The Ontario Securities Commission

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The Ontario Securities Commission administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE, SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV and EVGUENI TODOROV

NOTICE OF HEARING
(Sections 127 and 127.1 of the Securities Act)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission located at 20 Queen Street West, 17th Floor, on February 23, 2015 at 11:00 a.m., or as soon thereafter as the hearing can be held;

AND TAKE NOTICE THAT the purpose of the hearing is for the Commission to consider whether, in the Commission's opinion, it is in the public interest for the Commission to make the following orders against 2241153 Ontario Inc. ("2241153"), Setenterprice, Sarbjeet Singh ("Singh"), Dipak Banik ("Banik"), Stoyanka Guerenska ("Guerenska"), Sophia Nikolov ("Nikolov"), Evgueni Todorov ("Todorov") (collectively, the "Respondents"):

(i) pursuant to paragraph 2 of subsection 127(1) of the Act, that trading in any securities or derivatives by the Respondents cease permanently or for such period as is specified by the Commission;

(ii) pursuant to paragraph 2.1 of subsection 127(1) of the Act, that the acquisition of any securities by the Respondents is prohibited permanently or for such other period as is specified by the Commission;

(iii) pursuant to paragraph 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;

(iv) pursuant to paragraph 6 of subsection 127(1) of the Act, that the Respondents be reprimanded;

(v) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, that Singh, Banik, Guerenska, Nikolov, and Todorov resign all positions that they hold as directors or officers of any issuer, registrant, or investment fund manager;

(vi) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, that Singh, Banik, Guerenska, Nikolov and Todorov be prohibited from becoming or acting as directors or officers of any issuer, registrant, or investment fund manager permanently or for such period as is specified by the Commission;

(vii) pursuant to paragraph 8.5 of subsection 127(1) of the Act, that Singh, Banik, Guerenska, Nikolov and Todorov be prohibited from becoming or acting as registrants, as investment fund managers or as promoters permanently or for such period as is specified by the Commission;

(viii) pursuant to paragraph 9 of subsection 127(1) of the Act, that each Respondent pay an administrative penalty of not more than $1 million for each failure by the respective Respondent to comply with Ontario securities law;

(ix) pursuant to paragraph 10 of subsection 127(1) of the Act, that each Respondent disgorge to the Commission any amounts obtained by that Respondent as a result of non-compliance with Ontario securities law;

(x) pursuant to section 127.1 of the Act, that the Respondents be ordered to pay the costs of the Commission investigation and the hearing; and

(xi) such other order as the Commission considers appropriate in the public interest;

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated February 9, 2015 and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceedings;

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto this 10th day of February, 2015.

"Josée Turcotte"
Secretary to the Commission

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE, SARBJEET SINGH, DIPAK BANIK, STOYANKA GUERENSKA, SOPHIA NIKOLOV and EVGUENI TODOROV

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

I. OVERVIEW

1. This proceeding involves unregistered trading by 2241153 Ontario Inc. ("2241153"), Setenterprice, Sarbjeet Singh ("Singh"), Dipak Banik ("Banik"), Stoyanka Guerenska ("Guerenska"), Sophia Nikolov ("Nikolov") and Evgueni Todorov ("Todorov"), (collectively, the "Respondents") and an illegal distribution by Setenterprice, Banik, Guerenska, Nikolov and Todorov.

2. Between November 2010 and June 2013 (the "Relevant Period"), the Respondents engaged in or held themselves out as engaging in the business of trading and engaged in acts in furtherance of trades in investment contracts issued by Todorov and 2241153. None of the Respondents were registered with the Ontario Securities Commission (the "Commission") or were reporting issuers during the Relevant Period. In exchange for their investment monies, investors were issued promissory notes promising returns on their investment purportedly generated through trading in foreign currency exchange markets for profit. During the Relevant Period, approximately $1.2 million was raised from 12 investors.

3. Further, during the Relevant Period, Todorov engaged in fraudulent conduct by misleading investors regarding the use of their investment monies and by putting investor funds to other uses, including personal expenditures, to pay money owed to third parties, and to pay monthly returns to investors.

II. THE RESPONDENTS

4. 2241153 was incorporated on April 20, 2010 pursuant to the laws of Ontario and has never been a reporting issuer in Ontario and has never been registered with the Commission in any capacity.

5. Setenterprice is a sole proprietorship registered in Ontario on January 23, 2006 in the name of Nikolov. Its principal place of business is the residential address shared by Todorov and Nikolov in Toronto, Ontario. It has never been registered with the Commission in any capacity.

6. Todorov is a resident of Toronto, Ontario. Todorov was at all times a directing mind and de facto director of 2241153 and Setenterprice. Todorov has never been registered with the Commission in any capacity.

7. Singh is a resident of Brampton, Ontario. In October 2011, Singh became president and sole director of 2241153 and retained these positions throughout the Relevant Period. Singh was previously registered with the Commission in the category of Scholarship Plan Dealer from October 1999 to December 2003. During the Relevant Period, Singh was not registered with the Commission in any capacity.

8. Banik is a resident of Toronto, Ontario. In December 2011, Banik became vice-president, president and a director of 2241153. He has never been registered with the Commission in any capacity. In January 2015, Banik was removed as vice-president, president and director of 2241153.

9. Guerenska is a resident of Toronto, Ontario. Guerenska has never been registered with the Commission in any capacity.

10. Nikolov is a resident of Toronto, Ontario and the spouse of Todorov. Setenterprice is registered in her name. She has never been registered with the Commission in any capacity.

III. UNREGISTERED TRADING AND ILLEGAL DISTRIBUTION

A. Issuance of Investment Contracts by Todorov

11. During the Relevant Period, Todorov, Banik and Guerenska solicited Ontario investors, both directly and indirectly, to advance investment monies for the purpose of trading in the foreign currency exchange markets for profit. Investors entered into written agreements with Todorov with respect to these investments. Banik and Guerenska referred investors to Todorov in exchange for monetary compensation, or a "referral fee", which was paid to them over a period of time.

12. In return for advancing funds for the purpose of investing in the foreign currency exchange market, investors were issued promissory notes promising periodic interest payments and the return of their investment principal at the end of the contractual term, which was generally one year. Typically, investors were offered an interest rate of 5 percent per month, or 60 percent per annum. Although the promissory notes on their face were characterized as "loan agreements", the investors were led to believe that foreign currency exchange trading engaged in by Todorov would generate the funds or profits to pay the interest payments promised to them. During the Relevant Period, 12 investors invested with Todorov, for a total of approximately $1-million (the "Todorov Investors").

13. The promissory notes issued by Todorov are "investment contracts" and therefore securities within the meaning of subsection 1(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Todorov Investment Contracts").

14. Todorov, Banik and Guerenska solicited Ontario residents to invest in the Todorov Investment Contracts by meeting with potential investors, discussing the nature of the investment and returns, and/or showing potential investors materials purporting to demonstrate the profits Todorov had generated from trading in the foreign currency exchange markets in the past. Todorov prepared and signed the Todorov Investment Contracts and deposited substantially all investor funds in a bank account in the name of Setenterprice or in his personal bank account.

15. Setenterprice is a sole proprietorship registered to Todorov's spouse, Nikolov. When registering Setenterprice, Nikolov recorded the business activity of Setenterprice as "trading". Further, Nikolov opened a bank account at a bank branch located in Ontario and was the sole signatory on the Setenterprice bank account during the Relevant Period.

16. During the Relevant Period, Todorov maintained control or direction over the funds in the bank account of Setenterprice. Nikolov was a signatory on certain of the cheques provided to investors as interest payments pursuant to the Todorov Investment Contracts.

17. During the Relevant Period, and contrary to representations made to the Todorov Investors, none of the investment monies were used for trading in the foreign currency exchange markets.

B. Issuance of Investment Contract by 2241153 Ontario Inc.

18. In November 2011, an Ontario investor advanced monies to 2241153 for the purpose of trading in the foreign currency exchange markets for profit. Guerenska referred the investor in exchange for monetary compensation, or a "referral fee", which was paid to her over a period of time. The investor invested a total of $200,000 with 2241153 (the "2241153 Investor").

19. In return for advancing funds for the purpose of investing in the foreign currency exchange market, the 2241153 Investor was issued a promissory note promising periodic interest payments and the return of her investment principal at the end of the contractual term. The investor was offered an interest rate of 5 percent per month, or 60 percent per annum. As a result of the representations made, the 2241153 Investor was led to believe that foreign currency exchange market trading engaged in by Todorov would generate the funds or profits to pay the interest payments promised to her. The promissory note was signed by Singh in his capacity as an officer and director of 2241153.

20. The promissory note issued by 2241153 is an "investment contract" and therefore a security within the meaning of subsection 1(1) of the Act (the "2241153 Investment Contract").

21. The 2241153 Investor's funds were accepted and deposited into a bank account in the name of 2241153, which was opened by Singh. Investor monies were then transferred from the bank account of 2241153 to a brokerage account in the name of 2241153, which was also opened by Singh. Todorov was given access to the brokerage account of 2241153 by Singh, without designation of any formal trading authority. During the Relevant Period, Todorov maintained control or direction over the funds in the bank and brokerage accounts of 2241153.

22. By engaging in the conduct described above, the Respondents engaged in or held themselves out as engaging in the business of trading in securities and/or participated in acts, solicitations, conduct or negotiations directly or indirectly in furtherance of the sale or disposition of securities for valuable consideration, contrary to section 25 of the Act, in circumstances where there were no exemptions available to the Respondents under the Act.

23. By engaging in the conduct described above, Setenterprice, Banik, Guerenska, Nikolov and Todorov engaged in or held themselves as engaging in the business of trading and participated in acts, solicitations, conduct or negotiations directly or indirectly in furtherance of a sale or disposition of securities in circumstances where a preliminary prospectus and prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act.

VI. FRAUDULENT CONDUCT

A. Misleading Statements

(a) Statements Concerning Use of Investor Funds to Trade

24. During the Relevant Period, representations were made to investors that their investment monies would be used to trade in the foreign currency exchange markets for profit. With respect to the Todorov Investors, none of the $1 million in funds raised was used to trade in the foreign currency exchange markets by Todorov or any other individual.

25. With respect to the 2241153 Investor, only 85 percent of her $200,000 investment was initially deposited in the trading account and traded by Todorov in the foreign currency exchange markets. From the initial deposit, significant withdrawals were made from the trading account within the first 20 days of trading, totalling approximately $150,000. The 2241153 Investor only received one payment of $10,000 approximately one month after the date of her investment.

26. Instead of being used to trade in the foreign currency exchange markets, investor funds were put to other uses, including personal expenditures, to pay money owed to third parties, disbursements to the Respondents, and to pay monthly returns to investors.

27. Todorov's failure to use the investor funds as represented to investors was misleading and/or fraudulent in the circumstances.

(b) Statements Concerning Fixed Payments on Investment

28. During the Relevant Period, Todorov received numerous complaints from existing investors that they were not receiving their interest payments or repayment of their investment principal in accordance with the stated terms of the promissory notes. Todorov continued to accept new investment monies on the same or similar terms as existing investors while receiving complaints from existing investors. He failed to inform new investors that existing investors were not receiving interest payments or repayment of their investment principal

29. Todorov's continued acceptance of new investor funds when he knew that he was failing to meet his obligations to existing investors was misleading and/or fraudulent in the circumstances.

(c) Statements Concerning the Success of the Trading Strategy

30. Throughout the Relevant Period, some existing investors were shown materials purporting to demonstrate the profits Todorov had generated from trading in the foreign currency exchange markets in the past. Contrary to the representations made by Todorov, the materials shown to these investors were fictitious or were records from foreign currency exchange "demo accounts" and were not indicative of actual profit made by Todorov by trading in the foreign currency exchange markets.

31. At no time during the Relevant Period did Todorov correct these misrepresentations made to investors or produce any materials to investors that represented actual results from trading in the foreign currency exchange markets.

32. Todorov's representations to investors that he had a record of past success in trading in the foreign currency exchange markets was misleading and/or fraudulent in the circumstances.

B. USE OF INVESTOR FUNDS

(a) The Investment Contracts with Todorov

33. Of the $1 million raised through the sale of the Todorov Investment Contracts, none of the funds were actually used for trading in the foreign currency exchange markets. Without the knowledge of the Todorov Investors, Todorov directed the funds to other uses, including:

    (a) to repay individuals who were owed money from previous personal loans and other business arrangement entered into by Todorov;

    (b) to pay interest payments to existing investors;

    (c) to pay personal expenditures, including credit card payments, condominium fees, and electronic purchases; and

    (d) to pay Banik and/or Guerenska as compensation for referrals.

    (b) Investment Contract with 2241153 Ontario Inc.

34. During the Relevant Time, without the knowledge or authorization of the 2241153 Investor, funds were transferred in and out of the 2241153 bank and brokerage accounts, primarily at the direction of Todorov, for uses other than trading.

35. These funds were primarily directed to Singh, Banik, and Todorov or individuals, companies or entities associated with them. Payments were also made to Guerenska as compensation for her referral activities.

36. By August 2012, substantially all of the funds deposited in the 2241153 brokerage account had either been transferred out, as described above, or were lost through trading and the trading ceased. The 2241153 Investor was not informed by Todorov of the extent of the trading losses and was continually led to believe that she would receive her interest payments and principal in accordance with the terms of the 2241153 Investment Contract.

37. By engaging in the conduct described above, Todorov engaged in or participated in acts, practices, or courses of conduct relating to securities that he knew perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act.

VIII. BREACHES OF ONTARIO SECURITIES LAW AND/OR CONDUCT CONTRARY TO THE PUBLIC INTEREST

38. The specific allegations advanced by Staff are:

    (a) During the Relevant Period, the Respondents traded and engaged in, or held themselves out as engaging in, the business of trading securities without being registered to do so, contrary to subsection 25(1) of the Act;

    (b) During the Relevant Period, Setenterprice, Banik, Guerenska, Nikolov and Todorov traded in securities when a preliminary prospectus and prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act;

    (c) During the Relevant Period, Todorov engaged in or participated in acts, practices, or courses of conduct relating to securities that he knew perpetrated a fraud on persons or companies, contrary to subsection 126.1(b) of the Act;

    (d) During the Relevant Period, Todorov authorized, permitted or acquiesced in the non-compliance of 2241153 and Setenterprice, and Nikolov authorized, permitted or acquiesced in the non-compliance of Setenterprice with Ontario securities law, and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act; and/or

    (e) During the Relevant Period, the Respondents' conduct was contrary to the public interest and harmful to the integrity of the capital markets in Ontario.

39. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, this 9th day of February, 2015.

1.2.2 2241153 Ontario Inc. et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE, SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV and EVGUENI TODOROV

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and SARBJEET SINGH and 2241153 ONTARIO INC.

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, on February 11, 2015 at 1:00 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve a settlement agreement entered into between Staff of the Commission and Sarbjeet Singh and 2241153 Ontario Inc.;

BY REASON OF the allegations set out in the Statement of Allegations of Staff dated February 9, 2015 of the Commission and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel, if that party attends or submits evidence at the hearing;

AND TAKE FURTHER NOTICE that upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 10th day of February, 2015.

"Josée Turcotte"
Secretary to the Commission

1.4 Notices from the Office of the Secretary

1.4.1 2241153 Ontario Inc. et al.

FOR IMMEDIATE RELEASE
February 10, 2015

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE,
SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV
and EVGUENI TODOROV

TORONTO – The Office of the Secretary issued a Notice of Hearing on February 10, 2015 setting the matter down to be heard on February 23, 2015 at 11:00 a.m. or as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated February 10, 2015 and Statement of Allegations of Staff of the Ontario Securities Commission dated February 9, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 2241153 Ontario Inc. et al.

FOR IMMEDIATE RELEASE
February 10, 2015

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE,
SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV
and EVGUENI TODOROV

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and SARBJEET SINGH and 2241153 ONTARIO INC.

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Sarbjeet Singh and 2241153 Ontario Inc.

The hearing will be held on February 11, 2015 at 1:00 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated February 10, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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media_inquiries@osc.gov.on.ca

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1.4.3 Eda Marie Agueci et al.

FOR IMMEDIATE RELEASE

February 12, 2015

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

AND

IN THE MATTER OF
EDA MARIE AGUECI, DENNIS WING, SANTO IACONO, JOSEPHINE RAPONI, KIMBERLEY STEPHANY, HENRY FIORILLO, GIUSEPPE (JOSEPH) FIORINI, JOHN SERPA, IAN TELFER, JACOB GORNITZKI AND POLLEN SERVICES LIMITED

TORONTO – Following the hearing on the merits in the above named matter, the Commission issued its Reasons and Decision.

The Commission also issued an Order in the above named matter which provides that the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, ON, on April 13 and 14, 2015 at 10:00 a.m. or such further or other dates as agreed by the parties and set by the Office of the Secretary.

A copy of the Reasons and Decision dated February 11, 2015 and the Order dated February 11, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

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media_inquiries@osc.gov.on.ca

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1.4.4 2241153 Ontario Inc. et al.

FOR IMMEDIATE RELEASE
February 12, 2015

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE, SARBJEET SINGH, DIPAK BANIK, STOYANKA GUERENSKA, SOPHIA NIKOLOV and EVGUENI TODOROV

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND SARBJEET SINGH AND 2241153 ONTARIO INC.

TORONTO – The Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Sarbjeet Singh and 2241153 Ontario Inc.

A copy of the Order dated February 11, 2015 and the Settlement Agreement dated February 10, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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1.4.5 Bradon Technologies Ltd. et al.

FOR IMMEDIATE RELEASE
February 12, 2015

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

AND

IN THE MATTER OF
BRADON TECHNOLOGIES LTD., JOSEPH COMPTA,
ENSIGN CORPORATE COMMUNICATIONS INC.
and TIMOTHY GERMAN

TORONTO – The Commission issued an Order in the above named matter which provides that:

1. the adjournment request is granted; and

2. the hearing on the merits shall continue, commencing at 10:00 a.m. on February 24, 2015, for the purpose of hearing oral closing submissions of the parties.

A copy of the Order dated February 11, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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media_inquiries@osc.gov.on.ca

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416-593-8314
1-877-785-1555 (Toll Free)

1.4.6 The Juniper Fund Management Corporation et al.

FOR IMMEDIATE RELEASE
February 13, 2015

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

AND

IN THE MATTER OF
THE JUNIPER FUND MANAGEMENT CORPORATION,
JUNIPER INCOME FUND,
JUNIPER EQUITY GROWTH FUND and
ROY BROWN (a.k.a. ROY BROWN-RODRIGUES)

TORONTO – The Commission issued its Reasons and Decision on Sanctions and Costs and an Order in the above noted matter.

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated February 12, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Lincluden Investment Management Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval for change of control of manager under s. 5.5(2) of NI 81-102 and abridgment of securityholder notice period to 30 days – Filers have no current plan to change the manager of the Fund, or to amalgamate or merge the current manager with any other entity, for the foreseeable future.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(a.1), 5.7(1)(a), 5.8(1) and 19.1.

January 30, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
LINCLUDEN INVESTMENT MANAGEMENT LIMITED
(the Manager or LIML)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Manager and Morguard Corporation (**Morguard**, and together with the Manager, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval with respect to a proposed change of control of the Manager pursuant to section 5.5(1)(a.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Approval Sought**) and an abridgement to not less than 30 days of the time period prescribed by section 5.8(1)(a) of NI 81-102 for delivering notice to unitholders of Lincluden Balanced Fund (the **Fund**) of the change of control of the Manager resulting from the Proposed Transaction (as defined below) (the **Abridgement Relief**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a passport application):

(a) the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and

(b) the Manager has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be replied upon in each province and territory of Canada (the **Jurisdictions**).

Interpretation

Defined terms contained in NI 81-102, National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are otherwise defined herein.

Representations

The decision is based on the following facts represented by the Filers:

Morguard and MFC

1. Morguard, a corporation existing under the *Canada Business Corporations Act* (the **CBCA**) with its head office in Toronto, Ontario, is a real estate investment company whose principal activities include the acquisition and ownership of commercial, hotel and multi-unit residential real estate properties.

2. Morguard is a reporting issuer in all of the provinces and territories of Canada and its shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "MRC".

3. Morguard owns 100% of Morguard Investments Limited (**MIL**), which in turn owns 100% of Morguard Financial Corp. (**MFC**).

4. MFC, a corporation existing under the *Business Corporations Act* (Ontario) (the **OBCA**) with its head office in Toronto, Ontario, is a wealth management company focused primarily on providing portfolio management services specializing in real estate equities and income producing investments.

5. MFC is registered as (i) an investment fund manager (**IFM**) in Ontario and Québec; (ii) adviser in the category of portfolio manager (**PM**) in Ontario and British Columbia; and (iii) a dealer in the category of exempt market dealer (**EMD**) in all of the provinces except Newfoundland and Labrador.

6. Neither Morguard nor any of its affiliates currently has any intention to operate a family of public mutual funds.

LIML and LMFD

7. LIML, a corporation existing under the CBCA with its head office in Oakville, Ontario, is an employee owned firm which provides discretionary investment management for institutional and private clients.

8. LIML is registered as (i) an IFM in Ontario; (ii) an adviser in the category of PM in all of the provinces and territories of Canada; and (iii) a dealer in the category of EMD in Ontario, Alberta and Saskatchewan.

9. The issued and outstanding capital of LIML currently consists of an aggregate of 911 Class A common shares and 99,189 Class B common shares (collectively, the **LIML Shares**).

10. Lincluden Mutual Fund Dealer Inc. (**LMFD**), a corporation existing under the OBCA with its head office in Oakville, Ontario, which is a wholly owned subsidiary of LIML, is registered as a mutual fund dealer in Ontario and is a member of the Mutual Fund Dealers Association of Canada, and focuses primarily on the distribution of units of the Fund where there is no other registered broker or dealer involved in the sale.

The Fund

11. LIML is the manager, trustee and portfolio manager of the Fund, an open-ended public mutual fund established as a trust under the laws of the Province of Ontario.

12. The Fund is a reporting issuer in each of the provinces and territories of Canada.

13. Units of the Fund are distributed in each of the provinces and territories of Canada under a simplified prospectus, an annual information form and fund fact documents, which are all dated May 16, 2014.

14. None of Morguard, MIL, MFC, LIML, LMFD or the Fund is in default of any securities legislation in any of the Jurisdictions.

The Proposed Transaction

15. Morguard entered into a share purchase agreement dated as of December 17, 2014 with all of the holders of the issued and outstanding LIML Shares (the **Selling Shareholders**) to purchase directly from the Selling Shareholders an aggregate of 546.6 Class A common shares and 59,513.4 Class B common shares of LIML representing approximately 60% of the issued and outstanding LIML Shares for consideration comprising of cash and common shares in the capital of Morguard (the **Morguard Shares**) (the **Proposed Transaction**).

16. It is anticipated that the Proposed Transaction will be accomplished through a series of events (as more particularly described below) which will be completed in their entirety on or about January 31, 2015 (the **Closing Date**), provided that, among other things, all necessary regulatory notices, non-objections, and approvals have been given and received. If completed as contemplated, following the Closing Date, Morguard will be, directly or indirectly, the new majority beneficial owner of LIML and LMFD.

17. A notice of the Proposed Transaction has been delivered to the Compliance & Registrant Regulation branch of the principal regulator pursuant to section 11.9 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).

18. The Transaction will involve, among other things, the following series of events that are intended to be completed on a sequential basis:

    (a) the Selling Shareholders will transfer 40% of their respective LIML Shares to a newly formed corporation (**Vendor Holdco**) in consideration of the issuance from its treasury of shares in the capital of Vendor Holdco such that Vendor Holdco will be wholly-owned by the Selling Shareholders, except for one Class A common share issued to MIL;

    (b) after the completion of the event in (a), Morguard will purchase directly, for consideration comprising of cash and Morguard Shares, all of the remaining issued and outstanding LIML Shares held by the Selling Shareholders (which will represent approximately 60% of the issued and outstanding LIML Shares) and which will result in the direct acquisition by Morguard of approximately 60% of the issued and outstanding LIML Shares; and

    (c) after the completion of the events in (a) and (b), Morguard will transfer the LIML Shares acquired from the Selling Shareholders to MIL in consideration of the issuance from its treasury of shares in the capital of MIL to Morguard.

Change of Control of Manager

19. As the share ownership of the Manager will change such that after the Closing Date, MIL will own 60% of the issued and outstanding LIML Shares and Morguard will indirectly own 60% of the Manager, the Proposed Transaction will result in a change of control of the Manager and accordingly regulatory approval is required pursuant to section 5.5(1)(a.1) of NI 81-102.

Impact on the Manager and the Fund

20. Completion of the Proposed Transaction is not expected to result in any material changes to, or impact on, the business, operations or affairs of the Fund, the unitholders of the Fund or the Manager.

21. The Manager will continue to act as the investment fund manager of the Fund as a discrete, separate and distinct legal entity in materially the same manner as it has conducted such activities immediately prior to the Closing Date.

22. There are no plans to change the role of the Manager as manager of the Fund or the structure of the Fund. The Manager will operate autonomously with the existing senior management team. There are no immediate plans to make staffing changes or changes to the Manager's business model.

23. There is no current intention to: (i) change the name of the Manager or the name of the Fund as a result of the Proposed Transaction; (ii) change the officers or registered individuals of the Manager; (iii) make any substantive changes as to how the Manager operates or manages the Fund; (iv) change the portfolio managers of the Fund; or (v) immediately following the Proposed Transaction, or within a foreseeable period of time, change the Manager to another investment fund manager. The only change that is contemplated is that Morguard will elect three of the five directors of the Manager after the Proposed Transaction closes.

24. There is no current intention to merge or integrate the business operations of LIML or LMFD into Morguard or MIL. With respect to MFC, it is expected that the assets of MFC, with client consent, will be transferred to LIML by on or about December 31, 2015 and that the employees of MFC will become employees of LIML on or about the same time.

25. No current directors, officers or employees of Morguard or its affiliates are expected to become involved in the day-to-day management of the Fund following completion of the Proposed Transaction.

26. It is not expected that there will be any change to the fund accounting and other administrative functions undertaken by the current providers to the Manager or the Fund, both internal and external.

27. It is not expected that there will be any change to the custodian or trustee of the Fund.

28. The members of the Independent Review Committee (**IRC**) of the Fund will cease to be IRC members by operation of section 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). Immediately following the completion of the Proposed Transaction, the same members of the IRC will be re-appointed by the Manager.

29. To the extent that any related party issues arise following the Proposed Transaction, in particular if, in the future, the Manager wishes to appoint a portfolio manager or subadviser for the Fund that is an affiliate, the Manager will establish written policies and procedures to address the conflict of interest matter and will refer such policies and procedures to the IRC for its review and input, in accordance with its obligations under NI 81-107.

30. The Proposed Transaction is not expected to impact the financial stability of the Manager or its ability to fulfill its regulatory obligations.

Notice Requirement

31. Written notice (the **Notice**) regarding the Proposed Transaction was sent to each unitholder of the Fund on or before December 31, 2014, which, if the Closing Date occurs on January 31, 2015, means that unitholders of the Fund will have received the Notice approximately 30 days before the Closing Date of the Proposed Transaction.

32. While the Proposed Transaction is pending, but not closed, there is uncertainty among clients and others regarding LIML. To preserve the business and relationships of LIML it is strongly preferred to close the transaction promptly and minimize this period of uncertainty.

33. Completion of the Proposed Transaction will give rise to a deemed tax year end of LIML for income tax purposes and accounting for this will be simplified if the Proposed Transaction is completed on January 31, 2015.

34. It is the Filers' view that it would not be prejudicial to the unitholders of the Fund to abridge the notice period required under s. 5.8(1)(a) of NI 81-102 from 60 days to not less than 30 days for the following reasons:

    (a) the unitholders of the Fund will be sufficiently aware of the Proposed Transaction;

    (b) the Proposed Transaction is not expected to result in any change in how the Manager administers or manages the Fund;

    (c) the Proposed Transaction will not have any impact on the unitholders' interest in the Fund and unitholders are not required to take any action; unitholders need only consider whether they wish to exit the Fund. The change of control of the Manager, by itself, will not trigger any other material change to the Fund;

    (d) the Fund calculates and publishes its net asset value per unit on a daily basis and permits redemptions of units of the Fund on a daily basis allowing unitholders of the Fund to redeem their units prior to the Closing Date.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that:

(a) the Approval Sought is granted; and

(b) the Abridgement Relief is granted provided that

    (i) the Notice is given to unitholders of the Fund at least 30 days before the Closing Date, and

    (ii) no material changes will be made to the management, operations or portfolio management of the Fund for at least 60 days following the date the Notice was delivered.

"Vera Nunes"
Manager, Investment Funds and Structured Products Branch

2.1.2 Desjardins Investments Inc.

Headnote

Policy Statement 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from certain specified derivatives and custodial requirements to permit mutual funds to enter into swap transactions that are cleared through a clearing corporation – relief required because of new U.S. requirements to clear over-the-counter derivatives including swaps – decision treats cleared swaps similar to other cleared derivatives – Regulation 81-102 Investment Funds.

Applicable Legislative Provisions

Regulation 81-102 respecting Investment Funds, ss. 2.7(1), 2.7(4), 6.1(1) and 19.1.

February 11, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC AND ONTARIO
(THE JURISDICTIONS)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
DESJARDINS INVESTMENTS INC.
(THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**), pursuant to section 19.1 of *Regulation 81-102 respecting Investment Funds* (c. V-1.1, r. 39) (**Regulation 81-102**), exempting the Desjardins Funds (as defined below):

(i) from the requirement in subsection 2.7(1) of Regulation 81-102 that a mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating;

(ii) from the limitation in subsection 2.7(4) of Regulation 81-102 that the mark-to-market value of the exposure of a mutual fund under its specified derivatives positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A to Regulation 81-102 shall not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund; and

(iii) from the requirement in subsection 6.1(1) of Regulation 81-102 to hold all portfolio assets of a mutual fund under the custodianship of one custodian in order to permit each Desjardins Fund to deposit cash and portfolio assets directly with a Futures Commission Merchant (as defined below) and indirectly with a Clearing Corporation (as defined below) as margin;

(collectively, the **Requested Relief)**.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

(a) the Autorité des marchés financiers is the principal regulator for this application;

(b) the Filer has provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (c. V-1.1, r. 1) (**Regulation 11-102**) is intended to be relied upon in each jurisdiction of Canada other than the Jurisdictions (the Other Jurisdictions); and

(c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in Regulation 81-102, *Regulation 14-101 respecting Definitions* (c. V-1.1, r. 3), and Regulation 11-102 have the same meaning if used in this decision, unless otherwise defined. Capitalized terms used in this decision have the following meanings:

"**Applicable Desjardins Funds**" means the Desjardins Enhanced Bond Fund, the Desjardins Corporate Global Bond Fund, the Desjardins Floating rate Income Fund, the Desjardins Global Tactical Bond Fund, the Desjardins Global Inflation Linked Bond Fund (formerly Desjardins Completion Investments Fund) and the Desjardins Emerging Markets Bond Fund;

"**CFTC**" means the U.S. Commodity Futures Trading Commission;

"**Clearing Corporation**" means any of the Chicago Mercantile Exchange Inc., ICE Clear Credit LLC, ICE Clear Europe, LCH.Clearnet Limited and any other clearing organization that is permitted to operate in the Jurisdictions or the Other Jurisdictions, as the case may be, where the Desjardins Fund is located;

"**Desjardins Funds**" means (i) the Applicable Desjardins Funds and (ii) all existing mutual funds and any mutual funds subsequently established in the future that may enter into cleared Swaps (as defined below) and for which the Filer acts, or will act, as investment fund manager;

"**Dodd-Frank**" means the Dodd-Frank Wall Street Reform and Consumer Protection Act;

"**Futures Commission Merchant**" means any futures commission merchant that is registered with the CFTC and is a member of a Clearing Corporation;

"**OTC**" means over-the-counter;

"**Portfolio Manager**" means each affiliate of the Filer and/or each third party portfolio manager, including a portfolio sub-manager, retained from time to time by the Filer to manage all or a portion of the investment portfolio of one or more of the Desjardins Funds;

"**Swaps**" means the swaps that are, or will become, subject to a clearing determination issued by the CFTC, including fixed-to-floating interest rate swaps, basis swaps, forward rate agreements in U.S. dollars, the Euro, Pounds Sterling or the Japanese Yen, overnight index swaps in U.S. dollars, the Euro and Pounds Sterling and untranched credit default swaps on certain North American indices (CDX.NA.IG and CDX.NA.HY) and European indices (iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe HiVol) at various tenors;

"**U.S. Person**" has the meaning attributed thereto by the CFTC.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is, or will be, the investment fund manager of each Desjardins Fund. The Filer is registered as an investment fund manager in the Provinces of Québec, Ontario and Newfoundland and Labrador. The head office of the Filer is in Montreal, Québec.

2. Either an affiliate of the Filer or a third party portfolio manager is, or will be, the portfolio manager or sub-manager, of all or a portion of the investment portfolio of each Desjardins Fund.

3. Each Portfolio Manager of the Applicable Desjardins Funds is duly registered as a portfolio manager or acting under the international sub-advisor exemption in the Jurisdictions and in the Other Jurisdictions where the respective Applicable Desjardins Fund is located.

4. Each Desjardins Fund is, or will be, a mutual fund created under the laws of the Province of Québec and is, or will be, subject to the provisions of Regulation 81-102.

5. Neither the Filer nor the Desjardins Funds are in default of securities legislation in the Jurisdictions or any of the Other Jurisdictions.

6. The securities of each Desjardins Fund are, or will be, qualified for distribution pursuant to a prospectus that was, or will be, prepared and filed in accordance with the securities legislation of the Jurisdictions and the Other Jurisdictions. Accordingly, each Desjardins Fund is, or will be, a reporting issuer or the equivalent in each jurisdiction in Canada.

7. The investment objective and investment strategies of each Desjardins Fund permit, or will permit, the Desjardins Fund to enter into derivative transactions, including Swaps. Typically, the Portfolio Managers of the Applicable Desjardins Funds consider Swaps to be an important investment tool that is available to it to properly manage such Applicable Desjardins Fund's portfolio. Each of the Applicable Desjardins Funds has entered into, or intends to enter into, single-name credit default swaps, interest rate swaps and foreign exchange swaps.

8. Dodd-Frank requires that certain OTC derivatives be cleared through a Futures Commission Merchant at a clearing organization recognized by the CFTC. Generally, where one party to a Swap is a U.S. Person and the other party to the Swap is a mutual fund, such as a Desjardins Fund, that Swap must be cleared, absent an available exception.

9. Each Applicable Desjardins Fund may enter into Swaps on an OTC basis with Canadian, U.S. or other international counterparties. These OTC Swaps are entered into in compliance with the derivative provisions of Regulation 81-102.

10. In order for the Desjardins Funds to benefit from both the pricing benefits and reduced trading costs that a Portfolio Manager is often able to achieve through its trade execution practices for the investment funds it manages and from the reduced costs associated with cleared OTC derivatives as compared to other OTC trades, the Filer wishes to have the Desjardins Funds have the ability to enter into cleared Swaps.

11. In the absence of the Requested Relief, the Portfolio Managers of the Desjardins Funds will need to structure certain swaps entered into by the Desjardins Funds so as to avoid the clearing requirements of the CFTC. The Filer respectfully submits that this would not be in the best interests of the Desjardins Funds and their investors for a number of reasons, as set out below.

12. The Filer believes that it is in the best interests of the Desjardins Funds and their investors to be able to execute OTC derivatives with U.S. Persons, including U.S. swap dealers.

13. In its role as investment fund manager for the Desjardins Funds, the Filer has determined that central clearing represents the best choice for the investors in the Desjardins Funds to mitigate the legal, operational and back office risks faced by investors in the global swap markets.

14. A Portfolio Manager typically uses the same trade execution practices for all of the investment funds and other accounts it advises. An example of these trade execution practices is block trading, where a large number of securities are purchased or sold or large derivative trades are entered into on behalf of a number of investment funds and other accounts advised by one Portfolio Manager. These practices include the use of cleared Swaps if such trades are executed with a U.S. swap dealer. However, if the Desjardins Funds are unable to use cleared Swaps, then each affected Portfolio Manager will have to create separate trade execution practices only for the Desjardins Funds for these types of trades. This will increase the operational risk for the Desjardins Funds. In addition, the Desjardins Funds will not be able to enjoy the possible price benefits and reduction in trading costs that a Portfolio Manager is often able to achieve through a common practice for the investment funds and other accounts it advises. In the Filer's opinion, best execution and maximum certainty can best be achieved through common trade execution practices, which, in the case of OTC derivatives, involve the execution of Swaps on a cleared basis.

15. As a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, Canada has expressly recognized the systemic benefits that clearing OTC derivatives offers to market participants, such as the Desjardins Funds. The Filer respectfully submits that the Desjardins Funds should be encouraged to comply with the robust clearing requirements established by the CFTC by granting them the Requested Relief.

16. The Requested Relief is analogous to the treatment currently afforded under Regulation 81-102 to other types of derivatives that are cleared, such as clearing corporation options, options on futures and standardized futures. This demonstrates that, from a policy perspective, the Requested Relief is consistent with the views of the Canadian securities authorities in respect of cleared derivative trades.

17. For the reasons provided above, the Filer submits that it would not be prejudicial to the public interest to grant the Requested Relief.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that, in respect of the deposit of cash and portfolio assets as margin:

(a) in Canada,

(i) the Futures Commission Merchant is a member of a SRO that is a participating member of CIPF; and

(ii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant on behalf of the Desjardins Fund, exceed 10 percent of the net asset value of the Desjardins Fund as at the time of deposit; and

(b) outside of Canada,

(i) the Futures Commission Merchant is a member of a Clearing Corporation and, as a result, is subject to a regulatory audit;

(ii) the Futures Commission Merchant has a net worth, determined from its most recent audited financial statements that have been made public or from other publicly available financial information, in excess of the equivalent of $50 million; and

(iii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant on behalf of the Desjardins Fund, exceed 10 percent of the net asset value of the Desjardins Fund as at the time of deposit.

This decision will terminate on the coming into force of any revisions to the provisions of Regulation 81-102 that address the clearing of OTC derivatives.

“Josée Deslauriers”
Senior Director, Investment Funds and Continuous Disclosure
Autorité des marchés financiers

2.1.3 Bestar inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

Translation

Montréal, February 9, 2015

Bestar inc.
4220, rue Villeneuve
Lac Mégantic, Québec
G6B 2C3

Dear Sirs/Madames:

Re: **Bestar inc.** (the "Applicant") – application for a decision under the securities legislation of Ontario and Québec (the "Jurisdictions") that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions for a decision under the securities legislation (the "Legislation") of the Jurisdictions that the Applicant is not a reporting issuer.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant's status as a reporting issuer is revoked.

"Martin Latulippe"
Directeur de l'information continue
Autorité des marchés financiers

2.1.4 CHC Realty Capital Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from provisions of section 8.4 of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) permitting filer to include alternative financial disclosure in business acquisition report pursuant to section 13.1 of NI 51-102 – filer acquired a property that have been owned by multiple owners over previous two years – comparative period financial statements impractical to prepare – recent audited interim financial statements for the property will be provided.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.4, 13.1.

February 10, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CHC REALTY CAPITAL CORP.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from the financial statement requirements in Section 8.4 of National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**") for the business acquisition report ("**BAR**") to be prepared and filed by the Filer in connection with the Filer's acquisition of a property in London, Ontario, on the condition that acceptable alternative financial information be provided for such acquisition (the "**Exemptive Relief Sought**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 – *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia and Alberta.

Interpretation

Terms defined in National Instrument 14-101 – *Definitions*, MI 11-102 or NI 51-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation incorporated under the laws of the Province of Ontario. The head and principal offices of the Filer are located at 53 Yonge Street, 5th Floor, Toronto, Ontario M5E 1J3 and its registered office is located at 365 Bay Street, Suite 800, Toronto, Ontario M5H 2V1.

2. The common shares in the capital of the Filer are listed and posted for trading on the TSX Venture Exchange under the symbol CHC.

3. The Filer is a reporting issuer in British Columbia, Alberta and Ontario and, to the best of its knowledge, is not in default of any requirements of the securities legislation of the jurisdictions, other than with respect to the filing of the BAR in connection with the Filer's acquisition of the Property (as defined below).

4. The Filer is an owner and operator of student rental housing properties. The Filer's strategy is focused on acquiring high quality properties in close proximity to universities and colleges in primary and well understood secondary markets, with a focus on contemporary, purpose-built student housing properties, with the goal of becoming the leading consolidator of high quality student housing assets in Canada.

5. On November 19, 2014, the Filer completed the acquisition of a student rental housing property located in London, Ontario (the "**Property**") from Kanco-673 Richmond Ltd. and Kanco-675 Richmond Ltd. (collectively, the "**Vendor**"), an arm's length vendor, through an asset purchase transaction pursuant to a purchase and sale agreement dated August 7, 2014 between the Filer and the Vendor. The purchase price for the Property was $55.0 million, subject to closing adjustments. The Filer satisfied the purchase price through mortgages of $46.75 million, a debt facility of $2.5 million and the payment to the Vendor of the balance of the purchase price in cash.

6. The Property consists of land and one building located at 675 Richmond Street, London, Ontario, containing 368 beds in 187 student housing apartments and 12,642 s.f. of commercial space. The Property is a traditional apartment building tenanted primarily by students at the University of Western Ontario.

7. The acquisition of the Property constitutes a "significant acquisition" for the Filer for the purposes of NI 51-102 as of the Filer's interim period most recently completed before the acquisition date ended September 30, 2014 (exceeding the 40% threshold of the significance tests as determined in accordance with section 8.3 of NI 51-102), requiring the Filer to file a BAR with respect to the acquisition pursuant to section 8.2 of NI 51-102. The deadline for filing the BAR under NI 51-102 is February 2, 2015.

8. The fiscal year-end for the Property is December 31.

9. Pursuant to section 8.4 of NI 51-102, the BAR relating to the acquisition of the Property must include certain financial statements for the Property, being:

   (a) financial statements as at and for the years ended December 31, 2013 and December 31, 2012, being the most recently completed financial year of the Property ended on or before the acquisition date and the financial year immediately preceding such financial year, with the financial statements as at and for the year ended December 31, 2013 being audited, in accordance with subsections 8.4(1) and 8.4(2) of NI 51-102;

   (b) unaudited financial statements for the 9 month interim periods ended September 30, 2014 and September 30, 2013, being the most recently completed interim period of the Property ended on or before the acquisition date and the comparable period in the preceding financial year, in accordance with subsection 8.4(3) of NI 51-102; and

   (c) pro forma financial statements as at September 30, 2014 (the date of the Filer's most recent interim financial statements filed), that give effect to the acquisition of the Property as if it had taken place as at such date, in accordance with subsection 8.4(5) of NI 51-102,

   (collectively, the "**Required BAR Financial Statements**").

10. The Filer, being aware of the requirements under NI 51-102 to include certain financial statements in the BAR in respect of the acquisition of the Property, included covenants in the purchase agreement for the acquisition of the Property for the Vendor to provide the Filer with access to the books and records of the Property and to cooperate with the Filer in obtaining and delivering any financial information, or other information, in respect of the Property that the Filer may require for the BAR both before and after closing of the acquisition of the Property.

11. In connection with the acquisition of the Property and the preparation of the Required BAR Financial Statements, management of the Filer obtained from the Vendor certain financial records relating to the Property, including financial statements for the Property as at and for the year ended December 31, 2013 and the 9 month interim period ended September 30, 2014. During this process, however, it was determined that the Vendor, and therefore the Filer, only has access to financial records for the Property in respect of the year ended December 31, 2012 beginning on July 1, 2012 (the "**Vendor Acquisition Date**"), which is the date on which the Vendor purchased the Property from another party.

12. The Vendor, and therefore the Filer, does not have access to, and is not entitled to obtain access to, financial information in respect of the Property for any period prior to the Vendor Acquisition Date. The Filer has, without success, made every reasonable effort to obtain copies of, or reconstruct the historical accounting records in respect of the Property for the period prior to the Vendor Acquisition Date. Accordingly, the Filer is unable to prepare financial statements for the full comparative year ended December 31, 2012 that are required to be included in the Required BAR Financial Statements.

13. Consequently, the Filer wishes to seek an exemption which would permit it to include only six months of financial results for the Property during the comparative period to the year ended December 31, 2013 (i.e. the comparative period being the six months from July 1, 2012 to December 31, 2012). In connection with the same, and as a condition to obtaining such relief, the Filer intends to include audited financial results for the 9 month interim period ended September 30, 2014, such that the BAR would include audited financial statements for a total period of 21 months, being the year ended December 31, 2013 and such 9 month interim period ended September 30, 2014. As such, the BAR would include the following financial statements in lieu of the Required BAR Financial Statements:

    (a) audited financial statements as at and for the year ended December 31, 2013, and comparative unaudited financial statements as at and for the 6 month period ended December 31, 2012;

    (b) audited financial statements as at and for the 9 month interim period ended September 30, 2014, and comparative unaudited financial statements as at and for the 9 month interim period ended September 30, 2013; and

    (c) unaudited pro forma financial statements consisting of a consolidated balance sheet as at September 30, 2014 and statements of income (loss) and comprehensive income (loss) of the Filer reflecting the acquisition of the Property for the 9 month interim period ended September 30, 2014 and for the period from April 12, 2013 (date of incorporation of the Filer) to December 31, 2013,

    (collectively, the "**Alternative BAR Financial Statements**").

14. In connection with the acquisition of the Property, management of the Filer obtained an independent appraisal with respect to the Property (the "**Appraisal**"). A description of the Appraisal will be included in the BAR in accordance with the provisions of Item 2.5 of Form 51-102F4.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemptive Relief Sought is granted, provided that the BAR for the acquisition of the Property includes the Alternative BAR Financial Statements.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.1.5 Compagnie de Saint-Gobain

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from prospectus and dealer registration requirements in respect of certain trades in units made in connection with an employee share offering by a French issuer – Relief from prospectus and dealer registration requirements upon the redemption of units for shares of the issuer – The offering involves the use of collective employee shareholding vehicles, each a fonds communs de placement d'entreprise (FCPE) – The Filer cannot rely on the employee prospectus exemption in section 2.24 of National Instrument 45-106 Prospectus and Registration Exemptions and the Manager cannot rely on the plan administrator exemption in section 8.16 of National Instrument 31-103 Registration Requirements and Exemptions as the shares are not being offered to Canadian employees directly by the issuer but through the FCPEs – Canadian employees will receive disclosure documents – The FCPEs are subject to the supervision of the French Autorité des marchés financiers – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1).
National Instrument 31-103 Registration Requirements and Exemptions.
National Instrument 45-102 Resale of Securities.
National Instrument 45-106 Prospectus and Registration Exemptions.

February 13, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(THE "JURISDICTION")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
COMPAGNIE DE SAINT-GOBAIN
(THE "FILER")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for

1. an exemption from the prospectus requirements of the Legislation (the "**Prospectus Relief**") so that such requirements do not apply to

   (a) trades in:

      (i) units (the "**Principal Classic Units**") of Saint-Gobain Avenir Monde (the "**Principal Classic Compartment**"), a compartment of an FCPE named Saint-Gobain PEG Monde, which is a *fonds commun de placement d'entreprise* or "FCPE," a form of collective shareholding vehicle commonly used in France for the conservation of shares held by employee-investors; and

      (ii) units (together with the Principal Classic Units, the "**Units**") of a temporary FCPE named *Saint-Gobain Relais 2015 Monde* (the "**Temporary Classic FCPE**"), which will merge with the Principal Classic Compartment following the Employee Share Offering (as defined below), such transaction being referred to as the "**Merger**", as further described below (the term "**Classic Compartment**" used herein means, prior to the Merger, the Temporary Classic FCPE, and following the Merger, the Principal Classic Compartment);

made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below) resident in the Jurisdiction or in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (collectively, the "**Canadian Employees**," and Canadian Employees who subscribe for Units, the "**Canadian Participants**"); and

(b) trades of ordinary shares of the Filer (the "**Shares**") by the Classic Compartment to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants;

2. an exemption from the dealer registration requirements of the Legislation (the "**Registration Relief**") so that such requirements do not apply to the Saint-Gobain Group (as defined below and which, for greater clarity, includes the Filer and the Canadian Affiliates (as defined below)), the Temporary Classic FCPE, the Principal Classic Compartment and Amundi (the "**Management Company**") in respect of:

(a) trades in Units made pursuant to the Employee Share Offering to or with Canadian Employees; and

(b) trades in Shares by the Classic Compartment to or with Canadian Participants upon the redemption of Units as requested by Canadian Participants;

(the Prospectus Relief and the Registration Relief, collectively, the "**Offering Relief**")

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application),

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (together with the Jurisdiction, the "Jurisdictions").

