholders, only ValueAct did not meet the definition of "Independent Shareholders".

[67] A Permitted Bid under the Rights Plan required the deposit or tender of more than 50% of the Pulse Shares other than ValueAct's Pulse Shares – thus, more than 56.25 to 56.75% of the Pulse Shares including ValueAct's Pulse Shares – whereas the Offer's Minimum Tender Condition required the deposit or tender of at least 66⅔% of the Pulse Shares including ValueAct's Pulse Shares.

[68] At the special meeting of Pulse Shareholders on 21 September 2007, 56.48% of the Pulse Shares were present in person or represented by proxy, of which 74.86% were voted in favour of and 25.14% were voted in opposition to the Rights Plan. Including Pulse Shares voted late, 64.06% of the Pulse Shares were present in person or represented by proxy, of which 77.83% were voted in favour of and 22.17% were voted in opposition to the Rights Plan.

[69] Further, at the special meeting of Pulse Shareholders on 21 September 2007, 3.05% of the Pulse Shares that were owned or controlled by directors or officers of Pulse were voted. So, excluding the votes of directors and officers, 73.4% of the Pulse Shares voted excluding late votes – 76.7% of the Pulse Shares voted including late votes – were in favour of the Rights Plan. Further excluding the votes of ValueAct, 98.3% of the Pulse Shares voted excluding late votes – 98.6% of the Pulse Shares voted including late votes – were in favour of the Rights Plan.

[70] A Notice of Change to the Directors' Circular dated 21 September 2007 (the Notice of Change), which was mailed to Pulse Shareholders on 24 September 2007, disclosed recent developments concerning the Offer, including the approval of the Rights Plan by Pulse Shareholders. In the Notice of Change, the Pulse Board continued to unanimously recommend that Pulse Shareholders reject the Offer.

[71] As of 27 September 2007, Pulse had not waived the operation of the Rights Plan as required under the terms of the Offer.

F. No Auction

[72] According to the Directors' Circular:

> (a) on 17 August 2007, William Blair began soliciting indications of interest from parties it believed might be interested in discussing a potential transaction;
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> (b) a number of potential strategic and financial buyers had been contacted, eight of which had entered into confidentiality and standstill agreements for access to certain confidential information and Pulse's electronic data room; and
>
> (c) a number of other parties had had preliminary discussions with William Blair about engaging in the bid process.

[73] In a news release issued 21 September 2007, Pulse announced the approval of the Rights Plan by Pulse Shareholders, reminding them that the Rights Plan not only prevented creeping take-over bids but also provided Pulse "with additional time to pursue alternatives to maximize shareholder value".

[74] The Notice of Change updated Pulse's quest for strategic alternatives to enhance Shareholder value, noting:

> Since William Blair began soliciting indications of interest from parties who may be interested in engaging in discussions with Pulse Data with respect to a potential transaction, a total of 62 prospective buyers have been contacted, including 20 strategic buyers. Overall, 42 formal declines (nine of which were from strategic buyers) have been received. Seventeen confidentiality agreements have been signed to date, two of which are with strategic buyers. Nine of these parties later declined to pursue a transaction, leaving eight parties active with confidentiality agreements, of which two are strategic buyers. Eight additional strategic buyers have been contacted but to date have not declined to pursue a transaction nor signed a confidentiality agreement. Pulse Data has received preliminary indications of interest from certain parties which have indicated price levels superior to that which is being offered under the Seitel Offer. The current state of the debt markets has resulted in debt financing being either no longer available, or available only on much more stringent terms than in the past, to financial buyers which

> has made it more difficult for certain financial buyers to participate in the auction process. . . .
>
> The Board formed the Special Committee in response to the Seitel Offer to review and evaluate strategic alternatives for Pulse Data to enhance shareholder value, and retained William Blair to act as financial advisors to solicit indications of interest from other parties to determine whether superior competing offers or alternative proposals were available. It has been an inopportune time for such an auction process given the current state of the debt markets which has had a negative impact on the ability of potential financial buyers to obtain debt financing to permit them to fully participate in such process. Under more favourable market conditions, a more robust auction process involving greater participation from financial buyers would be expected which would produce greater value for Pulse Data Shareholders.

[75] In a news release issued 25 September 2007, Pulse announced that it had reduced the time period that the Offer would have to remain open in order to qualify as a Permitted Bid under the Rights Plan such that, as of that date, the Offeror, if in compliance with other requirements of the Rights Plan, would be in a position to acquire the Pulse Shares under the Offer. In the same news release, Pulse also announced "preliminary indications of interest from certain parties which have indicated price levels superior to that which is being offered under the Seitel Offer".