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning as used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation formed under the laws of France. It is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the other Jurisdictions. The head office of the Filer is located in France and the Shares are listed on NYSE Euronext Paris. The Filer is not in default under the Legislation or the securities legislation of the other Jurisdictions.

2. The Filer carries on business through certain affiliated companies that employ Canadian Employees, including Saint-Gobain Corporation, CertainTeed Gypsum Canada Inc., CertainTeed Canada, Inc., Saint-Gobain Abrasives, Inc., Saint-Gobain Abrasives Canada, Inc., Saint-Gobain Ceramics & Plastics, Inc., Saint-Gobain Adfors America, Inc. and SAINT-GOBAIN ADFORS Canada, Ltd. (collectively, the "**Canadian Affiliates**," and together with the Filer and other affiliates of the Filer, the "**Saint-Gobain Group**").

3. Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the other Jurisdictions. None of the Canadian Affiliates is in default under the Legislation or the securities legislation of the other Jurisdictions.

4. The Filer has established a global employee share offering for employees of the Saint-Gobain Group (the "**Employee Share Offering**"). As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Classic Compartment on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.

5. The Employee Share Offering is comprised of one subscription option, being an offering of Shares to be subscribed through the Temporary Classic FCPE, which Temporary Classic FCPE will be merged with the Principal Classic Compartment after completion of the Employee Share Offering, subject to the decision of the supervisory boards of the FCPEs and the approval of the French AMF (defined below) (the "**Classic Plan**").

6. Only persons who are employees of a member of the Saint-Gobain Group during the subscription period for the Employee Share Offering and who meet other employment criteria (the "**Qualifying Employees**") will be allowed to participate in the Employee Share Offering.

7. The Principal Classic Compartment and the Temporary Classic FCPE were established for the purposes of implementing employee share offerings and plans of the Filer. There is no current intention for these FCPEs to become reporting issuers under the Legislation or the securities legislation of the other Jurisdictions.

8. FCPEs are a form of collective shareholding vehicle commonly used in France for the conservation of shares held by employee-investors. The Principal Classic Compartment and the Temporary Classic FCPE have been registered with the French Autorité des marchés financiers (the "**French AMF**"). Only Qualifying Employees will be allowed to hold Units issued pursuant to the Employee Share Offering.

9. All Units acquired in the Employee Share Offering by Canadian Participants will be subject to a hold period of approximately five years (the "**Lock-Up Period**"), subject to certain exceptions prescribed by French law and adopted under the Classic Plan in Canada (such as a release on death or termination of employment).

10. Under the Classic Plan, the subscription price will be the Canadian dollar equivalent of the average of the opening price of the Shares on NYSE Euronext Paris (expressed in Euros) on the 20 trading days preceding the date of the fixing of the subscription price by the Chief Executive Officer of the Filer, less a 20% discount.

11. Canadian Participants who wish to subscribe will make a contribution to the Classic Plan (such contribution, the "**Employee Contribution**"). For each Canadian Participant who contributes, the Canadian Affiliate employing such Canadian Participant will make a contribution to the Classic Plan, for the benefit of, and at no cost to, the Canadian Participant, of an amount equal to 15% of such Employee Contribution up to a maximum amount of $1,500 per Canadian Participant (the "**Employer Contribution**").

12. The Temporary Classic FCPE will apply the cash received from the Employee Contributions and the Employer Contributions to subscribe for Shares from the Filer.

13. Initially, the Shares subscribed for will be held in the Temporary Classic FCPE and the Canadian Participants will receive Units in the Temporary Classic FCPE. Following the completion of the Employee Share Offering, the Temporary Classic FCPE will be merged with the Principal Classic Compartment (subject to the approval of the supervisory board of the FCPEs and the French AMF). Units of the Temporary Classic FCPE held by Canadian Participants will be replaced with Units of the Principal Classic Compartment on a *pro rata* basis and the Shares subscribed for under the Employee Share Offering will be held in the Principal Classic Compartment (such transaction being referred to as the "**Merger**").

14. At the end of the Lock-Up Period a Canadian Participant may

    (a) request the redemption of Units in the Classic Compartment in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or

    (b) continue to hold Units in the Classic Compartment and request the redemption of those Units at a later date in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares.

15. In the event of an early unwind resulting from a Canadian Participant exercising one of the exceptions to the Lock-Up Period and meeting the applicable criteria, the Canadian Participant may request the redemption of Units in the Classic Compartment in consideration for a cash payment equal to the then market value of the underlying Shares.

16. Dividends paid on the Shares held in the Classic Compartment will be contributed to the Classic Compartment and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued. The declaration of dividends on the Shares is determined by the board of directors of the Filer.

17. An FCPE is a limited liability entity under French law. The Classic Compartment's portfolio will consist almost entirely of Shares and may, from time to time, also include cash in respect of dividends paid on the Shares which will be reinvested in Shares and cash or cash equivalents pending investments in Shares and for the purposes of Unit redemptions.

18. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. To the best of the Filer's knowledge, the Management Company is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the other Jurisdictions.

19. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Classic Compartment are limited to purchasing Shares from the Filer, selling such Shares as necessary in order to fund redemption requests and investing available cash in cash equivalents.

20. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of the Classic Compartment. The Management Company's activities do not affect the underlying value of the Shares. To the best of the Filer's knowledge, the Management Company is not in default of the Legislation or the securities legislation of the other Jurisdictions.

21. Shares issued in the Employee Share Offering will be deposited in the Principal Classic Compartment and/or the Temporary Classic FCPE, as applicable, through CACEIS Bank France (the "**Depositary**"), a large French commercial bank subject to French banking legislation. The Depositary carries out orders to purchase, trade and sell securities in the portfolio and takes all necessary action to allow each of the Principal Classic Compartment and the Temporary Classic FCPE to exercise the rights relating to the securities held in its respective portfolio.

22. The value of Units will be calculated and reported to the French AMF on a regular basis, based on the net assets of the Classic Compartment divided by the number of Units outstanding. The value of Units will be based on the value of the Shares.

23. All management charges relating to the Classic Compartment will be paid from the assets of the Classic Compartment or by the Filer, as provided in the regulations of the Classic Compartment.

24. Participation in the Employee Share Offering is voluntary, and the Canadian Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.

25. The total amount invested by a Canadian Employee in the Employee Share Offering cannot exceed 25% of his or her gross annual compensation. The Employer Contribution will not be factored into the maximum amount that a Canadian Employee may contribute.

26. None of the Filer, the Management Company, the Canadian Affiliates or any of their employees, agents or representatives will provide investment advice to the Canadian Employees with respect to an investment in the Shares or the Units.

27. The Shares are not currently listed for trading on any stock exchange in Canada and the Filer has no intention to have the Shares so listed. As there is no market for the Shares in Canada, and none is expected to develop, any first trades of Shares by Canadian Participants will be effected through the facilities of, and in accordance with the rules and regulations of, a foreign stock exchange outside of Canada.

28. Canadian Employees will receive, or will be notified of their ability to request, an information package on the Employee Share Offering in the French or English language, according to their preference, which will include a summary of the terms of the Employee Share Offering and a description of Canadian income tax consequences of subscribing for and holding the Units and redeeming Units at the end of the Lock-Up Period.

29. Canadian Employees will have access to or may request a copy of the Filer's French *Document de Référence* filed with the French AMF in respect of the Shares and a copy of the rules of the Temporary Classic FCPE and the Principal Classic Compartment. The Canadian Employees will also have access to the continuous disclosure materials relating to the Filer that are furnished to holders of the Shares generally.

30. Canadian Participants will receive an initial statement of their holdings under the Classic Plan, together with an updated statement at least once per year.

31. There are approximately 1,153 Canadian Employees resident in Canada, with the greatest number resident in Ontario (668), and the remainder in the other Jurisdictions who represent, in the aggregate, less than 1% of the number of employees in the Saint-Gobain Group worldwide.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Offering Relief is granted provided that the prospectus requirements of the Legislation will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this decision unless the following conditions are met:

(a) the issuer of the security

(i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

(ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

(b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada

(i) did not own, directly or indirectly, more than 10% of the outstanding securities of the class or series, and

(ii) did not represent in number more than 10% of the total number of owners, directly or indirectly, of securities of the class or series; and

(c) the first trade is made

(i) through an exchange, or a market, outside of Canada, or

(ii) to a person or company outside of Canada.

"James Turner"
Vice-chair
Ontario Securities Commission

"Judith Robertson"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Eda Marie Agueci et al.

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

AND

IN THE MATTER OF
EDA MARIE AGUECI, DENNIS WING, SANTO IACONO, JOSEPHINE RAPONI,
KIMBERLEY STEPHANY, HENRY FIORILLO, GIUSEPPE (JOSEPH) FIORINI, JOHN SERPA,
IAN TELFER, JACOB GORNITZKI AND POLLEN SERVICES LIMITED

ORDER

WHEREAS the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on February 7, 2012 against Eda Marie Agueci ("Agueci") , Dennis Wing ("Wing"), Santo Iacono, Josephine Raponi, Kimberley Stephany ("Stephany"), Henry Fiorillo ("Fiorillo"), Giuseppe (Joseph) Fiorini, John Serpa, Jacob Gorntizki, Pollen Services Limited ("Pollen"), and Ian Telfer;

AND WHEREAS on September 20, 2013, the Commission approved a settlement agreement between Staff and Ian Telfer;

AND WHEREAS on September 26, 2013, Staff filed an Amended Statement of Allegations;

AND WHEREAS the hearing on the merits in this matter was held before the Commission over the course of 57 hearing days beginning on September 30, 2014 and concluding on April 30, 2014;

AND WHEREAS following the hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits on February 11, 2015, including findings against Agueci, Wing, Stephany, Fiorillo and Pollen (the "Respondents");

IT IS ORDERED that:

1. Staff shall serve and file written submissions on sanctions and costs by 4:00 p.m. on March 9, 2015;

2. Respondents shall serve and file responding written submissions on sanctions and costs by 4:00 p.m. on April 1, 2015;

3. Staff shall serve and file reply written submissions on sanctions and costs, if any, by 4:00 p.m. on April 8, 2015;

4. the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, 17th floor, Toronto, ON, on April 13 and 14, 2015, at 10:00 a.m., or such further or other dates as agreed by the parties and set by the Office of the Secretary; and

5. upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 11th day of February, 2015.

"Edward P. Kerwin"

"AnneMarie Ryan"

"Deborah Leckman"

2.2.2 2241153 Ontario Inc. et al. – s. 127(1)

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE, SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV and EVGUENI TODOROV

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND SARBJEET SINGH AND 2241153 ONTARIO INC.

ORDER
(Subsection 127(1))

WHEREAS on February 10, 2015 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsection 127(1) 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 make orders, as specified therein, against and in respect of Sarbjeet Singh ("Singh") and 2241153 Ontario Inc. ("2241153") (collectively, the "Respondents"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated February 9, 2015;

AND WHEREAS the Respondents entered into a Settlement Agreement with Staff dated February 10, 2015 (the "Settlement Agreement") in which the Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated February 10, 2015, subject to the approval of the Commission;

AND WHEREAS on February 10, 2015 the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement entered into between Staff and the Respondents;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff, and upon hearing submissions from counsel for the Respondents and from Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

Singh

(b) pursuant to paragraph 2, of subsection 127(1) of the Act, trading in any securities or derivatives by Singh ceases for a period of 4 years, commencing on the date of the Commission's order, except that:

(i) Singh may trade in or acquire securities in any registered retirement savings plan ("RRSP") accounts and/or tax-free savings accounts ("TFSA") and/or registered education savings plan ("RESP") and/or personal or joint trading accounts, for which he has sole legal and beneficial ownership, or is a sponsor, or for any immediate family member, provided that:

1. Singh carries out any permitted trading though a registered dealer; and

2. Singh must give a copy of the Settlement Agreement and Order to any registered dealer through which he trades in advance of any trading;

(ii) Singh may trade in or acquire Mortgage Instruments (as defined below) and/or securities of a Closely Held Private Company (as defined below);

(c) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, except that Singh is permitted to acquire securities to allow the trading in securities permitted by and in accordance with paragraph (b);

(d) pursuant to paragraph 3, of subsection 127(1) of the Act, any exemptions in Ontario securities law shall not apply to Singh for a period of 4 years, commencing on the date of the Commission's order, except those exemptions used in respect of trading in or acquisition of securities in accordance with paragraphs (b) and (c) or required to engage in the conduct permitted under paragraphs (f) and (g);

(e) pursuant to paragraph 6, of subsection 127(1) of the Act, Singh be reprimanded;

(f) pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1) of the Act, Singh shall resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, except that Singh will be permitted to continue to act as a director or officer of:

(i) any issuer that distributes, issues or trades in securities evidencing indebtedness secured or to be secured by a mortgage or charge on real property in Canada or that provides promissory notes or enters into loan agreements incidental thereto in accordance with local provincial legislative requirements ("Mortgage Instruments"); and/or

(ii) any issuer that has no more than five beneficial owners being family, friends or business associates of Singh and does not distribute securities of the issuer other than to family, friends and business associates of the beneficial owners (a "Closely Held Private Company");

(g) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, from becoming or acting as a director or officer of an issuer, registrant or investment fund manager, except that Singh will be permitted to become, or act as a director or officer of any issuer that distributes, issues or trades in Mortgage Instruments (as defined above) or any Closely Held Private Company (as defined above);

(h) pursuant to paragraph 8.5 of subsection 127(1), Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(i) Singh shall disgorge to the Commission the amount of $34,000 by certified cheque prior to the settlement hearing which shall be designated for allocation by the Commission to or for the benefit of third parties, including the investor described in paragraph 16 of the Settlement Agreement, in accordance with subsection 3.4(2)(b) of the Act;

(j) Singh will cooperate with the Commission and Staff in this matter and will appear and testify at the hearing in this matter if requested by Staff;

2241153 Ontario Inc.

(k) pursuant to paragraph 2, of subsection 127(1) of the Act, trading in any securities or derivatives by 2241153 ceases for a period of 4 years, commencing on the date of the Commission's order;

(l) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by 2241153 is prohibited for a period of 4 years, commencing on the date of the Commission's order; and

(m) pursuant to paragraph 3, of subsection 127(1) of the Act, any exemptions in Ontario securities law shall not apply to 2241153 for a period of 4 years, commencing on the date of the Commission's order.

DATED at Toronto, this 11th day of February, 2015.

"Mary G. Condon"

2.2.3 Bradon Technologies Ltd. et al.

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

AND

IN THE MATTER OF
BRADON TECHNOLOGIES LTD., JOSEPH COMPTA,
ENSIGN CORPORATE COMMUNICATIONS INC. AND TIMOTHY GERMAN

ORDER

WHEREAS on October 3, 2013, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, accompanied by a Statement of Allegations dated October 3, 2013, issued by Staff of the Commission ("Staff") with respect to Bradon Technologies Ltd. ("Bradon"), Joseph Compta ("Compta"), Ensign Corporate Communications Inc. ("Ensign") and Timothy German ("German") (collectively, the "Respondents");

AND WHEREAS the Commission conducted the hearing on the merits on December 1, 5, and 8 to 12, 2014;

AND WHEREAS on December 12, 2014, after concluding the evidentiary portion of the merits hearing, the Commission ordered that:

1. the hearing on the merits dates of December 16, and 18, 2014 are vacated;

2. Staff shall serve and file written closing submissions by 4:30 p.m. on January 21, 2015;

3. the Respondents shall serve and file written closing submissions by 4:30 p.m. on February 4, 2015;

4. the hearing on the merits shall continue, commencing at 10:00 a.m. on February 11, 2015 for the purpose of hearing oral closing submissions of the parties; and

5. that the record be sealed until the exhibits have been redacted to remove personal information of investors from the exhibits;

AND WHEREAS Staff served and filed written closing submissions on January 21, 2015; counsel for Compta and Bradon served and filed written responding closing submissions on February 4, 2015; and Staff served a written reply on February 6, 2015, and filed the reply on February 9, 2015. No written submissions have been served or filed by or on behalf of Ensign and/or German;

AND WHEREAS on February 10, 2015, counsel for Compta and Bradon submitted a written request for an adjournment of the hearing scheduled for February 11, 2015 to hear oral closing submissions;

AND WHEREAS counsel for Compta and Bradon represented that he was unable for medical reasons to appear and make oral closing submissions on February 11, 2015;

AND WHEREAS on February 11, 2015, Staff appeared and made submissions indicating that in the circumstances Staff was not opposing the adjournment. In attendance by telephone were counsel for Compta and Bradon, as well as Compta personally. German did not appear;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED that:

1. the adjournment request is granted; and

2. the hearing on the merits shall continue, commencing at 10:00 a.m. on February 24, 2015, for the purpose of hearing oral closing submissions of the parties.

DATED at Toronto this 11th day of February, 2015.

"James E. A. Turner"

2.2.4 The Juniper Fund Management Corporation et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
THE JUNIPER FUND MANAGEMENT CORPORATION, JUNIPER INCOME FUND,
JUNIPER EQUITY GROWTH FUND and ROY BROWN (a.k.a. ROY BROWN-RODRIGUES)

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on March 21, 2006, a Notice of Hearing was issued by the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") with respect to a Statement of Allegations issued by Staff of the Ontario Securities Commission ("Staff") on the same day, to consider whether the Juniper Fund Management Corporation ("JFM"), Juniper Income Fund ("JIF"), Juniper Equity Growth Fund ("JEGF") and Roy Brown ("Brown") (collectively, the "Respondents") breached certain provisions of the Act and acted contrary to the public interest;

AND WHEREAS on July 5, 2007, Staff filed an Amended Statement of Allegations;

AND WHEREAS the Commission conducted the hearing on the merits in this matter with respect to the Respondents on September 19- 23, 28-29, 2011; October 5, 2011; November 9, 2011; December 21, 2011, February 14 and 22, 2012; April 4, 2012; May 28 and 30, 2012; June 8, 2012; and September 4, 2012;

AND WHEREAS the Commission issued its Reasons and Decision on the merits in this matter on April 11, 2013 (*Re Juniper Fund Management Corporation* (2013), 36 O.S.C.B. 4243 (the "Merits Decision"));

AND WHEREAS the Commission is satisfied that the Respondents have not complied with Ontario securities law and have not acted in the public interest, as set out in the Merits Decision;

AND WHEREAS the Commission conducted a hearing with respect to sanctions and costs on October 25, 2013 and November 22, 2013 (the "Sanctions and Costs Hearing");

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that Exhibit 4 be marked as confidential;

AND IT IS FURTHER ORDERED THAT:

(i) With respect to Brown:

(a) an order that Brown cease trading in securities permanently from the date of this order pursuant to clause 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by Brown is prohibited permanently, pursuant to clause 2.1 of subsection 127(1) of the Act;

(c) an order that any exemptions contained in Ontario securities law do not apply to Brown permanently, pursuant to clause 3 of subsection 127(1) of the Act;

(d) an order that Brown be reprimanded pursuant to clause 6 of subsection 127(1) of the Act;

(e) an order that Brown resign all positions he holds as a director or officer of an issuer, registrant or investment fund manager pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act;

(f) an order that Brown is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act; and

(g) an order that Brown is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter pursuant to clause 8.5 of subsection 127(1) of the Act.

(ii) With respect to JFM:

(a) an order that JFM cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by JFM is prohibited permanently pursuant to clause 2.1 of subsection 127(1) of the Act; and

(c) an order that any exemptions contained in Ontario securities law do not apply to JFM permanently pursuant to clause 3 of subsection 127(1) of the Act.

(iii) With respect to both Brown and JFM:

(a) an order requiring Brown, on a joint and several basis with JFM, to pay an administrative penalty of $500,000, pursuant to paragraph 9 of section 127(1) of the Act, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(b) an order requiring Brown, on a joint and several basis with JFM, to disgorge to the Commission $2,331,076.71 obtained as a result of his non-compliance with Ontario securities law, pursuant to paragraph 10 of section 127(1) of the Act, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act; and

(c) an order requiring Brown, on a joint and several basis with JFM, to pay $583,459.26 for costs incurred in the investigation and hearing of this matter pursuant to subsection 127.1 of the Act.

(iv) After the payments set out in subparagraphs (iii)(a), (iii)(b) and (iii)(c) are made in full, as an exception to the provisions of paragraphs (i)(a), (i)(b) and (i)(c) of this Order above, Brown is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Brown and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order): (1) any “exchange-traded security” or “foreign exchange-traded security” within the meaning of National Instrument 21-101 – *Marketplace Operation* provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or (2) any security issued by a mutual fund that is a reporting issuer; (3) and exemptions are permitted for the purpose of trades described in this subparagraph. Until the entire amount of the payments set out in subparagraphs (iii)(a), (iii)(b) and (iii)(c) of this Order above, are paid in full, the prohibitions set out in subparagraphs (i)(a), (i)(b) and (i)(c) shall continue in force without any limitation as to time period.

DATED at Toronto, Ontario this 12th day of February, 2015.

“Vern Krishna”

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Eda Marie Agueci et al.

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

AND

IN THE MATTER OF
EDA MARIE AGUECI, DENNIS WING, SANTO IACONO, JOSEPHINE RAPONI,
KIMBERLEY STEPHANY, HENRY FIORILLO, GIUSEPPE (JOSEPH) FIORINI, JOHN SERPA,
IAN TELFER, JACOB GORNITZKI AND POLLEN SERVICES LIMITED

REASONS AND DECISION

Hearing:	September 30, 2013, October 1, 2, 4, 7, 9-11, 15-18, 23-25, 28-31, 2013, November 1, 4, 6-8, 11, 12, 15,18, 20, 22, 25-29, 2013, December 2, 4, 5, 9-11, 16, 18, 2013 and January 15, 16, 17, 20-22, 2014 and February 3, 4, 6, 7, 2014 and March 5, 2014 and April 28-30, 2014		
Decision:	February 11, 2015		
Panel:	Edward P. Kerwin	–	Commissioner and Chair of the Panel
	Deborah Leckman	–	Commissioner
	AnneMarie Ryan	–	Commissioner
Appearances:	Cullen Price Usman Sheikh Albert Pelletier Clare Devlin	–	For Staff of the Commission
	Nigel Campbell Erin Hoult	–	For Jacob Gornitzki
	Patricia McLean Donald Sheldon	–	For Dennis Wing
	Peter Howard Ellen Snow	–	For Henry Fiorillo
	David Hausman	–	For Joseph Fiorini
	Ken Jones David Moore	–	For Kimberley Stephany
	James Douglas Caitlin Sainsbury	–	For Eda Marie Agueci
	Melissa MacKewn	–	For Josephine Raponi
	Mark Polley	–	For Santo Iacono
	Neil Gross	–	John Serpa

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REASONS AND DECISION

I. OVERVIEW

A. Introduction

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") arising from a Notice of Hearing issued pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"), in connection with a Statement of Allegations filed by Enforcement Staff ("**Staff**") on February 7, 2012 against Eda Marie Agueci ("**Agueci**"), Dennis Wing ("**Wing**"), Santo Iacono ("**Iacono**"), Josephine Raponi ("**Raponi**"), Kimberley Stephany ("**Stephany**"), Henry Fiorillo ("**Fiorillo**"), Giuseppe (Joseph) Fiorini ("**Fiorini**"), John Serpa ("**Serpa**"), Jacob Gornitzki ("**Gornitzki**") and Pollen Services Limited ("**Pollen**") (collectively, the "**Respondents**") and Ian Telfer ("**Telfer**").

[2] In the Statement of Allegations, Staff alleges that the Respondents engaged in conduct in breach of the Act and contrary to the public interest, including insider trading and/or tipping contrary to section 76 of the Act. Agueci and Wing are also alleged to have made misleading statements contrary to section 122 of the Act and Agueci is alleged to have disclosed information regarding Staff's investigation contrary to section 16 of the Act. Staff further alleges that Wing authorized, permitted or acquiesced in Pollen's breaches of the Act and is therefore, deemed to have not complied with Ontario securities law in accordance with section 129.2 of the Act.

[3] On September 20, 2013, the Commission approved a settlement between Telfer and Staff (*Re Eda Marie Agueci et al.* (2013), 36 O.S.C.B. 9341).

[4] On September 26, 2013, Staff filed an Amended Statement of Allegations against the Respondents, which contained substantially similar allegations as those articulated above.

[5] This hearing was held over 57 days, including three days for closing submissions, between September 30, 2013 and April 30, 2014 (the "**Merits Hearing**"). Each of the Respondents was represented by counsel at the Merits Hearing and each counsel participated to various degrees throughout, with the exception of counsel for Pollen, who did not appear or make submissions. Certain limited portions of the Merits Hearing were heard *in camera* on an interim basis until we issued our decision on a confidentiality motion on March 5, 2014. We allowed the confidentiality motion, in part, and determined that some of the content that was the subject of the request fell within intimate financial or personal matters or other matters contemplated in subsection 9(1) of the *Statutory Powers Procedure Act,* R.S.O. 1990, c. S.22, as amended ("**SPPA**").

[6] On September 30, 2014, Staff and certain of the Respondents made written submissions with respect to the application of a recently issued decision of the Alberta Court of Appeal, which considered, and in some respects reversed, a decision of the Alberta Securities Commission pertaining to insider trading and tipping (*Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 (C.A.) ("***Walton***"), leave to appeal to SCC requested).

B. The Allegations

[7] At the conclusion of the Merits Hearing, Staff has, in some instances, described the allegations against the Respondents more broadly than in the Statement of Allegations, particularly those relating to conduct contrary to the public interest. The Respondents are entitled to notice of the allegations to which they must respond and it is not open to Staff to modify the allegations during the hearing from those made in the Statement of Allegations. Accordingly, consistent with the principles of procedural fairness and the practice of the Commission, we have confined our analysis to the allegations as set out in the Statement of Allegations and summarized below.

[8] Staff alleges that on or before April 17, 2007, while Gornitzki was in a special relationship with Nu Energy Uranium Corporation ("**Nu**" or "**Nu Energy**"), Gornitzki advised Agueci, other than in the ordinary course of business, of material facts related to the proposed acquisition of Nu prior to that information having been generally disclosed, contrary to subsection 76(2) of the Act. Staff alleges that Agueci subsequently purchased Nu securities, contrary to subsection 76(1) of the Act, in her own account and in her mother's account (the "**First Secret Account**") and failed to advise her employer, GMP Securities L.P. ("**GMP**") of her trades in the First Secret Account, as required by GMP's compliance policies. Staff further alleges that Agueci provided material non-public facts concerning the proposed acquisition of Nu, at a time when Agueci was in a special relationship with Nu, to Iacono, Raponi, Fiorillo, Wing and Fiorini, contrary to subsection 76(2) of the Act, each of whom subsequently purchased Nu securities, contrary to subsection 76(1) of the Act. Furthermore, Staff alleges that Serpa received material non-public facts concerning the proposed acquisition of Nu from Iacono, at a time when Iacono was in a special relationship with Nu, contrary to subsection 76(2) of the Act and that Serpa subsequently purchased Nu securities, contrary to subsection 76(1) of the Act.

[9] Staff alleges that on or before May 8, 2007, in her capacity as executive assistant in the investment banking department of GMP, Agueci became aware of material non-public facts concerning a proposed acquisition of Energy Metals Corporation ("**EMC**") and advised Iacono, Stephany, Raponi, Wing, Pollen, Fiorini and Fiorillo, other than in the ordinary course

of business, of the material undisclosed facts related to the proposed acquisition of EMC, contrary to subsection 76(2) of the Act, each of whom subsequently purchased EMC securities, contrary to subsection 76(1) of the Act. Staff further alleges that Serpa received material non-public facts concerning the proposed acquisition of EMC from Iacono, at a time when Iacono was in a special relationship with EMC, contrary to subsection 76(2) of the Act and that Serpa subsequently purchased EMC securities, contrary to subsection 76(1) of the Act. Furthermore, Staff alleges that Stephany used the material non-public facts to recommend that her client, S.P., purchase EMC shares and that two other friends of Agueci purchased EMC shares during the same period.

[10] Staff alleges that on or before May 28, 2007, in her capacity as executive assistant in the investment banking department of GMP, Agueci became aware of material non-public facts concerning a proposed three-way business combination between Yamana Gold Inc. ("**Yamana**"), Northern Orion Resources Inc. ("**Northern Orion**") and Meridian Gold Inc. ("**Meridian**"), and advised Wing on behalf of Pollen and Fiorini, other than in the ordinary course of business, of the material undisclosed facts related to the proposed three-way business combination, contrary to subsection 76(2) of the Act. Staff alleges that Wing, via Pollen, subsequently purchased Northern Orion and Meridian securities and Fiorini subsequently purchased Northern Orion securities, contrary to subsection 76(1) of the Act.

[11] Staff alleges that on or before July 17, 2007, in her capacity as executive assistant in the investment banking department of GMP, Agueci became aware of material non-public facts concerning a proposed acquisition of HudBay Minerals Inc. ("**HudBay**"), and advised Wing, Pollen, Stephany, Fiorini, Fiorillo, Raponi and Iacono, other than in the ordinary course of business, of the material undisclosed facts related to the proposed acquisition of HudBay, contrary to subsection 76(2) of the Act, each of whom subsequently purchased HudBay securities, contrary to subsection 76(1) of the Act. Staff further alleges that Serpa received material non-public facts concerning the proposed acquisition of HudBay from Iacono, at a time when Iacono was in a special relationship with HudBay, contrary to subsection 76(2) of the Act and that Serpa subsequently purchased HudBay securities, contrary to subsection 76(1) of the Act. Furthermore, Staff alleges that Stephany used the material non-public facts to recommend that her client, S.P., purchase HudBay shares and that at least one other friend of Agueci purchased HudBay shares during the same period. Staff also alleges that Agueci received payments from Wing in connection with his and Pollen's profitable trades described above.

[12] Staff alleges that on or before January 29, 2008, in her capacity as executive assistant in the investment banking department of GMP, Agueci became aware of material non-public facts concerning a proposed acquisition of Coalcorp Mining Inc. ("**Coalcorp**"), and advised Raponi, Stephany, Fiorini and Fiorillo, other than in the ordinary course of business, of the material undisclosed facts related to the proposed acquisition of Coalcorp, contrary to subsection 76(2) of the Act, and that each of them subsequently purchased Coalcorp securities, contrary to subsection 76(1) of the Act.

[13] Furthermore, Staff alleges that Wing was a person who authorized, permitted or acquiesced in Pollen's breaches of the Act with respect to conduct relating to EMC, Northern Orion, Meridian and HudBay and, as such, Wing is, by virtue of section 129.2 of the Act, deemed to have not complied with subsection 76(1) of the Act in respect of Pollen's conduct.

[14] Also, Staff alleges that Agueci's brother-in-law, Iacono, assisted Agueci to access and/or trade in a brokerage account (the "**Second Secret Account**") that was not disclosed to GMP, as required by its compliance policies. Staff alleges that Agueci's conduct in arranging, maintaining and failing to disclose to GMP her interest and trading in the First and Second Secret Accounts was contrary to the public interest. In addition, Agueci's ongoing trading in those accounts, as well as the manner of withdrawals from those accounts, was contrary to the public interest. Staff also alleges that Iacono's conduct in assisting Agueci to maintain and illicitly trade in an account that was not disclosed to GMP, as well as the manner of withdrawals from this account in allotments of less than $10,000, was contrary to the public interest.

[15] Staff further alleges that during each of Agueci's and Wing's compelled examinations during Staff's investigation, they made numerous statements that, in a material respect, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to section 122 of the Act. In particular, Staff alleges that Wing made misleading statements concerning his activities and involvement with offshore entities and other brokerage and bank accounts, including offshore accounts relating to Pollen. Staff also alleges that Agueci made misleading statements regarding her interest, involvement and knowledge with respect to the First and Second Secret Accounts and regarding payments received and made by her.

[16] Furthermore, Staff alleges that Agueci divulged the nature and content of her compelled examinations to others who were interviewed by Staff, contrary section 16 of the Act.

[17] Lastly, and in any event, Staff alleges that all conduct in paragraphs 0 to 0 is conduct contrary to the public interest.

C. The Respondents

[18] From 2007 through 2011, Agueci was a resident of Toronto, Ontario and an employee of GMP. Agueci previously worked at First Marathon Securities Limited ("**First Marathon**") for 14 years, beginning in 1987, until joining GMP in 2002. While

working at First Marathon, Agueci met Stephany and Fiorillo. From 2002 to 2011, Agueci was employed as an executive assistant in the mining group of the corporate finance department at GMP. Agueci has taken the Canadian Securities Course.

[19] From 2007 through 2011, Wing was a resident of Toronto, Ontario and the president, chief executive officer and director of Fort House Inc. ("**Fort House**"), an investment dealer registered with the Commission from January 2005 to January 2012. Previously, Wing worked at First Marathon beginning in 1981. He later became the Chief Compliance Officer ("**CCO**") for First Marathon's international operations and held that position for over 15 years. Subsequently, he became the Chairman of First Marathon International; a position he held for approximately 20 years. Wing was registered with the Commission as of at least January 2005, in various categories, but such registrations ended on January 31, 2012 further to Fort House's suspension that day. Wing also wrote and passed the CCO Qualifying Exam in 2009 and is a Fellow of the Canadian Securities Institute. Wing and Agueci had worked at First Marathon prior to 2002, were friends for some time and during the relevant period had an on-and-off romantic relationship.

[20] Pollen is a company incorporated in the British Virgin Islands ("BVI") in 2003, which is wholly-owned by The Honey Trust, a trust that was settled by Wing in the BVI. The assets of The Honey Trust include shares of Pollen and Pollen's assets included a trading account in Switzerland (the "**Pollen SG Account**") at Societe Generale Private Banking (Suisse) SA ("**SG Private**"), formerly Companie Bancaire Geneve ("**CBG**"), that was opened by Wing in 2003. During the 2007-2008 period, the Pollen SG Account traded through sub-accounts, including an account at Fort House (the "**SG Fort House Account**"). Wing had sole signing authority over the Pollen SG Account. Therefore, notwithstanding that Pollen was owned by The Honey Trust, whose beneficiaries are Wing's two sons, in 2007 and 2008, Wing had sole authority over all activity in the Pollen SG Account, including trading.

[21] From 2007 through 2011, Iacono was a resident of Toronto, Ontario. Iacono is Agueci's brother-in-law and Serpa's business partner in S.I.R. Investment Inc. ("**S.I.R. Investment**"), a food and beverage distribution company.

[22] From 2007 through 2011, Serpa was a resident of Toronto, Ontario. Serpa is Iacono's business partner in S.I.R. Investment.

[23] From 2007 through 2011, Raponi was a resident of Toronto, Ontario and a high school teacher who taught French, English as a second language and Italian. Raponi is Agueci's first cousin.

[24] From 2007 through 2011, Stephany was a resident of Ontario. During that time she worked as a trading assistant at Fort House until November 2007 and then at Brant Securities Limited from December 2007 to August 2012. Stephany first became registered in the securities industry in 1981 as a salesperson for Richardson Greenshields, as it then was. Stephany and Agueci became close friends after having worked together at First Marathon in the late 1990's. In May 2004, when she began working at Fort House, Stephany became registered with the Commission as a dealing representative of an investment dealer. Stephany continued to hold these registrations in 2007 and 2008 and was registered with the Commission until August 15, 2012.

[25] From 2007 through 2011, Fiorillo was a resident of Ontario. In 2007 and 2008 he was the president of Research Management Group, which was a firm that provided market research and consumer behaviour study services, among other things. Fiorillo has been registered with the Commission in various capacities including as a director, officer and dealing representative at an exempt market dealer/limited market dealer between August 2004 and April 2010. Fiorillo and Agueci were friends who have known each other for over 20 years.

[26] From 2007 through 2011, Fiorini was a resident of Toronto, Ontario. During that time, from January 2007 to March 2008, he was a senior employee in investment banking at Desjardins Securities ("**Desjardins**") and was tasked with building its mining business. Fiorini met Agueci prior to 2007 when he was working at TD Securities Inc. and they became friends.

[27] From 2007 through 2011, Gornitzki was a resident of Toronto, Ontario. In 2007, he was an advisor to various corporations seeking financing or engaging in other corporate transactions, including Nu. At that time, Gornitzki used a boardroom in the offices of GMP to carry out certain business activities. Gornitzki met Agueci in the summer of 2006 through Eugene McBurney, the Chairman of GMP, and they became friends.

II. PRELIMINARY ISSUES

A. The Standard Of Proof

[28] Staff must prove its allegations on the balance of probabilities, the civil standard of proof, and the evidence must be sufficiently clear, convincing and cogent (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 ("***F.H. v. McDougall***") at paras. 46 and 49). The Panel must scrutinize the evidence with care and determine whether it is more likely than not that the allegations occurred (*ibid.* at para. 49).

B. Evidence

[29] At the Merits Hearing, Staff tendered into evidence over 1160 exhibits and called the following witnesses:

- Christine George ("**George**"), Senior Staff Investigator and Forensic Accountant who investigated this matter since January 2011;
- Anthony Frizelle ("**Frizelle**"), Chief Executive Officer ("**CEO**") and President of Nu Energy in 2007;
- Pasquale (Pat) DiCapo ("**DiCapo**"), Managing Director at Power One Capital Markets Limited ("**Power One**") in 2007 – involved in the Nu/Mega Uranium Ltd. transaction;
- Richard Patricio ("**Patricio**"), Executive Vice-President, Corporate and Legal Affairs at Mega Uranium Ltd. in 2007;
- Eugene McBurney ("**McBurney**"), Chairman of GMP in 2007-2008;
- Mark Wellings ("**Wellings**"), Manager of Investment Banking and Co-Head of the mining team at GMP in 2007-2008;
- Kevin Reid ("**Reid**"), Senior Vice-President of Investment Banking at GMP in 2007-2008;
- Leo Ciccone ("**Ciccone**"), Chief Compliance Officer at GMP in 2007-2008; and
- Ron Aiello ("**Aiello**"), member of the institutional trading group at Haywood Securities ("**Haywood**") and investment advisor to Fiorillo in 2007-2008.

[30] On consent, Staff and the Respondents together submitted the affidavit of Agueci's mother sworn November 12, 2013, whose health prevented her from testifying in person.

[31] Gornitzki, Fiorillo, Stephany and Wing testified on their own behalf. Wing tendered seven exhibits, Fiorillo tendered five exhibits, Gornitzki tendered six exhibits and Stephany tendered three exhibits in the course of their direct evidence.

1. Hearsay Evidence

[32] Hearsay evidence is admissible in administrative hearings before the Commission, pursuant to subsection 15(1) of the SPPA, which states:

> Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[33] The weight to be accorded to hearsay evidence is determined by the panel, with care "to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability" (*Sunwide Finance Inc.* (2009), 32 O.S.C.B. 4671 at para. 22, citing *Starson v. Swayze*, [2003] 1 S.C.R. 722 at para. 115).

2. Compelled Evidence

[34] We considered the use of compelled evidence in our motion decision issued on December 13, 2013 (*Re Agueci et al* (2013), 36 O.S.C.B. 12133 ("***Agueci***" or "**Compelled Evidence Motion**")). The panel determined that Staff could tender into evidence selected excerpts from transcripts of compelled examinations of the Respondents who did not undertake to testify in person at the hearing (*Agueci, supra* at para. 139). In addition, for the Respondents who chose to testify at the hearing, Staff was permitted to use the compelled examinations for the purpose of cross-examinations (*Agueci, supra* at para. 139). Finally, Staff was permitted to use excerpts from compelled examinations to provide evidence regarding the allegations of misleading statements made during the compelled testimony (*Agueci, supra* at para. 140).

[35] We remain mindful of evidence law considerations relating to hearsay and the use of one respondent's statements against another (*Agueci, supra* at para. 133). The weight to be afforded to such evidence is to be determined by the Panel.

3. Circumstantial Evidence and Inferences

[36] The parties have made a number of submissions on the use of circumstantial evidence and the drawing of inferences. The parties agree that an inference is properly drawn if it flows reasonably and logically from proven facts. Their submissions differ in that Staff refers the Panel to a number of cases in which they submit that proper inferences were drawn, whereas the Respondents argue that the inferences that Staff submits the Panel should draw are not reasonably drawn from the circumstantial evidence in this matter for various reasons.

(a) Staff's Submissions

[37] Staff relies on the Commission's decision in *Suman* to support its submission that where there is a civil standard of proof, circumstantial evidence should be treated as any other kind of evidence and the weight is dependent upon the strength of the inference that can be drawn from it (*Re Suman* (2012), 35 O.S.C.B. 2809 ("***Suman***") at para. 288). Staff submits that allegations of improper trading activity, more often than not, turn on circumstantial evidence, and that the Panel must consider whether it is reasonable to infer the requisite knowledge exists from certain facts proven by circumstantial evidence (*Re Podorieszach,* [2004] A.S.C.D. No. 360 ("***Podorieszach***") at paras. 76-77). Staff cites *Landen* as an example of a case in which the Court relied upon circumstantial evidence to draw the inference that Landen possessed and traded upon material information and convicted him of insider trading (*R. v. Landen*, 2008 ONCJ 561 ("***Landen***") at para. 109).

[38] Staff submits that the Alberta Securities Commission summarised the law on inference in the following manner in *Holtby:*

> when drawing an inference from circumstantial evidence, we must ensure that the inference is grounded on proved, not hypothetical or assumed, facts and is a reasonable one -- one drawn using common sense, human experience and logic having considered the totality of the evidence and any competing inferences.
>
> (*Re Holtby* 2013 ABASC 45 ("***Holtby***") at para. 463, rev'd on other grounds *Walton, supra*; note principle affirmed in *Walton, supra* at para. 27)

[39] It is Staff's position that the panel in *Suman* determined that Staff does not have to bring direct evidence and may prove knowledge based on an opportunity to acquire the information combined with evidence of well-timed, uncharacteristic, risky and highly profitable trades (*Suman, supra* at para. 307).

[40] Further, Staff submits that the inferences Staff invites the Panel to draw do not have to be the only inferences that can be drawn from the evidence and that "reasonable" inferences are not necessarily the most obvious or the most easily drawn (*Suman, supra* at para. 308, citing R. *v. Munoz* (2006), 86 OR (3d) 134, [2006] OJ No 446 at para. 31).

[41] Staff cited a number of insider trading cases in which there were inferences of knowledge based on circumstantial evidence, including some decided in the United States ("**U.S.**") and the United Kingdom ("**U.K.**"). In *Suman*, Staff submits, the Commission considered evidence of Suman's opportunity to access material information and the respondents' well-timed, highly uncharacteristic, risky and highly profitable purchases of securities together with evidence suggesting that Suman had learned of the material information, and evidence of consciousness of guilt to draw an inference of knowledge of the material fact (*Suman, supra* at paras. 344-345). Staff submits that in *Larrabee*, in applying the criminal standard of proof, the U.S. Court of Appeal looked at the circumstances surrounding the alleged insider tip, including:

1. access to information
2. relationship between the tipper and the tippee;
3. timing of contact between the tipper and the tippee;
4. timing of the trades;
5. pattern of the trades; and
6. attempts to conceal either the trades or the relationship between the tipper and the tippee.

(*United States v. Larrabee*, 240 F.3d 18 (1st Cir Ct App 2001) ("***Larrabee***") at 21)

[42] Staff submits that in *Musella*, a U.S. court relied on the most likely inference that could be drawn from the evidence and stated that "any innocent explanation incorporating the proof offered is less plausible than an inference of wrongdoing" *(Securities and Exchange Commission v. Musella,* 578 F Supp. 425 at 441 (SDNY 1984) ("***Musella***")). Staff argues that the same analysis was applied by the United Kingdom Financial Services Authority (the "**FSA**") Regulatory Decisions Committee in its decision in respect of an insider trading case. In that matter, Staff submits that the FSA concluded that the respondent had the "opportunity and ability" to log into the executives' email accounts and that the circumstantial evidence relating to the uncharacteristic, substantial, exceedingly risky trade was strong enough to infer that he did so (UK Financial Services Authority ("FSA") Final Notice to Mr. John Shevlin (July 1, 2008) ("***Shevlin***") at paras 11.1-11.2).

[43] Staff submits that in *Eng*, a U.S. Securities and Exchange Commission ("**SEC**") case, there was a "startling pattern of trading" by the insider's friends and family while merger negotiations were underway, which supported the inference that the insider was tipping his friends and family (*Re Eng*, 53 SEC 709 (1998) ("***Eng***") at 716).

[44] Staff argues that in *Downe*, in denying a motion to overturn the jury's finding of insider trading, the U.S. District Court considered the close friendship between the alleged tipper and the tippee and the pattern of contact and proximate trading:

> the evidence showed that Downe was a close friend of Sullivan and was a Director of Kidde, had contact with Sullivan at crucial times during the takeover period, and purchased large amounts of warrants at considerable expense and risk to himself either immediately or soon after his contact with Sullivan. This evidence permitted the jury to conclude that Downe possessed inside information.
>
> (*Securities and Exchange Commission v Downe*, 969 F Supp 149 ("***Downe***") at 154 (SDNY 1997), 1997 US Dist LEXIS 8629, aff'd *Securities and Exchange Commission v Warde*, 151 F.3d 42 (2d Cir Ct App 1998), 1998 US App LEXIS 15991 ("***Warde***"))

[45] Staff submits that, on appeal to the U.S. Court of Appeals, the Court considered and rejected the argument that any conversations with the insider were based on public knowledge and determined that circumstantial evidence demonstrated a pattern in which Downe received nonpublic information, then communicated with Warde, and then both Warde and Downe purchased warrants, such that the parallel trading of tipper and tippee supported the inference (*Warde, supra* at 58).

[46] Further, Staff cites *Musella*, a U.S. District Court request for a preliminary injunction to freeze profits from allegedly illegal insider trades. In granting the injunction, Staff argues, the Court emphasized the "remarkable overlap and seeming orchestration" of two defendants' trading. The U.S. District Court decided:

> during the entire period at issue […] the Covellos purchased only securities of companies involved in matters for which Sullivan & Cromwell had been retained to provide legal services[…these] were purchases related to as yet undisclosed merger or acquisition transactions which in some way involved Alan Ihne's law firm.
>
> […]
>
> The evidence offered, like pieces to a puzzle, takes on significance only when one attempts to arrange the individual proof into some coherent, larger picture.
>
> (*Musella*, *supra* at 440-41)

[47] Staff submits that in *S.E.C. v. Maio* the court noted that, although the tippee testified at trial that she had been following the subject stock for many months, the trading by the defendant only began after the contact with the tipper (*Securities and Exchange Commission v. Maio*, 1993 US Dist LEXIS 21379 at para 48).

[48] Finally, Staff submits that attempts to conceal and mislead investigators can be considered as circumstantial evidence supporting an inference of wrongdoing. In *Suman*, Staff submits, the panel determined that "a person's conduct after committing an alleged offence can show a consciousness of guilt that will support an inference that the person committed the relevant offence" (*Suman, supra* at para. 340). Staff argues that in the case of *Downe*, Downe's attempts to conceal his purchases from the SEC supported the inference that Downe was in possession of inside information when he made these trades (*Downe, supra* at 153).

(b) The Respondents' Submissions

[49] Wing and Agueci's counsel respectively rely upon *John v. R.* for the submission that in considering the superiority of direct versus circumstantial evidence, direct evidence contains the error of unreliability of human testimony, whereas circumstantial evidence suffers from the same error in addition to the difficulty of drawing a correct inference (*John v. R.*, [1971] S.C.R. 781 at 788 "***John v. R.***"). Counsel for Agueci argues that the direct evidence of the Respondents, at most, suggests

Agueci recommended that they purchase a security or advised that she was purchasing a security, but not that she provided material non-public information.

[50] Fiorillo's counsel submits that direct evidence, if believed, resolves one or more of the matters in issue and that because Fiorillo's testimony is credible, it therefore resolves this proceeding (*R. v. Cinous*, [2002] SCJ No. 28 at para. 88). In any event, counsel argues that in considering circumstantial evidence, the Panel must first determine what primary facts are proven and then determine what rational, non-speculative inferences flow from the primary facts (*R. v. Humphrey*, [2011] O.J. No. 2412 at para. 148).

[51] Fiorillo and Gornitzki submit that an inference is properly drawn if it flows reasonably and logically from a fact or group of facts, established by clear, cogent and compelling evidence and must be more than mere conjecture or speculation (*R. v. Morissey*, [1995] O.J. No. 639 at para. 52 ("***Morissey***"); *Suman, supra* at paras. 293-295). Similarly, counsel for each of Wing, Agueci and Raponi, respectively, submits that only inferences that are "logically and reasonably drawn" from established evidence are permitted (*Morissey, supra* at para. 52). Therefore, Fiorillo, Wing and Agueci argue, inferences are improper where (i) they are based on assumed facts which have not been proven; and (ii) the primary facts are not sufficiently linked to the inferences drawn, such that they are not reasonably and logically drawn from established facts (*Suman, supra* at para. 296-300; *R. v. Munoz*, 2006 CanLII 3269 (Ont SCJ) ("***Munoz***") at paras. 25-26 and 28).

[52] Counsel for Agueci submits that the inferences, which Staff invites the Commission to draw, are unsupportable and constitute impermissible speculation. Agueci made submissions with respect to Nu, EMC, Northern Orion and HudBay, which, she argues, are examples of instances in which Staff's written submissions invite the Panel to draw improper inferences.

[53] Counsel for Fiorillo takes the position that in cases where allegations of insider trading are supported only by circumstantial evidence, the evidence must establish both the opportunity to have received material non-public information and "well-timed, highly uncharacteristic, risky and highly profitable trades" (*Suman, supra* at para. 307). As a result, he submits that the Panel must take into account the entire factual matrix in which trades are made, including Fiorillo's character, reputation, that trades are not deviations from Fiorillo's standard practices, and are not riskier or more profitable than other trades in the context of his net worth and risk appetite.

[54] Counsel for Wing submits that the Commission has identified a particular set of circumstances that could lead to the inference that a respondent engaged in insider trading, which is referred to throughout Wing's submissions as the "Suman Factors", including that:

1. the respondent had "access" to the material undisclosed information;

2. the respondent's trades were well-timed in connection with when he/she gained access to the material information and when the material information became publicly disclosed;

3. there was a fundamental shift in the respondent's trading pattern;

4. the respondent demonstrated suspicious after-the-fact conduct or a consciousness of guilt; and

5. the respondent's alternative explanation is implausible.

[55] Wing's counsel submits that, with respect to the first factor, the evidence supports that Wing and Agueci were having a relationship in April through August of 2007. In relation to the second, Wing argues that trades can be well-timed in two ways: by taking place shortly after a respondent had contact with the alleged tipper or shortly before material information is publicly disclosed. The former, Wing's counsel submits, in previous cases has been within minutes to a day of contact (*Suman, supra* at para. 105 and 1259; *Re Hu, 2011 BCSECCOMM 355* ("***Hu***") at para. 176; *Larrabee supra* at 1 and 3; *Re Donald* (2012), 35 O.S.C.B. 7383 at paras. 6-7; *Downe, supra* at para. 3) and the latter, in previous cases, has been found to be between minutes to five days of general disclosure (*Suman, supra* at para.4; *Larabee, supra* at 2; *Warde, supra* at 1; and *Donman v. BCSC,* (1998) CanLII 6551 at paras. 13-14).

[56] Wing's counsel submits that to support a finding of insider trading, the third factor requires an aberrational or fundamental shift in the respondent's trading pattern, including consideration of the amount of purchases, a history of purchasing large quantities, the respondent's holdings and if trades were uncharacteristic, risky and highly profitable (*SEC v. Moran,* 922 F Supp 867 at 32 and 34; *Suman*, *supra* at paras. 204 and 207; *Re Keith*, 2012 ABASC 382 ("***Keith***") at para. 100; *Landen, supra* at para. 146; etc.). With respect to the fourth factor, Wing submits that a respondent's conduct after committing an alleged offence can demonstrate a "consciousness of guilt" that supports an inference of misconduct, such as wiping computer data, concealing the relationship between respondents, and purchasing securities in someone else's name (*Suman, supra* at para. 340; *Larabee, supra* at 4-5; *Warde, supra*). Finally, Wing's counsel submits, as does Agueci's and Gornitzki's, that if a respondent puts forth an equally plausible alternative explanation, it would be improper for the Panel to infer improper intent (*Podorieszach, supra* at para. 78).

[57] Counsel for Gornitzki concurs that past cases involving insider trading provide guidance as to when an inference of misconduct may be properly drawn, including from established evidence of: a) access and opportunity to acquire the material information; b) after-the-fact consciousness of guilt; and c) well-timed, uncharacteristic, highly risky and profitable trades (*Suman, supra* at paras. 301-302). Gornitzki made submissions in respect of each. First, Gornitzki submits that an inference may be supported when the tipper and tippee are close, such as: married (*Suman*), friends for at least ten years (*Downe, Warde, Maio, Landen, supra*), familial (*Eng*), vacationing together (*Larrabee, Musella, Maio*) and/or financial connections (*Larrabee, Maio, Eng, Landen*). Gornitzki submits he and Agueci are not close, but rather "friendly" acquaintances.

[58] Second, counsel for Gornitzki submits that an inference of misconduct may be drawn when evidence establishes a "consciousness of guilt", such as attempts to conceal the trading or evidence thereof (*Suman, supra* at para. 340). In respect of that factor, Gornitzki submits his conduct after speaking about Nu is consistent with innocence, not guilt. In furtherance of that submission, he argues that Agueci openly emailed him from a compliance-monitored setting, telling him she bought Nu on April 17, 2007, expressing thanks and the email exchange that followed was open, casual and joking.

[59] Fiorini's counsel submits that Staff has mischaracterized unproven assumptions as circumstantial evidence. Specifically, he submits that telephone calls received by Fiorini from an unidentified source cannot establish that these were contact between Agueci and Fiorini. Fiorini submits that, if he and Agueci discussed the securities at issue, it is more likely than not that she merely provided investment advice.

[60] Raponi's counsel submits that the direct evidence of Raponi and Agueci is that material non-public information was not disclosed and she adopts submissions of other respondents with respect to the difference between circumstantial evidence and speculative inferences. Raponi submits that if an equally plausible alternative explanation has been provided for the trading, Staff has not met their onus. In this case, Raponi's counsel submits, the circumstantial evidence relied upon by Staff is primarily grounded in the relationship between Agueci and Raponi, the type of trading and timing of trading. Counsel argues that the inferences Staff seek to have drawn are speculation, conjecture, and/or the facts are not sufficiently linked to the inferences because Staff has failed to properly consider the totality of the evidence and the competing inferences that are consistent with the direct evidence – namely, that Agueci recommended that Raponi buy the stock. Further, Raponi submits that her conduct after the alleged breaches is consistent with her honest belief that she had done nothing wrong and, by admission, bought and sold on the basis of generic stock recommendations.

[61] Counsel for Stephany submits that with circumstantial evidence, there is an inferential gap between the evidence and the matter to be established and if the gap is too large in that additional unproven facts must be assumed to bridge it, the inference cannot be made because it is simply conjecture (*R. v. Arcuri,* [2001] 2 S.C.R. 828 at para. 23; *Morrissey, supra* at para. 52). Counsel for Stephany submits that the British Columbia Securities Commission has observed that "sequence does not prove causation" and therefore, the mere fact that one event chronologically follows another is insufficient to conclude that the first is related to the second (*Re Canaco Resources Inc.* 2013 BCSECCOM 310 at para. 115).

[62] Serpa's counsel adopts and relies on arguments of general application made by other Respondents, to the extent that they apply to Serpa. Serpa submits that there is no evidence that material time-sensitive information was ever communicated to him.

[63] Iacono's counsel submits that Staff relies upon tenuous circumstantial evidence, from which they draw inappropriate inferences. For example, he argues that Iacono's placement of a stop loss on his position in EMC to limit potential loss is inconsistent with Staff's inference that Iacono's purchase was extraordinarily risky. He submits that the more plausible explanation is that Agueci recommended stocks to Iacono and not that material non-public information was conveyed by Agueci.

(c) Legal Analysis and Conclusions

[64] The Ontario Court of Appeal in *Morrissey* stated that:

> the trier of fact may draw factual inferences from the evidence. The inferences must, however, be ones which can be reasonably and logically drawn from a fact or group of facts established by the evidence. An inference which does not flow logically and reasonably from established facts cannot be made and is condemned as conjecture and speculation.
>
> (*Morrissey, supra* at para. 52)

[65] The Commission has previously considered the use of circumstantial evidence and the inferences that may be properly drawn from that evidence. We agree with the Commission's determination in *Suman* that the panel can properly draw inferences "that are reasonably and logically drawn from the facts established by the evidence" (*Suman*, *supra* at para. 306). Such inferences must be established by clear, cogent and compelling evidence and must be more than mere conjecture or speculation (*Suman, supra* at paras. 293-295, citing *Morissey, supra* at para. 52 and *Watt's Manual of Criminal Evidence*, 2006, section 9.01, at p. 42).

[66] In *Suman*, the panel noted that "[i]n cases where there is a civil standard of proof, circumstantial evidence is treated just as any other kind of evidence and the weight accorded to it depends on the strength of the inference that can be drawn from it" (*Suman*, *supra* at para. 288, citing Alan W. Bryant, Sidney N. Lederman and Michelle K. Fuerst, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada,* 2d ed (Markham: LexisNexis Canada, 1999) at 41).

[67] We concur with the Commission's decision that findings of whether it is more likely than not that a respondent has knowledge of a material fact can be based on inferences reasonably and logically drawn from the combined weight of the evidence (*Suman, supra* at para. 309). As noted in *Holtby,* "[p]ieces of evidence, each by itself insufficient, may . . . when combined, justify the inference that the facts exist." (*Holtby, supra* at para. 463; rev'd on other grounds *Walton, supra*). We agree with Fiorillo's submission that we must take into account the entire factual matrix before us in determining whether it is more likely than not that a respondent traded with knowledge of a material fact that was not generally disclosed, while in a special relationship with the issuer.

[68] We note that the panel in *Suman* determined, in the circumstances of that case, that:

> Knowledge of an undisclosed material fact **may** be properly inferred based on circumstantial evidence that includes proof of the ability and opportunity to acquire the information combined with evidence of well-timed, highly uncharacteristic, risky and highly profitable trades.[emphasis added]
>
> (*Suman, supra* at para. 307)

In our view, the panel in *Suman* identified a non-exhaustive list of potential circumstantial evidence which could support a reasonable inference of knowledge of an undisclosed material fact by a respondent. Each case must be considered in light of the circumstances and the facts proven therein. Therefore, we do not accept that trades must be proven to be "highly uncharacteristic, risky and highly profitable trades" in every case. In this matter, we considered trades made by certain experienced and sophisticated investors who had large and varied portfolios, such that potentially improper trades may not necessarily appear uncharacteristic or risky for such an investor. As stated by the Alberta Court of Appeal in *Walton,* to determine if a trading pattern is anomalous one should consider other events and news concerning the business and the personal financial circumstances of the particular investor (*Walton, supra* at para. 29). We also note that in this matter we consider allegations relating to transactions which did not ultimately crystallize, such that passing of material facts could have occurred but would not result in highly profitable trades. In our view, circumstantial evidence of opportunity to acquire knowledge of a material undisclosed fact, combined with evidence of well-timed and profitable trades, which are based on proven facts that are sufficiently linked to the inferences, can lead to a reasonably and logically drawn inference of knowledge.

[69] We found certain of the U.S. cases that Staff and/or the Respondents referred us to be relevant in the circumstances. While those cases are not binding on the Commission, we find them helpful in discussing the circumstances in which one can properly infer knowledge of material non-public information. For instance, in Larabee the court noted that "opportunity alone does not constitute proof of possession, opportunity in combination with circumstantial evidence of a well-timed and well-orchestrated series of events, culminating with successful stock trades, creates a compelling inference of possession by the tipper" (*Larrabee, supra* at 21, citing *Warde, supra* at 46-49, *SEC v. Singer*, 786 F.Supp.1158, 1164 (S.D.N.Y. 1992) and *Musella, supra* at 440-441).

[70] Our approach to circumstantial evidence in this case shall be that we can draw inferences from the evidence submitted to us, provided those inferences arise reasonably and logically from the facts established by the evidence. We reviewed the cases submitted to us by the parties concerning principles applied in other insider trading matters, but ultimately our decision is based upon the unique facts and circumstances of this case. Our conclusions in this matter shall be based upon the combined weight of clear, convincing and cogent evidence and the findings we have made, on a balance of probabilities (*Suman, supra* at para. 309*; F.H. v. McDougall, supra* at paras. 46 and 49).

4. Similar Fact Evidence

[71] Staff submitted that the Panel is entitled to consider and rely on the "similar fact" evidence and findings in one allegation to support the inference that Agueci tipped the other respective Respondents as to the alleged material facts in other allegations. Staff's secondary argument is that similar fact evidence may also be considered between or among various Respondents for one particular transaction.

[72] The parties have made a number of submissions on the use of similar fact evidence and the inferences that may or may not be drawn therefrom.

[73] The parties agree that the law on the use of similar fact evidence has been stated by the Supreme Court of Canada, as follows:

> Similar fact evidence is thus presumptively inadmissible. The onus is on the prosecution to satisfy the trial judge on a balance of probabilities that in the context of the particular case the probative value of the evidence in relation to a particular issue outweighs its potential prejudice and thereby justifies its reception.
>
> (*R. v. Handy*, [2002] 2 S.C.R. 908 at para. 55)

[74] The Panel has considered the submissions of the parties in respect of similar fact evidence, all of which were drawn from cases involving criminal or quasi-criminal prosecutions and none of which was in respect of an administrative tribunal hearing. In the view of the Panel, in the circumstances of this matter, the question of the use of similar fact evidence and the inferences that may or may not be drawn therefrom does not assist the Panel in its consideration of the allegations of tipping and insider trading.

[75] In light of our determination above, we will not consider the proposed similar fact evidence in this matter. We will consider the evidence tendered to us by the parties with respect to each allegation, and for each of the Respondents, separately. This finding is not intended to detract from our ability to make findings upon considering the combined weight of the relevant evidence tendered for each allegation in respect of each Respondent.

5. Credibility

(a) Staff's Submissions

[76] Staff submits that the Respondents' denial that they had knowledge of undisclosed material facts concerning the relevant reporting issuers makes credibility a crucial issue (*Suman, supra* at para 314). Staff submits that credibility assessments should be based on both demeanour of the witness in testimony and whether the testimony is in harmony with the facts and circumstances of the case.

[77] Staff submits that assessing the credibility of a party witness was examined in the case of *Springer v. Aird & Berlis LLP,* which cited with approval the statement of the British Columbia Court of Appeal:

> [t]he Judge is not given a divine insight into the hearts and minds of the witnesses appearing before him. Justice does not descend automatically upon the best actor in the witness box. The most satisfactory judicial test of truth lies in its harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.
>
> (*Springer v. Aird & Berlis LLP* (2009), 96 OR (3d) 325 at para. 14, citing *R. v. Pressley*, [1948] B.C.J. No. 63, 94 C.C.C. 29 (C.A.) at para. 12)

[78] In *Suman*, Staff submits, the Commission relied on the above passage and carefully considered whether the evidence put forward by the respondents was "in harmony with the preponderance of probabilities disclosed by the facts and circumstances" of that case. In a number of instances, the Commission rejected the respondents' testimony or evidence or found it evasive, not consistent with the weight of the evidence or not believable. In particular, Staff relies on the Commission's rejection of the respondents' evidence in *Suman* that their impugned purchases of securities were based on analysis of publicly available information, stating that their explanation: "was most likely an after-the-fact attempt to provide an innocent explanation for the Respondents' purchases of the Molecular Securities." (*Suman, supra* at para. 316(c)).

[79] Staff argues that a witness' demeanour may also inform the trier of fact's assessment of credibility. The Ontario Superior Court of Justice dealt with this type of analysis in *R. v. Anderson* and noted that the trial judge had relied upon her observations that under cross-examination the accused was "anticipatory and arrogant and at times argumentative. She went on to indicate 'the words themselves fail to adequately reflect the tone and timing and nature of the immediate, clipped times [sic] confrontational responses.'" (*R. v. Anderson*, [2007] O.J. No. 2622 at para. 19).

[80] However, Staff submits that while it is a crucial issue, credibility findings cannot be the sole basis for a finding of a fact in issue (*F.H. v. McDougall*, *supra* at para. 95, cited in *Suman, supra* at para. 318).

[81] Staff submits that the Commission had the opportunity to make observations of the testimony of Wing, Fiorillo, Gornitzki and Stephany and to assess whether their evidence was "in harmony with the preponderance of probabilities disclosed by the facts and circumstances". Staff makes submissions with respect to the credibility of each of the respondents who testified and argues that the direct evidence of each did not accord with the preponderance of the evidence. Citing examples, Staff submits Wing's explanations were unbelievable, Fiorillo and Gornitzki were argumentative, evasive and not credible and Stephany was argumentative, unbelievable and generally unable to provide plausible explanations for purchasing impugned shares.

[82] Certain of the Respondents argue that it is not open to Staff to suggest that a respondent ought not to be believed on a point if Staff did not pose that question to the respondent, in accordance with the principle in *Browne v. Dunn* ((1894), 6 R. 67 (H.L.) ("***Browne v. Dunn***")). In response to those submissions, Staff argues that the principle in *Browne v. Dunn* is designed to provide fairness to witnesses and parties by requiring counsel to give notice to witnesses whom the cross-examiner intends later to impeach (*R. v. Sadikov,* [2014] O.J. No. 376 (CA) ("***Sadikov***") at para. 49). Staff relies on the Court of Appeal's decision that:

> While counsel's failure to follow the *Browne v. Dunn* rule may resonate in a trial judge's findings of fact at the end of the trial, neither the rule nor any analogy to it prohibits findings of fact adverse to a witness' credibility absent compliance with *Browne v. Dunn*.
>
> (*Sadikov, supra* at para. 50)

[83] Staff also submits that the principle in *Browne v. Dunn* is "a rule of fairness that prevents the "ambush" of a witness by not giving him an opportunity to state his position with respect to later evidence which contradicts him on an essential matter" but is not, an absolute rule (*R. v. Verney*, [1993] O.J No. 2632 (CA)).

[84] Furthermore, certain of the Respondents argue that it was improper for Staff to attempt to discredit Agueci's compelled testimony, which states that she did not give material non-public information to anyone. Certain of the Respondents take the position that Agueci is to be considered Staff's own witness by virtue of the fact that Staff tendered excerpts of her compelled testimony into evidence at the Merits Hearing. They rely on the decision in *Walker* which states: "Crown counsel is not entitled to call his own witness a liar and invite the jury to believe the very opposite of what the witness said." (*R. v. Walker*, [1994] O.J. No. 827 at para. 31 ("***Walker***")). In response to those submissions, Staff argues that Staff did not tender into evidence the part of Agueci's compelled testimony that contained the denial referred to by the Respondents. Rather, counsel for Wing filed that portion of the compelled testimony (Exhibit 1132-B at p. 237, Q. 1088). Staff also submits that the *Walker* decision addressed a criminal matter and may not be applicable in the circumstances of this administrative proceeding. Lastly, Staff submits that *Walker* can be distinguished from this case, where there is ample circumstantial evidence in this matter from which the Panel can draw the reasonable and logical conclusion that a tip was given in many instances and, therefore, there is a sufficient basis in the evidence to disbelieve Ms. Agueci's denial.

(b) The Respondents' Submissions

[85] Fiorillo's counsel submits that Fiorillo was straightforward and credible and that his direct evidence was completely consistent with the preponderance of all of the relevant evidence. Any suggestion that a witness' memory would have been better closer to the event, he submits, makes sense in a civil proceeding where there have been pleadings, production of documents and refreshing of memory. However, in the context of a compelled examination, which was closer in time to the alleged misconduct, there were no pleadings, production of documents or review before attendance. This should be contrasted, Fiorillo argues, with evidence at the hearing for which there are known allegations and the witness has the ability to refresh his or her recollection.

[86] Furthermore, Fiorillo's counsel submits that while Fiorillo disagreed with the measuring yardstick proposed by Staff, which is of marginal, if any, relevance, his answers were honest and unremarkable. Fiorillo also takes issue with Staff's submission that he refused to admit topics such as phone calls with Agueci. He argues that he made hundreds of trades a year in his portfolio and his contacts with Agueci were part of the normal course of his daily life. Witnesses are legitimately open to criticism if, Fiorillo submits, they "over-egg the soufflé" in this manner and purport to deliver detailed, self-serving accounts of what would have been normal daily events. Therefore, he argues it is not fair or legitimate to criticize him for not having an actual recollection of everyday events and not purporting to embellish with a reconstructed version. On the contrary, Fiorillo submits, he testified that if Agueci had purported to give him illicit inside information he would have gone to his friend McBurney, which is cogent and credible, and that evidence makes eminent sense because it would have been outside the range of normal.

[87] Fiorillo's counsel submits that as a matter of fairness, if Staff wanted to assail his credibility, Staff ought to have put matters squarely to him with respect to each transaction, whether Agueci told him the material facts that they allege to have been disclosed. In oral closing submissions, Fiorillo's counsel submits that four questions ought to have been put to Fiorillo, for example: "I put it to you that Ms. Agueci told you about Pala's bid coming for Coalcorp. What do you say?" Fiorillo's counsel acknowledges that Staff is not obliged to do that, but submits that it is a principle of fairness that if Staff does not pose the question, Staff cannot later suggest that he ought not to be believed on the point.

[88] As stated above, counsel for Fiorillo also takes the position that it was improper for Staff to attempt to discredit Agueci's compelled testimony, in which she stated that she did not give material non-public information to anyone. He relies on the *Walker* decision to support the proposition that Staff is not entitled to call Agueci, its own witness, a liar and invite the Panel to believe the very opposite of what she said (*Walker*, *supra* at para. 31).

[89] Stephany's counsel submits that Stephany was a credible witness who was under no compulsion to testify, but did testify, even after she left the securities industry. Stephany takes the position that she gave explanations for her trading in EMC

and HudBay, which were plausible and corroborated by evidence, and that she candidly acknowledged she had no specific recollection with respect to Coalcorp, but the record of public filings rebuts Staff's conclusions and provides context. Stephany's counsel also argues that she was candid in her acknowledgement of frequent contact with Agueci and suggests that the Panel consider that there have been no allegations of misleading Staff, nor has Staff contended that she made statements or exhibited conduct reflecting a consciousness of guilt.

[90] Agueci's counsel submits that if Staff is found to have made out the necessary elements of section 16 of the Act against Agueci, it will have done so on the basis of the evidence of respondents whose testimony it seeks to discredit in relation to other allegations. Counsel for Agueci submits that Staff's arguments in respect of the credibility of the Respondents who traded are not persuasive and the fact that the Respondents simply disagree with Staff's version of events is not a sufficient basis on which to discount the direct evidence of those Respondents where the alternative explanation is entirely reasonable and supported by the evidence, particularly where Staff relies upon the evidence of these same Respondents for other purposes.

[91] Counsel for Gornitzki submits that, as the Panel noted in its motion decision, oral evidence of the Respondents is the best evidence of their conduct (*Re Eda Marie Agueci* (2013), 36 O.S.C.B. 12133 at paras. 9, 131 and 139). Gornitzki takes the position that his testimony was clear, cogent and convincing and that circumstantial evidence, read reasonably and fairly, corroborates his testimony. Counsel for Gornitzki agrees with Staff that a witness' testimony is to be assessed by considering the witness' demeanour in testimony and consistency of that testimony with other evidence and circumstances of the proceeding (*Suman, supra* at paras. 315-316). Gornitzki's counsel submits that his testimony was honest, forthcoming and in harmony with the preponderance of the evidence. Specifically, Gornitzki submits that he acknowledged the limitation of his memory where he was unable to recall details of some events. However, he argues that where his evidence conflicts with that of others, his evidence should be preferred. For example, he submits that his evidence ought to be preferred over Frizelle's, because of the weaknesses in Frizelle's memory.

(c) Legal Analysis and Conclusions

[92] We have considered all submissions on the issue of credibility and note that in weighing conflicting testimony of the witnesses in this matter, we have considered whether the evidence is in harmony with the preponderance of probabilities disclosed by the proven facts and circumstances in this case (*Suman, supra* at para. 316).

[93] We are mindful of the rule in *Browne v. Dunn* and have considered the totality of the evidence in coming to our conclusions.

[94] With respect to the parties' submissions on the *Walker* decision, that it would be improper for Staff to attempt to discredit Agueci's denial of tipping in her compelled testimony, we find that Staff did not file that part of the transcript that the Respondents state is pertinent, namely Agueci's denial. Therefore, that statement by Agueci was not part of Staff's evidence.

[95] In any event, we are not persuaded that the principle articulated in *Walker* applies in the administrative tribunal context where a respondent chooses not to testify and Staff tenders into evidence their compelled examination as a substitute.

III. THE ISSUES

[96] There are ten respondents in this matter and each is alleged to have engaged in certain conduct contrary to the Act and/ or the public interest. The issues, as considered for each of the Respondents include:

1. Did Gornitzki, while in a special relationship with Nu, inform Agueci of material facts that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

2. Did Agueci:

   (a) while in a special relationship with Nu, purchase or sell securities of Nu with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

   (b) while in a special relationship with Nu, inform Iacono, Raponi, Wing, Fiorini and/or Fiorillo of material facts relating to Nu that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

   (c) while in a special relationship with EMC, inform Iacono, Raponi, Stephany, Wing, Pollen, Fiorini and/or Fiorillo of material facts relating to EMC that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

(d) while in a special relationship with Northern Orion and/or Meridian, inform Pollen and Fiorini of material facts relating to Northern Orion and/or Meridian that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

(e) while in a special relationship with HudBay, inform Iacono, Raponi, Stephany, Wing, Pollen, Fiorini and/or Fiorillo of material facts relating to HudBay that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

(f) while in a special relationship with Coalcorp, inform Raponi, Stephany, Fiorini and/or Fiorillo of material facts relating to Coalcorp that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

(g) mislead Staff contrary to subsection 122(1)(a) of the Act and act contrary to the public interest?

(h) divulge the nature and content of her compelled examinations to others, contrary section 16 of the Act and act contrary to the public interest?

3. Did Iacono:

(a) while in a special relationship with Nu, inform Serpa of material facts that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

(b) while in a special relationship with Nu, purchase or sell securities of Nu with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(c) while in a special relationship with EMC, inform Serpa of material facts that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

(d) while in a special relationship with EMC, purchase or sell securities of EMC with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(e) while in a special relationship with HudBay, inform Serpa of material facts that were not generally disclosed, contrary to subsection 76(2) of the Act and act contrary to the public interest?

(f) while in a special relationship with HudBay, purchase or sell securities of HudBay with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(g) engage in conduct relating to the Second Secret Account that was contrary to the public interest?

4. Did Serpa:

(a) while in a special relationship with Nu, purchase or sell securities of Nu with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(b) while in a special relationship with EMC, purchase or sell securities of EMC with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(c) while in a special relationship with HudBay, purchase or sell securities of HudBay with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

5. Did Raponi:

(a) while in a special relationship with Nu, purchase or sell securities of Nu with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(b) while in a special relationship with EMC, purchase or sell securities of EMC with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(c) while in a special relationship with HudBay, purchase or sell securities of HudBay with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(d) while in a special relationship with Coalcorp, purchase or sell securities of Coalcorp with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

6. Did Stephany:

(a) while in a special relationship with EMC, purchase or sell securities of EMC with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(b) while in a special relationship with HudBay, purchase or sell securities of HudBay with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(c) while in a special relationship with Coalcorp, purchase or sell securities of Coalcorp with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

7. Did Wing:

(a) while in a special relationship with Nu, purchase or sell securities of Nu with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(b) while in a special relationship with EMC, purchase or sell securities of EMC with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(c) through Pollen, while in a special relationship with Northern Orion and/or Meridian, purchase or sell securities of Northern Orion and/or Meridian with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(d) while in a special relationship with HudBay, purchase or sell securities of HudBay with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(e) authorize permit or acquiesce in Pollen's non-compliance with Ontario securities law, such that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act?

(f) mislead Staff contrary to subsection 122(1)(a) of the Act and act contrary to the public interest?

8. Did Pollen:

(a) while in a special relationship with EMC, purchase or sell securities of EMC with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(b) while in a special relationship with Northern Orion and/or Meridian, purchase or sell securities of Northern Orion and/or Meridian with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

(c) while in a special relationship with HudBay, purchase or sell securities of HudBay with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

9. Did Fiorini:

   (a) while in a special relationship with Nu, purchase or sell securities of Nu with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

   (b) while in a special relationship with EMC, purchase or sell securities of EMC with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

   (c) while in a special relationship with Northern Orion and/or Meridian, purchase or sell securities of Northern Orion and/or Meridian with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

   (d) while in a special relationship with HudBay, purchase or sell securities of HudBay with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

   (e) while in a special relationship with Coalcorp, purchase or sell securities of Coalcorp with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

10. Did Fiorillo:

   (a) while in a special relationship with Nu, purchase or sell securities of Nu with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

   (b) while in a special relationship with EMC, purchase or sell securities of EMC with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

   (c) while in a special relationship with HudBay, purchase or sell securities of HudBay with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

   (d) while in a special relationship with Coalcorp, purchase or sell securities of Coalcorp with the knowledge of material facts that were not generally disclosed, contrary to subsection 76(1) of the Act and act contrary to the public interest?

[97] We have considered the evidence tendered, submissions and legal authorities cited to us by the parties with respect to each allegation, and for each of the Respondents, separately. However, for ease of reference, we provide our analysis and findings with respect to allegations relating to: (i) insider trading; (ii) tipping; (iii) authorizing, permitting and acquiescing in non-compliance with the Act; and (iv) conduct contrary to the public interest, under a separate section for each transaction relating to the relevant reporting issuer. The relevant law, our analysis and our findings pertaining to allegations relating to misleading Staff and breach of confidentiality are articulated in two separate sections below.

IV. RELEVANT LAW ON INSIDER TRADING, TIPPING, AUTHORIZING, PERMITTING OR ACQUIESCING IN THE NON-COMPLIANCE WITH THE ACT AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

A. Insider Trading and Tipping

[98] Subsection 76(1) of the Act prohibits the purchase or sale of securities of a reporting issuer by persons or companies in a special relationship with that issuer, who have knowledge of undisclosed material facts. Subsection 76(1) of the Act provides:

> No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

[99] Subsection 76(2) of the Act prohibits those in a special relationship with a reporting issuer from informing others of undisclosed material facts with respect to the reporting issuer. Subsection 76(2) of the Act provides:

> No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary course of business, another person or company of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

1. Special Relationship to the Issuer

[100] The Act expressly defines "person or company in a special relationship with a reporting issuer" in subsection 76(5) of the Act. Staff relies on three of those definitions at subsection 76(5)(b), (c) and (e) of the Act. At the relevant time, subsection 76(5) of the Act provided:

> **"person or company in a special relationship with a reporting issuer"** means,
>
> (a) a person or company that is an insider, affiliate or associate of,
>
> (i) the reporting issuer,
>
> (ii) a person or company that is proposing to make a take-over bid, as defined in Part XX, for the securities of the reporting issuer, or
>
> (iii) a person or company that is proposing to become a party to a reorganization, amalgamation, merger or arrangement or similar business combination with the reporting issuer or to acquire a substantial portion of its property;
>
> (b) a person or company that is **engaging in or proposes to engage in any business or professional activity with or on behalf of the reporting issuer** or with or on behalf of a person or company described in subclause (a)(ii) or (iii);
>
> (c) a person who is a director, officer or **employee** of the reporting issuer or of a person or company described in subclause (a)(ii) or (iii) or clause (b);
>
> […]
>
> (e) a person or company that learns of a material fact or material change with respect to the issuer from any other person or company described in this subsection, including a person or company described in this clause, and **knows or ought reasonably to have known** that the other person or company is a person or company in such a relationship. [emphasis added]

2. Material Fact and Assessment of Materiality

[101] The term "material fact" is defined in subsection 1(1) of the Act as follows:

> "material fact", where used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities

[102] A "fact", the Commission has determined, is information from an identifiable source that may reasonably be expected to have such information and is obtained in circumstances which would support the accuracy and reliability of it (*Re YBM Magnex International Inc.* (2003), 26 O.S.C.B. 5285 ("***YBM***") at para. 86).

[103] The test to be applied in determining whether a fact is a material fact is the objective market impact test set out in subsection 1(1) of the Act in the definition of "material fact". The question is whether the alleged material facts would be reasonably expected to significantly affect the market price or value of the securities at issue? As stated by the Commission in *YBM*:

> The test for materiality in the Act is objective and is one of market impact. An investor wants to know facts that would reasonably be expected to significantly affect the market price or value of the securities. The investor is an economic being and materiality must be viewed from the perspective of the trading markets, that is, the buying, selling or holding of securities. Price in an open market normally reflects all available information.
>
> (*YBM, supra* at para. 91)

[104] The Commission has recognized that a "material fact" is a fact-specific concept that varies in the particular circumstances of each case, including the size and nature of the issuer and its business operations and the type of information

relative to the company (*Donald, supra* at paras. 196-199, citing *Re Donnini* (2002), 25 O.S.C.B. 6225 ("***Donnini***") at para. 135, aff'd *Donnini, Re* [2005] O.J. No. 240, 194 O.A.C. 29 (Ont. C.A.). 76 O.R. (3d) 43; *Re Biovail* (2010), 33 O.S.C.B. 8914 at paras. 65, 69 and 81 and *YBM, supra* at para. 90). Therefore, materiality is contextual and the objective market impact test is conducted with regard to the context of an issuer's industry and the market (*Cornish v. Ontario (Securities Commission*), 2013 ONSC 1310 at para. 51).

[105] National Policy 51-201 – *Disclosure Standards* (2002), 25 O.S.C.B. 4492 ("**NP 51-201**") provides guidance as to what may be considered material. The policy states at section 4.2:

> In making materiality judgments it is necessary to take into account a number of factors that cannot be captured in a simple bright-line standard or test. These include the nature of the information itself, the volatility of the company's securities and prevailing market conditions. The materiality of a particular event or piece of information may vary between companies according to their size, the nature of their operations and many other factors. An event that is "significant" or "major" for a smaller company may not be material to a larger company. Companies should avoid taking an overly technical approach to determining materiality. …

[106] NP 51-201 also includes a list of examples of potentially material information at section 4.3. They include:

- changes in share ownership that may affect control of the company;
- major reorganizations, amalgamations, or mergers;
- take-over bids, issuer bids, or insider bids; and
- significant acquisitions or dispositions of assets, property or joint venture interests.

[107] The Commission determined that a proposal to acquire all of the shares of an issuer at a significant premium to the market price of those shares was a fact that would reasonably be expected to have a significant effect on the market price or value of the issuer's shares and options (*Suman, supra* at para. 11). The Alberta Securities Commission has likewise noted that "news of a publicly-traded company's acquisition by way of take-over, merger or otherwise would always be a material fact." (*Holtby, supra* at para. 511; rev'd on other grounds *Walton, supra*).

[108] The Commission has previously decided that a number of facts may be material when considered collectively:

> Materiality is a question of mixed law and fact, i.e. do the facts satisfy the legal test? Some facts are material on their own. When one or more facts do not appear to be material on their own, materiality must also be considered in light of all the facts available to the persons responsible for the assessment.
>
> (*YBM, supra* at para. 94)

[109] For example, in *Donald*, the panel found that the respondent learned three facts: confidential discussions relating to a potential acquisition, there was an ongoing interest by the acquiror and the then-current share price of the target issuer was undervalued (*Donald, supra* at para. 252). In that case, the panel determined that three facts "taken together, would, if generally disclosed on the day following the [date the respondent learned of the three facts…], reasonably be expected to have significantly affected the market price or value of Certicom's securities, and would therefore be a material fact." (*Donald, supra* at para. 271).

[110] Another factor in determining whether information was material at the relevant time is the importance attached to the information by those who knew about it (*Donnini, supra* at para. 152, citing *Securities and Exchange Commission v. Mayhew*, 121 F.344 (2d Cir. 1997); *Donald, supra* at paras. 256-257 and 260, citing *Securities & Exchange Commission v. Texas Gulf Sulphur Co.* (1968), 401 F.2d 833 (U.S. 2nd Cir. N.Y.) ("***Texas Gulf***") at 851).

[111] In assessing materiality, the American probability/magnitude test has been referred to by the Commission (*Donnini, supra*; *Donald, supra*). In *Donnini*, the panel quoted *Texas Gulf* in considering that in each case with contingent or speculative developments, whether facts are material will depend "at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity." (*Donnini, supra* at para. 130, citing *Texas Gulf, supra* at 849). Specifically, the Commission considered the U.S. Supreme Court's adoption of the probability/magnitude test stating that:

> Generally, in order to assess the probability that the event will occur, a factfinder will need to look to indicia of interest in the transaction at the highest corporate levels. Without attempting to catalog all such possible factors, we note by way of example that board resolutions, instructions to investment bankers, and actual negotiations between principals or their intermediaries may serve as indicia of interest ... No particular event

> or factor short of closing the transaction need be either necessary or sufficient by itself to render merger discussions material.
>
> (*Donnini, supra* at para. 133, citing *Basic Inc. v. Levinson*, 485 U.S. 224 (U.S. Ohio 1988))

[112] While we are not bound by American case law, we agree that in assessing materiality in this case it is important to consider indicia of interest in certain transactions at issue, particularly in instances where there were contingent or speculative developments in potential transactions. However, we are mindful of the dangers of hindsight and recognize that materiality of negotiations turns upon facts known at the time (*Re AiT Advanced Information Technology Corp.* (2008), 31 O.S.C.B. 712 at para. 228).

3. Generally Disclosed Information

[113] The Commission has considered the meaning of the terms "generally disclosed". NP 51-201 provides guidance as to what may be considered "generally disclosed" material information, including if it has been disseminated in a manner to effectively reach the marketplace and that public investors have had a reasonable amount of time to consider the information (NP 51-201 *Disclosure Standards*, Schedule "B" and Re *Rowan* (2008), 31 O.S.C.B. 6515 at para. 183).

[114] Subsection 3.5(4) of NP 51-201 suggests that companies may satisfy the "generally disclosed" requirement by using one or a combination of the following disclosure methods:

> 1. News releases distributed through a widely circulated news or wire service; and/or
>
> 2. Announcements made through press conferences or conference calls that interested members of the public may attend or listen to either in person, by telephone, or by other electronic transmission (including the Internet).

[115] In our view, completing either of the above is indicative of the information therein being generally disclosed.

4. Informing Others of an Undisclosed Material Fact

[116] As noted above, subsection 76(2) of the Act prohibits those in special relationship to a reporting issuer from informing others, other than in the necessary course of business, of an undisclosed material fact. Therefore, in order to "inform" of a material fact, the alleged tipper must provide an undisclosed material fact in their possession to another. The Court explained in *R. v. Landen*:

> [The Act] defines a person as an insider to include one who "learns of a material fact or material change with respect to the issuer…" The hearing panel in ATI stated that "That definition does not include a person who has received advice from an insider to trade shares…" By implication, the advice from an insider to trade shares is not material information.
>
> (*Landen, supra* at para. 97)

[117] By comparison, as noted by certain of the Respondents, the Alberta legislature expressly prohibits those in a special relationship with a reporting issuer with knowledge of a material fact or change to recommend or encourage another person or company to purchase, sell or enter into certain transactions involving securities of the reporting issuer. Subsection 147(3.1) of the *Alberta Securities Act*, R.S.A. 2000, c. S-4 (the "***ASA***") provides:

> **147(3.1)** No reporting issuer or person or company in a special relationship with a reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed shall recommend or encourage another person or company to
>
> (a) purchase or sell a security of the reporting issuer, or
>
> (b) enter into a transaction involving a security the value of which is derived from or varies materially with the market price or value of a security of the reporting issuer.

[118] In our view, the current language of subsection 76(2) of the Act in Ontario does not encompass recommendations or encouragement to purchase or sell securities and, therefore, such communications do not constitute "informing" of a material fact for the purpose of non-compliance with subsection 76(2) of the Act.

B. Authorizing, Permitting or Acquiescing in the Non-Compliance with the Act

[119] Section 129.2 of the Act provides as follows:

> For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[120] In administrative proceedings, the Commission has relied upon section 129.2 of the Act to ensure the persons or companies who authorized, permitted or acquiesced in misconduct are held accountable and legally responsible for breaches of Ontario securities law by attributing the person or company's knowledge to the corporation (*Re Goldpoint Resources Corp.* (2011), 34 O.S.C.B. 5478 ("***Goldpoint***") at paras. 184 and 236).

C. Conduct Contrary to Public Interest

[121] The Commission's public interest jurisdiction permits it to consider whether the conduct of a respondent warrants a finding that such conduct was contrary to the public interest, even in the absence of a technical breach of the Act (*Re The Securities Act and Morton*, [1946] O.R. 492 (C.A.) at para. 5). The Commission has exercised that jurisdiction in the context of an insider trading case in *Donald,* where the panel noted:

> Although a Panel may not find a technical breach of the provisions of the Act, it may still consider whether the conduct of a respondent warrants a finding that such conduct was contrary to the public interest. The Commission has stated in *Canadian Tire*, *supra* at 28 (QL):
>
> > Equally clearly in our view, the Commission should act to restrain a transaction that is clearly abusive of investors and of the capital markets, whether or not that transaction constitutes a breach of the Act, regulations or a policy statement.
>
> (*Donald, supra* at para 305, citing *Re Canadian Tire Corp.* (1987) 10 O.S.C.B. 857 ("***Canadian Tire***")).

[122] The Supreme Court of Canada considered the nature and scope of the Commission's public interest jurisdiction in *Asbestos.* In that case, the Supreme Court determined that:

> pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. However, the discretion to act in the public interest is not unlimited. In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally.
>
> (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37 ("***Asbestos***") paras. 45)

[123] The Supreme Court in *Asbestos*, found that the nature and scope of the Commission's public interest jurisdiction should be considered in context, having regard to the purposes of the Act, described at section 1.1, and recognizing that the purpose of the public interest jurisdiction is not remedial or punitive, but protective and preventative (*Asbestos, supra* at paras. 41 and 42). Therefore, in determining whether to exercise its public interest powers, the Commission should consider whether conduct has engaged the fundamental principles of securities regulation and the purposes of the Act as set out in sections 1.1 and 2.1 of the Act. Section 1.1 sets out the purposes of the Act as follows:

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.

[124] Subsection 2.1 of the Act provides fundamental principles for the Commission to consider in pursuing the purposes of the Act, including:

i. requirements for timely, accurate and efficient disclosure of information,

ii. restrictions on fraudulent and unfair market practices and procedures, and

iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[125] In *Donald*, the Commission found that there was no special relationship when Donald purchased securities with knowledge of undisclosed material facts gained from his role as an officer of a reporting issuer and, therefore, there could be no liability for insider trading under subsection 76(1) of the Act (*Donald, supra* at paras. 286-288). However, the Commission concluded that Donald's conduct amounted to conduct contrary to the public interest and stated as follows:

> Although we do not find any technical breach of subsection 76(1) of the Act, we find that Donald's purchases of Certicom shares directly engage the fundamental principles of securities regulation and the purposes of the Act. The unusual circumstances of this matter warrant a finding that Donald's conduct was contrary to the public interest.
>
> We find that Donald's purchases of Certicom shares in August and September 2008, while he was in possession of undisclosed material facts regarding RIM's interest in Certicom, constituted conduct contrary to the public interest. We find that Donald's conduct was abusive of the capital markets and to confidence in the capital markets.
>
> (*Donald, supra* at paras. 323-324)

[126] In *Danuke,* the Commission also held that the respondents' trading while in possession of undisclosed material facts was contrary to the public interest (*Re Danuke* (1981), 2 O.S.C.B. 31c ("***Danuke***") at 43c). In that matter, the Commission stated:

> It is also fundamental to the registration process that persons granted registration be honest and of good reputation. It is the concept of honesty and integrity, of fair dealing as between classes of investors, which is the issue here. It is in the public interest that registrants conduct themselves in accordance with these precepts and not take advantage of inside information.
>
> It is the Commission's view that all registrants ought to understand that they have a duty not to attempt to profit, directly or indirectly, through the use of insider information that they believe is confidential and know or should know came from a person having a special relationship with the source of the information.
>
> (*Danuke, supra* at 40c)

[127] Some of the Respondents made policy arguments with respect to the application of the Commission's public interest mandate in this case. For example, Gornitzki argued that finding a recommendation to be contrary to the public interest would lead to significant capital market inefficiencies that would flow from prohibiting corporate representatives from speaking positively about their companies and encouraging investor participation. Fiorini similarly submitted that the Commission's use of its public interest jurisdiction to seek to prohibit communications with insiders would exert a chill factor (ie. corporate representatives would not be able to attend conferences or meetings hosted by dealers to introduce them to institutional investors if a material corporate transaction is pending).

[128] Counsel for Fiorini and Fiorillo submitted that absent a breach or policy statement, the Commission ought to proceed with caution and act only where abuse to investors or the capital markets is readily apparent. Fiorini argued that the Commission should exercise caution where intervention in the public interest would amount to an amendment to existing policies (cited *Re Financial Models Inc.* (2005) O.S.C.B. 2184 at para. 54, citing *Canadian Tire, supra* at para. 128).

[129] Further, it was submitted that it is not open to the Commission to simply treat a finding of conduct contrary to the public interest as Staff's consolation prize in cases where Staff fails to prove a breach of the Act or as an automatic back-up or basket clause when Staff have failed to prove breaches. The Panel was asked to consider that Ontario has not prohibited insiders from making recommendations to purchase or sell a security so long as that recommendation does not involve the passing of material non-public information. Further, they argued that, had the legislature wished to address or prohibit generic stock recommendations in the context of insider trading laws, it could have done so (as is the case in Alberta) and that, therefore, Staff is proposing an unjustified extension of the law in general as it relates to non-industry participants in the context of insider trading allegations. In other words, it was submitted that the purpose of s.127 is not to simply override the legislative choices made in respect of the constituent elements of offences of illegal insider trading and tipping.

[130] We have remained mindful of these submissions in considering the allegations before us. In our view, our decision is not the appropriate forum to create law, especially in the absence of legislative intention, however we are cognizant that it is the Commission's mandate to protect investors and to foster confidence in the capital markets.

V. NU ENERGY – ANALYSIS AND FINDINGS ON ALLEGATIONS OF INSIDER TRADING, TIPPING AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

A. Overview of the Nu Energy Transaction

[131] During the relevant period, March 1, 2007 to June 30, 2007, Nu was a reporting issuer in Ontario and was a publicly traded company. On April 12, 2007, Nu's shares became listed on the TSX Venture Exchange ("**TSX-V**").