[76] In the Hearing, counsel for Pulse confirmed, "There is no auction."

III. ANALYSIS AND FINDINGS

A. Offeror's Application

1. The Parties' Positions

(a) The Offeror

[77] The Offeror submitted that the issue to be determined in this application was whether at the time of the Hearing it was in the public interest for the Commission to make an order that would discontinue the operation of the Rights Plan with respect to the Offer in order to afford Pulse Shareholders the opportunity to tender their Pulse Shares to and have them taken up in accordance with the Offer.

[78] The Offeror submitted that, according to the case law, the question was not whether the Rights Plan would be set aside, but when. The Offeror contended that Canadian securities regulators have repeatedly held that a rights plan will be set aside in connection with a take-over bid if the rights plan is being used, as it was in this case, to prevent shareholders of a target company from exercising their fundamental right to determine whether to accept or reject an offer to acquire their securities. The Offeror further contended that, in the absence of a real and substantial possibility of an imminent auction to increase Shareholder value, which absence was acknowledged by Pulse, it was inappropriate to deny Pulse Shareholders by means of the Rights Plan their right to decide whether to tender their shares to and have them taken up in accordance with the Offer.

[79] The Offeror submitted that Pulse's use of the Rights Plan, an obvious tactical defence against the Offer, was not designed to generate a superior offer but rather to deny entirely the right of Pulse Shareholders to realize on their investments in response to the Offer unless approximately 56.25% of the Pulse Shares, including those held by ValueAct, were tendered to the Offer. The Offeror contended that such a requirement was unprecedented, radically amended Canadian securities take-over bid laws and was contrary to the principles expressed in National Policy 62-202 – *Take-over Bids – Defensive Tactics* (NP 62-202).

[80] The Offeror further contended that the recent Pulse Shareholder approval of the Rights Plan should not be determinative as to when the Rights Plan ought to be discontinued in the public interest. The Offeror noted that there was no evidence as to why the Pulse Shareholders approved the Rights Plan. The Offeror posited that the Pulse Shareholder approval of the Rights Plan was not necessarily a vote to continue the Rights Plan indefinitely and thereby prohibit any bid from proceeding unless the bidder became the holder of more than 50% of the Pulse Shares tendered by "Independent Shareholders". Rather, the Offeror suggested that Pulse Shareholders may have approved the Rights Plan in order to authorize the Pulse Board to actively seek alternatives and create and manage an auction in order to procure a superior offer. The Offeror also cautioned that approval of the Rights Plan by a majority of the Pulse Shareholders should not deprive individual Pulse Shareholders in the minority of their right to tender their Pulse Shares to and have them taken up in accordance with the Offer.

[81] Finally, the Offeror argued that continuation of the Rights Plan would be "bid inhibiting". In other words, Pulse Shareholders would thereby lose opportunities to sell meaningful blocks of Pulse Shares except in market transactions through the TSX.

[82] Thus, the Offeror urged the Commission to discontinue the Rights Plan immediately with respect to the Offer because there was no real and substantial possibility that its continuation would result in an alternative take-over bid or transaction that would be financially superior to the Offer. The Offeror submitted that the Offer – an all-cash offer for all Pulse Shares – was fair, was not part of a creeping take-over to achieve bare majority control and was not coercive. In concluding, the Offeror argued that in this case there was no ongoing auction process for the Offer to imperil and it was inappropriate for Pulse Management to use the Rights Plan simply to buy time when the result would be to deny or limit severely the ability of individual Pulse Shareholders to exercise their ownership rights in deciding whether to accept or reject the Offer, which may not be further extended.

(b) Pulse

[83] Pulse submitted that the issue to be determined in this application was not whether the time had come for the Rights Plan to be discontinued but rather whether shareholders

have the right to implement a rights plan that would prevent creeping or coercive take-over bids.

[84] Pulse emphasized that the very recent and overwhelming majority Shareholder approval of the Rights Plan was a manifestation of the will of Pulse Shareholders to prevent creeping take-over bids by acquirers generally, including the Offeror, and demonstrated that the continuation of the Rights Plan was in the best interests of Pulse Shareholders.

[85] Pulse submitted that the Rights Plan was not directed at preventing a take-over of Pulse, entrenching Pulse Management or the Pulse Board, deterring fair offers for the Pulse Shares or, in this instance, gaining time to seek out alternative bidders but rather at preventing creeping take-over bids and thereby ensuring fair and equal treatment of Pulse Shareholders. Pulse noted that the Rights Plan did and does not stand in the way of the Offer or any other offer if more than 50% of the Pulse Shares held by "Independent Shareholders" were or are tendered thereto. Here, the Offeror's Minimum Tender Condition had set a significantly higher threshold as a condition to its obligation to take up any Pulse Shares. Pulse expressed the concern that without the protection of the Rights Plan the Offeror, if it did not receive a minimum tender of 66⅔% of the Pulse Shares, including ValueAct's Pulse Shares, would waive the Minimum Tender Condition and increase its minority position.

[86] Pulse submitted that the Rights Plan was a "new generation" plan that provided protection for Pulse Shareholders from the Offer, which was coercive and unfair in that it permitted the Offeror to waive the Minimum Tender Condition and take up any number of Pulse Shares that were tendered. If permitted, Pulse contended, the Offeror could continue to increase its Share ownership through a creeping take-over bid strategy that could render Pulse less marketable in the future and adversely affect the ability of Pulse Shareholders to realize a full premium in any future change of control transaction. According to Pulse, the Rights Plan retained and retains for Pulse Shareholders the ability to decide who will own Pulse or be allowed to affect its marketability.

[87] Pulse concluded that there was no public interest reason to override the clear expression of shareholder democracy manifested by the very recent and fully informed Shareholder approval of the Rights Plan in the face of the Offer.

(c) Staff

[88] In submitting that the Rights Plan should be cease traded prior to the expiration of the Offer, Staff emphasized as a primary consideration the right and ability of Pulse Shareholders to decide whether to tender their Pulse Shares to and have them taken up in accordance with the Offer.

[89] Staff observed that Canadian securities regulators have considered shareholder approval of a rights plan to be an important but not a determinative factor in deciding the duration of the rights plan. Staff contended that, although there was broad support of the Rights Plan from disinterested Shareholders, at least 36% of Pulse Shares were not voted at the special meeting of Pulse Shareholders on 21 September 2007. Staff submitted that the interests of the Shareholders who did not vote on the Rights Plan must be considered.

[90] Staff submitted that, while the Rights Plan may have been implemented, at least in part, to maximize Shareholder choice and value, ample time had passed with no evidence to suggest that continuing the Rights Plan would result in alternative offers being made available to Pulse Shareholders. Staff contended that, in the absence of imminent alternative offers, a continuation of the Rights Plan would deprive Pulse Shareholders of their right to choose whether to tender their shares to and have them taken up in accordance with the Offer, which would not be in the best interests of Pulse Shareholders.

[91] Staff also agreed with the Offeror's position that to accept Pulse's position would effectively add new requirements to Canadian securities take-over bid laws without the benefit of the usual policy-making processes being brought to bear.

2. The Law

[92] Canadian securities regulators, such as the Commission, recognize the economic benefits of take-over bids. Sections 1.1(1) and (2) of NP 62-202 read:

> (1) The Canadian securities regulatory authorities recognize that take-over bids play an important role in the economy by acting as a discipline on corporate management and as a means of reallocating economic resources to their best uses. . . .
>
> (2) The primary objective of the take-over bid provisions of Canadian securities legislation is the protection of the bona fide interests of the shareholders of the target company. A secondary objective is to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment. The take-over bid provisions should favour neither the offeror nor the management of the target company, and should leave the shareholders of the target company free to make a fully informed decision. The Canadian securities regulatory authorities are concerned that certain defensive measures taken by management of a target company may have the effect of denying to shareholders the ability to make such a decision and of frustrating an open take-over bid process.

[93] Securities laws provide a framework for the fair conduct of a take-over bid. The primary purpose of securities take-over bid laws is to protect the securityholders of the target company, which is accomplished in three principal ways:

> (a) by ensuring that the securityholders have the information they need to make an informed decision to accept or reject the offer;

(b) by ensuring that the securityholders have sufficient time to consider the information and make a reasoned decision; and

(c) by requiring that all securityholders are treated equally in price and *pro rata* participation (see David Johnston & Kathleen Doyle Rockwell, *Canadian Securities Regulation*, 4th ed. (Markham: LexisNexis, 2006) at 286-87).

[94] Section 198 of the Act empowers the Commission to make orders in the public interest. In considering an application to cease trade a rights plan under section 198, the Commission is to act as an impartial referee in the take-over bid process. Our primary consideration in determining whether a rights plan should be permitted to continue in the context of a contested take-over bid is the protection of the *bona fide* interests of the shareholders of the target company (see, for example, *Re Royal Host Real Estate Investment Trust* (1999), 8 ASCS 3672 #08/48; and *Re Cara Operations Ltd.* (2002), 25 O.S.C.B. 7997 at paras. 54-55).