[132] Tony Frizelle, President and CEO of Nu, had a background in developing resource companies around the world. Frizelle's business model was to identify resource opportunities and to develop them to the point where they became attractive as a takeover target. In early 2006, he acquired licenses for two uranium projects in Cameroon, the Kitongo and Lolodorf properties, which were then put into Nu. During 2006, Frizzelle backed Nu into Canadian Resources Limited, a public company traded on an over-the counter exchange, and began raising financing (the company's name was later changed in January 2007 to Nu Energy Uranium Corporation). In the first half of 2006, Gornitzki was retained by Frizelle to assist the company in seeking financing and other potential corporate transactions. In his testimony before the Commission, Frizelle stated that in terms of overall strategy for Nu, Mega Uranium Ltd. ("**Mega**") was one potential candidate (Merits Hearing Transcript of October 30, 2013 at p. 108). Gornitzki confirmed in his testimony that during the relevant period, there were several potential strategic partners for Nu and that the ultimate goal would be to sell the company.

[133] In early 2007, Nu's management became acquainted with Mega through Gornitzki, who acted as an intermediary, and the companies discussed the potential of a joint venture to develop properties in Africa. In early March 2007, Frizelle was in Toronto attending the Prospectors and Developers Association Conference ("**PDAC**") and Nu hosted a dinner at Il Posto restaurant on the evening of March 4, which was attended by Sheldon Inwentash, CEO of Mega, Pat DiCapo, Managing Director of PowerOne (a company that had assisted with an earlier financing for Nu), and Gornitzki. During the dinner, no serious discussions were held between Mega and Nu, but Frizelle made an off-hand comment that Nu could be a candidate for acquisition for a price of $5 or more per share. In his testimony at the Merits Hearing, Frizelle indicated that this was meant as a humorous remark since Nu's shares were trading at approximately $3 or lower in March 2007.

[134] A second meeting was held later in the same week as PDAC in the offices of Mega and was attended by Frizelle, Inwentash, Gornitzki and DiCapo, among others. The purpose of the second meeting, according to Frizelle, was to discuss the potential joint venture for other properties in Africa and to outline for Mega and Power One the value of the assets held by Nu and what its development plan was; in Frizelle's words, this second purpose was to "give Mega and Power One a better appreciation as to the nature of our assets and what our work programme was" (Merits Hearing Transcript of October 30, 2013 at p. 91).

[135] Internal correspondence of Mega executives of March 24, 2007 supports that, by that date, Mega wished to purchase Nu rather than do a joint venture and that they had asked Gornitzki to act as a go-between in discussing a potential deal with Tony Frizelle.

[136] Frizelle returned to Toronto on Sunday, April 22, 2007 and had dinner the following evening, Monday April 23, 2007, with Gornitzki, DiCapo and others at Sotto Sotto restaurant (the "**April 23 Dinner**"). At the April 23 Dinner, Mega's potential acquisition of Nu was discussed in some detail, and it would appear that terms of the deal were being finalized. On the following day, April 24, 2007, Patricio, Mega's VP Corporate and Legal Affairs, advised Mega's Board of Directors by email that they were in negotiations with Nu and that the basic terms of the acquisition were two shares of Mega for every three shares of Nu. Later that same day, Frizelle emailed Inwentash at 4:28 p.m., stating that he understood that Mega was working on a term sheet that would reflect the basic terms outlined by DiCapo at dinner the previous evening. He also stated that "we are ready to move quickly" and wished to have the term sheet so that he might follow up with his Board. It is clear that at this point the deal was coming together quickly (Exhibit 133).

[137] On April 26, 2007, Gornitzki contacted McBurney to retain GMP's services to prepare a fairness opinion and provide financial advice to Nu. Mega and Nu were added to GMP's grey list on that same day.

[138] On April 27, 2007, prior to market opening, Mega and Nu jointly issued a press release announcing that they had entered into a "binding letter of intent" whereby Mega would acquire all of the outstanding shares of Nu. Nu's share price jumped 38% that day.

B. Were there Material Facts Relating to Nu that were Not Generally Disclosed?

[139] The question that the Panel must answer is whether any of the alleged material facts relating to Nu, or some or all of them taken together, were material facts that would reasonably be expected to have a significant effect on the market price or value of Nu securities, on the dates on which Staff allege that Gornitzki tipped Agueci, that Agueci tipped others, that Iacono tipped Serpa and that Agueci, Wing, Iacono, Raponi, Fiorillo, Fiorini and Serpa purchased Nu shares.

[140] Staff alleges that Gornitzki advised Agueci, other than in the ordinary course of business, of material facts related to the proposed acquisition of Nu prior to that information being generally disclosed. Staff submits that as of April 16, 2007, the following were material facts with respect to Nu that were not generally disclosed:

(a) Mega and Nu discussed the acquisition of Nu by Mega;

(b) Mega wanted to buy Nu, and had for some time;

(c) Frizelle, Nu's CEO, had a value expectation for the sale of Nu of $5 or more per Nu share;

(d) The end goal of Nu's discussions with Mega was to sell Nu to Mega at an attractive price; and

(e) Frizelle would be coming to Toronto on Sunday April 22, 2007 and there would be an opportunity to convince him that his value expectations could be achieved.

[141] Gornitzki submits the fifth alleged Nu Fact does not exist, namely that Frizelle was coming to Toronto to speak to Mega, and that the others do not rise to the level of accuracy or reliability required to constitute a fact. In any event, Gornitzki submits that if they are facts, there is an absence of indicia that the negotiations or contemplation of a transaction were actual and serious internally at Mega or Nu, which means the "facts" are not material.

[142] Wing also submits there was no material non-public information regarding Nu, as alleged. Wing argues that between April 16, 2007 and April 24, 2007 Pinetree Resources Partnership ("**Pinetree**"), whose parent company has the same chief executive officer as Mega, purchased shares in Nu. Wing takes the position that the Commission would have issued a Notice of Hearing to Pinetree if Staff believed that material non-public information existed on those dates. This matter does not involve allegations against Pinetree and, in our view, the conduct of that company is not determinative of whether undisclosed material facts existed at the time that the Respondents purchased Nu shares in this matter.

[143] First, we considered whether Mega and Nu discussed the acquisition of Nu by Mega on or before April 16, 2007. In our view, it is clear from the evidence that Mega had an interest in Nu as a potential acquisition target and that Mega had been acquiring junior uranium companies and paying substantial premiums on those acquisitions during the relevant period. Staff argues that Mega's interest in acquiring Nu began as early as February 2007 and that, at that time, they had discussions with Frizelle about Mega's interest in Nu's Cameroon assets and a potential joint venture.

[144] We accept Patricio's testimony that in February 2007, Frizelle did not want to give up control of the Cameroon assets and was more interested in doing a Joint Venture and working with Mega to find projects in other parts of Africa. Frizelle testified that, at that time, Nu was not interested in diluting its interest in properties, but rather wanted to develop properties in association with others who had stronger financial and technical resources.

[145] We also accept that, at the Il Posto dinner on March 4, 2007, the question was asked whether Nu would be a candidate for acquisition and Frizelle responded that, provided the price started with $5, Nu could be interested. Frizelle testified that this was a jocular remark made in passing; the evening was a social event and there was no serious discussion of an acquisition. In addition, when Mega and Nu representatives met later that week, according to Frizelle, the discussions concerned a potential joint venture and were an opportunity for Nu to outline its plan for developing the Cameroon properties, not a discussion of a Mega acquisition.

[146] On March 22, 2007 Gornitzki forwarded a document entitled "Fundamentals of the Newco JV [Joint Venture] for Africa between Mega Uranium Ltd and Nu Energy Uranium Corporation" to Patricio for Mega's consideration (Exhibit 79). On April 11, 2007, Frizelle emailed a member of Mega's Board of Directors to follow up on finalising the proposed Joint Venture with Mega and to advise that Gornitzki had been trying to get a draft proposal to them. In the written chronology of the events provided by Mega to Staff, Mega stated that as of April 11, 2007, there were no discussions with Nu about an acquisition, that Frizelle was only interested in doing a Joint Venture with Mega and that on or about April 17, 2007, internal discussions began at Mega about making an offer for Nu.

[147] In our view, it is not clear from the evidence presented that there had been serious discussions between Mega and Nu concerning the proposed acquisition on or prior to April 16, 2007. As stated above, to be a fact, the information should be from an identifiable source that may reasonably be expected to have such information and is obtained in circumstances which would support the accuracy and reliability of it (*YBM, supra* at para. 86). Neither of the principals of Nu or Mega provided evidence that discussions between the two issuers, concerning the potential acquisition, occurred on or prior to April 16, 2007. In fact, an internal email dated April 11, 2007 indicates that Mega would keep Frizelle going on the idea of the Joint Venture even though the ultimate intention was to buy Nu. Therefore, while there were internal discussions at Mega prior to April 16, 2007 concerning a potential acquisition of Nu, the evidence is not sufficiently clear that the parties discussed the deal on or prior to that date. Accordingly, the panel does not find that discussions between Mega and Nu concerning the proposed acquisition was a material fact as of April 16, 2007.

[148] The second alleged material fact that we considered was whether Mega wanted to buy Nu. We find that Mega had a strong interest in acquiring Nu, which was outlined in Mega's written chronology and also confirmed in several internal emails circulated among Mega's senior management. In an email dated March 24, 2007, Patricio wrote to Inwentash and Stewart Taylor ("**Taylor**"), Mega's President, that Mega had asked Gornitzki to "talk Tony F[rizelle] into actual acquisition by Mega…Not JV" and "We should just buy them. Jacob agrees and is working on Tony F" (Exhibit 81). On April 11, 2007, Patricio wrote to Taylor expressing that Gornitzki thought Frizelle would be surprised at how Nu's shares would not perform to Frizelle's expectations when moved to the TSX-V and stated that "We [Mega] want to buy them, but do not want to do this JV deal." (Exhibit 89). Gornitzki acknowledged in his testimony that on or about March 24, 2007 he reported to Frizelle that Mega wanted to buy Nu. Therefore, the Panel finds that it was a fact, on or before April 16, 2007, that Mega wanted to buy Nu ("**Nu Fact One**"). Our analysis of materiality of that fact follows below.

[149] Third, we considered whether Frizelle, Nu's CEO, had a value expectation of $5 or more per Nu share. We found Frizelle's testimony to be credible with respect to his strategy for Nu and that he had discussed his strategy with Gornitzki. Frizelle stated that his business model was to make the company as attractive as possible for a potential takeover at some stage, whether that meant making progress on the individual projects, or looking at other projects using the extra resources of partners. He further testified that his value expectation for Nu was approximately $5 per share, a value he had discussed with Gornitzki from time to time and which he had mentioned, albeit facetiously, at the Il Posto dinner. Therefore, the Panel finds that it was a fact, on or before April 16, 2007, that Frizelle, Nu's CEO, had a value expectation of $5 or more per Nu share ("**Nu Fact Two**"). Our analysis of materiality of that fact follows below.

[150] The fourth alleged material fact that we considered was whether the end goal of Nu's discussions with Mega was to sell Nu to Mega at an attractive price. We find that in early March 2007, managements of Nu and Mega and Gornitzki met to discuss a potential joint venture between the companies with respect to development of properties in Africa. We are also satisfied that Frizelle's intention was to make Nu as attractive as possible for a potential takeover at some stage and that his goal for pursuing Mega as a strategic investor was ultimately "to sell the company [Nu] at an attractive price." (Merits Hearing Transcript of October 30, 2013 at p. 107). Therefore, the Panel finds that it was a fact, on or before April 16, 2007, that the end goal of Nu's discussions with Mega was to sell Nu to Mega at an attractive price ("**Nu Fact Three**"). Our analysis of materiality of that fact follows below.

[151] Fifth, we considered whether Frizelle would be coming to Toronto on Sunday April 22, 2007 and that there would be an opportunity to discuss strategic initiatives between Nu and Mega. The evidence indicates that Frizelle's flight was booked on April 19, 2007 (Exhibit 128). Evidence tendered with respect to the purpose of that trip supports that Haywood had coordinated a marketing schedule for Frizelle to meet with investors on April 24 and 25, 2007 and that schedule was sent to Frizelle on April 23, 2007 (Exhibit 131). While it is likely that this marketing schedule would have been organized before April 23, there is no evidence that established when it was known that Frizelle would be in Toronto for the week of April 23. Further, we are not satisfied that there is clear evidence that Frizelle's trip had been planned prior to April 16, 2007 or that as of April 16, 2007, the trip was for any purpose other than the Haywood marketing meetings. Accordingly, the panel does not find that it was a material fact as of April 16, 2007 that Frizelle was coming to Toronto on Sunday April 22, 2007 to, among other things, discuss strategic initiatives between Nu and Mega.

[152] In light of the foregoing conclusions, we turn to the assessment of the materiality of the three facts as of April 16, 2007. In applying the objective market impact test of materiality, we consider whether Nu Fact One, Nu Fact Two and/or Nu Fact Three would be reasonably expected to significantly affect the market price or value of Nu's securities (subsection 1(1) of the Act). We find that Nu Fact One, Mega's interest in an acquisition of Nu, which was discussed by senior management at Mega, expressed to Gornitzki and reported to Frizelle in March 2007, and considered in context with Mega's history of acquiring junior uranium companies, would be reasonably expected to have a significant effect on the market price of Nu's securities.

[153] The Panel does not agree with Gornitzki's submission that any expression of interest by Mega in an acquisition prior to April 24 or 25, 2007 was mere "passing comment", rejected by Nu, and not accompanied by any acts by Mega internally or externally – to advance that interest. First, we find that Mega had been an active acquirer of other junior uranium companies in early 2007, that they had conveyed to Gornitzki an interest in acquiring Nu and had discussed a takeover internally, which meant that the deal had serious potential to occur, whether or not the final agreement had been reached by April 16, 2007. We agree that news of the real potential for a publicly-traded company's acquisition by way of take-over, merger or otherwise, whether or not specifying the potential acquisition price, would typically be a material fact (*Holtby, supra* at para. 511; rev'd on other grounds *Walton, supra*). Second, on March 24, 2007, in an internal email to Mega management regarding the potential acquisition, Patricio stated "Jacob agrees and is working on Tony F" (Exhibit 81). We find that at the time of that email, Gornitzki was aware of Mega's interest in an acquisition. In fact, he admittedly reported the interest to Frizelle. Finally, after the April 23 Dinner, the deal came together immediately, which supports a reasonable inference that there had been more than a passing interest in the deal prior to that day. Further, the day after the April 23 Dinner, Frizelle followed up on the discussion that had taken place the previous evening. It is clear from the evidence that the terms of the deal had been discussed at the April 23 Dinner and that, by this time, Frizelle was in favour of moving forward with the proposed acquisition of Nu, which supports a reasonable inference that Nu's CEO had prior awareness of Mega's position.

[154] We find that Nu Fact Two and Nu Fact Three, considered collectively with Nu Fact One were also material facts on April 16, 2007. While some facts are material on their own, multiple facts that may not appear to be material in isolation, considered in light of all the facts available and taken together, can be found to be material facts (*YBM, supra* at para. 94; *Donald, supra* at para. 271). In this case, we find that on April 16, 2007 Gornitzki knew three facts: (i) there was an ongoing interest by Mega to acquire Nu; (ii) Nu's CEO had a value expectation of $5 per share for the sale of Nu; and (iii) the end goal of Nu's discussions with Mega was to sell Nu to Mega at an attractive price (the "**Nu Material Facts**").

[155] We conclude that the Nu Material Facts were not generally disclosed on or before April 16, 2007 as contemplated by subsection 3.5(2) of NP 51-201 or otherwise.

C. Gornitzki

[156] Staff submits that Gornitzki engaged in conduct contrary to subsection 76(2) of the Act by providing material undisclosed facts relating to Nu to Agueci by telephone on April 16, 2007. Gornitzki submits that there were no material facts on that date and that, in any event, he merely gave Agueci his opinion that Nu was "a good company".

1. Was Gornitzki in a Special Relationship with Nu?

[157] Staff submits that Gornitzki was in a special relationship with Nu by virtue of subsection 76(5)(b) of the Act due to his involvement in business or professional activity with Nu. Staff's evidence included documentation of a Non-Disclosure Agreement signed between Gornitzki and Frizelle on May 30, 2006. Gornitzki acknowledges in his written closing submissions that he was in a special relationship with Nu.

[158] We find that Gornitzki was in a special relationship with Nu during the relevant period, pursuant to subsection 76(5)(b) of the Act.

2. Did Gornitzki have Knowledge of the Nu Material Facts on April 16, 2007?

[159] Based on the evidence, we find that, as of April 16, 2007, Gornitzki had knowledge of the Nu Material Facts as follows:

(a) Nu Fact One – Mega wanted to buy Nu, and had for some time. We are satisfied that "in March 2007, through Jacob Gornitzki, Mega approached Nu about a possible acquisition by Mega" as stated in Mega's chronology of events (Exhibit 64). We also accept that the March 24, 2007 email from Patricio to Inwentash and Taylor described Gornitzki's involvement stating "We should just buy them. Jacob agrees and is working on Tony F." (Exhibit 81). Further, Gornitzki acknowledged in his testimony that on or about March 24, 2007 he reported to Frizelle that Mega wanted to buy Nu.

(b) Nu Fact Two – Frizelle, Nu's CEO, had a value expectation for the sale of Nu of $5 or more per Nu share. Gornitzki testified that he did not recall Frizelle mentioning the $5 amount at the Il Posto dinner. We find Frizelle's testimony that he had discussed this specific price expectation with Gornitzki on several occasions to be credible. Frizelle testified that he and Gornitzki would have had discussions from time to time as to what Frizelle's expectations were and that they were consistent with the $5 figure quoted at the Il Posto dinner. We find that his expectation was conveyed to Gornitzki prior to April 16, 2007.

(c) Nu Fact Three – The end goal of Nu's discussions with Mega was to sell Nu to Mega at an attractive price. Frizelle testified that Gornitzki knew the end goal was to sell Nu to Mega and that was why they were pursuing Mega as a strategic investor. Gornitzki confirmed that Frizelle had identified Mega as a strategic partner for a Joint Venture, but that the end goal was for Mega to buy Nu. During cross-examination, this question was put to Gornitzki:

> Q. And there was an end goal in mind, right? And Mr. Frizelle's end goal was to sell to Mega at an attractive price?
>
> A. At the end of the day, yes ….
>
> (Merits Hearing Transcript of February 4, 2013 at pp.53-54).

[160] We conclude that Gornitzki had knowledge of the undisclosed Nu Material Facts on or before April 16, 2007.

3. Did Gornitzki Inform Agueci of the Nu Material Facts?

[161] Gornitzki submits that, even if he knew some or all of the alleged Nu Material Facts, he did not impart such facts to Agueci and his opinion that Nu was "a good company" does not meet the standard of "informing" required by subsection 76(2) of the Act.

[162] During the relevant period, Gornitzki frequently used the offices of GMP when he was in downtown Toronto between meetings. On such occasions, he was in contact with Agueci to coordinate boardroom availability for his use or to ask Agueci to make copies of documents, etc. Although Gornitzki and Agueci had frequent contact during this period, their relationship was only casually friendly. As multiple witnesses have testified, Agueci was a chatterbox and loved to talk about stocks with everyone she met.

[163] It is not disputed that on April 16, 2007, Gornitzki called McBurney's line at GMP, Agueci answered, and that they spoke for approximately eight minutes at 6:25 p.m. Staff alleges that Agueci learned of the Nu Material Facts from Gornitzki during this phone call. In her compelled testimony, Agueci stated that all of the information that she had about Nu came from Gornitzki. Gornitzki's best recollection of the call was that he asked Agueci for McBurney's whereabouts and if she asked him about Nu at that time, he would have told Agueci that Nu was a "good company and she should buy it" (Merits Hearing Transcript of February 3, 2013 at p. 166).

[164] We find that Agueci made no efforts to hide her interest in Nu, sending emails to other GMP staff, asking others outside GMP what they thought of the stock, and even telling McBurney that Jacob had told her to buy Nu and asking what he thought. McBurney testified that in response to Agueci's inquiry, he stated something to the effect that 'Jacob is not a stupid man'. We find that Agueci communicated openly about Nu in emails from April 16 to April 23, 2007.

[165] While it is possible that Gornitzki may have told Agueci the Nu Material Facts on that call, we find it equally plausible that he did not tell Agueci anything more than that Nu was a good stock; i.e. that he recommended the stock to her. We also find it plausible that Gornitzki may have discussed the potential deal with one or more of the investment banking professionals at GMP, in the context of their potential mandate with Nu. It is possible that, in the course of day to day business at GMP, Agueci may have overheard speculation among others at GMP about Nu and Gornitzki's role with the company. No direct evidence was presented that would indicate that Gornitzki informed her of any of the specifics of the Nu Material Facts known to him. Nor was the circumstantial evidence sufficient to satisfy us that the inference that Gornitzki informed Agueci of the Nu Material Facts should be drawn in this instance.

[166] We are cognizant that if a respondent puts forth an equally plausible alternative explanation, it would be improper for the Panel to infer improper intent (*Podorieszach, supra* at para. 78). Therefore, we are not satisfied on a balance of probabilities that there is clear, convincing and cogent evidence that Gornitzki informed Agueci of the Nu Material Facts on April 16, 2007.

D. Agueci

[167] Having found that there was not sufficient evidence to satisfy us on a balance of probabilities that Agueci learned of the Nu Material Facts on the date alleged by Staff, we make no further analysis or findings with respect to allegations that Agueci informed others or traded with knowledge of the Nu Material Facts, contrary to subsections 76(1) and 76(2) of the Act.

E. Wing, Iacono, Raponi, Fiorillo, Fiorini and Serpa

[168] Having found that there was not sufficient evidence to satisfy us on balance of probabilities that Gornitzki informed Agueci of the Nu Material Facts, we make no further analysis or findings with respect to allegations that Iacono informed Serpa of the Nu Material Facts, contrary to subsection 76(2) of the Act or that Wing, Iacono, Raponi, Fiorillo, Fiorini and Serpa traded with knowledge of the Nu Material Facts, contrary to subsection 76(1) of the Act.

F. Did Gornitzki, Agueci, Wing, Iacono, Raponi, Fiorillo, Fiorini and/or Serpa Engage in Conduct Contrary to the Public Interest?

1. Gornitzki

[169] Staff submits that, even if the Panel does not find that Gornitzki tipped Agueci, Gornitzki acted contrary to the public interest by recommending the purchase of Nu shares while in a special relationship with Nu and by discussing Nu's prospects with Agueci while subject to a duty of confidentiality to Nu. Staff refers the Panel to the *Donald* decision.

[170] Gornitzki submits these arguments should be rejected because: (a) Gornitzki did not discuss Nu's prospects with Agueci; (b) even if expressing a positive opinion could be said to be a recommendation, the law in Ontario does not prohibit recommending a stock; and (c) in any event, Staff's argument is inconsistent with the purposes and scope of the public interest powers of the Commission and, if accepted would have negative effects on the market.

[171] We find that, during the relevant period, Gornitzki was an experienced market participant who had many years of experience in merchant banking and advising corporations on financing and other corporate transactions. We are persuaded that it is possible that Gornitzki told Agueci that Nu was a good stock and recommended that she purchase it. We also find that the circumstances in this case are somewhat different from *Donald* since, in that case, Donald was an officer of a reporting issuer (and the acquiring firm) and after learning of the potential acquisition, he purchased stock in the target company. While it is true that Gornitzki was in a special relationship with Nu and that he owed them a duty of confidentiality, we are not convinced that his conduct was contrary to the public interest if he merely informed Agueci that Nu was a good company. At most, we would agree with Staff that his remarks were indiscreet given his relationship with the two companies involved, but we do not find that there is a basis to conclude his conduct was contrary to the public interest or abusive of the capital markets.

2. Agueci

[172] Staff submits that Agueci's conduct in illegal tipping, illegal trading and in relation to the First Secret Account was contrary to the public interest. We make no findings regarding the allegations of illegal tipping and trading since we are not satisfied that Gornitzki informed Agueci of the Nu Material Facts. In respect of the allegation as to the First Secret Account, Staff submits that Agueci was not allowed to have any undisclosed association with a securities account given her employment at GMP and that her impersonation of her mother when placing orders for Nu shares in the First Secret Account was deceptive and fell below the standard of behaviour expected of employees of registrants.

[173] Agueci submits that it is not open to the Commission simply to treat a finding of conduct contrary to the public interest as Staff's consolation prize in cases where Staff fails to prove a breach of the Act. Further, Agueci asks that the Panel consider that Ontario has not prohibited insiders from making recommendations to purchase or sell a security so long as that recommendation does not involve the passing of material non-public information. Agueci cites *Asbestos* for the submission that the Commission's public interest jurisdiction is not unlimited (*Asbestos, supra* at para. 41). Further, Agueci argues that the purpose of section 127 of the Act is not to simply override the legislative choices made in respect of the constituent elements of offences of illegal insider trading and tipping.

[174] As an employee of a registrant, Agueci was fully aware that she was not allowed to have an interest in undisclosed accounts and that she was required to report all trading activity to GMP. We heard evidence that Agueci was required each year to attest to her understanding of GMP's compliance policies and procedures. We also heard recordings of brokerage calls in which Agueci can be heard placing orders for the First Secret Account while stating that she is her mother. The voice on these recordings was confirmed by witnesses familiar with Agueci's voice, including McBurney and Staff who interviewed her. We find that not only did Agueci open the First Secret Account in her mother's name, Agueci also impersonated her mother when placing orders for the First Secret Account.

[175] Although Agueci was not a registrant, as an employee of a registrant, she ought to be held to a higher standard of conduct and her conduct fell far below the high standard expected of her. The integrity of the regulatory framework for registrant firms depends upon the adherence of member firms to appropriate compliance structures. For Agueci to circumvent the compliance structure of GMP is not simply an employment matter. Her conduct engaged fundamental principles that the Commission considers in pursuing the purposes of the Act and in particular "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants" (section 2.1 of the Act). We consider her conduct in impersonating her mother in order to acquire securities to be abusive of the capital markets and, therefore, find that Agueci's conduct was conduct contrary to the public interest.

3. Wing, Iacono, Raponi, Fiorillo, Fiorini and Serpa

[176] We do not find that Wing, Iacono, Raponi, Fiorillo, Fiorini or Serpa's conduct in respect of Nu was contrary to the public interest.

G. Conclusions

[177] With respect to allegations relating to Nu, the Panel is not satisfied that on or before April 16, 2007 Gornitzki advised Agueci of the Nu Material Facts, contrary to subsection 76(2) of the Act or the public interest. Accordingly, the Panel does not find that Agueci informed any of the other Respondents of the Nu Material Facts, as alleged, or that Iacono informed Serpa of those facts contrary to subsection 76(2) of the Act or the public interest. Similarly, the Panel makes no finding that Agueci, Wing, Iacono, Raponi, Fiorillo, Fiorini or Serpa traded with knowledge of the Nu Material Facts, contrary to subsection 76(1) of the Act or the public interest.

[178] Furthermore, the Panel is not satisfied that Gornitzki's possible recommendation of Nu as a good stock represents conduct contrary to the public interest.

[179] However, the Panel does find that Agueci's conduct and involvement with the First Secret Account, her lack of disclosure of that account to her employer and her impersonation of her mother when placing trades in that account constitute conduct contrary to the public interest.

VI. EMC – ANALYSIS AND FINDINGS ON ALLEGATIONS OF INSIDER TRADING, TIPPING AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

A. Overview of the EMC Transaction

[180] During the relevant period, May and June 2007, EMC was a reporting issuer in Ontario. Staff submits that in early 2007, SXR Uranium One ("**SXR**") and EMC began negotiations relating to a transaction whereby SXR would purchase all outstanding EMC shares at a premium. Both companies were in the uranium extraction business, but at different stages of development. EMC's market capitalization was $1.3 billion and SXR's was $6.3 billion. By January 11, 2007, SXR and EMC had executed a Confidentiality and Non-Disclosure Agreement in furtherance of assessing the feasibility of entering into a possible business transaction.

[181] On May 4, 2007, Paul Matysek ("**Matysek**"), the President and CEO of EMC, announced a trading blackout on insiders due to a pending material transaction. On May 5, 2007, Jean Nortier ("**Nortier**"), SXR's Executive Vice President Corporate Affairs, advised SXR's directors that negotiations to acquire EMC had concluded and that the parties wished "to bring the transaction to an announceable stage as soon as possible" (Exhibit 315). Nortier's email attached a document entitled "Project Grizzly: Summary of Business Points" which included details and terms of the transaction, including a proposed exchange ratio of 1.05 SXR shares for every EMC share.

[182] On May 7, 2007, Matysek approached Kevin Reid, Senior Vice President of Investment Banking at GMP, to ask whether GMP would provide financial advice to EMC's special committee in connection with SXR's proposal. Reid then sought GMP approval to proceed with the mandate, added both issuers to GMP's grey list, as he reasonably expected GMP to participate and come into possession of material undisclosed information, and sent EMC a draft engagement letter, which noted that the engagement was to assist EMC in a transaction that would involve the acquisition of EMC by a third party.

[183] On May 10, 2007, the EMC board of directors met to appoint a special committee to continue negotiations with SXR. EMC and SXR exchanged a draft business combination agreement on the same day. SXR had previously performed extensive analysis, including a tour of EMC properties, reserve and resource analysis and financial modelling to arrive at an exchange ratio of 1.15 SXR per EMC share, which was previously 1.05 as noted above. Reid testified that the transaction information would have been shared with GMP by May 10, 2007 so that GMP could determine if the share exchange ratio was fair. GMP, having received formal approval for the engagement from EMC's Board of Directors, commenced preparation of a fairness opinion and board presentation that day.

[184] GMP delivered a draft fairness opinion to the EMC special committee on May 15, 2007, indicating that, in GMP's opinion, the transaction was fair from a financial point of view, which was then presented to the EMC board of directors the next day.

[185] On May 18, 2007, Market Regulation Services contacted EMC to inquire about irregular trading activity in its shares. As a result, EMC issued a press release after the market close that day, indicating that it was "in exclusive negotiations with respect to a potential sale of the company" but that "[n]o assurance can be given that the negotiations will be successful" (Exhibit 412; the "**1st EMC Announcement**"). The following trading day, EMC's stock price jumped 10.6%. Further activity occurred over the next few weeks, in furtherance of the transaction.

[186] On June 4, 2007 at 8:18 a.m. EST, EMC and SXR issued a joint press release declaring that they had signed a definitive agreement whereby SXR would acquire all the shares of EMC at a ratio of 1.15 SXR shares for each share of EMC, representing a value of $19.12 per EMC share based on SXR's closing price on June 1, 2007 or a 28% premium to the 20 day volume weighted average trading price for the period ending May 17, 2007 (Exhibit 471, the "**2nd EMC Announcement**").

B. Were there Material Facts Relating to EMC that were Not Generally Disclosed?

[187] The question that the Panel must answer is whether any of the alleged material facts relating to EMC, or some or all of them taken together, were material facts that would reasonably be expected to have a significant effect on the market price or value of EMC securities, on the dates on which Staff allege that Agueci tipped others and that Wing, Pollen, Fiorillo, Stephany, Fiorini, Raponi, Iacono and Serpa purchased EMC shares.

[188] Staff submits that the following were material facts with respect to EMC that were not generally disclosed at the relevant time: (a) SXR proposed to acquire EMC; (b) the negotiations between SXR and EMC had effectively concluded and that the parties were working to bring the transaction to "an announceable stage"; (c) the terms of the proposal were that it was to be an acquisition of 100% of the outstanding common shares of EMC; (d) the acquisition was by way of a share exchange

ratio, initially proposed in early May 2007 at 1.05:1 and by May 10, 2007 at 1.15 SXR share for each EMC share; and (e) the ratio represented a significant premium to EMC's share price.

[189] First, we considered whether (a) SXR proposed to acquire EMC and (b) negotiations between SXR and EMC had effectively concluded such that the parties were working to bring the transaction to "an announceable stage". The evidence indicates that on Saturday, May 5, 2007 the SXR board was informed by Nortier that negotiations were concluded with regard to the acquisition of EMC and that the parties were moving the deal to an "announceable stage". We find that as of May 5, 2007, SXR had proposed to acquire EMC ("**EMC Fact One**") and negotiations between SXR and EMC had effectively concluded.

[190] We also considered whether: (c) the offer terms included an acquisition of 100% of the outstanding common shares of EMC, (d) the offer was by way of share exchange ratio of 1.15 SXR share for each EMC share, and (e) the consideration represented a significant premium to EMC's share price. We note that in the May 5, 2007 email from Nortier to the SXR board the attachment indicated the share ratio of 1.05 SXR shares for every EMC share. On May 10, 2007, the SXR board received a presentation with extensive analysis on the deal with a share exchange ratio of 1.15 SXR per EMC share. We find that as of May 10, 2007, SXR's proposal included an acquisition of all outstanding common shares of EMC, by way of a share exchange of 1.15 SXR share per EMC share, which represented a significant premium (together with EMC Fact One, the "**EMC Facts**").

[191] In light of the foregoing conclusions, we turn to the assessment of the materiality of the EMC Facts. In applying the objective market impact test of materiality we consider whether the EMC Facts would be reasonably expected to significantly affect the market price or value of EMC's securities (subsection 1(1) of the Act).

[192] The EMC Facts above must be considered in context, including that: EMC was a smaller company than SXR in terms of market capitalization ($1.3 billion versus $6.3 billion); SXR and EMC executed a confidentiality agreement in January 2007; on May 4, 2007, EMC implemented a blackout period on insiders; and by May 5, 2007, the SXR board was aware that negotiations with EMC had concluded and that they were working towards an "announceable stage" with a proposed share exchange ratio. These are indicative of the advanced stage of the transaction and support a finding that the EMC Facts were material. In our view, the deal had progressed sufficiently to place a value on the target company and to engage financial advisors, further supporting that the transaction was probable. In the past, the Commission has found that a proposal to acquire all of the shares of an issuer at a significant premium to the market price of those shares was a fact that would reasonably be expected to have a significant effect on the market price or value of the issuer's shares (*Suman, supra* at para. 11). We concur.

[193] We find that EMC Fact One, SXR's proposal to acquire EMC, would be reasonably expected to have a significant effect on the market price of EMC's securities and, therefore, was a material fact as of May 8, 2007. We also find that the EMC Facts, considered collectively, were material facts (*YBM, supra* at para. 94; *Donald, supra* at para. 271). We find that during the relevant period, the EMC Facts would be reasonably expected to have a significant effect on the market price of EMC's securities (collectively, the "**EMC Material Facts**").

[194] We also considered whether the EMC Material Facts were generally disclosed during the relevant period. We accept the testimony of Ciccone, Chief Compliance Officer at GMP in 2007-2008, that issuers were placed on the GMP grey list when GMP obtained material non-public information about the issuer. As noted above, both EMC and SXR were placed on the GMP grey list on May 7, 2007. We also conclude that the 1st EMC Announcement of May 18, 2007 was triggered by the Market Regulation Services inquiry into irregular market activity and that this press release was the first indication to the public that EMC was in exclusive negotiations with respect to a potential sale of the company. The identity of the acquirer, SXR, and terms of the proposal were not publicly announced until the 2nd EMC Announcement on June 4, 2007. We also accept the testimony of George that, prior to the aforementioned announcements, the SXR proposal to acquire EMC had not been disclosed to the market. For these reasons, in our view the EMC Material Facts were not generally disclosed until the 1st EMC Announcement of May 18, 2007 and the 2nd EMC Announcement of June 4, 2007, as contemplated by subsection 3.5(2) of NP 51-201 or otherwise.

C. Agueci

[195] Staff submits Agueci engaged in conduct contrary to subsection 76(2) of the Act by providing undisclosed material facts relating to EMC to Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi and Iacono.

1. Was Agueci in a Special Relationship with EMC?

[196] The Panel finds that Agueci was in a special relationship with EMC pursuant to subsection 76(5)(c) of the Act as of May 7, 2007. On May 7, 2007, upon being approached by Matysek to act for EMC, Reid requested that EMC and SXR be placed on GMP's grey list at 3:36 p.m. and emailed McBurney, Chairman of GMP, and Harris Fricker, Vice-Chairman of GMP for approval to act on behalf of EMC at 7:17 p.m. As a result of their mandate between at least May 7, 2007 and June 4, 2007, GMP was in a special relationship with EMC pursuant to subsection 76(5)(b) of the Act because GMP was engaged in a business or professional activity with or on behalf of the reporting issuer, EMC. Accordingly, Agueci was in a special relationship with EMC

pursuant to subsection 76(5)(c) of the Act during the relevant time because she was an employee of GMP, which we found to be a company described in subsection 76(5)(b) of the Act.

2. Did Agueci have Knowledge of the EMC Material Facts Beginning on May 8, 2007?

[197] The testimony of multiple GMP executives supports that in May 2007 Agueci sat in close proximity to the GMP deal team, including McBurney and Reid, and that she would have overheard conversations in their open concept office layout. Certain emails pertaining to SXR's proposed acquisition of EMC were either sent directly to her or were accessible by her, as Agueci had access to McBurney's emails and to the GMP corporate directory. Agueci knew a corporate mergers and acquisitions ("**M&A"**) file was being opened for EMC on May 8, 2007 and she also booked travel arrangements on May 11, 2007 for the GMP team to deliver the fairness opinion to EMC.

[198] Based on the evidence, we are satisfied that Agueci had knowledge of the following facts:

1. on or before May 8, 2007, Agueci knew that SXR proposed to acquire EMC. On May 7, 2007, Reid emailed Fricker and McBurney for GMP's approval to act on behalf of EMC (the "**Approval Email**"). Also on May 7, 2007, both EMC and SXR are placed on the GMP grey list. On May 8, 2007, Agueci was copied on an email, which included the Approval Email and which indicated that EMC may receive a share exchange offer from SXR. Agueci received copies of the GMP's grey lists and had access to McBurney's emails;

2. at the latest by May 11, 2007, Agueci knew that the terms of SXR's proposal included (i) an acquisition of all outstanding common shares of EMC; (ii) a share exchange of 1.15 SXR share for each EMC share; and (iii) a significant premium. On May 10, 2007, Reid emailed Jason Yeung, a vice-president at GMP, to start working on a fairness opinion. Reid testified that by May 10, 2007, he would have had the share exchange ratio in order to determine if the offer was fair. Agueci sat in close proximity to the GMP deal team and had access to the corporate directory, which contained the fairness opinion.

[199] However, we were not satisfied that Agueci had personal knowledge of the stage of negotiations between EMC and SXR, as alleged by Staff.

[200] We conclude that Agueci had knowledge of the EMC Material Facts beginning on or before May 8, 2007 and at the latest by May 11, 2007, which were not generally disclosed at the time that she learned of them.

D. Did Agueci Inform, and did Wing, Pollen, Fiorillo, Stephany, Fiorini, Raponi, Iacono and/or Serpa Purchase, EMC Securities, with Knowledge of the EMC Material Facts?

[201] Agueci takes the position that the direct evidence, which should be preferred over inferences drawn from circumstantial evidence, at most supports that she recommended to other Respondents that they purchase a security or advised them that she was purchasing a particular security. She relies upon *ATI* and *Landen* in support of her submission that in Ontario, unlike in Alberta, advice from an insider to trade is not material information (*Re ATI Technologies Inc.* (2005), 28 O.S.C.B. 8558 ("***ATI***") at paras. 63-64; *Landen, supra* at para. 97). Agueci submits that Staff has failed to establish on a balance of probabilities that any of the Respondents who traded in the impugned securities received material non-public information from her. Agueci notes that she had no reason or motive to pass such information and received no benefit from the alleged tipping.

1. Wing and Pollen

[202] On Sunday, May 13, 2007, Wing called Agueci at 2:42 p.m. for three minutes and at 8:58 p.m. for four minutes. Approximately one hour later, at 10:16 p.m. Toronto time, Wing emailed his contact, Blaise Friedli ("**Friedli"**), at SG Private in Switzerland under the subject "EMC" stating: "Blaise, your client would like to buy 20,000 shares with a $16 limit. I think the name is Energy Metals. Call my cell before opening but he wants the order placed by the opening. I think it is TSE listed. Thanks. Dennis" (Exhibit 346). The order was filled at the opening of the market on May 14, 2007 for the Pollen SG Account. On the same day at 10:06 a.m., Wing directed the purchase of an additional 20,000 shares of EMC for the Pollen SG Account, which was executed through RBC Dominion Securities. Later that day, Wing called Agueci at 2:39 p.m. for two minutes, following which he placed an order to purchase a further 20,000 EMC shares in his Fort House account at 3:40 p.m. On May 15, 2007, Wing directed a purchase of a further 40,000 EMC shares in the Pollen SG Account, for a total of 100,000 EMC shares held collectively by Wing and Pollen, purchased within a two-day span, from May 14 to 15, 2007, and immediately following contact with Agueci.

[203] On June 4, 2007, following the 2nd EMC Announcement, Wing sold the entirety of EMC positions held in the Pollen SG Account and his personal Fort House account.

[204] We find that the aggregate of Wing's and Pollen's purchases of EMC shares in the amount of $1,561,986 to be significant (Exhibit 1020). Wing submits that he placed a National Bank purchase of $497,365 in November 2007, which was a

bigger purchase than the EMC purchase in his personal account. In fact, on November 26, 2007 his account statement records a short sale of 10,000 shares of National Bank and on November 28, 2007 it records a purchase of 10,000 shares of National Bank to cover the short sale. That was the nature of the transaction, which was covering a short position and not a true purchase.

[205] The fact that Wing and Pollen had not bought EMC before May 14, 2007 is noteworthy, but not conclusive. We agree with Wing that the impugned trades were not necessarily uncharacteristic or unusually risky for Wing and/or Pollen. Wing and Pollen both held commodity stocks and Wing was purchasing junior resource stocks at the time. The trades were, however, highly profitable – 16% for Pollen and 23% for Wing in a 21-day holding period, which we find to be a short timeframe for the size of the profit. We also note that, while Wing did place a limit order of $16 for the first order in the Pollen SG Account, the price at which he placed the limit exceeded the high of $15.97 that day and the closing price of $15.10 on the prior trading day for EMC shares and is, therefore, somewhat more akin to a market order and indicative of his interest in making a quick purchase of EMC shares. Wing's rush to fill his order of EMC shares by placing a limit at that price supports the inference that Agueci informed Wing of the EMC Material Facts.

[206] Furthermore, Wing shorted SXR stock in the Pollen SG Account on May 30 and June 1, 2007, prior to the 2nd EMC announcement. As stated above, the 1st EMC announcement advised of a potential acquisition of EMC, but was silent on the identity of the acquirer. While there are no allegations against Wing or Pollen with respect to those specific transactions, we find Wing's conduct in shorting the acquirer, SXR, and purchasing the target company, EMC, prior to the public announcements, is corroborative of an inference that he had been informed of the EMC Material Facts.

[207] Wing testified that he relied upon an article dated May 10, 2007, which indicated that SXR might make a bid for EMC and that EMC was a takeover target. Yet, Wing did not sell the stock short until May 30. We heard evidence from multiple witnesses that the uranium market was "hot" in the spring of 2007. Wing's evidence was that he relied on reports, but the document he relies upon shows recommendations of EMC as a top pick as early as June 2005. We note that Wing was aggressively buying EMC stock – four orders within 2 days in two accounts. We do not find it credible that either the article of May 10, 2007 or reports spurred his persistent trading activity days later. Wing also did not explain why he preferred EMC over other uranium companies mentioned in the articles to which he referred us.

[208] Wing also testified that Friedli of SG Private was an experienced portfolio manager and provided him with investment advice. However, the evidence supports that Wing instructed SG Private to purchase EMC on behalf of Pollen. Further, Wing admitted that he directed 99% of the trades in the Canadian sub-account of the Pollen SG Account. Furthermore, Wing could not recall if Friedli advised him about the stocks at issue in this proceeding.

[209] Despite their personal relationship, we also do not find Wing's testimony credible that he and Agueci never spoke about stocks because a review of the evidence provided by others and Agueci's email history indicates that she discussed stocks with just about everyone. Agueci stated, and Respondents and witnesses confirmed, that she told everyone, including taxi drivers, about her stocks.

[210] We also found Wing to be less than forthcoming and selective in his responses at the Merits Hearing with respect to the involvement of SG Private and Friedli in Pollen's trades. When initially questioned about Pollen's connection to a Fort House account, Wing stated that the SG account at Fort House does not indicate for each trade the specific client or account to which it is related. The next hearing day, Wing stated that the SG account at Fort House looked at in this proceeding was just for trades on behalf of Pollen and he could not recall other accounts SG may have traded in at Fort House. Furthermore, in the Institutional Account Application Form for the SG Private account at Fort House, Wing checked a box which indicated that the Investment Advisor ("**IA**"), who in this case was Wing himself, had no direct or indirect interest in the account. In his testimony, Wing admitted that he incorrectly filled out the form with respect to the IA's interest in the account, which should have stated that there was a relationship, through Pollen, between the IA (ie. Wing) and the SG account at Fort House.

[211] Wing submits that there was a seven-day delay between the time Staff alleges Agueci learned of the EMC Material Facts and when she allegedly informed him of them. We do not accept this characterization. We are persuaded that Agueci learned of SXR's proposal to acquire EMC beginning on May 8, 2007, continued to obtain further EMC Material Facts by May 11, 2007 and booked travel for GMP executives to deliver their ultimate fairness opinion to the EMC board on May 11, 2007. In our view, a tipper need not alert a tippee to material undisclosed facts immediately after receiving them. Between May 7 and May 11, 2007, GMP became increasingly involved in its mandate for EMC and details of the SXR's proposed acquisition were becoming firmer. By May 13, 2007, when Agueci spoke to Wing, she knew that the likelihood of the transaction occurring had increased.

[212] Wing also submits that he and Agueci spoke every day and, therefore, trades were bound to be in proximity to communications. We are not persuaded that it was coincidental that he placed orders for purchases of EMC shares on May 13 and 14, 2007. We are satisfied that the timing of Wing's and Agueci's communications to the placement of the orders and the rush to fill by the opening support the inference that Agueci informed Wing of the EMC Material Facts.

[213] Wing takes the position that he did not try to hide the EMC purchases because he purchased them in his personal account. In our view, hiding trades in another account is not by itself determinative of whether someone is trading on inside information, but it is a relevant consideration. Wing's purchase of 20,000 EMC shares in his personal account alone would not necessarily demonstrate a significant exposure to the stock, whereas the total purchases, including Pollen's, for a combined amount of over $1.5 million, is substantial. Moreover, a Canadian regulator would not necessarily have access to trades in the Pollen SG Account and, thus, would not be aware of the cumulative amount Wing and Pollen had purchased. Therefore, we find that Wing was hiding his exposure to EMC, which supports an inference that he had knowledge of the EMC Material Facts.

[214] Although Wing takes the position that he did not try to hide the EMC purchases, the Panel notes that when Wing instructed Friedli to purchase EMC shares in the Pollen SG Account, he did so by referring to a fictional client in the third person: "Blaise, your client would like to buy 20,000 shares…he wants the order placed by the opening…Thanks. Dennis" (Exhibit 346). In his testimony, Wing admitted that the "he" referred to in the email cited is actually Wing himself. We find that Wing was trying to obscure his involvement in the Pollen SG Account, an account that traded in the impugned securities, which further supports an inference that he had knowledge of the EMC Material Facts.

[215] Wing also submits that he did not demonstrate a consciousness of guilt because he did not sell after the 1st EMC Announcement. In our view, it is more likely in the circumstances that he did not sell after the 1st EMC Announcement because he had been informed of the EMC Material Facts, which supported that the deal would likely close.

[216] Wing further submits that he purchased EMC because he read research reports that recommended EMC and because the uranium market was "hot". However the Brendan Kyne report that Wing referred us to was not produced and not made an exhibit at the Merits Hearing. Rather, a Stockchase webpage listing that report, among others, was produced and made an exhibit. We were also not provided with an explanation as to why Wing chose EMC among the numerous uranium companies recommended in other reports upon which Wing testified he relied. Finally, EMC was recommended in various research reports and news articles as early as 2005 and 2006; Wing did not provide a reason why he bought EMC in May 2007, just when Agueci learned of the EMC Material Facts.