[95] In considering the *bona fide* interests of shareholders, we must be mindful that their ability to exercise their fundamental right of ownership to sell their shares as they see fit not be thwarted. As the Ontario Securities Commission commented in *Cara Operations* at para. 53:

> While it may be important for shareholders to receive advice and recommendations from the directors of the target company as to the wisdom of accepting or rejecting a bid, and for directors to be satisfied that a particular bid is the best likely bid under the circumstances, in the last analysis the decision to accept or reject a bid should be made by the shareholders, and not by the directors or others.

[96] Typically, Canadian securities regulators have permitted the continuation of a rights plan in the face of a contested take-over bid when doing so would afford the target company time to seek out alternative bidders with a view to maximizing shareholder value. However, it has been clear in such cases that there will almost invariably come a time at which the rights plan "must go" (see, for example, *Re Canadian Jorex Ltd.* (1992), 15 O.S.C.B. 257; *Re BGC Acquisition Inc. and Argentina Gold Corp.*, 1999 LNBCSC 55; and *Re 1153298 Alberta Ltd.*, 2005 ABASC 725 at para. 46). In *Royal Host*, the Commission, in conjunction with the British Columbia and Ontario Securities Commissions, while cautioning that each case is fact-specific, provided the following non-exhaustive enumeration of factors potentially relevant to the determination of when a rights plan "must go":

- whether shareholder approval of the rights plan was obtained;
- when the plan was adopted;
- whether there is broad shareholder support for the continued operation of the plan;
- the size and complexity of the target company;

- the other defensive tactics, if any, implemented by the target company;
- the number of potential, viable offerors;
- the steps taken by the target company to find an alternative bid or transaction that would be better for the shareholders;
- the likelihood that, if given further time, the target company will be able to find a better bid or transaction;
- the nature of the bid, including whether it is coercive or unfair to the shareholders of the target company;
- the length of time since the bid was announced and made;
- the likelihood that the bid will not be extended if the rights plan is not terminated.

[97] We were guided by a consideration of these factors in this case.

3. Application of the Law

[98] The Offeror submitted that since the public announcement of the Offer there had been more than enough time for any potential alternative bidder to assess the value of Pulse and to make a competing bid. That the business of Pulse and its assets were simple to evaluate for the purposes of acquisition was borne out by the facts. On 2 and 3 April 2007, the Independent Committee finalized its engagement of William Blair as its independent financial advisor. Nineteen days later, at meetings on 20 and 21 April 2007, the Independent Committee received William Blair's preliminary valuation analysis. Further, in mid-April 2007, the Independent Committee retained Raymond James to conduct an independent valuation. Twenty-three days later, on 9 May 2007, Raymond James presented its draft valuation analysis to the Pulse Board. Also on 9 May 2007, William Blair presented an updated valuation analysis. Moreover, according to Pulse's news release issued on 5 September 2007, Pulse would have been left with a total of approximately 25 employees on completion of the Terrapoint Disposition.

[99] Here, however, Pulse acknowledged that the Rights Plan was not directed at gaining time to seek out alternative bidders. The Offeror's application, then, raised the following issue: whether, in the acknowledged absence of a real and substantial possibility of an imminent auction to increase Shareholder value, it would be in the public interest to discontinue the operation of the Rights Plan with respect to the Offer in order to afford Pulse Shareholders the opportunity to tender their Pulse Shares to and have them taken up in accordance with the Offer.

[100] Based on the evidence before us and the submissions of the parties and, we emphasized, in the unique circumstances of this case, we were not persuaded that, at that time (as at 27 September 2007), it was in the public interest to make an order under section 198 of the Act that would have the effect of discontinuing the Rights Plan.

[101] As noted, our primary consideration in exercising our public interest authority under section 198 of the Act was the protection of the *bona fide* interests of Pulse

Shareholders. With that in mind, the following unique circumstances persuaded us that the Rights Plan ought to stand for the time being:

(a) The evidence before us indicated that it was the Pulse Shareholders' very recent and informed choice to have the Rights Plan remain in effect as at 27 September 2007.