[217] We acknowledge that there is no evidence that Wing has ever been implicated in Commission enforcement proceedings over the course of his 35 year career, and he was aware of the consequences of insider trading in another matter. However, exposure to insider trading investigations in the past does not assist us in determining whether Wing had been informed of the EMC Material Facts in the circumstances of this case. While Wing's motivation for his impugned conduct is not clear to us, motive is not a prerequisite to a finding of insider trading.

[218] Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Wing, an experienced and knowledgeable market participant, would have purchased a stock based on a simple recommendation from Agueci.

[219] We infer, based on the combined weight of the evidence, that Agueci informed Wing of the EMC Material Facts. We find that Agueci learned of the EMC Material Facts on or before May 8, 2007 and at the latest by May 11, 2007. Wing and Agueci spoke on Sunday, May 13, 2007, in the afternoon and again in the evening. Approximately one hour later, Wing emailed Friedli to place an order to buy EMC shares. Wing continued to purchase EMC in both the Pollen SG Account and his personal account over the following two days, May 14 and 15, 2007, for a total purchase of 100,000 shares. The purchases were very proximate to phone calls with Agueci, which supports that Wing had the ability and opportunity to acquire knowledge of the EMC Material Facts and that he executed well-timed purchases of EMC shares. Furthermore, the aggregate purchase amount of $1,561,986, was significant even for Wing and Pollen. Finally, the trades were highly profitable – at a 16% return for Pollen and at a 23% return for Wing over a short 21-day holding period.

[220] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Wing of the EMC Material Facts on May 13, 2007 and, therefore, that Wing purchased, and directed purchases for Pollen of, EMC shares on May 14 and 15, 2007 with knowledge of the EMC Material Facts while they were not generally disclosed.

2. Fiorini

[221] Staff submits that Agueci was one of five unidentified callers on Fiorini's phone record on May 14, 2007 and that during that contact, she informed Fiorini of the EMC Material Facts. Counsel for Agueci and Fiorini, respectively, submit that an inference that calls from an unknown caller to Fiorini came from Agueci is not sufficiently linked to the established primary facts.

[222] In her evidence-in-chief, George explained that GMP`s phone records do not track calls by employee extension number. Therefore, Staff was only able to obtain cell phone records that track calls being made from a cell phone to a particular GMP extension, but was not able to obtain records of specific GMP extensions to track outgoing calls.

[223] On May 14, 2007, Fiorini purchased 2,000 shares of EMC and on May 17, 2007 Fiorini purchased a further 2,500 shares of EMC. On May 22, 2007, the first trading day in Canada after the 1st EMC Announcement, Fiorini sold his entire position in EMC.

[224] Fiorini's total purchase amount of $68,055 was significant relative to his then-annual salary, which Fiorini estimated to be approximately $200,000 in 2007 (Exhibit 1020). His profit of 23% was significant over a short time frame of eight days.

[225] Fiorini testified in his compelled examination that he would meet Agueci on a regular basis for coffee during the work day and stated that Agueci was a good source of information about the mining sector in the market – rumours, gossip and innuendo – and she would discuss such information in their meetings over coffee, which would give Fiorini a sense of the lay of the land as he tried to build up the mining business at Desjardins. Fiorini testified that he and Agueci would communicate occasionally by phone, using their respective office phone lines and not their cell phones, and sometimes by email, but regularly would meet over coffee to chat about the markets and people.

[226] The Panel places no weight on unidentified calls. In our view, it would be speculation or conjecture to accept that an unidentified call to Fiorini on May 14, 2007 was a call from Agueci.

[227] While we acknowledge that Fiorini's purchases of EMC shares were well-timed relative to the 1st EMC Announcement, we are not satisfied that Staff provided clear, convincing and cogent evidence that Agueci informed Fiorini of the EMC Material Facts and, therefore, we cannot find that Fiorini's conduct in connection with EMC constituted insider trading contrary to subsection 76(1) of the Act.

3. Fiorillo

[228] On Saturday, May 12, 2007, Agueci called Fiorillo for one minute. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. On Sunday, May 13, 2007 at 12:23 p.m., Fiorillo called Agueci for 13 minutes. The following day, phone records show two calls from Agueci to Fiorillo for one minute each at 8:43 p.m. and 8:56 p.m. On May 15, 2007 at 8:51 a.m., Fiorillo called Agueci for nine to 10 minutes. Forty minutes later, Fiorillo placed an order for 5,000 EMC shares and then another 5,000 EMC shares. On Wednesday, May 16, 2007, Agueci called Fiorillo at 8:17 a.m. for two minutes and Fiorillo called Agueci at 8:30 a.m. for five to six minutes. On May 17, 2007, Fiorillo placed three orders for EMC shares in amounts of 5,000, 5,000 and 15,000, respectively. On Friday, May 18, 2007, Fiorillo placed a final order for 5,000 EMC shares at 12:55 p.m. At 2:32 p.m. that same day, less than 2 hours after his last order, EMC's stock was halted. Later that day EMC issued the 1st EMC Announcement. On Thursday, May 24, 2007, Fiorillo sold 5,000 shares. On June 4, 2007, EMC and SXR issued the 2nd EMC Announcement and Fiorillo sold his remaining position.

[229] In his examination-in-chief, Fiorillo attempted to downplay the extent of his relationship with Agueci, saying she was a chatter-box. In cross-examination, it became apparent that they were friends, who met for drinks, dinners, and Fiorillo invited her to social gatherings on his boat. Fiorillo says that Agueci "would almost get to the point of pestering me at times" (Merits Hearing Transcript of January 20, 2014 at p. 63). We find it inconsistent that Fiorillo regarded Agueci as a pest, but then would return Agueci's calls on a Sunday afternoon if he wasn't interested in what Agueci had to say at the time.

[230] Furthermore, we do not find Fiorillo's testimony credible that it was not possible he spoke to Agueci about EMC. When Fiorillo was confronted with his compelled examination, he reversed his position and stated that it is possible he and Agueci spoke about EMC after all. We note that Fiorillo bought EMC shares forty minutes after speaking with Agueci on May 15, 2007. GMP delivered a draft fairness opinion to the EMC special committee on May 15, 2007, which was then presented to the EMC board of directors by GMP employees whose travel had been arranged by Agueci.

[231] Fiorillo submits that he traded so frequently that it is quite likely that calls with Agueci could have been in close proximity to trades he made. In fact Fiorillo lists approximately 28 trades that he did between May 12 and May 29, 2007, which were also in close proximity to calls with Agueci. We accept that Fiorillo was a frequent trader and it is more than likely that he made trades in stocks other than the impugned trades that occurred in close proximity to calls with Agueci.

[232] We find that Fiorillo's purchases of EMC shares for a collective amount of $613,469, which was among the largest dollar value stock purchases in a 14 month period, were not insignificant (Exhibit 1020). Fiorillo submits that the impugned trades were a small percentage of his income and net worth. As Fiorillo implied in his testimony and in his closing submissions, his net worth was between $33 million and $100 million, it would follow that most, if not all, his purchases likely would be a small percentage of his net worth. Also, his percentage return of 18% for EMC shares was substantial over the 20-day holding period, which we find to be a very short timeframe for the size of the profit.

[233] We agree with Fiorillo that his trades in EMC shares were not necessarily uncharacteristic or unusually risky for Fiorillo, in that he frequently invested in other resource stocks in gold, silver, oil and gas, coal, uranium and base metals during the relevant time. We accept that Fiorillo was a prolific trader, who implemented various strategies in his trading. For example, he sold some EMC stock on May 24, 2007, after the 1st EMC Announcement, to crystallize a profit of 20%. Fiorillo stated in cross-

examination that if EMC suddenly shot up, he would not have been buying the stock. Yet he began purchasing stock on May 15, 2007 at $14.95 and continued buying it on May 18, 2007, just prior to the 1st EMC Announcement, at $16.35, an increase of $1.40 or 9.4%. In our view, his conduct in this regard supports the inference that Agueci informed Fiorillo of the EMC Material Facts.

[234] We accept the testimony of Aiello, Fiorillo's investment advisor in 2007-2008, that Fiorillo's purchases of EMC shares in 2007 were not solicited, which indicates that Fiorillo directed the purchases. We note that Fiorillo testified that it is "very highly probable" he read an article as early as March 14, 2007 about EMC's target price being boosted by an analyst, yet he did not buy the stock until shortly after his conversation with Agueci in mid-May.

[235] Fiorillo also testified that at the time of his purchases of EMC shares, the uranium sector was "hot". This characterization of the uranium sector does not assist us in our analysis, because it is not unusual for takeovers to occur when markets are "hot" in that specific sector.

[236] Fiorillo testified that he read extensively: newspapers, newsletters, research reports, blogs and watched financial news, such as the Business News Network ("**BNN**"), in addition to speaking with many individuals in the investment industry. Fiorillo presented a Sprott Securities research report dated February 14, 2007 that listed over 20 uranium stocks that Sprott recommended. Yet, the only two uranium companies that Fiorillo bought were EMC and Cameco prior to May 15, 2007. Fiorillo acknowledged that he saw articles as early as March 2007 that recommended EMC, yet he did not purchase any EMC shares until after his conversations with Agueci on May 12, 13 and 15, 2007.

[237] We also heard evidence and considered submissions concerning Fiorillo's good character and concern for his reputation. We do not doubt McBurney's testimony that in his dealings with Fiorillo, Fiorillo's integrity was at the "top end of the scale" (Merits Hearing Transcript of December 10, 2013 at p. 46). However, we are not persuaded that McBurney knew all aspects of Fiorillo's trading activities. Therefore, McBurney's character reference is not of great assistance to the Panel in the circumstances. We are also not persuaded by Fiorillo's evidence that if he received material non-public information from Agueci, he would caution Agueci and tell McBurney. While we agree that a good reputation is important in business, it does not assist the Panel with these deliberations. As stated above with respect to Wing, while Fiorillo's motivation for his impugned conduct is not clear to us, motive is not a prerequisite to a finding of insider trading.

[238] Fiorillo provided the Panel with an extensive list of individuals with whom he discussed markets, investments and trading ideas, including several well-known and recognized market experts. He was clearly a sophisticated and well-connected market participant.

[239] Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Fiorillo, an experienced and knowledgeable market participant, would have purchased a stock based on a simple recommendation from Agueci.

[240] While we accept Fiorillo's evidence that he traded frequently, watched the market avidly and spoke to many people about stocks, we do not find Fiorillo's explanations of why he bought EMC shares to be in accord with the preponderance of the evidence. They do not sufficiently explain the timing of his contact with Agueci and the proximity to his trading.

[241] We infer, based on the combined weight of the evidence, that Agueci informed Fiorillo of the EMC Material Facts. We find that Agueci learned of the EMC Material Facts on or before May 8, 2007 and at the latest by May 11, 2007. Fiorillo and Agueci communicated over the May 12 and 13, 2007 weekend. Within days of Agueci learning of SXR's bid to acquire EMC and after her communication with Fiorillo, Fiorillo purchased 40,000 shares of EMC worth $613,469, a significant amount, even for someone of Fiorillo's substantial net worth and it was among the largest dollar value purchases by Fiorillo over the relevant period. The purchases were proximate to contact with Agueci, which supports that Fiorillo had the ability and opportunity to acquire knowledge of the EMC Material Facts and that he executed well-timed purchases of EMC shares. Furthermore, the trades were highly profitable at an 18% return over a short holding period of 20 days.

[242] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Fiorillo of the EMC Material Facts on or before May 15, 2007 prior to the opening of markets that day and, therefore, that Fiorillo purchased EMC shares on May 15, 17 and 18, 2007 with knowledge of the EMC Material Facts while they were not generally disclosed.

4. Stephany

[243] On Friday, May 11, 2007, Stephany and Agueci played tennis together in the evening. The following day, Agueci called Stephany for one minute, Stephany called Agueci back for one minute and at 7:48 p.m. Agueci called Stephany for three minutes. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. On Sunday, May 13, 2007, Agueci called Stephany for one minute at 10:31 a.m., 24 minutes later Stephany called Agueci for one minute and at 11:04 a.m. Agueci called Stephany for eight minutes. Later that day, Stephany called Agueci twice, at 3:58

p.m. for six minutes and again at 4:12 p.m. for 10 minutes. On Monday, May 14, 2007, Stephany called Agueci for one minute at 9:03 a.m. and Agueci called her back at 9:04 a.m. for five minutes. Approximately 33 minutes later, Stephany bought 1,000 EMC shares. That same day Stephany called Agueci at 11:23 a.m. for one minute and purchased 500 EMC shares at 1:20 p.m. That evening at 8:44 p.m., Agueci called Stephany for 12 minutes. On May 16, 2007, Stephany bought a further 1,000 EMC shares.

[244] On May 18, 2007, EMC issued the 1st EMC Announcement that it had entered into exclusive negotiations concerning a potential sale of the company. Monday, May 21, 2007, was the Victoria Day holiday in Canada. On May 22, 2007, the first trading day in Canada after the 1st EMC Announcement, Stephany sold 500 shares in her personal account. Approximately 28 minutes later Stephany emailed Agueci suggesting they meet for coffee that day. On May 23, 2007, Agueci called Stephany at 9:14 a.m. for one minute. On May 24, 2007, Stephany sold 2,000 EMC shares at 9:42 a.m. for $17.77 per share and then bought 1,000 EMC shares at 11:02 a.m. for $18.25 per share. On June 4, 2007 the definitive agreement was announced in the 2nd EMC Announcement and Stephany placed the order to sell the balance of her EMC shares at 8:46 a.m.

[245] In the course of her testimony, Stephany acknowledged she did not do research on stocks, but rather relied on information from others when making investment decisions. The thrust of her evidence was that she could not recall specific events in the relevant period. Her testimony was that she thought EMC was in the uranium industry and at the time EMC was the "news of the day". Stephany also thought she heard about EMC from many people. Overall, Stephany's testimony was of little assistance to the Panel.

[246] We also found Stephany's testimony to be inconsistent in certain respects. In her examination-in-chief, Stephany testified that she did not know about one of Agueci's personal relationships with someone who had bought Agueci a condo. However, in cross-examination, Stephany admitted that she and Agueci spoke about everything. Stephany also testified that she and Agueci communicated by phone and email regularly. They had been friends for 12 years.

[247] In our view, Stephany's aggregate cost of purchase of EMC prior to May 24 (when she sold and then immediately bought back half the number of shares) in the amount of $38,679 is significant, as it was approximately 38% of her annual salary at the time (Exhibit 1020). On our review of the evidence, Stephany's purchases of EMC shares prior to May 24, 2007 are the second largest dollar value holdings relative to her stock purchases in 2007. We also note that prior to the 2nd EMC Announcement, Stephany purchased an additional 1,000 EMC shares on May 24, 2007 for $18.25, having sold 2000 shares just 80 minutes earlier at $17.77.

[248] We find that these purchases were significantly large and risky relative to her income and particularly since the purchases were made on margin. Although the purchases of EMC shares were not out of character by comparison to other junior resource stocks Stephany purchased, they were risky relative to the potential loss of money invested. In her own words, Stephany acknowledged that her investment in EMC was significant by comparison to her salary and that at the time she remortgaged her house to invest in the stock market. We are not persuaded that Stephany did not recall details of an admittedly significant purchase at a time when she remortgaged her house to make investments in the market and bought on margin.

[249] Stephany's purchases were also highly profitable. She earned a 16% return in a seven to nine day holding period, which we find to be a very short timeframe for the size of the profit.

[250] We do not find Stephany's explanation that she would not have sold her entire position before June 4, 2007 if she had had material non-public information to be persuasive. Stephany took her profit after the 1st EMC Announcement. Her explanation does not accord with the preponderance of the evidence because if Agueci informed her of the EMC Material Facts, including that a formal proposal had been made, the 1st EMC Announcement provided an opportune time for her to sell. Furthermore, Stephany repurchased 1000 shares prior to the 2nd EMC Announcement at a price higher than her last sale.

[251] Stephany submits that there was a 10-day delay between Agueci allegedly obtaining knowledge of the EMC Material Facts and the date Staff alleges she informed Stephany of those facts. We do not accept this characterization. As stated above, we are persuaded that Agueci learned the EMC Material Facts beginning on or before May 8, 2007, learned of further EMC Material Facts at the latest by May 10, 2007 and even booked travel for delivery of the fairness opinion on May 11, 2007. In our view, a tipper need not alert a tippee to material facts immediately upon receiving them. Between May 7 and May 10, 2007, GMP became increasingly involved in its mandate for EMC and details of the SXR's proposed acquisition were becoming firmer. By May 12 to 14, 2007, when Agueci spoke to Stephany, and prior to Stephany's first purchase of EMC shares, she knew that the likelihood of the transaction occurring had increased.

[252] Again, Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Stephany, an experienced market participant, would have purchased a stock based on a simple recommendation from Agueci.

[253] We infer, based on the combined weight of the evidence, that Agueci informed Stephany of the EMC Material Facts. We find that Agueci learned of the EMC Material Facts on or before May 8, 2007 and at the latest by May 11, 2007. Stephany and Agueci played tennis on the evening of May 11, 2007; over the weekend May 12 and 13, 2007 there were four phone calls

longer than 1 minute, in addition to four phone calls of one minute each between them. They also spoke on the morning of May 14, 2007 and approximately half an hour later, Stephany made her first purchase of EMC shares. Just four days later, EMC issued the 1st EMC Announcement. The purchases were proximate to contact with Agueci, which supports that Stephany had the ability and opportunity to acquire knowledge of the EMC Material Facts and that she executed well-timed purchases of EMC shares. Furthermore, the trades were highly profitable at a 16% return over a very short holding period of seven to nine days. Also, as stated above, we find that these purchases were significantly large and risky relative to Stephany's income, particularly since the purchases were made on margin and because it occurred at a time when Stephany had remortgaged her house in order to invest in the stock market.

[254] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Stephany of the EMC Material Facts on or before May 14, 2007 prior to the opening of markets that day and, therefore, that Stephany purchased EMC shares on May 14 and 16, 2007 with knowledge of the EMC Material Facts while they were not generally disclosed.

5. Raponi

[255] On May 16, 2007, there were three calls between Raponi and Agueci for two minutes, one minute and one minute, respectively. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. On May 17, 2007, Raponi bought 1,000 shares of EMC at 11:51 a.m. On Monday, May 21, 2007, following the 1st EMC Announcement, Raponi sold 1,000 shares of EMC at 12:10 p.m. on the NYSE Arca, as Canadian markets were closed for the Victoria Day holiday.

[256] As Agueci's cousin, Raponi and Agueci had frequent contact with each other, often in person, but also by email, text and phone. Raponi is a high school teacher of languages, had limited stock market experience and had not been registered in the industry. We find that she was at the relevant time a novice investor. In her compelled examination, when asked if she would research stocks, Raponi stated "…if she [Agueci] bought it, it was good enough for me" (Exhibit 1157 at p. 45) and "I want to buy what you [Agueci] buy" (Exhibit 1157 at p. 123). Raponi further stated that Agueci would not tell Raponi specifics, but that Agueci would tell Raponi if she thought a stock recommendation was a good one. Raponi admitted that Agueci told her to buy EMC shares.

[257] We find that Raponi's purchase of $15,149 in EMC shares was somewhat risky because Raponi used her line of credit to make the purchase (Exhibit 1020). However, Raponi's EMC purchase was not uncharacteristic relative to her other trades in size and she was buying other resource stocks at the time. Raponi testified that her salary was approximately $85,000 to $90,000. The EMC purchase represented approximately 17% of her annual salary, which represents a substantial proportion of her income and a relatively risky investment for her. However, Raponi limited her risk by selling at the first opportunity of profit, and realized a return of 13%.

[258] We do not accept Staff's submission that Raponi sold quickly because she had knowledge of the EMC Material Facts. In the circumstances, we consider her sale of EMC shares to be a sign of a nervous and novice investor hoping to crystallize some profit. Raponi explained she sold on May 21, 2007 on the NYSE Arca because she was happy with the profit and "didn't want to risk it going down or losing out" (Exhibit 1157 at p. 166). Raponi explained that she specifically recalled selling the EMC stock because she had to call TD Greenline Investor Services to do so, rather than executing the sale online.

[259] Again, Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are cognizant that if a respondent puts forth an equally plausible alternative explanation, it would be improper for the Panel to infer improper intent (*Podorieszach, supra* at para. 78). In our view, it is equally plausible that Raponi, a non-registrant and novice investor, would have purchased a stock based on a simple recommendation from Agueci. In her case, we are not persuaded that Agueci informed Raponi of the EMC Material Facts in order for Raponi to purchase EMC shares.

[260] On a balance of probabilities, we are not satisfied that we have been provided with clear and cogent evidence that Agueci informed Raponi of the EMC Material Facts prior to Raponi's purchase of EMC shares on May 17, 2007 and, therefore, we cannot find that Raponi's conduct in relation to EMC constituted insider trading contrary to subsection 76(1) of the Act.

6. Iacono and Serpa

[261] On Saturday, May 12, 2007, Iacono called Agueci at 8:51 p.m. for four minutes. On Monday, May 14, 2007, Agueci called Iacono at 8:50 a.m. for two minutes, following which at 9:33 a.m., Iacono bought 1,500 shares of EMC. At 10:42 a.m. that same day, Iacono emailed Agueci: "You're sure about this? I have a S.L. at 15 for mine." and two minutes later Agueci responded: "YES!" (Exhibit 354). On Friday, May 18, 2007, after the 1st EMC Announcement that it has entered into an exclusive agreement to negotiate a potential sale of the company, Iacono called Agueci at 5:45 p.m. for five minutes. On Saturday, May 19, 2007, Agueci called Iacono at 11:52 a.m. for one minute and at 1:36 p.m. for two minutes. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. Iacono called Agueci four minutes later

for a duration of four minutes. On Tuesday, May 22, 2007, the next day that trading resumed in Canada, Iacono placed a stop loss on all his 1,500 EMC shares of $17.50 at 9:50 a.m., which was filled on May 29, 2007.

[262] As Agueci's brother-in-law, Iacono and Agueci had frequent contact, often in person.

[263] In his compelled examination, Iacono explained his level of sophistication about trading. Iacono admittedly became familiar with the stock market in 1987 working for a database company. Iacono stated that he moved from investing in mutual funds to investing in equities in 2006. He watched BNN and did his own market research online.

[264] Out of the 6 stocks Iacono purchased between September 2006 and September 2007 (with a range of $4,000 to $29,480), the EMC purchase of $23,876 was the second largest (Exhibit 1020). We find that Iacono's purchase of $23,876 in EMC shares was uncharacteristically large and risky relative to Iacono's income as it was 80% of his salary. However, Iacono limited his risk somewhat by placing the stop loss. He realized a profit of 8%.

[265] Iacono admitted that the idea of EMC may have come from Agueci. Iacono's evidence was that he placed a stop loss on his EMC shares because he was unsure of whether Agueci's recommendation was good. Iacono stated that Agueci gave him "public" information and said "I never approached that question" when asked if he had any concerns about Agueci having non-public material information (Exhibit 1148 at pp. 125-126).

[266] Again, Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We remain cognizant that if a respondent puts forth an equally plausible alternative explanation, it would be improper for the Panel to infer improper intent (*Podorieszach, supra* at para. 78). In our view, it is equally plausible that Iacono, who had never been a registrant and was not a sophisticated investor, would have purchased a stock based on a simple recommendation from Agueci. In his case, we are not persuaded that Agueci informed Iacono of the EMC Material Facts in order for Iacono to purchase EMC shares.

[267] On a balance of probabilities, we are not satisfied that we have been provided with clear and cogent evidence that Agueci informed Iacono of the EMC Material Facts prior to Iacono's purchase of EMC shares on May 14, 2007 and, therefore, we cannot find that Iacono's conduct in relation to EMC constituted insider trading contrary to subsection 76(1) of the Act.

[268] On May 14, 2007, Serpa bought 1,000 shares of EMC. In view of our finding that we are not satisfied that Agueci informed Iacono of the EMC Material Facts, we cannot conclude that Iacono informed Serpa of the EMC Material Facts prior to Serpa's purchase of EMC shares on May 14, 2007.

7. Did Agueci Breach subsection 76(2) of the Act?

[269] In light of our findings above, we conclude that Agueci informed Wing, Pollen, Fiorillo and Stephany of the EMC Material Facts, contrary to subsection 76(2) of the Act and contrary to the public interest.

E. Were Wing, Pollen, Fiorillo and/or Stephany in a Special Relationship with EMC?

[270] Staff submits that each of Wing, Pollen, Fiorillo and Stephany knew or ought reasonably to have known, pursuant to subsection 76(5)(e) of the Act, that Agueci was a person in a special relationship with EMC.

[271] We have found above that EMC was a reporting issuer, that Agueci was in a special relationship with EMC under subsection 76(5)(c) of the Act and that each of Wing, Pollen, Fiorillo and Stephany learned from Agueci material facts with respect to EMC that had not been generally disclosed.

1. Wing and Pollen

[272] Wing knew Agueci was the executive assistant to McBurney, Chairman of GMP in the investment banking department. Wing also knew that GMP's business included M&A.

[273] Although Wing acknowledged he knew Agueci's position as executive assistant to McBurney, we find that Wing was evasive, during his testimony at the Merits Hearing, when asked about knowing whether Agueci would be in contact with material non-public information, or the details of her role. For example:

> Q.[Staff] So I put it to you, sir, that you knew in 2007 and 2008 that in the course of her employment Eda would be in regular contact with material, non-public information.
>
> A. [Wing] You know, it's difficult for me to answer that question because I don't know of her specific role there. I mean, I can understand her position there. I don't know if she was part of, you know, the committee that would do investment banking deals or if she did other work for Eugene McBurney that was outside that. I don't

> know if she was part of the inner sanctum of that. It might be logical that she was, but I have no idea if she was, so it would be difficult for me to say that accurately.
>
> (Merits Hearing Transcript of January 17, 2014 at p. 27)

[274] As an experienced market participant, especially someone in the position of Ultimate Designated Person and Chief Compliance Officer, Wing knew or ought reasonably to have known that Agueci was in a special relationship with a number of issuers, given her role in the investment banking department of GMP. When Agueci informed him of the EMC Material Facts, Wing knew or ought reasonably to have known Agueci was in a special relationship with EMC.

[275] Therefore, we find that Wing was a person in a special relationship with EMC in accordance with subsection 76(5)(e) of the Act, by virtue of the fact that he learned of the EMC Material Facts with respect to a reporting issuer, EMC, from a person in a special relationship with the reporting issuer, Agueci, and he knew or ought reasonably to have known that Agueci was in such a relationship.

[276] Wing was admittedly the directing mind of Pollen and directed purchases of EMC shares in the Pollen SG Account. Wing had sole signing authority over the Pollen SG Account and was the only person who could give instructions to trade in that account or to make withdrawals and deposits. We concur that a directing mind's knowledge is attributable to the corporation (*Goldpoint, supra* at paras. 184 and 236). Therefore, since we have found that Wing knew or ought reasonably to have known that Agueci was in a special relationship with EMC, we find that Pollen knew or ought reasonably to have known that Agueci was in a special relationship with EMC as well. Therefore, Pollen was in a special relationship with EMC, pursuant to subsection 76(5)(e) of the Act at the relevant time.

2. Fiorillo

[277] Fiorillo knew Agueci was executive assistant to McBurney, Chairman of GMP in the investment banking department. Fiorillo also knew that GMP's business included M&A.

[278] Fiorillo was aware that Agueci was an executive assistant in the mining group at GMP and that the group routinely worked on confidential mandates. We do not find Fiorillo's evidence credible that, although he knew Agueci's role, he was not aware Agueci would have exposure to material non-public information:

> Q. [Staff] And you knew and expected that Eda had access to material nonpublic information as part of her job?
>
> A. [Fiorillo] I didn't know that because what seemed to be a large part of her job was managing travel plans and affairs of Mr. McBurney. And I understood that she interacted with clients, they liked her, that sort of thing. She looked at -- did family things for him, and things of that nature, his travel and so forth. And I didn't know -- I never ever asked her -- she had been more of a social friend than, you know, she is not a business friend in that sense.
>
> (Merits Hearing Transcript of January 21, 2014 at p. 53)

[279] As an experienced and active market participant and a former registrant, Fiorillo knew or ought reasonably to have known that Agueci was in a special relationship with EMC when Agueci informed him of the EMC Material Facts.

[280] Therefore, we find that Fiorillo was a person in a special relationship with EMC in accordance with subsection 76(5)(e) of the Act, by virtue of the fact that he learned of the EMC Material Facts with respect to a reporting issuer, EMC, from a person in a special relationship with the reporting issuer, Agueci, and he knew or ought reasonably to have known that Agueci was in such a relationship.

3. Stephany

[281] Stephany knew Agueci was executive assistant to McBurney, Chairman of GMP in the investment banking department. Stephany also knew that GMP's business included M&A.

[282] Stephany acknowledged she was a former registrant. Stephany knew Agueci worked at GMP as an executive assistant in the mining group, that the group did work on mining deals and that Agueci had access to confidential information. Stephany previously worked as an executive assistant herself to the head of the corporate finance group at First Marathon. As an experienced market participant, a registrant for various periods from 1981 to 2012, and a former executive assistant, Stephany knew or ought reasonably to have known that Agueci was in a special relationship with a number of issuers. Stephany knew or ought reasonably to have known that Agueci was in a special relationship with EMC when Agueci informed her of the EMC Material Facts.

[283] Therefore, we find that Stephany was a person in a special relationship with EMC in accordance with subsection 76(5)(e) of the Act, by virtue of the fact that she learned of the EMC Material Facts with respect to a reporting issuer, EMC, from a person in a special relationship with the reporting issuer, Agueci, and she knew or ought reasonably to have known that Agueci was in such a relationship.

F. Did Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi, Iacono and/or Serpa Breach Subsection 76(1) of the Act?

[284] As stated above, we are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Wing, Pollen, Fiorillo and Stephany of the EMC Material Facts and that Wing, who directed purchases for Pollen, and Fiorillo and Stephany purchased EMC shares with knowledge of the EMC Material Facts while they were not generally disclosed. Having found that Wing, Pollen, Fiorillo and Stephany were each in a special relationship with EMC at the relevant time the purchases of EMC shares by each of Wing, Pollen, Fiorillo and Stephany on the relevant dates constituted insider trading, contrary to subsection 76(1) of the Act.

[285] Staff submits that Fiorini, Raponi, Iacono and Serpa engaged in conduct contrary to subsection 76(1) of the Act. Having found that there was not sufficient evidence to support a finding that Agueci informed Fiorini, Raponi or Iacono of the EMC Material Facts, we cannot conclude that they breached subsection 76(1) of the Act. Further, as we have not found that Agueci informed Iacono of the EMC Material Facts, we cannot conclude that Iacono informed Serpa of the EMC Material Facts, in breach of subsection 76(2) of the Act, and, therefore, cannot conclude that Serpa violated subsection 76(1) of the Act.

G. Did Wing Authorize, Permit or Acquiesce in Pollen's Non-Compliance with the Act?

[286] By his own admission, Wing was the directing mind of Pollen. Wing is a person for the purposes of section 129.2 of the Act because he is an individual and furthermore, as the "protector", he was also a "legal representative" of The Honey Trust, which, in turn, was the owner of Pollen.

[287] We find that Wing directed purchases and sales of EMC shares in the Pollen SG Account with knowledge of the EMC Material Facts. Wing also had sole signing authority over the Pollen SG Account and was the only person who could give instructions to trade in the Pollen SG Account and to make deposits and withdrawals from it. We conclude that Wing, who authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law, should be held accountable for breaches of Ontario securities law (*Goldpoint, supra* at paras. 184 and 236). Therefore, we find that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act.

H. Did Agueci, Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi, Iacono and/or Serpa Engage in Conduct Contrary to the Public Interest?

[288] Staff submits that, even if the Panel does not find that technical breaches of subsection 76(2) of the Act by Agueci and Iacono or of subsection 76(1) of the Act by Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi, Iacono or Serpa, their conduct in relation to EMC was contrary to the public interest. Staff also submits that Stephany's use of undisclosed information obtained from Agueci in relation to EMC to make trades for her client, S.P. is conduct contrary to the public interest. Finally, Staff submits that Agueci caused another friend, S.F., to purchase shares of EMC in May 2007, contrary to the public interest. Staff refers the Panel to the *Donald* decision.

1. Agueci

[289] As stated above, Agueci's position is that the Commission's public interest jurisdiction is not unlimited (*Asbestos, supra* at para. 41) and that the Commission ought not to treat findings of conduct contrary to the public interest as Staff's consolation prize in cases where Staff fails to prove a breach of the Act. Further, Agueci asks that the Panel consider that Ontario has not prohibited insiders from making recommendations to purchase or sell a security so long as that recommendation does not involve the passing of material non-public information. Furthermore, Agueci submits that the purpose of section 127 of the Act is not to override legislative choices made in respect of the elements of illegal insider trading and tipping.

[290] Agueci's friend, S.F., is not a respondent in this proceeding. On May 16, 2007, Agueci called S.F. at 8:11, 8:25 and 9:41 p.m., each time for two minutes. On May 17, 2007, Agueci called S.F. twice at 8:35 and 8:38 a.m., each time for one minute and S.F. then bought 1,000 EMC shares. We did not receive evidence or submissions with respect to S.F.'s trading activity generally. We are not satisfied that Staff has provided sufficiently clear, convincing and cogent evidence to support a determination that Agueci's conduct caused S.F. to purchase EMC shares contrary to the public interest.

[291] The Panel has also considered Agueci's recommendations to Raponi and Iacono. Agueci was an employee of a registrant, but was not registered in any capacity with securities regulators. We agree with Staff that more is expected of those with greater experience and defined roles within the securities regulatory system, such as registrants. However, we are not satisfied that Staff has proven on a balance of probabilities that Agueci's conduct in making recommendations to Raponi and Iacono engaged the purposes of securities regulation to provide protection to investors from unfair, improper or fraudulent

practices and to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act) such that she acted contrary to the public interest.

[292] We find that Agueci's violations of subsection 76(2) of the Act, by informing Wing, Pollen, Fiorillo and Stephany of the EMC Material Facts, constitute conduct contrary to the public interest.

2. Stephany

[293] Stephany submits that the evidence does not support she was provided with or acted upon undisclosed material facts in relation to securities of EMC and, therefore, could not have made the allegedly improper recommendations to S.P. Further, Stephany argues that, if Staff seriously believed that improper recommendations were made, it was Staff's obligation to question S.P. under oath and call him as a witness to testify about the recommendations.

[294] On May 14, 16 and 17, 2007, Stephany placed purchase orders for a total of 3,000 shares of EMC for her client, S.P. On May 18, 2007, EMC issued the 1st EMC Announcement stating that it had entered into exclusive negotiations concerning a potential sale of the company. On May 21, 2007, the first trading day in the United States following this announcement, Stephany sold 3,000 EMC shares for S.P. on the NYSE Arca.

[295] At the Merits Hearing, Stephany denied making recommendations to S.P., stating "I didn't make recommendations. I gave him information when I was buying or selling stock. He made his own decision about whether or not he wanted to buy or sell." (Merits Hearing Transcript of February 7, 2014 at p. 175). Upon being shown an excerpt from her compelled testimony, in which she stated "I have made some recommendations to him for sure", Stephany admitted that her testimony was contradictory and asserted that what she meant was she did not do market research. Stephany later admitted at the Merits Hearing that S.P. likely bought EMC stock in May 2007 because of information she gave him.

[296] We find that Stephany's conduct in recommending to her client, S.P., that he buy EMC, and in executing orders to purchase those shares with knowledge of the EMC Material Facts received from Agueci, was contrary to the public interest. We note that Stephany's circumstances are distinguishable from Agueci's as Stephany was registered as a dealing representative of an investment dealer who had direct involvement in executing the impugned trades. Again, we agree with Staff that more is expected of those with greater experience and defined roles within the securities regulatory system, such as registrants.

[297] We are satisfied that Staff has proven on a balance of probabilities that Stephany's conduct engaged the purposes of securities regulation to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act) such that she acted contrary to the public interest. Such conduct is an unfair market practice, abusive of the capital markets and below the high standards of fitness and business conduct expected of market participants (section 2.1 of the Act). Stephany was acting in her capacity as a registrant, advising a client and executing trades. We agree with Wellings' testimony that investors do not want to see a bid premium eroded in the market due to unfair trading by those with privileged access to certain information.

[298] In our view, it is fundamental that persons granted registration be honest and of good reputation because it is the concept of fair dealing between classes of investors, which is the issue and "[i]t is in the public interest that registrants conduct themselves in accordance with these precepts and not take advantage of inside information" (*Danuke, supra* at 40c).

[299] We find Stephany's recommendation that S.P. purchase EMC stock during the relevant period, while she was in possession of the EMC Material Facts, was an unfair market practice and amounted to conduct contrary to the public interest.

3. Wing, Pollen, Fiorillo, Fiorini, Stephany, Raponi, Iacono and Serpa

[300] Having found that the purchases of EMC shares by Wing, Pollen, Fiorillo and Stephany were made contrary to subsection 76(1) of the Act, we find that the conduct of each of them in that respect constituted conduct contrary to the public interest. However, we do not find the conduct of Fiorini, Raponi, Iacono or Serpa in respect of EMC was contrary to the public interest.

I. Conclusions

[301] We conclude that Agueci informed Wing, Pollen, Fiorillo and Stephany of the EMC Material Facts, contrary to subsection 76(2) of the Act and contrary to the public interest. We also find that Wing, Pollen, Fiorillo and Stephany purchased shares of EMC, contrary to subsection 76(1) of the Act and contrary to the public interest.

[302] Based on the evidence, we find that on May 8, 2007 through May 18, 2007:

1. EMC was a "reporting issuer" within the meaning of the Act;

2. as an employee of GMP, Agueci was a person in a special relationship with EMC within the meaning of subsection 76(5) (c) of the Act;

3. the EMC Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the EMC securities and were therefore "material facts" with respect to EMC, within the meaning of the Act;

4. Agueci informed Wing, Pollen, through Wing, Fiorillo and Stephany, other than in the necessary course of business, of the EMC Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the Act and contrary to the public interest;

5. Wing, Pollen, through Wing, Fiorillo and Stephany each learned of the EMC Material Facts from Agueci, and knew or ought reasonably to have known that Agueci was a person in a special relationship with EMC and, as a result, were persons and a company in a special relationship with EMC within the meaning of subsection 76(5)(e) of the Act;

6. based on the foregoing, Wing, Pollen, Fiorillo and Stephany each purchased EMC securities with knowledge of the EMC Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the Act and contrary to the public interest; and

7. Wing authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law in respect of the purchases of EMC shares, such that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act.

[303] We are not satisfied that Agueci informed Fiorini, Raponi or Iacono of the EMC Material Facts or that Iacono informed Serpa of those facts, contrary to subsection 76(2) of the Act or the public interest. Similarly, the Panel is not satisfied that Fiorini, Raponi, Iacono or Serpa purchased EMC shares, contrary to subsection 76(1) of the Act or the public interest.

VII. NORTHERN ORION – ANALYSIS AND FINDINGS ON ALLEGATIONS OF INSIDER TRADING, TIPPING AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

A. Overview of the Northern Orion Transaction

[304] During the relevant period, May and June 2007, Northern Orion and Meridian were reporting issuers in Ontario. In May 2007, Northern Orion was a mid-tier copper and gold producer with a market capitalization of approximately $1.4 billion, Meridian was a mid-tier gold producer with a market capitalization of approximately $3.1 billion and Yamana was a gold producer with market capitalization of approximately $5 billion. In the spring of 2007, Northern Orion and Yamana had discussions concerning a potential three-way business combination with Meridian.

[305] Yamana proposed to acquire 100% of the outstanding common shares of Northern Orion in an all-share transaction and subsequently acquire all of the outstanding common shares of Meridian in a cash and share offer. Yamana's original offer was a 25% premium for the shares of each of Northern Orion at $7 per share and Meridian at $34.15 per share, based on the 20-day volume weighted average share price of each target. In this two-stage transaction, Yamana was proposing an all-share offer for Northern Orion shares, conditional on the successful completion of the Meridian acquisition. The Northern Orion acquisition was to be pre-agreed and announced at the time of the Meridian offer, using a portion of Northern Orion's cash to fund the Meridian offer. The Meridian offer later became an offer of $33.84 per share for a 20% premium to the spot price. The transaction was a 3-way amalgamation by way of a plan of arrangement on a friendly basis.

[306] In late April to early May 2007, Yamana sought the views of Genuity Capital Markets ("**Genuity**"), a financial advisor, with respect to the proposed transaction. A potential three-way business combination was initially discussed with Robert Cross ("**Cross**"), Chairman of Northern Orion and David Cohen ("**Cohen**"), President and CEO of Northern Orion, through a Genuity representative on May 8 and 10, 2007. On May 14, 2007 Cohen and Peter Marrone ("**Marrone**"), Chairman and CEO of Yamana, discussed the potential three-way transaction and on May 15, 2007, Genuity commenced evaluating the potential transaction and representatives of each of Yamana, Northern Orion and Genuity participated in a telephone conference call to discuss the matter.

[307] On May 18, 2007, a summary presentation was made by Genuity and Yamana to Cohen regarding the proposed three-way business combination with an offer of $7 per Northern Orion share at an assumed premium of approximately 25% and $34.15 per Meridian share, which also represented a 25% premium from the then-closing price of Meridian shares. Code names were used for the parties involved in the transaction, including the code name "Cash" for Northern Orion, "Kiki" for Meridian and "Tango" for Yamana. The transaction itself was also given the code name "Project Tango" to be used in correspondence amongst the parties and their advisors.

[308] On May 22, 2007, Yamana provided Northern Orion with two drafts, a Letter Agreement and a confidentiality agreement in furtherance of the potential transaction. On May 23, 2007, Genuity advised Marrone that they had spoken to Cohen and Cross and noted that Northern Orion "clearly want to see a deal get done – all discussions have been very positive and constructive." (Exhibit 520). Genuity also advised Marrone that "there are no issues that can't be resolved – all good" (Exhibit 520).

[309] On May 25, 2007, Northern Orion emailed a signed confidentiality agreement to Yamana. Between May 25 and June 27, 2007, Yamana and Northern Orion each conducted due diligence on the other party, as negotiations continued.

[310] Genuity made a presentation to the Yamana board of directors with respect to the proposed three-way business combination on May 25, 2007 (the "**May 25 Presentation**"). On May 26, 2007, the May 25 Presentation to Yamana was sent by Cohen to the Northern Orion board of directors, along with other background documentation on Yamana and Meridian. Cohen reminded recipients of that email that the information detailed in Yamana's proposal was meant to be kept confidential and that "[o]nce the documentation is in a more reasonable form, we will ask our advisors (Endeavour and GMP) to make a presentation to the board and the draft LOI will be circulated for review and comments" (Exhibit 525).

[311] On May 28, 2007, Cohen forwarded the May 25 Presentation, which provided details of the proposed three-way business combination including a 25% premium to be offered by Yamana for 100% of the shares of each of Northern Orion and Meridian, to McBurney (the "**Yamana Original Terms**"). Agueci personally received the May 28, 2007 email on the same day from McBurney, who requested that she print three copies, including the May 25 Presentation with the Yamana Original Terms.

[312] Northern Orion, Meridian and Yamana were added to GMP's grey list on May 28, 2007. On that day, McBurney was copied on a draft Letter Agreement pertaining to the potential transaction. As negotiations progressed from May 28 through June 18, 2007, McBurney was copied on further drafts of a Letter Agreement and presentations by Genuity with respect to the potential transaction, some of which he forwarded to Agueci directly to request that she print copies.

[313] On June 11, 2007, Northern Orion requested that GMP deliver a verbal fairness opinion by June 14, 2007. On June 12, 2007, GMP approved the mandate to act as an advisor for Northern Orion on this matter and Agueci was asked to open file folders. GMP's engagement letter was not formally signed by Cohen until June 27, 2007.

[314] On June 15, 2007, Yamana approached Meridian with respect to the proposed three-way business combination. On June 17, 2007, Cohen emailed the Northern Orion board of directors, McBurney and others with an update of his meeting with the CEOs of Meridian and Yamana to discuss the proposed transaction. Cohen reported that Edward Dowling, Meridian's CEO, had given a positive response and "indicated that if he could attract a 24-26% premium, it was a done deal" (Exhibit 592).

[315] On June 27, 2007 at 9:09 p.m. Yamana and Northern Orion jointly announced that they had entered into a business combination agreement and a concurrent proposal had been made to Meridian with respect to the combination of the three companies. The expected terms as announced included: cash and share consideration for Meridian, which represented a spot premium of approximately 23% over Meridian's closing share price on June 27, 2007, and a share exchange between Yamana and Northern Orion shares, a 21.3% premium over Northern Orion's closing share price on June 27, 2007.

B. Were there Material Facts Relating to Northern Orion and/or Meridian that were Not Generally Disclosed?

[316] The question that the Panel must answer is whether any of the alleged material facts relating to Northern Orion and/or Meridian, or some or all of them taken together, were material facts that would reasonably be expected to have a significant effect on the market price or value of Northern Orion and/or Meridian securities, on the dates on which Staff allege that Agueci tipped others and that Wing, Pollen, and Fiorini purchased Northern Orion and/or Meridian shares.

[317] Staff submits that the following were material facts with respect to Northern Orion and/or Meridian that were not generally disclosed at the relevant time: (a) Yamana proposed to acquire Northern Orion and make a concurrent proposal to Meridian to combine all three companies; (b) the terms of Yamana's proposal were that it was to be an acquisition of 100 percent of the outstanding common shares of Northern Orion by Yamana (for $7.00 per Northern Orion share) and to acquire 100 percent of the outstanding common shares of Meridian (for $34.15 per Meridian share); and (c) both prices represented a 25% premium over the closing price of each of Northern Orion and Meridian shares.

[318] First, we considered whether Yamana proposed to acquire Northern Orion and make a concurrent proposal to Meridian to combine all three companies. As early as May 8, 2007, Genuity discussed the potential three-way business combination with representatives of Northern Orion and on May 18, 2007 a presentation was made to Northern Orion. On May 28, 2007, Cohen emailed the May 25 Presentation, citing the websites for Yamana and Meridian, to McBurney. All three stocks were added to the GMP grey list on May 28, 2007. Also on May 28, 2007, McBurney received a draft Letter Agreement between Yamana and Northern Orion for review and comment. We find that on or before May 25, 2007, Yamana proposed to acquire Northern Orion and make a concurrent proposal to Meridian to combine all three companies ("**NNO Fact One**").

[319] The second alleged material fact that we considered was whether the terms of Yamana's proposal were that it was to be an acquisition of 100 percent of the outstanding common shares of Northern Orion (for $7.00 per share) and Meridian (for $34.15 per share). On May 18, 2007, a summary presentation was made by Genuity to Northern Orion regarding the proposed three-way business combination; it contained an offer of $7.00 per Northern Orion share and $34.15 per Meridian share. On June 8, 2007, Genuity forwarded to McBurney a draft investor presentation and a draft presentation to Meridian on the proposed three-way transaction, which included the $7.00 offer for Northern Orion on a share exchange basis and a $33.84 offer for Meridian at a 20% spot premium. On June 13, 2007, Genuity sent McBurney a subsequent version of the draft presentation to Meridian, to be delivered on June 15, 2007, which McBurney circulated to certain GMP staff and included the same offer figures of $7.00 for Northern Orion and $33.84 for Meridian. We find that as of June 8, 2007, Yamana proposed to acquire 100 percent of all outstanding shares of Northern Orion for $7.00 per share and of Meridian for $33.84 per share ("**NNO Fact Two**").

[320] Third, we considered whether both prices to acquire Northern Orion and Meridian represented a 25% premium over the closing price of each. The May 25 Presentation, forwarded to Agueci on May 28, 2007, included a 25% premium for each of Northern Orion and Meridian.We note that the Genuity draft presentation to Meridian sent to McBurney on June 8, 2007, contemplated an approximate 20% premium. On June 13, 2007, McBurney circulated a presentation to GMP staff, which cited an approximate 20% premium for each of Meridian and Northern Orion. However, we note that on June 14, 2007, GMP provided a preliminary verbal fairness opinion to the Northern Orion board of directors based upon Yamana's offer of a 25% premium up to $7.00 for each share of Northern Orion and determined that "GMP believes the Transaction has merit and deserves further investigation" (Exhibit 557). We are not satisfied that the 25% premiums contemplated in the Yamana Original Terms were a fact. We find that as of June 8, 2007 Yamana proposed to acquire Northern Orion and Meridian for an approximate 20% premium ("**NNO Fact Three**"; together with NNO Fact One and NNO Fact Two, the "**Three NNO Facts**").

[321] We note that our findings with respect to NNO Fact Two and NNO Fact Three are not directly in line with Staff's submissions on values. However, we find that the substance of those submissions were supported by the evidence, specifically that Yamana proposed to acquire all the outstanding shares of each of Northern Orion and Meridian and that the offer would be a significant premium for each. In light of the foregoing conclusions, we turn to the assessment of the materiality of the Three NNO Facts. In applying the objective market impact test of materiality we consider whether the facts would be reasonably expected to significantly affect the market price or value of Northern Orion's securities and/or Meridian's securities (subsection 1(1) of the Act).

[322] The Three NNO Facts above must be considered in context, including that Yamana and Northern Orion had been discussing the proposed three-way business combination since early May, 2007 and both engaged financial advisors and held board meetings to discuss it, which indicated that those involved, at the highest corporate levels, attached importance to the proposal. Further, Yamana had a market capitalization of approximately $5 billion, while Northern Orion's was approximately $1.4 billion, and Meridian's was approximately $3.1 billion, which made the three-way combination an attractive proposition to the two targets. The evidence supports that the CEOs of both Northern Orion and Meridian responded positively when first approached with the three-way business combination. Also, an approximate 20% premium for each of Northern Orion's and Meridian's share price was, in our view, significant. This is corroborated by the fact that Northern Orion's share price increased by eight percent and Meridian's by 17% on June 28, 2007, following the public announcement of the proposed transaction. These factors are indicative of the advanced stage of the transaction and support a finding that the Three NNO Facts were material.

[323] We find that NNO Fact One, Yamana's proposal to acquire Northern Orion and make a concurrent proposal to Meridian to combine all three companies, would be reasonably expected to have a significant effect on the market price of each of Northern Orion's and Meridian's securities and, therefore, was a material fact as of May 28, 2007. We find that NNO Fact Two and NNO Fact Three collectively, Yamana's proposal to acquire 100 percent of the outstanding common shares of Northern Orion (for $7.00 per share) and Meridian (for $33.84 per share), would be reasonably expected to have a significant effect on the market price of each of Northern Orion's and Meridian's securities because an approximate 20% premium over the closing price of each was significant and, therefore, were material facts as of June 8, 2007.

[324] We also find that the Three NNO Facts, considered collectively, were material facts at the time (*YBM, supra* at para. 94; *Donald, supra* at para. 271). We find that during the relevant period, beginning on May 28, 2007, as discussed below, Agueci knew the Three NNO Facts, which would be reasonably expected to have a significant effect on the market price of each of Northern Orion's and Meridian's securities (the "**NNO Material Facts**").

[325] We also considered whether the NNO Material Facts were generally disclosed during the relevant period. We accept the testimony of Ciccone, Chief Compliance Officer at GMP in 2007-2008, that issuers were placed on the GMP grey list when GMP obtained material non-public information about the issuer. As noted above, each of Yamana, Northern Orion and Meridian were placed on the GMP grey list on May 28, 2007. We also conclude that the joint Yamana and Northern Orion press release of June 27, 2007 was the first indication to the public that a three-way business combination between them and Meridian was proposed. For these reasons, in our view the NNO Material Facts were not generally disclosed during the relevant period as contemplated by subsection 3.5(2) of NP 51-201 or otherwise.

C. Agueci

[326] Staff submits Agueci engaged in conduct contrary to subsection 76(2) of the Act by providing undisclosed material facts relating to Northern Orion/Meridian to Pollen, through Wing, and Fiorini.

1. Was Agueci in a Special Relationship with Northern Orion and/or Meridian?

[327] The Panel finds that Agueci was in a special relationship with Northern Orion pursuant to subsection 76(5)(c) of the Act as of May 28, 2007.

[328] On May 28, 2007, McBurney received a copy of the May 25 Presentation by Genuity, which detailed the proposed three-way business combination. By that date, Yamana and Northern Orion had discussed the proposed transaction and signed a confidentiality agreement in furtherance of it. Also at that date, management of Northern Orion expected to engage GMP as a financial advisor to review the transaction and the Yamana Original Terms were sent to GMP for the purpose of engaging GMP's services in that respect. Upon receipt of the Yamana Original Terms, Northern Orion, Meridian and Yamana were added to GMP's grey list. In our view, GMP was in a special relationship with Northern Orion pursuant to subsection 76(5)(b) of the Act as of May 28, 2007 because GMP was a company that was proposing to engage in a business or professional activity with or on behalf of the reporting issuer, Northern Orion.

[329] We recognize that Cohen did not request the verbal fairness opinion until June 11, 2007, GMP approved the mandate to act as an advisor for Northern Orion on June 12, 2007 and GMP's formal engagement was not signed by Cohen until June 27, 2007, but we are satisfied that the evidence supports GMP's proposed engagement as of May 28, 2007. Accordingly, we find that Agueci was in a special relationship with Northern Orion pursuant to subsection 76(5)(c) of the Act as of May 28, 2007, because she was an employee of GMP, which we found to be a company described in subsection 76(5)(b) of the Act.

[330] We are satisfied that Agueci was in a special relationship with Meridian pursuant to subsection 76(5)(c) of the Act. GMP was in a special relationship with Northern Orion pursuant to subsection 76(5)(b) of the Act because GMP was a company that was proposing to engage in a business or professional activity with or on behalf of Northern Orion. In turn, pursuant to subsection 76(5)(a)(iii), Northern Orion was a company that proposed to become a party to a business combination with Meridian.

2. Did Agueci have Knowledge of the NNO Material Facts Beginning on May 28, 2007?

[331] The testimony of multiple GMP executives supports that in May 2007 Agueci sat in close proximity to the GMP deal team, including McBurney, and that she would have overheard conversations in their open concept office layout. Certain emails pertaining to the proposed three-way proposed business combination between Yamana, Northern Orion and Meridian were either sent directly to her or were accessible by her, as Agueci had access to McBurney's emails and to the GMP corporate directory.

[332] On May 28, 2007, McBurney forwarded the May 25 Presentation, in an email citing the websites for Yamana and Meridian, to Agueci for printing. The May 25 Presentation contained details of the proposed transaction. Yamana, Northern Orion and Merdian were added to the GMP grey list, which Agueci would have received, on the same day. Also on May 28, 2007, McBurney received a draft Letter Agreement between Yamana and Northern Orion for review and comment.

[333] On June 8, 2007, Genuity forwarded to McBurney draft presentations, which included Yamana's $7.00 offer for Northern Orion on a share exchange basis and a $33.84 offer for Meridian at an approximate 20% premium for each company. On June 12, 2007, an associate at GMP, emailed Agueci asking her to open a M&A file for NNO, the ticker symbol for Northern Orion. As negotiations progressed between Yamana and Northern Orion, McBurney received further drafts, presentations and other transactional documents, which he forwarded to Agueci to print.

[334] Based on the evidence, we find that Agueci had knowledge of the following facts:

1. as of May 28, 2007, Agueci knew NNO Fact One, as detailed in the May 25 Presentation, that Yamana proposed to acquire Northern Orion and make a concurrent proposal to Meridian to combine all three companies;

2. as of June 8, 2007, Agueci knew NNO Fact Two, that the terms of Yamana's proposal were to acquire 100 percent of the outstanding common shares of Northern Orion (for $7.00 per share) and Meridian (for $33.84 per share); and

3. as of June 8, 2007, Agueci knew NNO Fact Three, that both prices represented an approximate 20% premium over the closing price of each of Northern Orion and Meridian shares.

[335] We conclude that Agueci had knowledge of the NNO Material Facts beginning on May 28, 2007, which were not generally disclosed at the time that she learned of them.

D. Did Agueci Inform, and did Wing, Pollen, and/or Fiorini Purchase, Northern Orion and/or Meridian Securities, with Knowledge of the NNO Material Facts?

[336] As with the other allegations of this nature, Agueci takes the position that the direct evidence, which should be preferred over inferences drawn from circumstantial evidence, at most supports that she recommended to other Respondents that they purchase a security or advised them that she was purchasing a particular security. She relies upon *ATI* and *Landen* in support of her submission that in Ontario, unlike in Alberta, advice from an insider to trade is not material information (*ATI, supra* at paras. 63-64; *Landen, supra* at para. 97). Agueci submits that Staff have failed to establish on a balance of probabilities that any of the Respondents who traded in the impugned securities received material non-public information from her. Agueci notes that she had no reason or motive to pass such information and received no benefit from the alleged tipping.

1. Wing and/or Pollen

[337] On Tuesday, June 12, 2007 at 11:54 p.m., Agueci called Wing for nine minutes. On June 13, 2007 at 10:47 a.m., Wing placed an order to buy 50,000 shares of Northern Orion in the Pollen SG Account. The order was executed through BMO Nesbitt Burns ("**BMO**") at an average price of $5.665 and not through Fort House. At 1:24 p.m. that day, Wing called Agueci for one minute. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. On June 14, 2007 at 10:33 a.m., Wing placed another order to buy 50,000 shares of Northern Orion in the Pollen SG Account. Again, the order was executed through BMO and filled at $5.90 per Northern Orion share. Later that day, at 2:59 p.m., Wing called Agueci for one minute and Agueci called him back twice, each occurring for one minute. At 3:42 p.m. Wing called Agueci for three minutes. On June 15, 2007 at 9:45 a.m. Wing placed a further order to buy 25,000 shares of Northern Orion in the Pollen SG Account, which was executed through BMO and filled at $5.87 per Northern Orion share.

[338] On June 18, 2007, Wing placed an order to buy 20,000 Meridian shares in the Pollen SG Account, which was executed through RBC Dominion Securities and filled at $28.548 per Meridian share. On June 27, 2007 at 9:09 p.m., Yamana and Northern Orion issued a joint press release that they had entered into a business combination and concurrently made a proposal to Meridian for a three-way combination. The following day Wing placed an order to sell all of Pollen's shares of Meridian. On October 23, 2007, Wing directed that all the Northern Orion shares (now converted to Yamana) be sold.

[339] We find that Pollen's aggregate purchases of Northern Orion and Meridian shares in the amount of $1,313,462 were significant (Exhibit 1020). The fact that Pollen had not bought Northern Orion and Meridian before is noteworthy, but not conclusive. We agree that the impugned trades were not necessarily uncharacteristic or unusually risky for Pollen. Pollen held commodity stocks at the time. The trades were, however, highly profitable – 20% for Northern Orion in four and a half months and 5% for Meridian in 11 days, which we find to be a short timeframe for the size of the profit. We note that Wing did not sell his Northern Orion shares shortly after the joint announcement on June 27, 2007. However, his decision to hold the stock may have been due to a number of factors and is not determinative.

[340] Wing testified that he liked the resource sector. He explained that Pollen bought Northern Orion at a higher price on June 14, 2007 compared to the day before because he liked the stock and it might have been at a higher price and volume, which is usually a good sign something is happening with the company. We did not find his testimony to be credible in this respect. The Toronto Stock Exchange ("**TSX**") trading data indicates that trading volume of Northern Orion on June 13 was 2.5 million shares, but that was not unusual. Volumes were over 3 million on May 10, 17 and 23. On June 14, 2007 the trading volume was 1.3 million shares. On June 15, 2007, the third day Wing directed purchases for Pollen, the volume was less than the volume on June 13, 2007. These facts do not support Wing's explanation for buying more Northern Orion stock.

[341] We note that the three orders to buy Northern Orion and the one order for Meridian were all placed at market, which in our view, demonstrates an intent to buy quickly. Wing's rush to fill Pollen's orders of Northern Orion and Meridian shares by placing market orders supports the inference that Agueci informed Wing of the NNO Material Facts. Furthermore, Pollen's purchases of both targets (Northern Orion and Meridian) are strong circumstantial evidence that support our finding that Pollen, through Wing, had knowledge of the NNO Material Facts. This finding is bolstered by the fact that Pollen purchased Meridian shares only after Meridian had been approached by Yamana and Northern Orion on June 15, 2007 and had responded positively.

[342] Wing relies on his compelled evidence of December 14, 2011 to argue that shares of Northern Orion and Yamana were purchased by Pollen because the CEO of Yamana had given a speech prior to June 2007 about looking at acquisitions and there were rumors Yamana would pursue Northern Orion and Meridian. Wing did not confirm this explanation in his direct testimony before us. We do not accept Wing's compelled evidence that he bought on the basis of rumours, which were not corroborated with any evidence and did not explain the timing of his purchases.

[343] Wing also testified that Friedli of SG Private was an experienced portfolio manager, who provided him with investment advice. However, the evidence supports that Wing instructed SG Private to purchase Northern Orion and Meridian shares on behalf of Pollen. Wing could not recall if Friedli advised him about the stocks at issue in this proceeding and there was no evidence before us of such a suggestion from Friedli in relation to Northern Orion and/or Meridian. The fact that SG Private was trading in Yamana and Meridian in 2007 generally is not surprising, as they were a broker who was likely trading for many clients/institutions. Further, Wing admitted that he directed 99% of the trades in the Canadian sub-account of the Pollen SG Account.

[344] Wing submits that there was a 16-day delay between the time Staff alleges Agueci learned of the NNO Material Facts and Pollen's first purchase of Northern Orion shares and a 21-day delay for Pollen's first purchase of Meridian shares. We do not accept this characterization. Wing acknowledged that he spoke to Agueci on May 30-31, June 3-4 and June 11, 2007. We are persuaded that Agueci learned of the NNO Material Facts beginning on May 28, 2007 and continued to obtain further NNO Material Facts on June 8, 2007. At the latest by June 8, 2007, Agueci knew the takeover offer was for all outstanding shares at a price of $7.00 for Northern Orion and she knew of the approximate 20% premium bid for Meridian. Further, McBurney was advised by Northern Orion's CEO of Meridian's positive reaction to the proposed business combination by email on Friday, June 15, 2007, which was accessible by Agueci. In our view, a tipper need not alert a tippee to undisclosed material facts immediately after receiving them. GMP approved the mandate to act as an advisor for Northern Orion on June 12, 2007, but between May 28, 2007 and June 12, 2007, GMP became increasingly involved in its mandate for Northern Orion and details of Yamana's proposal of a three-way business combination were becoming firmer throughout the relevant period. By June 12, 2007, when Agueci spoke to Wing, she knew that the likelihood of the transaction occurring had increased. In our view, as an experienced market participant, Wing knew that he did not need to rush to purchase Meridian, but rather wait until Meridian was approached on June 15, 2007 to ascertain whether the second acquisition in Yamana's proposal would become more crystallized.

[345] Wing also submits that he and Agueci spoke every day and, therefore, trades were bound to be in proximity to communications. We are not persuaded that it was coincidental that he placed orders for purchases of Northern Orion and Meridian shares on June 13, 14, 15 and 18, 2007. We are satisfied that the timing of Wing's and Agueci's communications relative to the placement of the orders and his rush to fill at market support the inference that Agueci informed Wing of the NNO Material Facts.

[346] Wing takes the position that he did not try to hide Pollen's Northern Orion purchases and argues that he did not direct that the orders be placed through BMO. We find that nothing turns on whether the words "passer chez BMO", written in SG Private's records for Pollen's Northern Orion purchase order, are an instruction from Wing or a note of SG Private as to method of execution. In our view, regardless of the impetus for that note, we find that Wing was hiding the impugned purchases through Pollen's SG Account, which he admitted that Canadian authorities would not know was his trading activity. Wing also states that the sales of Northern Orion shares (by then Yamana shares) and Meridian shares were executed through Fort House. With respect to Pollen's trading activity through Fort House, Stephany confirmed that she did not know that Wing had an indirect financial interest in trades of the SG Private account at Fort House, nor that it was a trade execution account for Pollen. Wing did not provide evidence that anyone at Fort House knew of his interest in that account.

[347] Wing also submits that he did not demonstrate a consciousness of guilt because he did not sell Pollen's Northern Orion shares (by then Yamana shares) until four months after the June 27, 2007 announcement. In our view, the delay in selling those stocks does not assist our analysis because Wing, by his own admission, liked resource stocks. Further, he did take a quick profit from Pollen's Meridian holdings on June 28, 2007, on the same day that Meridian published a coldly worded press release relating to the proposed transaction at issue. Wing was sophisticated enough to understand that the transaction between Meridian and the combined Yamana/Northern Orion might not go forward on the basis of Meridian's response.

[348] Again, we acknowledge that there is no evidence that Wing has ever been implicated in Commission enforcement proceedings over the course of his 35 year career, and he was aware of the consequences of insider trading in another matter. Nevertheless, it remains our view that exposure to insider trading investigations in the past does not assist us in determining whether Wing had been informed of the NNO Material Facts in the circumstances of this case. While Wing's motivation for his impugned conduct is not clear to us, motive is not a prerequisite to a finding of insider trading.

[349] Wing also submits that Staff has no explanation for why only two Respondents traded in Northern Orion and that Pollen was the only Respondent who traded in Meridian given that Agueci spoke to the other Respondents regularly between June 3 and June 24, 2007. There have been no allegations or evidence to suggest other Respondents, except Fiorini, traded in these securities. The onus is on Staff to prove its case on a balance of probabilities. The Panel has considered each transaction and the conduct of each Respondent separately. While similar fact evidence may, if admitted and weighed with other relevant evidence, support an inference that a respondent had knowledge of certain material facts, an absence of similar fact evidence is not conclusive of the reverse. We are not persuaded that a pattern is necessary to corroborate a finding that Wing directed Pollen's purchases of Northern Orion and Meridian shares with knowledge of material facts.

[350] Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Wing, an experienced and knowledgeable market participant, would have purchased a stock based on a simple recommendation from Agueci.

[351] We infer, based on the combined weight of the evidence, that Agueci informed Wing of the NNO Material Facts. We find that Agueci learned of the NNO Material Facts beginning on May 28, 2007 and learned of additional information in furtherance of the NNO Material Facts on June 8, 2007. Wing and Agueci spoke on June 12, 2007 for nine minutes and on June 13, 2007 Wing placed an order to buy 50,000 shares of Northern Orion in the Pollen SG Account. Wing continued to purchase Northern Orion in both the Pollen SG Account over the following two days, on June 14 and 15, 2007. Furthermore, on June 18, 2007, Wing placed an order to buy 20,000 Meridian shares in the Pollen SG Account. The purchases were very proximate to phone calls with Agueci, which supports that Wing had the ability and opportunity to acquire knowledge of the NNO Material Facts and that he executed well-timed purchases of Northern Orion and Meridian shares. Furthermore, the aggregate purchase amount of $1,313,462 was significant even for Wing and Pollen. Finally, the trades were highly profitable – at a 20% return for Northern Orion in four and a half months and 5% for Meridian in 11 days. The latter is a short timeframe for the size of the profit.

[352] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Pollen, through Wing, of the NNO Material Facts on or before June 12, 2007 and that Wing directed purchases for Pollen of Northern Orion shares on June 13, 14, 15, 2007 and Meridian shares on June 18, 2007, with knowledge of the NNO Material Facts while they were not generally disclosed.

2. Fiorini

[353] On June 12, 2007 at 4:56 p.m., Agueci emailed Fiorini: “coffee tomorrow?” and he responded at 4:58 p.m. “nice to catch up” (Exhibit 566). On June 13, 2007, Agueci emailed Fiorini stating “Hey Joe Joe…what time do you want to meet?” and Fiorini responded “Am or pm?”, to which Ageuci said “pm…lunch time would be great – 1:00?” (Exhibit 567). Approximately 30 minutes later, Agueci emailed Fiorini again stating “Does 12:00 work or we can do later this afternoon after your meeting…what time would that be?” (Exhibit 568).

[354] On June 14, 2007 at 10:17 a.m., Fiorini bought 6,000 shares of Northern Orion for a total purchase amount of $35,476 (Exhibit 1020). In Agueci’s calendar she has an entry for June 14, 2007 for a meeting with Joe at 2:00 p.m.

[355] Staff also submits that Agueci was an unidentified caller on Fiorini’s phone record on June 13, 2007 at 11:56 a.m. Counsel for Agueci and Fiorini, respectively, submit that an inference that calls from an unknown caller to Fiorini came from Agueci is not sufficiently linked to the established primary facts.

[356] On June 29, 2007, two days following the joint Yamana/Northern Orion press release, Fiorini sold his entire position in Northern Orion, for a profit of 3%.

[357] In our view, Fiorini’s purchase was not uncharacteristically large or risky by comparison to other stocks he purchased in the same time frame, but was significant relative to his then-salary of approximately $200,000. His return of 3% was profitable but not large for the time period he held the stock.

[358] The evidence tendered does not clearly establish whether Agueci and Fiorini communicated prior to Fiorini’s purchase of Northern Orion shares on June 14, 2007. Also, while there is evidence that Agueci and Fiorini attempted to connect prior to Fiorini’s purchase of Northern Orion shares, their emails do not reveal a sense of urgency and are relatively innocuous. It is not clear from the emails whether Agueci and Fiorini met for coffee on June 13, 2007, prior to Fiorini’s purchase of Northern Orion shares, or on the following day as per the calendar entry, which would have been after his purchase. Lastly, as the Panel places no weight on unidentified calls, in our view it would be speculation or conjecture to accept that an unidentified call to Fiorini on June 13, 2007 was a call from Agueci.

[359] While we acknowledge that Fiorini’s purchase of Northern Orion shares was well-timed relative to the joint Yamana/Northern Orion press release, we are not satisfied that Staff provided clear, convincing and cogent evidence that Agueci informed Fiorini of the NNO Material Facts and, therefore, we cannot find that Fiorini’s conduct in connection with Northern Orion constituted insider trading contrary to subsection 76(1) of the Act.

3. Did Agueci breach subsection 76(2) of the Act?

[360] In light of our findings above, we conclude that Agueci informed Pollen, through Wing, of the NNO Material Facts, contrary to subsection 76(2) of the Act and contrary to the public interest.

E. Was Pollen, through Wing, in a Special Relationship with Northern Orion and/or Meridian?

[361] Staff submits that each of Wing and Pollen knew or ought reasonably to have known, pursuant to subsection 76(5)(e) of the Act, that Agueci was a person in a special relationship with Northern Orion and Meridian.

[362] We have found above that Northern Orion and Meridian were reporting issuers, that Agueci was in a special relationship with each of Northern Orion and Meridian under subsection 76(5)(c) of the Act and that each of Wing and Pollen learned from Agueci material facts with respect to Northern Orion and Meridian that had not been generally disclosed.

[363] Wing knew Agueci was the executive assistant to McBurney, Chairman of GMP in the investment banking department. Wing also knew that GMP's business included M&A.

[364] Although Wing acknowledged he knew Agueci's position as executive assistant to McBurney, we find that Wing was evasive, during his testimony at the Merits Hearing, when asked about knowing that Agueci would be in contact with material non-public information or the details of her role. As an experienced market participant, especially someone in the position of Ultimate Designated Person and Chief Compliance Officer, Wing knew or ought reasonably to have known that Agueci was in a special relationship with a number of issuers, given her role in the investment banking department of GMP. When Agueci informed him of the NNO Material Facts, Wing knew or ought reasonably to have known Agueci was in a special relationship with Northern Orion and Meridian.

[365] Therefore, we find that Wing was a person in a special relationship with Northern Orion and Meridian in accordance with subsection 76(5)(e) of the Act, by virtue of the fact that he learned of the NNO Material Facts with respect to the reporting issuers, Northern Orion and Meridian, from a person in a special relationship with the reporting issuers, Agueci, and he knew or ought reasonably to have known that Agueci was in such relationships.

[366] Wing was admittedly the directing mind of Pollen and directed purchases of Northern Orion and Meridian shares in the Pollen SG Account. Wing had sole signing authority over the Pollen SG Account and was the only person who could give instructions to trade in that account or to make withdrawals and deposits. We concur that a directing mind's knowledge is attributable to the corporation (*Goldpoint, supra* at paras. 184 and 236). Therefore, since we have found that Wing knew or ought reasonably to have known that Agueci was in a special relationship with each of Northern Orion and Meridian, we find that Pollen knew or ought reasonably to have known that Agueci was in a special relationship with each of Northern Orion and Meridian as well. Therefore, Pollen was in a special relationship with each of Northern Orion and Meridian, pursuant to subsection 76(5)(e) of the Act at the relevant time.

F. Did Wing, Pollen and/or Fiorini Breach subsection 76(1) of the Act?

[367] Staff submits that Wing and Pollen engaged in conduct contrary to subsection 76(1) of the Act.

[368] As stated above, we are satisfied that clear and cogent evidence supporting a reasonable inference that Agueci informed Pollen, through Wing, of the NNO Material Facts on or before June 12, 2007 and that Wing directed purchases for Pollen of Northern Orion and Meridian shares with knowledge of the NNO Material Facts on June 13, 14, 15 and 18, 2007. Having found that Wing and Pollen were in a special relationship with each of Northern Orion and Meridian at the relevant time, Pollen's purchases of Northern Orion and Meridian shares on those dates constituted insider trading, contrary to subsection 76(1) of the Act.

[369] Having found that there was not sufficient evidence to support a finding that Agueci informed Fiorini of the NNO Material Facts, we cannot conclude that he breached subsection 76(1) of the Act.

G. Did Wing Authorize, Permit or Acquiesce in Pollen's Non-Compliance with the Act?

[370] By his own admission, Wing was the directing mind of Pollen. Wing is a person for the purposes of section 129.2 of the Act because he is an individual and furthermore, as the "protector", he was also a "legal representative" of The Honey Trust, which, in turn, was the owner of Pollen.

[371] We find that Wing directed purchases and sales of Northern Orion and Meridian shares in the Pollen SG Account with knowledge of the NNO Material Facts. Wing also had sole signing authority over the Pollen SG Account and was the only person who could give instructions to trade in the Pollen SG Account and to make deposits and withdrawals from it. We conclude that Wing, who authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law, should be held accountable for breaches of Ontario securities law (*Goldpoint, supra* at paras. 184 and 236). Therefore, we find that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act.

H. Did Agueci, Wing, Pollen and/or Fiorini Engage in Conduct Contrary to the Public Interest?

[372] We find that Agueci's violation of subsection 76(2) of the Act, by informing Pollen, through Wing, of the NNO Material Facts constitute conduct contrary to the public interest.

[373] We find Pollen's purchases of Northern Orion and Meridian shares, through Wing, were acts contrary to subsection 76(1) of the Act and constitute conduct contrary to the public interest. Wing used the Pollen SG Account as a vehicle to engage in insider trading. Therefore, Wing, as directing mind of Pollen and the sole authority to place orders on behalf of Pollen to buy Northern Orion and Meridian, acted contrary to subsection 76(1) of the Act and engaged in conduct contrary to the public interest.

[374] We cannot find that Fiorini's conduct in respect of Northern Orion was contrary to the public interest.

I. Conclusions

[375] We conclude that Agueci informed Pollen, through Wing, of the NNO Material Facts, contrary to subsection 76(2) of the Act and contrary to the public interest. We also find that Pollen, through Wing, purchased shares of Northern Orion and Meridian, contrary to subsection 76(1) of the Act and contrary to the public interest.

[376] Based on the evidence, we find that on May 28, 2007 through June 18, 2007:

1. Northern Orion and Meridian were "reporting issuers" within the meaning of the Act;

2. as an employee of GMP, Agueci was a person in a special relationship with Northern Orion and Meridian within the meaning of subsection 76(5)(c) of the Act;

3. the NNO Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of Northern Orion and Meridian securities and were therefore "material facts" with respect to Northern Orion and Meridian, within the meaning of the Act;

4. Agueci informed Pollen, through Wing, other than in the necessary course of business, of the NNO Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the Act and contrary to the public interest;

5. Pollen, through Wing, learned of the NNO Material Facts from Agueci, and knew or ought reasonably to have known that Agueci was a person in a special relationship with Northern Orion and Meridian and, as a result, was a company in a special relationship with Northern Orion and Meridian within the meaning of subsection 76(5)(e) of the Act;

6. based on the foregoing, Pollen, through Wing, purchased Northern Orion and Meridian securities with knowledge of the NNO Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the Act and contrary to the public interest; and

7. Wing authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law in respect of the purchases of Northern Orion and Meridian shares, such that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act.

[377] We are not satisfied that Agueci informed Fiorini of the NNO Material Facts, contrary to subsection 76(2) of the Act or the public interest. Therefore, the Panel is not satisfied that Fiorini purchased Northern Orion shares, contrary to subsection 76(1) of the Act or the public interest.

VIII. HUDBAY – ANALYSIS AND FINDINGS ON ALLEGATIONS OF INSIDER TRADING, TIPPING AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

A. Overview of the HudBay Transaction

[378] During the relevant period, July 1, 2007 to September 30, 2007, HudBay was a reporting issuer in Ontario. In July 2007, HudBay was a Manitoba-based company listed on the TSX with a market capitalization of approximately $3 billion and a producer of zinc, copper, gold and silver. At that time, Votorantim Metals Inc. ("**Votorantim**") was a large, privately-owned Brazilian company with annual revenues of between $10 billion to $12 billion with interests and production in zinc, nickel and steel, among others.

[379] As of and from December 2006, HudBay was developing a large cash position, which, together with the then-active market for resource companies, made HudBay an attractive takeover target. Speculation about a possible takeover bid for HudBay existed in the marketplace throughout 2007. On December 8, 2006, HudBay retained GMP to act for the special committee of the board of HudBay in respect of an offer that HudBay then expected to receive. HudBay was added to the GMP grey list and a file was opened at GMP but no offer was received at that time. When Votorantim initially approached HudBay verbally in late June 2007 about a possible offer to acquire it, HudBay was added to the GMP grey list again on July 3, 2007, but was removed from the GMP grey list on July 12, 2007 because the transaction appeared improbable due to a lack of response from Votorantim.

[380] On July 17, 2007, the CEO of HudBay received a confidential non-binding written proposal from Votorantim to acquire 100% of the issued and outstanding shares of HudBay for an all-cash consideration of between $30 and $32 per HudBay share, which was a premium of approximately 26% over the 20-day average price of $25.82 per HudBay share, subject to the completion of due diligence and the negotiation and execution of a definitive agreement (the "**Votorantim Proposal**").

[381] The Chairman of HudBay, Allen Palmiere ("**Palmiere**"), called Wellings, Manager of Investment Banking and Co-head of the Mining Group at GMP, on July 17, 2007 and informed him that HudBay had received the Votorantim Proposal and communicated its terms to Wellings. Palmiere indicated to Wellings that HudBay wanted to engage GMP to advise the special committee of the board of HudBay in respect of the Votorantim Proposal. Wellings emailed McBurney about the proposed deal at 1:07 p.m. that day and proceeded to place HudBay on GMP's grey list at 1:08 p.m. that day.

[382] On July 17, 2007, Wellings proceeded to contact Lazard Ltd. ("**Lazard**"), a multinational M&A financial advisory firm, to determine whether it could assist GMP in providing strategic advice to HudBay in respect of the Votorantim Proposal. On July 18, 2007 at 4:37 p.m., Palmiere forwarded the Votorantim Proposal to Wellings.

[383] On July 19, 2007, Palmiere issued a notice of meeting of the HudBay board of directors calling a meeting for July 23, 2007 at 9:00 a.m. to, among other things, "review and discuss the confidential non-binding proposal dated July 17, 2007" (Exhibit 669). On July 20, 2007, Wellings emailed Palmiere a preliminary valuation analysis on the basis of (i) premiums paid, (ii) price to cash flow, and (iii) price to Net Asset Value, which Wellings testified meant that more value should be attributable to HudBay so that the Votorantim Proposal could be fair from GMP's assessment.

[384] On July 26, 2007, when the market price for HudBay shares declined to $25.33 per shares, Wellings sent an email to Palmiere: "Markets getting killed the last few days…$32 looking great now." (Exhibit 692).

[385] On July 30, 2007, the special committee of independent directors of HudBay held a meeting at which GMP and Lazard were formally retained. Blake, Cassels & Graydon LLP ("**Blakes**") was retained as legal advisor to HudBay and on August 2, 2007, Blakes delivered by email to Votorantim's counsel a letter from the Chair of the HudBay special committee, responding to the Votorantim Proposal and attaching a first draft Confidentiality Agreement; a copy of Blakes' email and the HudBay letter were sent to Wellings on August 2, 2007. The HudBay response letter said that Votorantim's Proposal and its interest in HudBay "require careful consideration" and that as a preliminary response, the special committee was "not satisfied that the indicative offer price" was sufficient (Exhibit 638).

[386] Wellings was copied on an email of August 7, 2007, which indicated that by that time HudBay anticipated that Votorantim would make a due diligence site visit and HudBay was preparing to commit approximately $250,000 to establish a virtual data room that would make it possible for Votorantim to conduct certain due diligence on HudBay. On August 19, 2007, Credit Suisse, Votorantim's financial advisor, communicated to Wellings that Votorantim confirmed the dates of September 7-9, 2007 for its site trip to Winnipeg and Flin Flon, Manitoba and Wellings communicated that information to HudBay's CEO and others on that same day. On August 21, 2007, Wellings was sent an email, which stated that the HudBay data room was expected to be usable within a few days.

[387] On August 22, 2007, Votorantim's representative at Credit Suisse provided Wellings with the Confidentiality Agreement signed by Votorantim. The final schedule confirmed that Votorantim's site visit of HudBay's management offices in Toronto and Winnipeg and mining properties in Flin Flon and Snow Lake areas would occur between September 6 and 10, 2007.

[388] On September 11, 2007, HudBay and Votorantim were negotiating the terms of a follow-up site visit and on September 12, 2007 the HudBay special committee met via conference call.

[389] On September 18, 2007, Credit Suisse emailed Wellings indicating that they were trying to confirm whether Votorantim would make a technical visit to Flin Flon.

[390] By the next day, it appeared that the proposed transaction had fallen through. On September 19, 2007 at 3:20 p.m. Wellings emailed members of the HudBay special committee and others, on behalf of Palmiere, to advise that after Votorantim's board meeting, "it appears they won't be proceeding to the next stage" and "they couldn't get to the value expectations" (Exhibit 640).

[391] HudBay was removed from GMP's grey list on September 25, 2007.

[392] Agueci was on vacation from September 19, 2007 to October 1, 2007. She flew from Toronto to London, England at 10:55 p.m. on September 19, 2007 and returned to Toronto on October 1, 2007 at 12:20 p.m.

B. Were there Material Facts Relating to HudBay that were Not Generally Disclosed?

[393] The question that the Panel must answer is whether any of the alleged material facts relating to HudBay, or some or all of them taken together, were material facts that would reasonably be expected to have a significant effect on the market price or value of HudBay securities, on the dates on which Staff allege that Agueci tipped others and that Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi, Iacono and Serpa purchased HudBay shares.

[394] Staff submits that the following were material facts with respect to HudBay that were not generally disclosed at the relevant time: (a) HudBay's CEO received the Votorantim Proposal; (b) the terms of the Votorantim Proposal were that it was to be an all-cash acquisition of 100 percent of the outstanding common shares of HudBay; (c) the proposed acquisition price was $30-32 per HudBay share; and (d) the price represented a premium of approximately 26% based on the then-closing price of HudBay common shares.

[395] First, we considered whether HudBay's CEO received the Votorantim Proposal. Initially, Votorantim verbally approached HudBay with a possible offer to acquire it. As a result of that approach, HudBay was added to the GMP grey list on July 3, 2007. Wellings testified that when "the CEO of Votorantim, did not come back to HudBay in a timely fashion, we [GMP] took it off the grey list and the transaction became improbable at that time." (Merits Hearing Transcript of December 13, 2013 at p. 32). On July 16, 2007, Agueci emailed Wellings with the message "Please call Allen Palmiere – no urgency" (Exhibit 675). On July 17, 2007 at 1:07 p.m. Wellings emailed McBurney stating "hbm happening perhaps tomorrow" (Exhibit 665). Wellings testified that the email to McBurney meant he believed there was an offer coming for HudBay in short order. Wellings testified that he believed Palmiere called him on July 17, 2007 and told Wellings that Palmiere was in possession of the Votorantim Proposal. On July 18, 2007 at 4:28 p.m., Palmiere forwarded the Votorantim Proposal to the HudBay Board stating "I just received the attached indicative offer letter", which was dated July 17, 2007 (Exhibit 636). On July 18, 2007 at 4:37 p.m., Palmiere's assistant forwarded the Votorantim Proposal, dated July 17, 2007, to Wellings. We find Wellings' testimony credible that Palmiere was in possession of the Votorantim Proposal on July 17, 2007 when he called Wellings. We find that as of July 17, 2007, HudBay's CEO received the Votorantim Proposal ("**HudBay Fact One**").

[396] We also considered whether the terms of the Votorantim Proposal included an all-cash acquisition of 100 percent of the outstanding common shares of HudBay at a price of $30-32 per HudBay share. The Votorantim Proposal dated July 17, 2007, and forwarded to Wellings on July 18, 2007, expressly stated "We are prepared to purchase 100% of the issued outstanding shares of HudBay for between C$30.00 and C$32.00 per share, on an all-cash basis, subject to the terms and conditions contained herein" (Exhibit 667). We find that as of July 17, 2007, the terms of the Votorantim Proposal included an all-cash offer for all outstanding common shares of HudBay at a price of $30-$32 ("**HudBay Facts Two and Three**").

[397] The last alleged material fact that we considered was whether the price to acquire HudBay represented an approximate 26% premium based on the then closing price of HudBay common shares. Evidence of trading data for HudBay records a closing price of $27.25 on July 16, 2007. On July 18, 2007, Palmiere's email to the HudBay board expressly states that the top end of the range, a $32 offer, is a 26% premium to the 20-day average price of the stock. On July 20, 2007, Wellings emailed HudBay with the GMP valuation analysis of the Votorantim Proposal, which shows a premium of 26% on a 20-day average price at $25.82 for HudBay. We find that as of July 17, 2007, the price of Votorantim's offer to acquire HudBay represented an approximate 26% premium based on a 20-day average price of the stock ("**HudBay Fact Four**", collectively with HudBay Fact One and HudBay Facts Two and Three, the "**Four HudBay Facts**").

[398] In light of the foregoing conclusions, we turn to the assessment of the materiality of the Four HudBay Facts. In applying the objective market impact test of materiality we consider whether the Four HudBay Facts would be reasonably expected to significantly affect the market price or value of HudBay's securities (subsection 1(1) of the Act).

[399] The Four HudBay Facts above must be considered in context, including that: as of December 2006, HudBay was developing a large cash position in a then-active market for resource companies, which made HudBay an attractive takeover target; initially, Votorantim verbally approached HudBay with a possible offer to acquire it, which was considered serious enough to result in HudBay being placed on the GMP grey list on July 3, 2007; on July 17, 2007, the offer and information provided to Wellings was sufficiently firm that Wellings placed HudBay back on the GMP grey list and reached out to Lazard for their international merger and acquisition expertise in mining; by July 18, 2007, the HudBay board was aware of the offer and the key terms; on July 23, 2007, HudBay struck a special committee, which proceeded to hire both financial advisors and lawyers to advise on the Votorantim Proposal; in the two weeks commencing August 7, 2007, HudBay spent approximately $250,000 on a virtual data room to accommodate Votorantim's due diligence investigation of HudBay. Furthermore, the highest corporate executive levels of both the acquirer and the target were actively involved at critical stages of the Votorantim Proposal's

development. These are indicative of the advanced stage of the transaction and support a finding that the Four HudBay Facts were material.

[400] We find that HudBay Fact One, HudBay's receipt of Votorantim's Proposal to acquire HudBay, would be reasonably expected to have a significant effect on the market price of HudBay's securities and, therefore, was a material fact as of July 17, 2007. We also find that the Four HudBay Facts, considered collectively, were material facts (*YBM, supra* at para. 94; *Donald, supra* at para. 271; the "**HudBay Material Facts**").

[401] We also considered whether the HudBay Material Facts were generally disclosed during the relevant period. We accept the testimony of Ciccone, Chief Compliance Officer at GMP in 2007-2008, that issuers were placed on the GMP grey list when GMP obtained material non-public information about the issuer. As noted above, HudBay was placed on the GMP grey list on July 17, 2007.

[402] The Votorantim Proposal was expressly stated to be "Confidential". We note in email communications of August 2007 that Wellings stressed the need to maintain the confidentiality of the HudBay Material Facts. In his email of August 8, 2007 to the senior management of HudBay and HudBay's counsel, after HudBay management had received an inquiry from an international engineering firm, which indicated that Votorantim had approached the engineering firm to perform "due diligence on HudBay scheduled for early September", Wellings stated:

> I have a call into CS [Votorantim's financial advisors] and have emailed my counterpart to say that these inquiries are a little premature and...we would like to keep a lid on it as long as we can in the interim...we have to watch it such that we don't invite leaks especially this early in a process...
>
> (Exhibit 731)

Furthermore, in Wellings' email of August 15, 2007 to Votorantim's financial advisors, in his response to the request by Votorantim to have six management personnel from Votorantim attend the September site visits being arranged for HudBay's operations in Flin Flon, Wellings communicated: "...there is some concern over the number of bodies going to Flin Flon...the concern is that too man [sic] bodies could cause a leak...couldn't the additional bodies just stay in Winnipeg and go through all the data ... and go after the deal is announced?" (Exhibit 746).

[403] We find that the Votorantim Proposal was never generally disclosed because Votorantim was a private Brazilian company and ultimately decided not to proceed with the acquisition of HudBay. Furthermore, there was also no mention of Votorantim or the Votorantim Proposal in any of HudBay's public filings from December 1, 2006 to September 30, 2007. For these reasons, in our view the HudBay Material Facts were not generally disclosed during the relevant period, as contemplated by subsection 3.5(2) of NP 51-201 or otherwise.

[404] Wing submits that there was no material fact relating to HudBay that was not generally disclosed during the relevant period and, in support of that submission, relies on the trading in HudBay securities by officers and/or directors of HudBay on July 4, 2007 to July 12, 2007 and an issue of options to a newly appointed senior officer (Lantz) on August 24, 2007, which Wing submits would be contrary to the Act and the TMX Rules if Votorantim's interest in HudBay was material. In respect of the first of those two submissions, our finding is that as of July 17, 2007, the Votorantim Proposal was sent to and received by HudBay and became a material fact that was not generally disclosed as of that date, which is five to thirteen days after the reported trades by officers and/directors of HudBay. We note, in respect of the second of the two submissions, that the appointment of Lantz as an officer of HudBay was approved by the board of HudBay on June 8, 2007 and was not to take effect until the retirement of another officer later that summer. Regardless, this matter does not involve allegations against officers of HudBay and, in our view, the conduct of those individuals is not determinative of whether undisclosed material facts existed at the time that the Respondents purchased HudBay shares.

[405] We conclude that the HudBay Material Facts were material facts that were not generally disclosed throughout the relevant time, from July 17, 2007 to September 30, 2007.

C. Agueci

[406] Staff submits Agueci engaged in conduct contrary to subsection 76(2) of the Act by providing undisclosed material facts relating to HudBay to Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi and Iacono.

1. Was Agueci in a Special Relationship with HudBay?

[407] The Panel finds that Agueci was in a special relationship with HudBay pursuant to subsection 76(5)(c) of the Act as of July 17, 2007.

[408] On December 8, 2006, HudBay retained GMP to act for the special committee of the board of HudBay in respect of an offer that HudBay then expected to receive and was added to the GMP grey list on that date. Subsequently, on July 17, 2007, HudBay called Wellings to inform him and GMP that HudBay had received the Votorantim Proposal and approached GMP to advise the special committee of the board of HudBay in respect of the Votorantim Proposal. Wellings proceeded to email McBurney at 1:07 p.m. on that date and to place HudBay back on the GMP grey list at 1:08 p.m. on that date. We find that GMP was in a special relationship with HudBay under subsection 76(5)(b) of the Act because it was engaged in business or professional activity with or on behalf of the reporting issuer, HudBay. Accordingly, Agueci was in a special relationship with HudBay pursuant to subsection 76(5)(c) of the Act during the relevant time because she was an employee of GMP, which we found to be a company described in subsection 76(5)(b) of the Act.

2. Did Agueci have Knowledge of the HudBay Material Facts Beginning on July 17, 2007?

[409] The testimony of multiple GMP executives supports that in July 2007 Agueci sat in close proximity to the GMP deal team, including McBurney and Wellings, and that she would have overheard conversations in their open concept office layout. Certain emails and documents pertaining to the Votorantim Proposal were accessible by her, as Agueci had access to McBurney's emails and to the GMP corporate directory. Wellings testified that Agueci was generally aware of professional activities in the office, would answer his phone, would speak to clients and had access to his emails.

[410] On July 17, 2007 at 1:07 p.m. Wellings emailed McBurney stating "hbm happening perhaps tomorrow" (Exhibit 665). Wellings testified that the email to McBurney meant he believed there was an offer coming for HudBay in short order. On July 17, 2007 at 1:08 p.m. Wellings sent an email to GMP compliance requesting that HudBay be placed back on the GMP grey list. The Votorantim Proposal dated July 17, 2007, which was forwarded to Wellings on July 18, 2007, expressly stated "We are prepared to purchase 100% of the issued outstanding shares of HudBay for between C$30.00 and C$32.00 per share, on an all cash basis, subject to the terms and conditions contained herein" (Exhibit 667). On July 20, 2007, Wellings emailed HudBay with the GMP valuation analysis of the Votorantim Proposal, which shows a premium of 26% on a 20-day average price at $25.82 for HudBay.

[411] Based on the evidence, we are satisfied that Agueci had knowledge of the HudBay Material Facts, including:

1. **HudBay Fact One** – as of July 17, 2007, Agueci knew that HudBay's CEO received the Votorantim Proposal;

2. **HudBay Facts Two and Three –** as of July 18, 2007, Agueci knew that the terms of the Votorantim Proposal included an all-cash offer to acquire all outstanding common shares of HudBay at a price of $30-$32 per share;

3. **HudBay Fact Four –** as of July 20, 2007, Agueci knew that the price of Votorantim's offer to acquire HudBay represented an approximate 26% premium based on a 20-day average price of the stock, when GMP prepared and submitted its preliminary evaluation of the Votorantim Proposal to HudBay.

[412] We conclude that Agueci had knowledge of the HudBay Material Facts beginning on July 17, 2007 and that those facts were not generally disclosed at the time that she learned them. We also find that the HudBay Material Facts were material facts that were not generally disclosed throughout the relevant time, from July 17, 2007 to September 30, 2007.

[413] It is not clear from the evidence when Agueci learned that the Votorantim Proposal was not going forward. Wellings emailed members of the HudBay special committee on September 19, 2007 at 3:20 p.m. and reported that "it appears they [Votorantim] won't be proceeding to the next stage" and "they couldn't get to the value expectations" (Exhibit 640). There is evidence that Agueci left for vacation in London and Rome in the evening of September 19, 2007 and returned to Toronto in the afternoon of October 1, 2007.

D. Did Agueci Inform, and did Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi , Iacono and/or Serpa Purchase, HudBay Securities, with Knowledge of the HudBay Material Facts?

[414] As with the other allegations of this nature, Agueci takes the position that the direct evidence, which should be preferred over inferences drawn from circumstantial evidence, at most supports that she recommended to other Respondents that they purchase a security or advised them that she was purchasing a particular security. She relies upon *ATI* and *Landen* in support of her submission that in Ontario, unlike in Alberta, advice from an insider to trade is not material information (*ATI, supra* at paras. 63-64; *Landen, supra* at para. 97). Agueci submits that Staff have failed to establish on a balance of probabilities that any of the Respondents who traded in the impugned securities received material non-public information from her. Agueci notes that she had no reason or motive to pass such information and received no benefit from the alleged tipping.