(b) At a special meeting of Pulse Shareholders held less than one week before the Hearing – on 21 September 2007 – 74.86% of 56.48% of the Pulse Shares present in person or represented by proxy were voted in favour of the Rights Plan. Including Pulse Shares voted late, 77.83% of 64.06% of the Pulse Shares present in person or represented by proxy were voted in favour of the Rights Plan. Very few of the Pulse Shares voted, apart from the Shares owned by ValueAct, were voted in opposition to the Rights Plan. Further, three institutional Pulse Shareholders, while not appearing at the Hearing, filed letters supportive of the Rights Plan in the face of the Offer.

(c) The Rights Plan was approved by a majority of Pulse Shares voted in person or by proxy after Pulse Shareholders had been given ample information and sufficient time to decide whether to approve or oppose the Rights Plan in the face of the Offer as follows:

(i) The Shareholders had the benefit of disclosure of all relevant information in, *inter alia*, the Offer to Purchase and Circular, the Notice of Variation, the Directors' Circular, the Information Circular and the four valuation analyses referred to in the Directors' Circular. In the result, the Shareholders had sufficient time to consider the Rights Plan on the basis of extensive disclosure.

(ii) Having regard to this information:

(A) the Shareholders knew, or ought to have known, that there was no real and substantial possibility of an imminent auction – Pulse had been "in play" for a lengthy period, beginning in July 2005 when it was approached by Seitel and again in December 2006 when it was approached by the Fund; there was an earlier unsolicited take-over bid made on 19 June 2007 and withdrawn on 29 June 2007; and, despite Pulse's soliciting indications of interest from parties it believed might be interested in discussing a potential transaction, no alternative bid or transaction had emerged since the Offer was made some 40 days before.

(B) the Shareholders knew that the Offeror is a competitor of Pulse and were advised that the Offer price of $3.0625 per Share (after deduction of the August 2007 dividend paid) was significantly below the value of the Pulse Shares.

(C) the Shareholders were advised that the Pulse Board was very confident about Pulse's future and the continued success of its business plan.

(D) the Shareholders knew of the Offeror's ability to waive the Minimum Tender Condition under the Offer.

(E) the Shareholders were advised that the Rights Plan would restrict the ability of the Offeror to acquire effective control of Pulse through a creeping take-over, which effective control could result in any subsequent superior acquisition transaction not proceeding.

(iii) In sum, the Rights Plan was approved by a majority of Pulse Shares voted in person or by proxy by Shareholders armed with an extraordinary amount of information with which to evaluate the Rights Plan in the face of the Offer – indeed, before us, the Offeror characterized the Directors' Circular and the four valuation analyses referred to therein as "an extraordinary amount of information . . . with which to evaluate the Offer and to make [the] decision as to whether . . . to tender to the Offer and take cash now or 'just say no' to the Offer and allow Pulse Data management to continue with its existing business plan".

(d) There was no suggestion of managerial coercion or inappropriate managerial pressure being brought to bear on Pulse Shareholders to approve the Rights Plan. Indeed, we noted that ISS, an independent advisory service, recommended to its institutional shareholder clients that they vote in favour of the Rights Plan at the special meeting of Pulse Shareholders on 21 September 2007.

(e) We were reluctant to interfere with a decision of the Pulse Board that has a fiduciary duty to act in the best interests of Pulse Shareholders, particularly when that decision had very recently been approved by informed Shareholders.

(f) Further, the Rights Plan did not stand in the way of the Offer so long as more than 50% of the Pulse Shares other than ValueAct's Pulse Shares – thus, more than 56.25 to 56.75% of the Pulse Shares including ValueAct's Pulse Shares – were tendered to the Offer. The Offeror itself had set a significantly higher threshold – the tendering of 66⅔% of the Pulse Shares including ValueAct's Pulse

Shares – as a condition to its obligation to take up any Pulse Shares, a threshold it professed to have no intention of waiving.

[102] In our view, this very recent and informed Pulse Shareholder approval, given in the absence of any imminent alternatives to the Offer, demonstrated that the continuation of the Rights Plan as at 27 September 2007 was in the *bona fide* interests of Pulse Shareholders. We therefore denied the Offeror's application.

[103] We further clarified that this decision does not preclude any party from making further applications to the Commission should circumstances change.

B. Pulse's Cross-Application

[104] We were not persuaded that it was necessary or appropriate in the circumstances to make the orders requested by Pulse in its cross-application. We noted that we expect issuers to comply with Alberta securities laws and that, if they do not, regulatory intervention may well follow. Pulse's cross-application was denied.

IV. PROCEEDING CONCLUDED

[105] We again commend the parties for their helpful written submissions, which we appreciated were prepared under tight time constraints.

[106] This proceeding is concluded.

30 November 2007

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Karen A. Prentice, QC