1. Wing and Pollen

[415] On July 17, 2007, Agueci called Wing, who was in Italy at the time, at 2:08 p.m. (Toronto time) for two minutes. Wing returned Agueci's call at 3:28 p.m. (Toronto time) on the same date for three minutes. On July 18, 2007, Wing emailed SG Private at 9:12 a.m. (Toronto time) with the following message: "Blaise, your client would like to buy 20,000 shares of Hudson Bay Mining" (Exhibit 684). On July 19, 2007, Wing called SG Private at 7:07 a.m. (Toronto time) and at 8:36 a.m. (Toronto time) for three minutes. A limit order was placed by SG Private, on behalf of Pollen, with BMO at 9:22 a.m. that day (Toronto time) to buy 20,000 shares of HudBay at a price of $28.50. Later that morning, Agueci called Wing at 10:13 a.m. for one minute and Wing called Agueci at 10:14 a.m. for two minutes. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. On July 19, 2007 HudBay shares traded above the limit price. On July 20, 2007, Wing called SG Private at 8:57 a.m. (Toronto time) and Pollen's order was filled between 9:34 a.m. and 11:30 a.m. (Toronto time) at a price of $28.50 per share.

[416] On July 30, 2007, the special committee of independent directors of HudBay held a meeting at which Lazard made a presentation and GMP and Lazard were formally retained to provide financial advisory services to the special committee. On July 31, Agueci called Wing at 9:09 a.m. for one minute and within one hour, Pollen bought an additional 20,000 shares of HudBay at 10:02 a.m. at a price of $27.16 per share.

[417] On August 1, 2007 at 12:04 p.m., GMP staff emailed to Lazard, and copied Wellings, a draft presentation for the special committee of HudBay. Agueci sent the Project Working Group List to members of the HudBay board, their counsel, Lazard and GMP staff by email at 12:33 p.m. that day, and later Agueci called Wing at 4:05 p.m. for three minutes.

[418] On August 2, 2007, Agueci called Wing at 9:18 a.m. for one minute. Wing returned Agueci's call at 9:26 a.m. and again at 9:29 a.m. for four to five minutes. Then Wing placed two market orders to buy HudBay shares. On August 2, 2007, Wing bought 10,000 HudBay shares at 9:47 a.m. at prices between $25.95 and $26.05 and Pollen bought 10,000 HudBay shares at 9:51 a.m. at an average price of $25.792 per share.

[419] On January 10, 2008, Pollen sold 25,000 shares of HudBay for $17.34 per share and on January 22, 2008, another 25,000 shares of HudBay for $13.92 per share. Wing sold 10,000 HudBay shares on April 16, 2008 for $17.43 per share. The combined loss for Wing and Pollen was $703,116.

[420] Wing's submissions focus on his personal holdings; however, as Wing was a directing mind and the sole signatory to the Pollen SG Account we are unable to consider his trading activity without taking into account the holdings of Pollen, a vehicle through which he built a position. We find that the aggregate purchases of HudBay shares by Pollen and Wing in the two-week period of mid-2007 in the amount of $1,648,473 was significant and resulted in a significant investment by them in HudBay (Exhibit 1020).

[421] The fact that Wing and Pollen had not bought HudBay during the period from December 2006 to July 19, 2007 is noteworthy, but is not conclusive. Again, we agree with Wing's submission that these trades were not necessarily uncharacteristic or unusually risky for Wing and/or Pollen. Wing and Pollen both held commodity stocks and Wing was purchasing other resource stocks at the time. However, we note that on July 17, 2007, Agueci called Wing in Italy and he called her back on her cell phone within 80 minutes, while he was travelling in Europe. Wing subsequently made repeated efforts to contact SG Private until an order for shares of HudBay was filled on July 20, 2007 for the account of Pollen. In our view, this conduct is indicative of a sense of urgency and supports the inference that Agueci informed Wing of the HudBay Material Facts.

[422] As stated in previous sections, the relationship between Wing and Agueci was an intimate personal relationship during 2007. We do not find credible Wing's testimony that he and Agueci never spoke about stocks because a review of the evidence provided by others and Agueci's email history indicates that she discussed stocks with just about everyone. Agueci stated, and Respondents and witnesses confirmed, that she told everyone, including taxi drivers, about her stocks.

[423] Wing also submits that he and Agueci spoke every day and therefore trades are bound to be in proximity to communications. We are not persuaded that it was merely coincidental that he placed orders to buy HudBay shares for himself or Pollen's account on July 18 and 31, 2007 and August 2, 2007 shortly following communications with Agueci. Furthermore, after Agueci learned of additional HudBay Material Facts on July 18 and July 20, 2007 and as other details concerning the progression of the Votorantim Proposal were developing, Agueci continued to maintain contact with Wing and he continued to purchase HudBay shares during this two-week period. We are satisfied that the timing of communications between Wing and Agueci relative to the placement of the orders, in the context of the transaction's progression and GMP's active participation, and the persistence of Wing to fill the orders support the inference that Agueci informed Wing of the HudBay Material Facts.

[424] Wing's evidence was that he relied upon an expectation of demand from China for Canadian commodities as an explanation for buying HudBay shares (the "**China Story**"). HudBay issued many announcements in the first half of 2007, some of which were positive, including good first quarter results. HudBay had also been the subject of takeover rumours in March 2007. In the two weeks from July 18, 2007 to August 2, 2007, Wing was aggressively ordering the purchase of HudBay shares –

four orders for a total of 60,000 HudBay shares. Staff's evidence indicated that Pollen did not purchase any shares other than HudBay shares in its offshore account in July and August 2007, when Pollen invested $1,388,210 in HudBay shares. Staff's evidence also indicated that Wing's only purchases of securities in his account in August 2007 were purchases of 10,000 HudBay shares in the amount of $260,263. We do not find Wing's evidence credible. It is not credible that there had risen a sudden expectation of demand from China, which spurred his trading activity in HudBay in a two-week period in the summer of 2007 when he was travelling in Europe. Wing also did not explain why he preferred to buy shares of HudBay over other resource and commodity companies in July and August 2007. In our view, it is improbable that he placed orders to purchase HudBay shares without having been informed of the HudBay Material Facts by Agueci. We note that Wing placed his first order within one day after Agueci became aware that HudBay had received the Votorantim Proposal and their communication.

[425] Again, we have considered that Wing also testified that Friedli of SG Private was an experienced portfolio manager who provided Wing with investment advice. However, the evidence supports that Wing instructed SG Private to purchase HudBay on behalf of Pollen. Further, Wing admitted that he directed 99% of the trades in the Canadian sub-account of the Pollen SG Account. Furthermore, Wing could not recall if Friedli advised him about the stocks at issue in this proceeding.

[426] Wing submits that he did not demonstrate a consciousness of guilt because he did not sell his HudBay shares until April 2008. In our view, the fact that Wing did not sell those stocks when Votorantim withdrew its Proposal does not assist our analysis because Wing, by his own admission, liked resource stocks. Accordingly, the timing of sales of HudBay shares by Wing and Pollen is not, in our view, indicative of whether they had knowledge of the HudBay Material Facts at the time of their purchase of HudBay shares.

[427] Wing submits that there was a 29-day delay between the time Staff alleges Agueci learned of the HudBay Material Facts and his orders to purchase HudBay shares in his personal account and a 16-day gap before orders to purchase HudBay shares in the Pollen SG Account. Wing's timeframes are based upon Staff's enforcement letters, which Wing argues alluded to Agueci's knowledge as of July 4, 2007. We do not accept these characterizations. The Amended Statement of Allegations clearly alleges that on or before July 17, 2007, Agueci became aware of the HudBay Material Facts. We are persuaded that Agueci learned of the HudBay Material Facts beginning on July 17, 2007, continued to obtain further HudBay Material Facts on July 18 and July 20, 2007 and even sent the Project Working Group List to members of the HudBay board, their counsel, Lazard and GMP staff by email dated August 1, 2007 before Agueci called Wing later that day for three minutes. As of July 17, 2007, GMP became increasingly involved in its mandate for HudBay and details of the Votorantim Proposal were becoming firmer, which bolstered the probability of the transaction occurring.

[428] We acknowledge that there is no evidence that Wing has ever been implicated in Commission enforcement proceedings over the course of his 35 year career, and he was aware of the consequences of insider trading in another matter. However, exposure to insider trading investigations in the past does not assist us in determining whether Wing had been informed of the HudBay Material Facts in the circumstances of this case. While Wing's motivation for his impugned conduct is not clear to us, motive is not a prerequisite to a finding of insider trading.

[429] Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Wing, an experienced and knowledgeable market participant, would have purchased a stock based on a simple recommendation from Agueci.

[430] We infer, based on the combined weight of the evidence, that Agueci informed Wing of the Hudbay Material Facts. We find that Agueci learned of the HudBay Material Facts beginning on July 17, 2007. Wing and Agueci spoke on July 17, 2007 after the close of the business day in Europe. On July 18, 2007, prior to the opening of the stock market in Toronto, Wing emailed Friedli in Switzerland to place an order to buy 20,000 HudBay shares. On July 31, 2007, Agueci called Wing at 9:09 a.m. for up to one minute and less than one hour later at 10:02 a.m., Pollen bought an additional 20,000 shares of HudBay. On August 2, 2007, Agueci called Wing for one minute. Wing returned Agueci's call at 9:26 a.m., again at 9:29 a.m. for four to five minutes, and then Wing placed two market orders to buy 10,000 HudBay shares for his account at 9:47 a.m. and 10,000 HudBay shares for Pollen's account at 9:51 a.m. The purchases were proximate to phone calls with Agueci, which supports that Wing had the ability and opportunity to acquire knowledge of the HudBay Material Facts from Agueci and that he executed well-timed purchases of a total of 50,000 HudBay shares for Pollen's account and 10,000 HudBay shares for his own account. Furthermore, the aggregate purchase amount of $1,648,473 was significant, even for Wing and Pollen.

[431] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Wing of the HudBay Material Facts on and after July 17, 2007 and, therefore, that Wing purchased, and directed purchases for Pollen of, HudBay shares on July 20, July 31 and August 2, 2007 with knowledge of the HudBay Material Facts while they were not generally disclosed.

2. Fiorini

[432] On Friday, August 10, 2007, Fiorini received six calls on his cell phone from unidentified callers between 10:19 a.m. and 12:51 p.m. and a seventh call from an unidentified caller for four minutes at 6:53 p.m. Staff submit that at least one of these

7 calls was from Agueci. Counsel for Agueci and Fiorini, respectively, submit that an inference that calls from an unknown caller to Fiorini came from Agueci is not sufficiently linked to the established primary facts.

[433] As stated above, George explained that GMP`s phone records do not track calls by employee extension number and therefore, Staff was not able to obtain records of specific GMP extensions to track outgoing calls.

[434] On Monday, August 13, 2007 at 10:55 a.m., the next trading day after August 10 when he received the seven unidentified calls on his cell phone, Fiorini emailed the compliance department at Desjardins Securities to request permission to buy shares of HudBay. The permission sought was granted within the next two minutes and a few minutes later, at 11:01 a.m., Fiorini purchased 2,000 shares of HudBay through a market order. The next day, August 14, 2007, Agueci placed four calls of one minute or less duration to Fiorini on her cell phone between 12:50 p.m. and 2:16 p.m. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration.

[435] On September 16, 2007, a few days before Votorantim withdrew its Proposal, Fiorini received 2 calls from unidentified callers at 2:01 p.m. and 2:45 p.m. for two minutes and three minutes, respectively. Staff submit that at least one of these unidentified calls was from Agueci. The next day at 10:43 a.m., Fiorini emailed the compliance department at Desjardins Securities to request permission to buy shares of HudBay. The permission sought was granted in less than three minutes and a few minutes later, at 10:53 a.m., on September 17, 2007, Fiorini purchased 2,200 more shares of HudBay using a market order.

[436] On September 25, 2007, some six days after Votorantim withdrew its Proposal and while Agueci was on an 11-day holiday, Fiorini purchased 1,200 more shares of HudBay through a market order.

[437] As noted above, Fiorini testified in his compelled examination that he would meet Agueci on a regular basis for coffee during the work day and stated that Agueci was a good source of information about the mining sector in the market – rumours, gossip and innuendo – and she would discuss such information in their meetings over coffee, which would give Fiorini a sense of the lay of the land as he tried to build up the mining business at Desjardins Securities. Fiorini testified that he and Agueci would communicate occasionally by phone, using their respective office phone lines and not their cell phones, and sometimes by email, but regularly would meet over coffee to chat about the markets and people.

[438] We find that the aggregate purchases of HudBay shares by Fiorini in the five weeks prior to September 19, 2007 in the amount of $105,925 was significant (Exhibit 1020). The two purchases represented more than 50% of his then-annual gross salary, which he estimated to be approximately $200,000 in 2007. We find this activity to be risky relative to the amount of money invested in relation to his annual gross salary. Fiorini's purchase of HudBay shares was also uncharacteristic in size relative to his other trades and was his second largest trade on a dollars invested basis of his trades in 21 issuers from January 2007 to February 2008.

[439] The Panel places no weight on unidentified calls. In our view, it would be speculation or conjecture to accept that one of the unidentified calls to Fiorini on August 10, 2007 or September 16, 2007 was a call from Agueci.

[440] The Panel notes that Fiorini's purchases of 4,200 HudBay shares on August 13 and September 6, 2007, during the period when the Votorantim Proposal had been received by HudBay and was being worked on by GMP, were well-timed and constituted a large and risky investment relative to Fiorini`s gross annual income. We are not satisfied, however, that Staff provided clear, convincing and cogent evidence that Agueci informed Fiorini of the HudBay Material Facts and, therefore, we cannot find that Fiorini's conduct in connection with HudBay constituted insider trading contrary to subsection 76(1) of the Act.

3. Fiorillo

[441] On August 19, 2007, Agueci called Fiorillo for two minutes at 1:22 p.m. The next day, Agueci called Fiorillo for five minutes at 9:11 a.m. Approximately 20 minutes later at 9:34 a.m. on August 20, 2007, Fiorillo bought 1,700 shares of HudBay at market for an average price of $22.12 per share. One week later, at 9:40 a.m. on August 27, 2007, Fiorillo sold his 1,700 HudBay shares at a price of $24.26 per share, making a net profit of $3,437 on those shares. In addition, on August 24, 2007, Fiorillo sold 35 HudBay March 24 puts for an exposure of $84,000 and on August 28, 2007, sold 15 HudBay March 22 puts for an exposure of $33,000.

[442] Agueci called Fiorillo for eight minutes at 10:54 p.m. on Thursday, September 6, 2007, the date when Votorantim began its confidential meetings with HudBay's senior officers in Winnipeg and its confidential due diligence site visits to HudBay's mining properties and operations in Manitoba as part of the progression of the Votorantim Proposal. The next day at 1:33 p.m., prior to Labour Day weekend, Fiorillo placed an order to buy 3,000 HudBay shares at market, which was filled immediately at a price of $24.95 per share. In addition, on that same day, Fiorillo sold 50 HudBay March 28 puts for a total exposure of $140,000. In the morning of the next business day, Tuesday, September 11, 2007, Fiorillo purchased a further 2,000 HudBay shares at market at an average price of $24.54 per share and 25 minutes after that, he purchased an additional 1,000 HudBay shares at market. The following day, Fiorillo purchased 8,000 more shares of HudBay at market at a price of $25.17 per share.

[443] Agueci called Fiorillo twice on September 13, 2007 at 1:00 p.m. and 2:16 p.m., each time for up to one minute. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. The next day, Friday, September 14, 2007 at 11:39 a.m., Fiorillo purchased 2,000 more shares of HudBay at market at a price of $25.03 per share.

[444] Agueci called Fiorillo twice on Monday, September 17, 2007 at 11:11 a.m. and 11:48 a.m., each time for up to one minute. The next day, Tuesday, September 18, 2007 at 9:33 a.m., Fiorillo purchased 5,000 more shares of HudBay at $25.05 per share. On September 20, 2007, Fiorillo purchased an additional 4,000 HudBay shares at $25.42 per share at 9:33 a.m.

[445] Agueci returned from her vacation in the early afternoon of October 1, 2007. In the morning of October 3, 2007, Agueci called Fiorillo's cell phone for up to one minute and in the evening of that date, Fiorillo called Agueci's cell phone for up to one minute. On Friday, October 5, 2007, Fiorillo called Agueci's cell phone three times between 6:38 p.m. and 6:58 p.m. for up to one minute each time and at 7:22 p.m., Fiorillo emailed Agueci to advise her that he had called her cell and had stayed downtown so that they could meet, but she did not appear. At 7:32 p.m., Agueci called Fiorillo for up to three minutes. In Agueci's GMP calendar, she had an entry for "henry" at 10 p.m. that evening. On Saturday, October 6, 2007 at 11:49 a.m., Agueci called Fiorillo for three minutes. On Tuesday, October 9, 2007, the first business day following the Canadian Thanksgiving weekend, Fiorillo placed two sell orders of 14,000 HudBay shares at 9:39 a.m., which he sold for $367,785, and 8,000 HudBay shares at 11:13 a.m., which he sold for $208,008. In addition, on October 9, 2007, Fiorillo sold HudBay calls for total proceeds of $9,100.

[446] Fiorillo made many purchases of HudBay shares during the relevant period, the first was within 20 minutes of speaking with Agueci. Fiorillo's second purchase was made on September 7, 2007 less than 15 hours after a late night call with Agueci, which was the day that Votorantim began its meetings with HudBay's senior executives and site visits of HudBay's mining properties in Manitoba. In our view, the commencement of such meetings and the site visit reinforced the HudBay Material Facts. We find it telling that the first evidence of contact between Agueci and Fiorillo after HudBay and GMP received the Votorantim Proposal was the day before Fiorillo started trading in HudBay shares and that Fiorillo did not start buying HudBay shares until after the calls from Agueci.

[447] Fiorillo submits that Staff had no explanation as to why there was a one-month gap between the time Staff alleges Agueci's learned of the HudBay Material Facts and the time Staff alleges she conveyed them to Fiorillo. However, we were not provided any evidence of contact between Agueci and Fiorillo in the month prior to August 19, 2007. There was evidence that Fiorillo was out of town from time to time for extended voyages on his boat. The evidence does indicate that Fiorillo placed his first order for HudBay shares shortly after the market open, after the first two calls in evidence from Agueci to Fiorillo following the receipt of the Votorantim Proposal by HudBay and GMP.

[448] Between August 15 and August 19, 2007, Agueci had access, in her capacity as an executive assistant in the Mining Group of the Investment Banking Department of GMP, to Wellings' emails, including those between August 15 and 19, 2007 when the first site visit by Votorantim to HudBay's mining properties in Manitoba was being arranged for early September. On August 20, 2007, Agueci called Fiorillo for five minutes and within 20 minutes of that call he placed his first order to buy HudBay shares at 9:34 a.m. On September 6, 2007 at 10:54 p.m., the date when Votorantim began its confidential meetings with HudBay's senior officers in Winnipeg and its confidential due diligence site visits to HudBay's mining properties as part of the progression of the Votorantim Proposal, Agueci called Fiorillo for eight minutes and the next day at 1:33 p.m., Fiorillo placed his second order to buy HudBay shares.

[449] We find that Fiorillo's purchases of 22,700 HudBay shares in the aggregate amount of $563,478 between August 20, 2007 and September 18, 2007, were among his largest dollar value stock purchases in the relevant period and were not insignificant (Exhibit 1020). Fiorillo submits that the impugned trades were a small percentage of his income and net worth. As Fiorillo implied in his testimony and in his closing submissions, his net worth was between $33 million and $100 million. It would follow that most, if not all, his purchases likely would be a small percentage of his net worth.

[450] We accept that Fiorillo's purchases were not necessarily uncharacteristic or unusually risky for Fiorillo, in that he frequently invested in shares of companies engaged in gold, silver, oil and gas, coal, uranium and other base metals during the relevant time. We also accept that Fiorillo was a prolific trader, who implemented various strategies in his trading. Furthermore, we accept Fiorillo's evidence that he traded frequently, watched the market avidly and spoke to many people about stocks.

[451] We also concur with Fiorillo's position that a complete record should include his options trading and that Staff's summary of trades do not account for any potential exposure related to options trading. After our review of the trading records, we note that in the relevant period, when Fiorillo was purchasing HudBay shares between August 20, 2007 and September 18, 2007, he was also selling HudBay puts, on August 24, August 28 and September 7, 2007; thus his options trades were directionally consistent with his purchases of HBM shares. As Fiorillo points out in paragraph 165 of his closing submissions, his "investment strategy [of selling puts] speculates that […] the stock will be trading at or above the strike price at the time the option expires". Accordingly, Fiorillo's option strategy was consistent with someone who has a positive view of the stock, that is, that the stock price is expected to go up. Similarly, on October 9, 2007, when Fiorillo begins selling HudBay stock, he is also

selling HudBay calls, reversing his option strategy. We find that Fiorillo's HudBay options trading is directionally consistent with the corresponding HudBay share purchases, which supports the inference that Agueci informed Fiorillo of the HudBay Material Facts.

[452] Fiorillo testified that he was interested in HudBay in August and September 2007 because of the China Story and because HudBay had developed a large cash position. We heard evidence that HudBay had issued many announcements in the first half of 2007, some of which were positive, including good first quarter results. A Globe Investor article dated January 11, 2007 reported that HudBay had a large cash balance, which could drive M&A activity. Another Globe Investor article of February 6, 2007 discussed that HudBay was trading at a 37% discount to its net asset value and had a growing cash position, which was creating speculation about a private equity buyout and M&A activity. On March 3, 2007, an article by Ira Gluskin in the Globe Investor disclosed that one of his fund's bigger positions was in HudBay, which was selling at a very low multiple to earnings, and discussed that China and India are growing at record paces. Fiorillo listed Mr. Gluskin as a contact with whom he discussed stocks and testified that he very likely read Mr. Gluskin's article at that time. In addition, Mr. Gluskin was an investor in Fiorillo's fund, Alpha Scout Capital Management. On March 8, 2007, an article in Globe Investor entitled "HudBay Minerals cashes in on high metal prices" discussed positive results of its fourth quarter 2006, including:

> HudBay Minerals Inc. recorded soaring profits in the fourth quarter on rising revenues caused by high world metal prices … [and] Like many of the world's miners HudBay has benefitted from soaring demand from Asia, especially the rapidly growing economies of China and India. That has helped generate record cash flows and has made the company a possible takeover target of a bigger rival. (Exhibit 1183, "HudBay Minerals cashes in on high metal prices" *The Globe and Mail* (8 March 2007))

[453] On May 9, 2007, HudBay reported strong first quarter 2007 results in its news release and indicated that its operating cash flow nearly doubled. Notwithstanding all the positive news reports and takeover speculation from January to May 2007, Fiorillo did not buy HudBay shares during that time. Further, while there were many other resource and commodity stocks that could have benefitted by the China Story, we were not directed to any evidence of Fiorillo's purchases of such other resource and commodity stocks during the 2007 period when he was buying HudBay shares. In September 2007, Fiorillo was accumulating a large position in HudBay. We do not find credible Fiorillo's explanation that he purchased a significant number of HudBay shares in September 2007 simply on the basis of HudBay's large cash position and the China Story, when both those facts were in existence for over eight months prior to his purchases.

[454] In our view, it is improbable that he placed orders to buy HudBay shares in August and September 2007 without having been informed of some or all of the HudBay Material Facts from Agueci, having placed an order to purchase HudBay shares shortly after the opening of the market and within 20 minutes after speaking with Agueci on August 20 and another order, which was the first of a series of orders to buy HudBay at market that he made in September, commencing within a half-day after Agueci's call to him at 10:54 p.m. on September 6, 2007. The latter was the first day of the management visits in Winnipeg and the site visits to HudBay's mining properties in Manitoba that were being undertaken by Votorantim as part of its due diligence in progression of the Votorantim Proposal. We also find it improbable that he placed additional orders to purchase more HudBay shares at market within less than a day after calls from Agueci to Fiorillo on September 13, 2007 and September 17, 2007 without having been informed of the HudBay Material Facts by Agueci.

[455] The Panel notes that, while Fiorillo did buy and sell 1,700 shares within one week after the August 20 call from Agueci for a profit of more than 9%, he then proceeded to purchase another 21,000 HudBay shares, between September 7 and 18, 2007, in close proximity to calls from Agueci and at market purchase prices, all of which were higher than the price at which he sold the 1,700 shares on August 27, 2007 (We note that Fiorillo also purchased 3,000 HudBay shares on September 20, 2007, which was outside the relevant period). Therefore, we do not find that Fiorillo's explanation of why he bought 22,700 HudBay shares in the one-month period between August 20 and September 18, 2007 is in accord with the preponderance of the evidence.

[456] The evidence of proximity of timing of the contact between Agueci and Fiorillo in early October, upon her return from vacation, and the sale by Fiorillo of 22,000 HudBay shares on October 9, 2007, the first business day following the Canadian Thanksgiving weekend, supports an inference that Agueci communicated to Fiorillo that the Votorantim Proposal had been withdrawn and that the proposed HudBay transaction had fallen through, which resulted in Fiorillo's sales of HudBay shares on October 9, 2007.

[457] The evidence submitted by Fiorillo indicates that, more than six months after the relevant period, Fiorillo bought and sold HudBay shares between April 2008 and June 2009 as he: bought 4,000 HudBay shares on April 28, 2008; sold 4,000 HudBay shares on May 6, 2008; sold 1,000 HudBay shares on July 11, 2008; bought 3,000 HudBay shares on November 21, 2008; and sold 5,000 HudBay shares on June 19, 2009. The fact that Fiorillo purchased HudBay shares in the period that was six to 14 months after the relevant period and sold HudBay shares in the period that was seven to 21 months after the relevant period is not determinative of whether he purchased HudBay shares in the relevant period with knowledge of the HudBay Material Facts.

[458] The withdrawal of the Votorantim Proposal on September 19, 2007 meant that Fiorillo was unable to realize an anticipated profit on his holding of HudBay shares that would have arisen had the Votorantim Proposal been announced publicly and a definitive purchase agreement been entered into between Votorantim and HudBay. Fiorillo realized a profit of $18,551 in excess of the total purchase price of $452,160 for the 21,000 HudBay shares that he purchased between September 7 and 18, 2007, in addition to the profit of $3,437 that he made on the purchase and sale of 1,700 HudBay shares in August 2007. Fiorillo submits that his trading in HudBay, viewed in its entirety until June 2009, reveals a loss of $65,127. The fact that Fiorillo continued to purchase and sell HudBay shares beyond the relevant period does not assist our determination of whether he purchased HudBay shares in the relevant period with knowledge of the HudBay Material Facts.

[459] Furthermore, we do not find Fiorillo's testimony credible that he did not receive any information from Agueci concerning HudBay and the Votorantim Proposal. As stated above, in his examination-in-chief, Fiorillo attempted to downplay the extent of his relationship with Agueci, saying she was a chatter-box. In cross-examination, it became apparent that they were friends, who met for drinks, dinners, and Fiorillo invited her to social gatherings on his boat. Fiorillo says that Agueci "would almost get to the point of pestering me at times" about stocks (Merits Hearing Transcript of January 20, 2014 at p. 63). We find it inconsistent that Fiorillo regarded Agueci as a pest, but then answered her calls late in the evening or on weekends.

[460] The evidence discloses that Agueci made several calls to Fiorillo and shortly thereafter, Fiorillo purchased HudBay shares and sold HudBay puts. Fiorillo made his first purchase of HudBay shares at the opening of market on August 20, 2007 within 20 minutes after a five-minute phone call from Agueci and made his second purchase of 3,000 HudBay shares and sold 50 puts on HudBay shares on the day immediately following an eight-minute phone call from Agueci at 10:54 p.m. on September 6, 2007. In the following two business days, Fiorillo purchased an additional 11,000 HudBay shares. On the business day next following one-minute phone calls from Agueci on September 13, 2007 and September 17, 2007, Fiorillo purchased another 7,000 HudBay shares.

[461] We accept the testimony of Aiello, Fiorillo's investment advisor in 2007-2008, that Fiorillo's purchases of HudBay shares in his Haywood account in 2007 were not solicited, which indicates that Fiorillo directed the purchases.

[462] We also heard evidence and considered submissions concerning Fiorillo's good character and concern for his reputation. We do not find McBurney's character reference to be of great assistance to the Panel in the circumstances. Again, while we agree that a good reputation is important for business, it does not assist the Panel with these deliberations. As stated above with respect to Wing, while Fiorillo's motivation for his impugned conduct is not clear to us, motive is not a prerequisite to a finding of insider trading.

[463] Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Fiorillo, an experienced and knowledgeable market participant, would have purchased a stock based on a simple recommendation from Agueci.

[464] While we accept Fiorillo's evidence that he traded frequently, watched the market avidly and spoke to many people about stocks, we do not find Fiorillo's explanation of why and when he bought HudBay shares is in accord with the preponderance of the evidence. His explanation does not explain the timing of his contact with Agueci, nor the proximity to his trading; this evidence supports the inference that Agueci informed Fiorillo of the HudBay Material Facts and that Fiorillo purchased HudBay securities with knowledge of the HudBay Material Facts between August 20 and September 18, 2007.

[465] We infer, based on the combined weight of the evidence, that Agueci informed Fiorillo of the HudBay Material Facts. We find that Agueci learned of the HudBay Material Facts beginning on July 17, 2007. We find that the first evidence of contact between Agueci and Fiorillo after July 17, 2007 was in calls from Agueci to Fiorillo on August 19 and 20, 2007. We find that Fiorillo made his first purchase of HudBay shares at the opening of the market within 20 minutes after his five-minute contact with Agueci on August 20, 2007. We find that Fiorillo made his second purchase of HudBay shares on September 7, 2007 within 15 hours after a late-night eight-minute call with Agueci. We find that Fiorillo purchased additional HudBay shares at market within less than one day after one-minute calls from Agueci to Fiorillo on September 13, 2007 and September 17, 2007. Furthermore, Fiorillo's option trading was directionally consistent with the corresponding HudBay share purchases. We find Fiorillo's purchases of HudBay shares amounted to an aggregate amount of $563,478, which were among his largest dollar value stock purchases in the relevant period and were not insignificant, even for someone of Fiorillo's substantial net worth. Furthermore, this amount does not include his potential exposure based on his sales of HudBay options. The purchases were proximate to phone calls with Agueci, which supports the finding that Fiorillo had the ability and opportunity to acquire knowledge of the HudBay Material Facts from Agueci and that he executed well-timed purchases of 1,700 HudBay shares on August 20, 2007 and an additional 21,000 HudBay shares between September 7 and September 18, 2007.

[466] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Fiorillo of the HudBay Material Facts on August 19 and 20, 2007 and, therefore, that Fiorillo purchased HudBay shares with knowledge of the HudBay Material Facts on August 20, 2007 and between September 7, 2007 and September 18, 2007, while the material facts were not generally disclosed.

4. Stephany

[467] Agueci and Stephany played tennis at or about 7:30 p.m. on Wednesday, August 1, 2007. After an exchange of emails between Stephany and Agueci the next morning, they met shortly after 10:32 a.m. on August 2, 2007 in the vicinity of their office buildings downtown. Later that same day, Stephany entered an order to purchase 500 shares of HudBay at market for her client S.P. in S.P.'s margin account with Fort House; the order was filled at $26.10 per HudBay share. Later that same day, Stephany phoned Agueci twice: first, for approximately three minutes at 5:28 p.m. and for one minute at 5:56 p.m. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. Prior to the opening of markets on Friday, August 3, 2007, at 9:12 a.m., Stephany entered an order to purchase 500 shares of HudBay at a price of $26.00 per share in her margin account at Fort House. Stephany changed the fill order ("**CFO'd**") twice before it was filled at a price of $26.40 per share. Later that same day, Stephany purchased 200 more shares of HudBay at $26.17 per share for the margin account of her client S.P.

[468] Agueci called Stephany twice in the morning of Tuesday, August 7, 2007, prior to the opening of the markets on the first trading day after the August holiday weekend: first, Agueci called at 9:20 a.m. for up to one minute and at 9:21 a.m. for five minutes. A few minutes later, Stephany entered an order to purchase 300 more shares of HudBay for her client S.P. at a price of $25.50 per share in S.P.'s margin account with Fort House. The next day, August 8, 2007, Stephany called Agueci at 9:12 a.m. for up to one minute. Later that morning, at 10:28 a.m., Stephany entered an order to purchase 500 more shares of HudBay at a price of $25.68 in her RRSP account at Fort House; she then CFO'd it twice before it was filled at $25.90 per share. Later that evening, phone records show that Stephany phoned Agueci twice at 6:34 p.m. for up to one minute. The next morning, August 9, 2007, shortly after the opening of the market, Stephany entered an order to purchase 300 more shares of HudBay for her client S.P. in S.P.'s margin account with Fort House; this order was filled at a price of $25.15 per share.

[469] On August 10, 2007 at 3:05 p.m., Stephany called Agueci for one minute and 31 seconds. Stephany entered an order to sell 500 shares of HudBay from her margin account at Fort House at a price of $25.05 per share. The order was CFO'd twice, reducing the number of shares to be sold to 300 and reducing the price to $24.40 per share. The order to sell 300 shares of HudBay from Stephany's margin account was filled at $24.40 per share at 3:52 p.m. on August 10, 2007. At 3:43 p.m. that same day, Stephany entered an order to sell 400 shares of HudBay for the margin account of her client S.P.; the order was filled at a price of $24.40 per share.

[470] On August 14, 2007, Agueci and Stephany played tennis together at or about 7:30 p.m. The next day at 1:46 p.m., Stephany entered an order to purchase 300 more shares of HudBay at a price of $23.50 per share in her margin account at Fort House. The next day, August 16, 2007, Stephany phoned Agueci twice at 6:17 p.m. and 8:17 p.m., each time for up to one minute. The next day, August 17, 2007, at 11:33 a.m., Stephany entered an order to purchase 100 more shares of HudBay for her client S.P. in S.P.'s margin account with Fort House at a price of $20.68 per share; the order was filled at a price of $20.84 per share. On August 28, 2007, Stephany entered an order to purchase 200 more shares of HudBay for her client S.P. in S.P.'s margin account with Fort House at a price of $22.54 per share; the order was CFO'd and was filled at a price of $22.92 per share.

[471] On Labour Day, Monday, September 3, 2007 at 1:44 p.m., Agueci phoned Stephany from New York City for between six and seven minutes. The next day, September 4, 2007 at 10:04 a.m., Stephany entered an order to purchase 300 more shares of HudBay for her client S.P. in S.P.'s margin account with Fort House at a price of $23.95 per share.

[472] On September 25, 2007, Stephany sold 300 HudBay shares from her margin account at a price of $26.05 per share. On September 27, 2007, Stephany sold 500 HudBay shares from her RRSP account at a price of $25.45 per share. On September 27, 2007, Stephany sold 1,000 HudBay shares at a price of $25.45 per share for the margin account of her client S.P. On October 2, 2007 at 9:21 a.m., Stephany sold 500 HudBay shares at a price of $25.80 per share for the margin account of her client S.P. and Stephany also sold 200 HudBay shares at a price of $25.75 per share from her RRSP account.

[473] In our view, Stephany's aggregate cost of purchases of HudBay between August 3 and August 15, 2007 in the amount of $33,270 is significant in her circumstances (Exhibit 1020). We note that due to Stephany's purchase and sale activities her maximum exposure at any one time would have been less than that total. Accordingly, we do not accept Staff's submission that Stephany invested an amount representing 30% to 36% of her salary. While her total amount invested would have been 30-36%, her exposure was likely more akin to approximately 25% of her annual salary at the time. On our review of the evidence, Stephany's purchases of HudBay were, however, among the larger dollar value holdings relative to her stock purchases in 2007.

[474] We also find that these HudBay trades by Stephany were significantly large and risky relative to her income and particularly since some purchases were made in her margin account. Although the purchases of HudBay shares were not out of character by comparison to other resource stocks that she purchased, they were risky relative to the potential loss of money invested given her financial position. That Stephany incurred a slight loss of $330 on her investment in HudBay shares instead of a profit is explained in part by the withdrawal of the Votorantim Proposal on September 19, 2007 and the consequent inability for Stephany to realize an anticipated profit that would likely have resulted from a positive news release, if one had come to pass.

[475] We recognize that Stephany bought HudBay shares between August 2 and August 9, 2007, in her margin account and in her RRSP account, but then sold some of her position from her margin account on August 10, 2007. We note that Stephany purchased the securities in a margin account and shortly after she sold some of the HudBay shares from that account, she also had cash credited into her margin accounts, which is indicative of a margin call. We note that Stephany bought 500 HudBay shares in her margin account on both August 3 and August 8, 2007, then sold 300 of the HudBay shares from her margin account on August 10, 2007 and transferred 200 of the HudBay shares to her RRSP account at Fort House, where she had available cash and the cash for those shares was swapped from her RRSP account into, and credited to, her margin account. Accordingly, Stephany was "net long" at the end of the day on August 10, 2007 and subsequently bought 300 shares of HudBay on August 15, 2007 to restore her overall holding to 1,000 HudBay shares in her two accounts. Stephany's conduct in maintaining her overall position at 1,000 HudBay shares supports the inference that Agueci informed Stephany of the HudBay Material Facts.

[476] Stephany's explanation for why she purchased HudBay shares was essentially that there had been vague rumours in the markets about HudBay. In her examination-in-chief, Stephany could not recall why she purchased HudBay shares, yet when asked again, after the lunch break, she testified that she recalled that HudBay had been the subject of takeover rumours. Stephany could not speak to any specific factors that would have impacted her interest in HudBay. Her explanation does not accord with the preponderance of the evidence, in our view. As discussed above, positive news about HudBay existed throughout the first half of 2007 and yet Stephany did not purchase HudBay shares prior to August 2007, shortly after communicating with Agueci.

[477] Stephany's counsel submits that there was a two-week delay between Agueci allegedly obtaining knowledge of the HudBay Material Facts and the date that Staff alleges that Agueci informed Stephany of the those facts. We recognize that the evidence supports that there was a gap between July 17 and July 20, 2007 when Agueci learned of the HudBay Material Facts and August 2, 2007 when Stephany made her first purchase of HudBay for the account of her client S.P. We find it telling that the first evidence of contact between Agueci and Stephany after HudBay and GMP received the Votorantim Proposal was the evening before Stephany started trading in HudBay shares and that Stephany did not start buying HudBay shares for the account of her client S.P. or for her own account until after Stephany had met with Agueci on August 2, 2007. We are persuaded that Agueci began learning of the HudBay Material Facts on July 17, 2007, learned of additional information concerning the HudBay Material Facts by July 18 and July 20, 2007 and even sent out a working group list in relation to the Votorantim Proposal on August 1, 2007. In addition, on August 1, 2007, at 12:03 p.m., GMP Staff emailed Lazard a Joint GMP – Lazard draft preliminary presentation, copying Wellings and others, which included the Votorantim proposed offer price of $32 all-cash per HudBay share and indicated the 21.4% premium based on the recent five-day volume-weighted average price. The draft presentation is evidence that the proposed deal was progressing. As of and from July 17, 2007, GMP became increasingly involved and the details of the proposed deal became firmer. By August 1 and 2, 2007, when Agueci spoke to Stephany, she knew that the likelihood of the transaction occurring had increased.

[478] Again, Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Stephany, an experienced market participant, would have purchased a stock based on a simple recommendation from Agueci.

[479] While we accept Stephany's evidence that she watched trends in the market and spoke to people about stocks, we do not find Stephany's explanation for why and when she purchased HudBay shares for her account or her client's account to be credible or in accord with the preponderance of evidence. Her explanation does not explain the timing of her contact with Agueci and the proximity to her trading.

[480] We infer, based on the combined weight of the evidence, that Agueci informed Stephany of the HudBay Material Facts. We find that Agueci learned of the HudBay Material Facts beginning on July 17, 2007. We find that the first evidence of contact between Agueci and Stephany after July 17, 2007 was made on August 1 and 2, 2007 in meetings between them outside their respective offices at tennis and coffee. We find that Stephany made her first purchase of HudBay shares for her account prior to the opening of the market on August 3, 2007 after additional contact between Agueci and Stephany. We find that Stephany purchased additional HudBay shares for her accounts on August 8 and 15, 2007 shortly after additional phone calls between Stephany and Agueci. We find that purchases of HudBay shares by Stephany for her accounts were significant, large and risky relative to her income and in her circumstances. The purchases of HudBay shares made by Stephany for her accounts were proximate to Stephany's contact with Agueci, which supports the finding that Stephany had the ability and opportunity to acquire knowledge of the HudBay Material Facts from Agueci and that Stephany executed well-timed purchases of HudBay shares for her accounts in August 2007.

[481] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Stephany of the HudBay Material Facts commencing on August 1 and August 2, 2007 and, therefore, that Stephany purchased HudBay shares for her accounts on August 3, 8 and 15, 2007 with knowledge of the HudBay Material Facts while the material facts were not generally disclosed.

5. Raponi

[482] On Friday, August 24, 2007 at 9:22 a.m., Raponi sent an email to Agueci stating "I'm thinking of doing it today???what do you think", to which Agueci responded at 9:46 a.m. "No. will call you later."(Exhibit 775). On Sunday, August 26, 2007 at 1:27 p.m., Agueci called Raponi for three minutes. On August 28, 2007 at 1:53 p.m., Raponi sent an email to Agueci with subject line "going to buy" and the message "im [sic] going to do it what do you think?" (Exhibit 777). Later that day at 7:28 p.m., Raponi called Agueci for up to one minute. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. On August 29, 2007 at 9:11 a.m., before the opening of the markets, Raponi entered an order to buy 1,000 shares of HudBay at $22.90 per share; Raponi CFO'd her order five times before the order was filled at 9:42 a.m. at $23.35 per share.

[483] On August 29, 2007 at 9:52 a.m., Raponi placed a stop loss on her 1,000 HudBay shares at a price of $21.00 per share. Later that afternoon, at 5:34 p.m., Agueci called Raponi for 10 minutes. The next morning at 9:48 a.m., Raponi entered an order to sell her 1,000 HudBay shares at a price of $23.85 per share, but within a minute, she cancelled the sell order at 9:49 a.m. Later that day, Raponi called Agueci twice: first, at 11:13 a.m. for one minute and second, at 12:04 p.m. for eight minutes.

[484] On September 20, 2007 at 8:02 a.m., Raponi placed an order to sell her 1,000 HudBay shares at a price of $26.35 per share. She CFO'd the order at 9:42 a.m. on the same date lowering the price to $25.65 per share and the order was filled at the lower price.

[485] As Agueci's cousin, Raponi and Agueci had frequent contact with each other, often in person, but also by email, text and phone. As stated above, Raponi is a high school teacher of languages, has limited stock market experience and has not been registered in the industry. We find that she was a novice investor at the relevant time. In her compelled examination, when asked if she would research stocks, Raponi stated "…if she [Agueci] bought it, it was good enough for me" (Exhibit 1157 at p. 45) and "I want to buy what you [Agueci] buy" (Exhibit 1157 at p. 123). Raponi further stated that Agueci would not tell Raponi specifics, but that Agueci would tell Raponi if she thought a stock recommendation was a good one. Raponi also admitted that Agueci told her to buy HudBay.

[486] We find that Raponi's purchase of $23,379 in HudBay shares was risky because Raponi used her line of credit to make the purchase and the amount was equivalent to approximately 25% of her income at the time (Exhibit 1020). She realized a profit of almost 10% in a short period. Raponi's purchase of HudBay shares was uncharacteristic in size relative to her other trades and the largest on a dollars invested basis from January 2007 to February 2008. This evidence would support the inference that Raponi was informed by Agueci of the HudBay Material Facts.

[487] We note that Raponi increased the price of her order to buy HudBay shares five times before her order was filled, which indicates that she was anxious to acquire a position. We consider the stop loss placed immediately after the time of her order on August 29, 2007 to be a sign of a cautious investor and suggests that she was sufficiently informed about share trading to take such action. This evidence would support an inference that Raponi was informed by Agueci of the HudBay Material Facts.

[488] Again, Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. In our view, Raponi would have taken a simple recommendation from Agueci. We accept Raponi's evidence in her compelled examination that she purchased shares of HudBay because Agueci recommended that she do so. We remain cognizant that if a respondent puts forth an equally plausible alternative explanation, it would be improper for the Panel to infer improper intent (*Podorieszach, supra* at para. 78). In Raponi's case, we are persuaded that Agueci did not inform Raponi of the HudBay Material Facts in order for Raponi to purchase HudBay shares. In our view, it is equally plausible that Raponi, a non-registrant and novice investor, would have purchased a stock based on a recommendation from Agueci as opposed to having learned of the HudBay Material Facts. In her case, we are not persuaded that Agueci informed Raponi of the HudBay Material Facts in order for Raponi to purchase HudBay shares.

[489] Notwithstanding the proximity of Raponi's communications with Agueci to Raponi's well-timed purchase of 1,000 shares of HudBay, we are not persuaded on a balance of probabilities that there is clear and cogent evidence that Agueci informed Raponi of the HudBay Material Facts prior to Raponi's purchase of HudBay shares on August 29, 2007 and, therefore, we cannot find that Raponi's conduct in relation to HudBay constituted insider trading contrary to subsection 76(1) of the Act or contrary to the public interest.

6. Iacono and Serpa

[490] On September 6, 2007 at 3:52 p.m., which was the first day of the site visit by Votorantim to HudBay's mining properties in Manitoba, Agueci called Iacono for up to one minute. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. A few minutes after that call, at 3:57 p.m. on the same date, Iacono entered an order to purchase 500 HudBay shares at a price of $25.00 per share. Iacono CFO'd his order once to raise his price to $25.05 per share and filled his order just before the close of the market on that date.

[491] On October 11, 2007 at 3:49 p.m., Iacono entered an order to sell all 500 HudBay shares at a price of $27.00 per share and sold all 500 HudBay shares on October 15, 2007 at a price of $27.13 per share.

[492] As stated above, in his compelled examination, Iacono explained his level of sophistication about trading. Iacono admittedly became familiar with the stock market in 1987 working for a database company. Iacono stated that he moved from investing in mutual funds to investing in equities in 2006. He watches BNN and does his own market research online.

[493] As Agueci's brother-in-law, Iacono and Agueci had frequent contact, often in person. However, the only evidence of possible contact that was presented between Agueci and Iacono was a call for up to one minute immediately prior to his purchase of HudBay shares. In our view, it is more likely that the length of that call supports an inference that a recommendation was made rather than an inference that Agueci communicated the HudBay Material Facts to Iacono. Therefore, we agree with the submission of Iacono's counsel that a more likely explanation of the substance of that call is that Agueci made a recommendation.

[494] We find that Iacono's purchase of $12,550 in HudBay shares was large and risky relative to Iacono's income, which amounted to 45% of his salary at the time (Exhibit 1020). He realized a profit of almost 8%. Iacono's purchase of HudBay shares, however, was not uncharacteristically large relative to other stock purchases made by Iacono in the period from September 2006 to September 2007. This evidence would support the inference that Iacono was informed by Agueci of the HudBay Material Facts.

[495] Again, Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. In our view, Iacono would have taken a recommendation from Agueci. In Iacono's case, we are not persuaded that Agueci informed Iacono of the HudBay Material Facts in order for Iacono to purchase HudBay shares. In our view, it is equally plausible that Iacono, who had never been a registrant and was not a sophisticated investor, would have purchased a stock based on a recommendation from Agueci as opposed to having learned the HudBay Material Facts from her.

[496] Notwithstanding the proximity of Agueci's call to Iacono to Iacono's well-timed purchase of 500 shares of HudBay, we are not satisfied, on a balance of probabilities, that we have been provided with clear and cogent evidence that Agueci informed Iacono of the HudBay Material Facts prior to Iacono's purchase of HudBay shares on September 6, 2007 and, therefore, we cannot find that Iacono's conduct in relation to HudBay constituted insider trading contrary to subsection 76(1) of the Act or contrary to the public interest.

[497] The evidence establishes that Iacono and Serpa were business partners who had frequent, almost daily contact with one and other. At 9:31 a.m. on September 7, 2007, Iacono phoned Serpa for between one and two minutes. Later that day, at 1:56 p.m., Serpa entered a market order to purchase 1,000 shares of HudBay and his order was filled at $25.11 per share. In view of our finding that we are not satisfied that Agueci informed Iacono of the HudBay Material Facts, we cannot conclude that Iacono informed Serpa of the HudBay Material Facts prior to Serpa's purchase of HudBay shares on September 7, 2007.

7. Did Agueci Breach subsection 76(2) of the Act?

[498] In light of our findings above, we conclude that Agueci informed Wing, Pollen, Fiorillo and Stephany of the HudBay Material Facts, contrary to subsection 76(2) of the Act and contrary to the public interest.

E. Were Wing, Pollen, Fiorillo and/or Stephany in a Special Relationship with HudBay?

[499] Staff submits that each of Wing, Pollen, Fiorillo and Stephany knew or ought reasonably to have known, pursuant to subsection 76(5)(e) of the Act, that Agueci was a person in a special relationship with HudBay and that the information with respect to the Votorantim Proposal and HudBay that Agueci communicated to them were material facts with respect to HudBay that had not been generally disclosed.

[500] We have found above that HudBay was a reporting issuer, that Agueci was in a special relationship with HudBay under subsection 76(5)(c) of the Act and that each of Wing, Pollen, Fiorillo and Stephany learned from Agueci material facts with respect to HudBay that had not been generally disclosed.

1. Wing and Pollen

[501] Wing knew Agueci was the executive assistant to McBurney, Chairman of GMP in the investment banking department. Wing also knew that GMP's business included M&A.

[502] Although Wing acknowledged that he knew Agueci's position as executive assistant to McBurney, we find that Wing was evasive, during his testimony at the Merits Hearing, when asked about knowing that Agueci would be in contact with material non-public information or the details of her role. As an experienced market participant, especially someone in the position of Ultimate Designated Person and Chief Compliance Officer, Wing knew or ought reasonably to have known that

Agueci was in a special relationship with a number of issuers, given her role in the investment banking department of GMP. When Agueci informed him of the HudBay Material Facts, Wing knew or ought reasonably to have known Agueci was in a special relationship with HudBay. Therefore, Wing was a person in a special relationship with HudBay by virtue of the fact that he learned of the HudBay Material Facts with respect to a reporting issuer, HudBay, from a person in a special relationship with the reporting issuer, Agueci, and he knew or ought reasonably to have known that Agueci was in such a relationship.

[503] Wing was admittedly the directing mind of Pollen and directed purchases of HudBay shares in the Pollen SG Account. Wing had sole signing authority over the Pollen SG Account and was the only person who could give instructions to trade in that account or to make withdrawals and deposits. We concur that a directing mind's knowledge is attributable to the corporation (*Goldpoint, supra* at paras. 184 and 236). Therefore, since we find that Wing knew or ought reasonably to have known that Agueci was in a special relationship with HudBay, we find that Pollen knew or ought reasonably to have known that Agueci was in a special relationship with HudBay as well. Therefore, Wing and Pollen were each in a special relationship with HudBay, pursuant to subsection 76(5)(e) of the Act at the relevant time.

2. Fiorillo

[504] Fiorillo knew Agueci was executive assistant to McBurney, Chairman of GMP in the investment banking department. Fiorillo also knew that GMP's business included M&A.

[505] Fiorillo was aware that Agueci was an executive assistant in the mining group at GMP and that the group routinely worked on confidential mandates. We do not find Fiorillo's evidence credible that, although he knew Agueci's role, he was not aware Agueci would have exposure to material non-public information. As an experienced and active market participant and a former registrant, Fiorillo knew or ought reasonably to have known that Agueci was in a special relationship with HudBay when Agueci informed him of the HudBay Material Facts.

[506] Therefore, we find that Fiorillo was a person in a special relationship with HudBay in accordance with subsection 76(5)(e) of the Act, by virtue of the fact that he learned of the HudBay Material Facts from Agueci, a person in a special relationship with HudBay, and because Fiorillo knew or ought reasonably to have known that Agueci was in such a relationship at the relevant time.

3. Stephany

[507] Stephany knew Agueci was executive assistant to McBurney, Chairman of GMP in the investment banking department. Stephany also knew that GMP's business included M&A.

[508] Stephany acknowledged she was a former registrant. Stephany knew Agueci worked at GMP as an executive assistant in the mining group, that the group did work on mining deals and that Agueci had access to confidential information. Stephany previously worked as an executive assistant herself to the head of the corporate finance group at First Marathon. As an experienced market participant, a registrant for various periods from 1981 to 2012, and a former executive assistant to the head of the corporate finance group at an investment banking firm, Stephany knew or ought reasonably to have known that Agueci was in a special relationship with a number of issuers. Stephany knew or ought reasonably to have known that Agueci was in a special relationship with HudBay when Agueci informed her of the HudBay Material Facts.

[509] Therefore, we find that Stephany was a person in a special relationship with HudBay in accordance with subsection 76(5)(e) of the Act, by virtue of the fact that she learned of the HudBay Material Facts from Agueci, a person in a special relationship with HudBay, and because Stephany knew or ought reasonably to have known that Agueci was in such a relationship at the relevant time.

F. Did Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi, Iacono and/or Serpa Breach subsection 76(1) of the Act?

[510] As stated above, we are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Wing, Pollen, Fiorillo and Stephany of the HudBay Material Facts and that Wing, who directed purchases for Pollen, and Fiorillo and Stephany purchased HudBay shares with knowledge of the HudBay Material Facts while they were not generally disclosed. Having found that Wing, Pollen, Fiorillo and Stephany were each in a special relationship with HudBay at the relevant time the purchases of HudBay shares by each of Wing, Pollen, Fiorillo and Stephany on the relevant dates constituted insider trading, contrary to subsection 76(1) of the Act.

[511] Staff submits that Fiorini, Raponi, Iacono and Serpa engaged in conduct contrary to subsection 76(1) of the Act. Having found that there was not sufficient evidence to support a finding that Agueci informed Fiorini, Raponi or Iacono of the HudBay Material Facts, we cannot conclude that they breached subsection 76(1) of the Act. Further, as we have not found that Agueci informed Iacono of the HudBay Material Facts, we cannot conclude that Iacono informed Serpa of the HudBay Material Facts, in breach of subsection 76(2) of the Act, and, therefore, cannot conclude that Serpa violated subsection 76(1) of the Act.

G. Did Wing Authorize, Permit or Acquiesce in Pollen's Non-Compliance with the Act?

[512] By his own admission, Wing was the directing mind of Pollen. Specifically, we find that Wing directed purchases and sales of HudBay shares in the Pollen SG Account with knowledge of the HudBay Material Facts. Wing also had sole signing authority over the Pollen SG Account and was the only person who could give instructions to trade in the Pollen SG Account and to make deposits and withdrawals from it. We conclude that Wing, who authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law, should be held accountable for breaches of Ontario securities law (*Goldpoint , supra* at paras. 184 and 236). Therefore, we find that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act.

H. Did Agueci, Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi, Iacono and/or Serpa Engage in Conduct Contrary to the Public Interest?

[513] Staff submit the activities of Agueci, Wing, Pollen, Fiorini, Fiorillo, Stephany, Raponi, Iacono and Serpa in respect of trades in the HudBay shares constituted, among other things, conduct contrary to the public interest.

1. Agueci

[514] As stated above, Agueci's position is that the Commission's public interest jurisdiction is not unlimited (*Asbestos, supra* at para. 41) and that the Commission ought not to treat findings of conduct contrary to the public interest as Staff's consolation prize in cases where Staff fails to prove a breach of the Act. Further, Agueci asks that the Panel consider that Ontario has not prohibited insiders from making recommendations to purchase or sell a security so long as that recommendation does not involve the passing of material non-public information. Furthermore, Agueci submits that the purpose of section 127 of the Act is not to override legislative choices made in respect of the elements of illegal insider trading and tipping.

[515] Staff submits that Agueci acted contrary to the public interest in providing tips about HudBay to her friend S.F. Staff provided evidence that Agueci and S.F. called one another twice on Friday, August 24, 2007 at 9:22 a.m. for nine minutes and at 9:31 a.m. for an additional two minutes. Evidence was provided that on Monday, August 27, 2007, S.F. purchased 3,550 HudBay shares at a price of $23.90 per share at 11:46 a.m. and an additional 840 HudBay shares at the same price at 11:47 a.m. and S.F. called Agueci later that same day at 4:50 p.m. for one minute. Staff also provided evidence that Agueci phoned S.F. on Friday, October 5, 2007 at 9:10 a.m. for seven minutes. Later that same morning, S.F. proceeded to sell all of his HudBay shares, entering an order at 11:41 a.m. to sell 840 HudBay shares at a price of $26.03 per share, which was filled at 1:36 p.m. on October 5, 2007 and a second order entered at 11:47 a.m. to sell 3,550 HudBay shares at a price of $26.04 per share, which was filled at 1:40 p.m. on October 5, 2007.

[516] We are not satisfied that Staff has provided sufficiently clear, convincing and cogent evidence to support a determination that Agueci's conduct caused S.F. to purchase HudBay shares contrary to the public interest.

[517] The Panel has also considered Agueci's recommendations to Raponi and Iacono. Agueci was an employee of a registrant, but was not registered in any capacity with securities regulators. We agree with Staff that more is expected of those with greater experience and defined roles within the securities regulatory system, such as registrants. However, we are not satisfied that Staff has proven on a balance of probabilities that Agueci's conduct in making recommendations to Raponi and Iacono engaged the purposes of securities regulation to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act) such that she acted contrary to the public interest.

[518] We find that Agueci's violations of subsection 76(2) of the Act, by informing Wing, Pollen, Fiorillo and Stephany of the HudBay Material Facts constitute conduct contrary to the public interest.

2. Stephany

[519] Stephany submits that the evidence does not support she was provided with or acted upon undisclosed material facts in relation to securities of HudBay and, therefore, could not have made the allegedly improper recommendations to S.P. Further, Stephany argues that, if Staff seriously believed that improper recommendations were made, it was Staff's obligation to question S.P. under oath and call him as a witness to testify about the recommendations.

[520] Stephany made her first purchase of 500 HudBay shares for her client, S.P., within a few hours of her meeting with Agueci on August 2, 2007. Stephany purchased additional HudBay shares for S.P.'s account on August 3, 7, 9, 17 and 28. The purchases of HudBay shares made by Stephany for her client's account were proximate to Stephany's contact with Agueci. Stephany's conduct in buying and selling HudBay shares for the account of her client S.P. is described above at paragraphs [467] to 472.

[521] At the Merits Hearing, Stephany denied making recommendations to S.P., stating "I didn't make recommendations. I gave him information when I was buying or selling stock. He made his own decision about whether or not he wanted to buy or sell." (Merits Hearing Transcript of February 7, 2014 at p. 175). Upon being shown an excerpt from her compelled testimony, in which she stated "I have made some recommendations to him for sure", Stephany admitted that her testimony was contradictory and asserted that what she meant was she did not do market research. Stephany also then admitted that S.P. likely bought HudBay shares because she told him to do so.

[522] We find Stephany did recommend that S.P. purchase HudBay stock in August 2007. Stephany's conduct in recommending to her client that he buy HudBay shares and in executing orders to purchase those shares was, in our view, contrary to the public interest as she used her knowledge of the HudBay Material Facts received from Agueci to execute such orders on behalf of her client.

[523] We are satisfied that Staff has proven on a balance of probabilities that Stephany's conduct engaged the purposes of securities regulation, which are to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act). Such conduct is an unfair market practice, abusive of the capital markets and below the high standards of fitness and business conduct expected of market participants (section 2.1 of the Act). Stephany was acting in her capacity as a registrant, advising a client and executing trades. We agree with Wellings' testimony that investors do not want to see a bid premium eroded in the market due to unfair trading by those with privileged access to certain information.

[524] In our view, it is fundamental that persons granted registration be honest and of good reputation because it is the concept of fair dealing between classes of investors, which is the issue and "[i]t is in the public interest that registrants conduct themselves in accordance with these precepts and not take advantage of inside information" (*Danuke, supra* at 40c).

[525] We find Stephany's recommendation that S.P. purchase HudBay stock during the relevant period, while she was in possession of the HudBay Material Facts, was an unfair market practice and amounted to conduct contrary to the public interest.

3. Wing, Pollen, Fiorillo, Stephany, Fiorini, Raponi, Iacono and Serpa

[526] Having found that the purchases of HudBay shares by Wing, Pollen, Fiorillo and Stephany were made contrary to subsection 76(1) of the Act, we find that the conduct of each of them in that respect constituted conduct contrary to the public interest. However, we do not find the conduct of Fiorini, Raponi, Iacono or Serpa in respect of HudBay was contrary to the public interest.

I. Conclusions

[527] We conclude that Agueci informed Wing, Pollen, Fiorillo and Stephany of the HudBay Material Facts, contrary to subsection 76(2) of the Act and contrary to the public interest. We also find that Wing, Pollen, Fiorillo and Stephany purchased shares of HudBay, contrary to subsection 76(1) of the Act and contrary to the public interest.

[528] Based on the evidence, we find that from July 17, 2007 to September 18, 2007:

1. HudBay was a "reporting issuer" within the meaning of the Act;

2. as an employee of GMP, Agueci was a person in a special relationship with HudBay within the meaning of subsection 76(5)(c) of the Act;

3. the HudBay Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the HudBay securities and were therefore "material facts" with respect to HudBay, within the meaning of the Act;

4. Agueci informed Wing, Pollen, through Wing, Fiorillo and Stephany, other than in the necessary course of business, of the HudBay Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the Act and contrary to the public interest;

5. Wing, Pollen, through Wing, Fiorillo and Stephany each learned of the HudBay Material Facts from Agueci, and knew or ought reasonably to have known that Agueci was a person in a special relationship with HudBay and, as a result, were persons and a company in a special relationship with HudBay within the meaning of subsection 76(5)(e) of the Act;

6. based on the foregoing, Wing, Pollen, Fiorillo and Stephany each purchased HudBay securities with knowledge of the HudBay Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the Act and contrary to the public interest; and

7. Wing authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law in respect of the purchases of HudBay shares, such that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act.

[529] We are not satisfied that Agueci informed Fiorini, Raponi or Iacono of the HudBay Material Facts or that Iacono informed Serpa of those facts, contrary to subsection 76(2) of the Act or the public interest. Similarly, the Panel is not satisfied that Fiorini, Raponi, Iacono or Serpa purchased HudBay shares, contrary to subsection 76(1) of the Act or the public interest.

[530] However, the Panel finds that Stephany's conduct in recommending to her client, S.P., that he buy HudBay shares, and in executing orders to purchase those shares with knowledge of the HudBay Material Facts received from Agueci, was contrary to the public interest.

IX. COALCORP – ANALYSIS AND FINDINGS ON ALLEGATIONS OF INSIDER TRADING, TIPPING AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

A. Overview of the Coalcorp Transaction

[531] During the relevant period, December 1, 2007 to February 29, 2008, Coalcorp was a reporting issuer in Ontario. At that time, Coalcorp was a Colombia-based coal mining, exploration and development company listed on the TSX and had a market capitalization on January 30, 2008 of approximately $186 million. On January 29, 2008, at 12:57 p.m., an investor group, consisting of Pala Investments Holdings Limited ("**Pala**"), First Reserve Corporation ("**First Reserve**") and AMCI Capital ("**AMCI**" and together with Pala and First Reserve, the "**Pala Group**") submitted to Coalcorp an unsolicited non-binding written proposal to acquire Coalcorp by way of an all-cash offer for 100% of the outstanding common shares of Coalcorp for a price of $2.75 per share plus the assumption of all of Coalcorp's existing net debt (the "**Pala Group Proposal**"). The Pala Group Proposal indicated that its terms represented a premium of 51% on the closing price of Coalcorp common shares on the TSX on January 28, 2008 and a premium of 39% to the 20-day volume-weighted average price.

[532] Pala was a US$1 billion multi-strategy alternative investment company with a particular focus on mining and natural resources in both developed and emerging markets. In January 2008, Pala was the largest shareholder of Coalcorp, holding 19.1% of Coalcorp's total common shares outstanding, having recently increased its stake in stages from a holding of 9.8%, which it had acquired prior to December 12, 2007. First Reserve was a private equity firm specializing in the energy industry. By January 2008, First Reserve had completed eight prior domestic and international mining investments, totalling equity commitments over $700 million. AMCI was a resources and energy-focused company with $800 million in capital commitments. In January 2008 AMCI had operations in Australia, South Africa, Mozambique, China, Europe and America.

[533] On January 29, 2008, The Pala Group Proposal was sent to Serafino Iacono, the CEO and Co-Chairman of Coalcorp, by email. It bore the warning legend STRICTLY CONFIDENTIAL in bold type on the cover letter, which was signed by the Executive Director of Pala, Joseph Belan ("**Belan**"), the President of Pala Investments AG of Switzerland.

[534] Within 11 minutes after receiving the Proposal, Serafino Iacono forwarded the Pala Group Proposal by email, marked of High Importance and Confidential, to Peter Volk ("**Volk**"), the General Counsel and Secretary of Coalcorp. Within less than five minutes, Volk forwarded this email from Serafino Iacono, accompanied by the Pala Group Proposal, to McBurney and copied Coalcorp's legal advisors, Wildeboer Dellelce LLP ("**Wildeboer**"), and four other employees of Coalcorp at 1:13 p.m. on January 29, 2008. Volk instructed McBurney that Serafino Iacono wanted GMP, Coalcorp and the other recipients to consider the Pala Group Proposal.

[535] McBurney testified that after he received the Pala Group Proposal, he discussed the terms with Serafino Iacono, who viewed it as *bona fide* and thought that Coalcorp should pursue it. Prior to delivering the Pala Group Proposal, Pala had held talks with Serafino Iacono regarding Pala's views on the direction and management of Coalcorp.

[536] Previously, in November 2007, when Pala had acquired just under 10% of Coalcorp's common shares, Coalcorp signed an engagement letter agreement with GMP, which was dated November 28, 2007 and under which GMP was to provide financial advisory services in respect of reviewing strategic options for Coalcorp. Coalcorp was added to GMP's grey list on November 30, 2007.

[537] On January 29, 2008 at 2:37 p.m., Volk emailed the Pala Group Proposal to the board of directors of Coalcorp and indicated that Coalcorp was in the process of considering the offer and consulting with GMP. Volk stressed to Coalcorp's directors that the Pala Group Proposal was strictly confidential and material, and suggested that a board meeting be held on January 31, 2008 to consider the Pala Group Proposal and any preliminary views of GMP and management. At 5:15 p.m. on the same day, Coalcorp sent confidentiality agreements that dealt with its potential transactions to McBurney, members of Coalcorp's board of directors and three members of Wildeboer.

[538] On January 29, 2008 at 5:55 p.m., Agueci sent the Pala Group Proposal by email to Jason Yeung ("**Yeung**") at GMP, who was described by McBurney as the "number two person" at GMP on the Coalcorp transaction (Merits Hearing Transcript of November 28, 2013 at p. 108). Seven minutes later, Agueci sent another email to Yeung with a copy of the engagement letter dated November 28, 2007 between GMP and Coalcorp. At 6:03 p.m. on January 29, 2008, Yeung emailed Kevin Morris ("**Morris**") at Torys LLP and copied McBurney, attaching the Pala Group Proposal and the engagement letter of November 28, 2007. Yeung advised Morris by email, copied to McBurney, at 7:48 p.m., that GMP had decided to draft a new engagement letter instead of amending the November 28, 2007 engagement letter. By January 30, 2008, GMP was engaged to advise Coalcorp in respect of the Pala Group Proposal.

[539] At approximately 11:00 a.m. on January 30, 2008, Belan of Pala called McBurney, who confirmed receipt of the Pala Group Proposal. A conference call involving Coalcorp's legal counsel was scheduled for noon that day "to discuss the proposed transaction and steps forward". Participants included Serafino Iacono and Volk of Coalcorp, McBurney of GMP and Jean Fraser of Osler, Hoskin & Harcourt ("**Osler**"), who had been retained as counsel to the special committee (Exhibit 936).

[540] At 9:05 p.m. on January 30, 2008, counsel at Osler emailed Volk and McBurney, attaching documents for their review and comment, including a draft response letter to Pala, a draft confidentiality agreement to be entered into with the Pala Group, and a draft directors' resolution of Coalcorp authorizing the establishment of a special committee for the purpose of reporting and making recommendations to the board of Coalcorp in respect of the Pala Group Proposal.

[541] At 10:30 a.m. on January 31, 2008, the meeting of the board of directors of Coalcorp commenced with several participants attending by conference call. The participants discussed the Pala Group Proposal and the proposed response by Coalcorp. The directors established and authorized a special committee to take carriage of the Pala Group Proposal mandate.

[542] At 11:08 a.m. on January 31, 2008, Belan sent an email to McBurney, asking McBurney about a possible leak of material non-public information in the market regarding the Pala Group Proposal, including the price of $2.75 as a cash bid. McBurney subsequently interrupted the Coalcorp board meeting to advise that he had just learned that there was a leak in the market regarding the Pala Group Proposal, including the price. It was concluded that Coalcorp must issue a news release announcing the receipt of the Pala Group Proposal.

[543] The Coalcorp board adjourned its meeting to allow the special committee to consider the Pala Group Proposal and make an initial recommendation to the board. Upon the Coalcorp board meeting being reconvened, the special committee recommended to the board that Coalcorp send the response letter, including the draft form of confidentiality and standstill agreement, to the Pala Group.

[544] On January 31, 2008 at 2:31 p.m., Volk sent an email to Pala, attaching Coalcorp's response letter, which was signed on behalf of the Coalcorp board by the chairman of the special committee, together with a signed confidentiality and standstill agreement. Shortly thereafter, Volk sent an email to McBurney, Serafino Iacono and members of the special committee and the Coalcorp board, attaching a draft press release regarding the receipt of the Pala Group Proposal, which was copied to counsel at Osler and Wildeboer.

[545] On February 1, 2008 at 7:46 a.m. McBurney emailed Volk, to report that he had "been dealing with the Pala people and we seem to be at an impasse" and advised Volk that Pala would "not proceed without clarity on price" and had "suggested that the process be put on hold" until Coalcorp is "in a position to give them comfort on price" (Exhibit 981).

[546] Prior to the opening of the market on February 1, 2008, Coalcorp issued a press release announcing that it had received a non-binding unsolicited proposal from an unnamed third party to acquire all of the common shares of Coalcorp and that the board of directors of Coalcorp had established a special committee to evaluate the proposal and to make recommendations to the board of directors with respect to the proposal (the "**Coalcorp Announcement**"). That day, at the opening of the market, the price of Coalcorp common shares increased 16% from the close on the previous trading day. At the end of the trading day on February 1, 2008, the closing price for Coalcorp common shares was $2.47 per share, which was a 12% increase from the closing price the day before.

[547] By 9:00 a.m. on Saturday, February 2, 2008, the special committee retained Canaccord Capital Corporation as its financial advisor, following a request and review by the special committee of submissions by three invited advisors.

[548] On Monday, February 4, 2008 at 5:29 p.m., Coalcorp issued a press release announcing that the non-binding unsolicited proposal to acquire all of Coalcorp's common shares, which had been announced by Coalcorp on February 1, 2008, had expired on February 4, 2008 without the parties reaching an agreement as to arrangements for due diligence and exclusivity.

[549] On February 5, 2008, prior to the opening of markets, the Pala Group announced it, together with an affiliate of AMCI and another investor, had terminated negotiations with Coalcorp in respect of the Pala Group Proposal, which had been delivered to Coalcorp's board on January 29, 2008.

B. Were there Material Facts Relating to Coalcorp that were Not Generally Disclosed?

[550] The question that the Panel must answer is whether any of the alleged material facts relating to Coalcorp, or some or all of them taken together, were material facts that would reasonably be expected to have a significant effect on the market price or value of Coalcorp securities, on the dates on which Staff allege that Agueci tipped others and that Fiorillo, Fiorini, Stephany and Raponi purchased Coalcorp shares.

[551] Staff submits that the following were material facts with respect to Coalcorp that were not generally disclosed at the relevant time:

1. Coalcorp's CEO, Serafino Iacono, received the Pala Group Proposal;

2. The acquirer was to be the Pala Group, which included Pala, Coalcorp's largest shareholder at 19.1%;

3. The terms of the Pala Group Proposal were that it was to be an all-cash acquisition of 100% of the common shares of Coalcorp;

4. At an offer price of $2.75 per Coalcorp common share;

5. Plus the assumption of all of Coalcorp's existing net debt; and

6. The price represented a premium of 51% based on the closing price of Coalcorp common shares on January 28, 2008 and a 39% premium to the 20-day volume-weighted average price of Coalcorp common shares.

[552] First, we considered whether Coalcorp's CEO received the Pala Group Proposal. On January 29, 2008 at 12:57 p.m., Belan of Pala sent an email to Serafino Iacono attaching a letter with the Pala Group Proposal addressed to Coalcorp's board of directors, which included an unsolicited non-binding proposal to acquire Coalcorp by way of an all-cash offer for 100% of the outstanding common shares of Coalcorp. We find that on January 29, 2008, Coalcorp's CEO received the Pala Group Proposal ("**Coalcorp Fact One**").

[553] We also considered whether the acquirer was to be the Pala Group, which included Pala, Coalcorp's largest shareholder at 19.1%. The Pala Group Proposal described each of the three investors forming the Pala Group, including Pala, AMCI Capital and First Reserve Corporation. Also, the Pala Group Proposal itself stated "Pala is currently the largest shareholder of Coalcorp, holding 19.1% of Coalcorp's total common shares outstanding" (Exhibit 899). We find that it was a fact on January 29, 2008 that the acquirer was to be the Pala Group, which included Coalcorp's largest shareholder at 19.1%. ("**Coalcorp Fact Two**").

[554] We also considered whether the terms of the Pala Group Proposal included: (i) an all-cash acquisition of 100% of the common shares of Coalcorp; (ii) an offer price of $2.75 per Coalcorp common share; and (iii) the assumption of all of Coalcorp's existing net debt (the "**Pala Group Proposal Terms**"). As stated above, the Pala Group Proposal submitted to Coalcorp on January 29, 2008 included an all-cash offer for 100% of the outstanding common shares of Coalcorp for a price of $2.75 per share plus the assumption of all of Coalcorp's existing net debt. We find that the Pala Group Proposal Terms were facts on January 29, 2008 ("**Coalcorp Fact Three**").

[555] Lastly, we considered whether the Pala Group Proposal represented a premium of 51% to the closing price of Coalcorp's shares on January 28, 2008 and a 39% premium to the 20-day volume-weighted average price of Coalcorp shares (the "**Pala Premium**"). The Pala Group Proposal itself indicated that its terms represented a premium of 51% to the closing price of Coalcorp common shares on the TSX on January 28, 2008 and a premium of 39% to the 20-day volume-weighted average price. We find that the Pala Premium was a fact on January 29, 2008 ("**Coalcorp Fact Four**", collectively with Coalcorp Fact One, Coalcorp Fact Two and Coalcorp Fact Three, the "**Four Coalcorp Facts**").

[556] In light of the foregoing conclusions, we turn to the assessment of the materiality of the Four Coalcorp Facts. In applying the objective market impact test of materiality we consider whether Four Coalcorp Facts would be reasonably expected to significantly affect the market price or value of Coalcorp's securities (subsection 1(1) of the Act).

[557] The Four Coalcorp Facts above must be considered in context. The Pala Group Proposal was submitted to Coalcorp's CEO and board of directors on a "Strictly Confidential" basis. The communications by Coalcorp and GMP within 20 minutes after the Pala Group Proposal was sent to Serafino Iacono, as well as the immediate steps taken by Coalcorp and GMP to consider and evaluate the offer on the same day and the following two days, indicate the urgency and materiality of the facts in respect of the Pala Group Proposal accorded to the Pala Group Proposal by Coalcorp and GMP and their legal advisors. Furthermore, the acquirer included Pala, the largest shareholder, and members of the Pala Group were well funded.

[558] In *Suman,* the panel determined that a proposal to acquire all of the shares of an issuer at a significant premium to the market price of those shares was a fact that reasonably would be expected to have a significant effect on the market price or value of the issuer's shares (*Suman, supra* at para. 11). The fact that the Pala Group Offer included an offer price of $2.75 per Coalcorp share, which represented a premium of 51% to the closing price on January 28, 2008 and a premium of 39% to the 20-day volume-weighted average price strongly supports our view that if the Four Coalcorp Facts listed above were to be publicly disclosed, those facts reasonably would be expected to have a significant effect on the market price or value of the Coalcorp shares.

[559] We find that Coalcorp Fact One, Coalcorp's receipt of the Pala Group Proposal to acquire Coalcorp, reasonably would be expected to have a significant effect on the market price of Coalcorp's securities and, therefore, was a material fact on January 29, 2008. We also find that the Four Coalcorp Facts, considered collectively, were material facts at the time (*YBM, supra* at para. 94; *Donald, supra* at para. 271). We find that during the relevant period, beginning on January 29, 2008, the Four Coalcorp Facts, reasonably would be expected to have a significant effect on the market price of Coalcorp's securities and are therefore material (the "**Coalcorp Material Facts**").

[560] We also considered whether the Coalcorp Material Facts were generally disclosed during the relevant period. We accept the testimony of Ciccone, Chief Compliance Officer at GMP in 2007-2008, that issuers were placed on the GMP grey list when GMP obtained material non-public information about the issuer. As noted above, Coalcorp was placed on the GMP grey list on November 30, 2007. The Pala Group Proposal, forwarded to McBurney at GMP on January 29, 2008, was expressly stated to be "Strictly Confidential". There was no mention of the Pala Group Proposal in the press until February 1, 2008, when the Coalcorp Announcement indicated that Coalcorp had received a non-binding unsolicited proposal from an unnamed third party to acquire all of the common shares of Coalcorp.

[561] We note that McBurney received an email from Baker of GMP's Montreal office on January 30, 2008 at 3:47 p.m. asking about Coalcorp and a rumour of a cash takeover coming at $2.75 and an email from Belan on January 31, 2008 at 11:08 a.m. asking McBurney "What the hell is going on here?" in respect of an email that Belan had received from another market participant who asked Belan if Pala was doing anything as there were "market rumours of $2.75 cash bid on your name" in respect of Coalcorp (Exhibit 963). As discussed above, McBurney informed the board of Coalcorp at its meeting on January 31, 2008 of a leak in the market regarding the Pala Group Proposal, including the price, which resulted in the issue of the Coalcorp Announcement at 8:59 a.m. on February 1, 2008. For the purpose of our analysis it is sufficient to find that we are satisfied on the evidence that during the relevant period, January 29, 2008 to February 1, 2008 before the opening of markets, the Coalcorp Material Facts were not generally disclosed. We acknowledge that there was unusual trading activity (in terms of price and volume) in Coalcorp common shares on January 30 and 31, 2008; however, that does not amount to sufficiently clear and convincing evidence that the Coalcorp Material Facts were generally disclosed as contemplated by subsection 3.5(2) of NP 51-201 or otherwise.

[562] We find that Coalcorp Fact One, the potential sale of Coalcorp, was a material fact that was not generally disclosed until the release of the Coalcorp Announcement on February 1, 2008 and that Coalcorp Fact Two, the identity of the acquirer, was not generally disclosed until February 5, 2008, prior to the opening of markets, when the Pala Group announced it had terminated negotiations with Coalcorp. We are satisfied that Coalcorp Fact Three and Coalcorp Fact Four, the Pala Group Proposal Terms and significant premium offered, were not generally disclosed within the meaning of the Act during the relevant period, January 29, 2008 to February 1, 2008.

C. Agueci

[563] Staff submits Agueci engaged in conduct contrary to subsection 76(2) of the Act by providing undisclosed material facts relating to Coalcorp to Fiorini, Fiorillo, Stephany and Raponi.

1. Was Agueci in a Special Relationship with Coalcorp?

[564] The Panel finds that Agueci was in a special relationship with Coalcorp pursuant to subsection 76(5)(c) of the Act as of November 28, 2007 and certainly by January 29, 2008.

[565] In November 2007, when Pala had acquired just under 10% of Coalcorp's common shares, Coalcorp entered into an engagement letter with GMP dated November 28, 2007, under which GMP was to provide financial advisory services in respect of reviewing strategic options for Coalcorp. Coalcorp was added to GMP's Grey List on November 30, 2007. On December 10, 2007, Agueci sent an email to Volk at Coalcorp, attaching a copy of the November 28, 2007 engagement letter between Coalcorp and GMP, and Fricker of GMP, approved a mandate for GMP to review strategic options for Coalcorp.

[566] On January 29, 2008 at 1:12 p.m., Volk forwarded the Pala Group Proposal to McBurney and instructed McBurney that Serafino Iacono wanted GMP to consider it and discuss it with Coalcorp. At 5:55 p.m., Agueci sent an email to Yeung, attaching a copy of the Pala Group Proposal and at 6:02 p.m. on the same evening, Agueci sent another email to Yeung, attaching a copy of the November 28, 2007 engagement letter between Coalcorp and GMP.

[567] We find that as of November 28, 2007 and certainly by January 29, 2008, GMP was in a special relationship with Coalcorp under subsection 76(5)(b) of the Act because GMP was engaged in or proposing to engage in business or professional activity with or on behalf of the reporting issuer, Coalcorp. Accordingly, not later than the afternoon of January 29, 2008, Agueci was in a special relationship with Coalcorp pursuant to subsection 76(5)(c) of the Act because she was an employee of GMP, which we found to be a company described in subsection 76(5)(b) of the Act.

2. Did Agueci have Knowledge of the Coalcorp Material Facts on January 29, 2008?

[568] The testimony of multiple GMP executives supports that, in January 2008, Agueci sat in close proximity to the GMP deal team, including McBurney, and that she could have overhard conversations in their open-concept office layout. Agueci had access to McBurney's emails and to the GMP corporate directory. Certain documents pertaining to the Pala Group Proposal were accessible by her directly. For instance, on January 29, 2008 at 5:55 p.m., Agueci sent the Pala Group Proposal by email attachment to Yeung, who was described by McBurney as the "number two person" at GMP on the Coalcorp transaction (Merits Hearing Transcript of November 28, 2013 at p. 108). Minutes later, Agueci sent another email to Yeung with a copy of the engagement letter dated November 28, 2007 between GMP and Coalcorp. The fact that Agueci attached the Pala Group Proposal to her email to Yeung, as opposed to forwarding the Pala Group Proposal to him, supports a finding that Agueci was in possession of the Pala Group Proposal no later than 5:55 p.m. on January 29, 2008.

[569] Based on the evidence, we are satisfied that Agueci had knowledge of the Coalcorp Material Facts:

1. Coalcorp Fact One – on January 29, 2008, Agueci knew Coalcorp's CEO received the Pala Group Proposal;

2. Coalcorp Fact Two – on January 29, 2008, Agueci knew that the Pala Group was the proposed acquirer, which included Pala, Coalcorp's largest shareholder with a holding of 19.1%;

3. Coalcorp Fact Three – on January 29, 2008, Agueci knew the Pala Group Proposal Terms; and

4. Coalcorp Fact Four – on January 29, 2008, Agueci knew the Pala Premium.

[570] We conclude that Agueci had knowledge of the Coalcorp Material Facts on January 29, 2008, and that those facts were not generally disclosed at the time that she learned them. We also find that the Coalcorp Material Facts were material facts that were not generally disclosed throughout the relevant period, January 29, 2008 to February 1, 2008.

D. Did Agueci Inform, and did Fiorini, Fiorillo, Stephany and/or Raponi Purchase, Coalcorp Securities, with Knowledge of the Coalcorp Material Facts?

[571] As with the other allegations of this nature, Agueci takes the position that the direct evidence, which should be preferred over inferences drawn from circumstantial evidence, at most supports that she recommended to other Respondents that they purchase a security or advised them that she was purchasing a particular security. She relies upon *ATI* and *Landen* in support of her submission that in Ontario, unlike in Alberta, advice from an insider to trade is not material information (*ATI, supra* at paras. 63-64; *Landen, supra* at para. 97). Agueci submits that Staff have failed to establish on a balance of probabilities that any of the Respondents who traded in the impugned securities received material non-public information from her. Agueci notes that she had no reason or motive to pass such information and received no benefit from the alleged tipping.

1. Fiorini

[572] On January 29, 2008, Fiorini received three one-minute calls from unknown callers at 10:35 a.m., 4:26 p.m. and 6:18 p.m. As noted elsewhere, a one-minute call can indicate no response, the call went to voicemail, or the call was of a short duration. At 2:58 p.m. on January 30, 2008, less than 40 minutes before Fiorini's first purchase of Coalcorp shares, Agueci sent Fiorini a text message that said "Call me, Eda" (Exhibit 1022). In his examination with Staff, Fiorini testified that when he called Agueci, it was from his office phone to her office phone.

[573] As stated above, George explained that GMP`s phone records do not track calls by employee extension number and therefore, Staff was not able to obtain records of specific GMP extensions to track incoming calls. Therefore, a call from Fiorini's desk phone to Agueci's desk phone at GMP would not have left any record. Staff submits that there was ample time of almost 15 minutes for Fiorini to call Agueci at GMP in response to her text message request, prior to Agueci leaving GMP's office at 3:12 p.m. for approximately 80 minutes on January 30, 2008. Counsel for Agueci and Fiorini, respectively, submit that an inference that calls from an unknown caller to Fiorini came from Agueci is not sufficiently linked to the established primary facts.

[574] At 3:24 p.m. on January 30, 2008, Fiorini emailed Desjardins Compliance requesting permission to buy Coalcorp. After receiving approval, Fiorini entered his first order to purchase Coalcorp common shares at 3:37 p.m. on January 30, 2008. Fiorini purchased 11,000 Coalcorp shares at $2.00 per share. Fiorini entered a second order to purchase an additional 5,000 Coalcorp common shares at $2.01 at 3:50 p.m. on January 30, 2008, but that order expired unfilled.

[575] Fiorini received a one-minute call from an unidentified caller at 3:44 p.m. on January 30, 2008. Agueci's calendar indicated a tentative meeting with "joe" at 6:00 p.m. on that date. In her text messages with Fiorini, Agueci would refer to Fiorini as "joe" or "joe joe". Fiorini also referred to himself as "Joe" in a text message to Agueci. Staff submits that Agueci had a meeting scheduled with Fiorini on the evening of January 30, 2008.

[576] At 7:55 a.m. on January 31, 2008, Fiorini received a one-minute call from an unidentified caller. That same morning, at 9:37 a.m., shortly after the markets opened, Fiorini emailed Desjardins Compliance requesting permission to buy Coalcorp and received it. At 9:46 a.m. that morning, Fiorini purchased an additional 8,000 common shares of Coalcorp at $2.00. Shortly after that, at 10:11 a.m., Fiorini entered another order to purchase 12,000 Coalcorp common shares at $2.00, but that order was cancelled unfilled at 2:04 p.m. that afternoon.

[577] Throughout the day on January 31, 2008, Agueci and Fiorini exchanged text messages as they were arranging to meet later that morning or early that afternoon. Fiorini also received a four-minute call from an unidentified caller at 10:39 a.m., less than 40 minutes after he sent Agueci a text message seeking to arrange a meeting for a coffee at 11:00 a.m.

[578] At 1:50 p.m. on January 31, 2008, Fiorini emailed Desjardins Compliance requesting permission to sell Coalcorp; they replied "ok" at 1:52 p.m. (Exhibit 980). Later that afternoon, at 3:31 p.m., Fiorini entered an order to sell 19,000 Coalcorp shares at $2.25, but the order was cancelled shortly after at 3:37 p.m.

[579] Between 4:33 p.m. and 5:17 p.m. on January 31, 2008, Fiorini received three calls from unidentified callers, one for three minutes and the other two for one-minute each. Staff submits that at least one of those calls was from Agueci.

[580] At 9:25 a.m. on February 1, 2008, less than 30 minutes after Coalcorp's press release announcing that it had received a non-binding unsolicited proposal from an unnamed party to acquire all the common shares of Coalcorp, and before the markets opened, Fiorini emailed Desjardins Compliance asking for permission to sell Coalcorp. Desjardins Compliance replied at 9:27 a.m., allowing Fiorini to sell. At 9:53 a.m., Fiorini entered an order to sell at market all 19,000 common shares of Coalcorp that he had acquired in the preceding two days at $2.00 per share; his sell order was filled within one minute at prices between $2.55 and $2.57 per share.

[581] The one text message from Agueci to Fiorini that was sent less than 40 minutes prior to Fiorini's first purchase of Coalcorp shares does not reveal a sense of urgency and is relatively innocuous on the face of it. The Panel places no weight on calls from unidentified callers.

[582] In our view, Fiorini's purchases of 19,000 Coalcorp shares for a total price of $38,020 were not uncharacteristically large or risky by comparison to other stocks purchased by Fiorini during 2007 and 2008 (Exhibit 1020). However, we do find the return of 28% realized by Fiorini in two days to be highly profitable relative to the short time that he held the stock.

[583] While we acknowledge that Fiorini's purchases of Coalcorp shares were well-timed relative to the Coalcorp Announcement, we are not satisfied that Staff provided clear, convincing and cogent evidence that Agueci informed Fiorini of the Coalcorp Material Facts and, therefore, we cannot find that Fiorini's conduct in connection with Coalcorp constituted insider trading contrary to subsection 76(1) of the Act.

2. Fiorillo

[584] Fiorillo called Agueci for seven minutes at 11:19 p.m. on January 29, 2008, which was less than five and a half hours after Agueci became aware, at the latest, of the Pala Group Proposal and the terms thereof. On January 30, 2008 at 9:43 a.m., Fiorillo bought 25,000 shares of Coalcorp at $1.80 per share and, at 2:22 p.m., he bought an additional 25,000 shares of Coalcorp at $1.96 per share.

[585] There were two one-minute calls between Fiorillo and Agueci at 3:40 p.m. and 4:07 p.m. on January 30, 2008. We have noted elsewhere that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. The next morning, at 9:40 a.m. on January 31, 2008, Fiorillo entered an order to buy an additional 20,000 shares of Coalcorp at a price of $1.95 per share, then increased his price to $1.99 per share and the buy order was partially filled for 2,000 Coalcorp shares at that price at 10:05 a.m. The balance of Fiorillo's order expired, unfilled.

[586] Agueci had an entry in her calendar for "Henry" at 8:30 p.m. on January 31, 2008.

[587] At 9:41 a.m. on February 1, 2008, within 42 minutes of the Coalcorp Announcement stating that it had received a non-binding unsolicited proposal from an unnamed third party to acquire all of the common shares of Coalcorp, Fiorillo entered an order to sell at $2.70 per share all of the 52,000 Coalcorp shares he had acquired over the two preceding days. Within 15 minutes, Fiorillo changed his order to reduce the selling price to $2.65 per share and he was able to sell all 52,000 Coalcorp shares at $2.65 per share at 9:57 a.m. on February 1, 2008.

[588] In total, Fiorillo purchased 52,000 Coalcorp shares for an aggregate amount of $98,730 between January 30 and 31, 2008 (Exhibit 1020). Fiorillo submits that the impugned trades were a small percentage of his income and net worth. Fiorillo implied during his examination in chief and in his closing submissions that his net worth was between $33 million and $100 million. It would follow that most, if not all, of his purchases likely would be a small percentage of his net worth. We also note the time frame for this transaction was quite compressed. Between the date of the Pala Group Proposal and the date of the Coalcorp Announcement, there were only two trading days to acquire Coalcorp shares.

[589] We agree with submissions by Fiorillo's counsel that Fiorillo's purchases of Coalcorp shares were not necessarily uncharacteristic, large or unusually risky for Fiorillo, in that he frequently invested in other resource companies at the relevant time. We note, however, that the impugned trades in Coalcorp by Fiorillo on the last two days of January 2008 were highly profitable, yielding a profit of almost 39% for Fiorillo within two days, which we find to be a very short timeframe for such highly profitable trades and which supports an inference that Agueci informed Fiorillo of the Coalcorp Material Facts prior to his purchase.

[590] We accept that Fiorillo was a prolific trader, who implemented various strategies in his trading and that he previously held positions in Coalcorp shares in March to December 2006, which resulted in a modest overall profit. Prior to his purchases of Coalcorp shares on January 30, 2008, Fiorillo's most recent purchase of Coalcorp shares was made on August 25, 2006. In our view, the fact that Fiorillo placed his first order shortly after the opening of markets on January 30, 2008, after his seven-minute call to Agueci late at night on January 29, 2008, supports an inference that Agueci had informed him and that he had knowledge of the Coalcorp Material Facts.

[591] Fiorillo testified that he purchased Coalcorp in January 2008 because the price of the shares had climbed to the $6 to $7 range and then had fallen again, which he characterized as a "fallen angel" (Merits Hearing Transcript of January 20, 2014 at pp. 80-81). Fiorillo explained that he sold on February 1, 2008 because it was a volatile sector and he took a profit when he got it. In cross-examination, Fiorillo admitted that Coalcorp had been a "fallen angel" for the better part of 2007. Fiorillo offered no explanation for why he did not purchase Coalcorp at any point in 2007, when the stock was as low as $2 in October 2007, yet suddenly he decided to purchase 52,000 Coalcorp shares shortly after communicating with Agueci and after she had knowledge of the Coalcorp Material Facts.

[592] Fiorillo also submits that there was chatter in the market about Coalcorp and suggests that the Panel consider the email sent January 30, 2008 at 3:47 p.m. from Baker at GMP's Montreal office to McBurney, which was noted in paragraph 0 above. However, we have received no evidence that Fiorillo ever saw that internal GMP email and Fiorillo did not provide evidence of any news of rumours surrounding Coalcorp in early 2008. In his response to other allegations about other impugned stock transactions, Fiorillo was able to tender evidence of news or speculation about the issuers, yet in relation to Coalcorp he provided no support for his assertion. We find that Fiorillo's explanation of why he bought Coalcorp is not in accord with the preponderance of the evidence. In our view, Fiorillo's explanation does not sufficiently explain or account for the facts of the timing of his contact with Agueci and the proximity to his purchases of Coalcorp shares.

[593] We also heard evidence and considered submissions concerning Fiorillo's good character and concern for his reputation. We do not find McBurney's character reference to be of great assistance to the Panel in the circumstances. Again, while we agree that a good reputation is important for business, it does not assist the Panel with these deliberations. As stated above with respect to Wing and Fiorillo, while Fiorillo's motivation for his impugned conduct is not clear to us, motive is not a prerequisite to a finding of insider trading.

[594] As stated above, Fiorillo attempted to downplay the extent of his relationship with Agueci, saying she was a chatter-box. In cross-examination, it became apparent that they were friends, who met for drinks, dinners, and Fiorillo invited her to social gatherings on his boat. Fiorillo says that Agueci "would almost get to the point of pestering me at times" (Merits Hearing Transcript of January 20, 2014 at p. 63). We find it inconsistent that Fiorillo regarded Agueci as a pest, but then called her for seven minutes at 11:19 p.m. late at night.

[595] Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Fiorillo, an experienced and knowledgeable market participant, would have purchased a stock based on a simple recommendation from Agueci.

[596] We infer, based on the combined weight of the evidence, that Agueci informed Fiorillo of the Coalcorp Material Facts. We find that Agueci learned of the Coalcorp Material Facts on January 29, 2008. Fiorillo and Agueci communicated late that same day, at 11:19 p.m. The morning immediately following the day when Agueci learned of the Pala Group's bid to acquire Coalcorp and after her late-night communication with him, Fiorillo purchased 52,000 shares of Coalcorp worth approximately $98,730. The purchases were proximate to contact with Agueci, which supports the finding that Fiorillo had the ability and opportunity to acquire knowledge of the Coalcorp Material Facts and that he executed well-timed purchases of Coalcorp shares. Furthermore, the trades were highly profitable at a return of 39% over a very short holding period of 2 days.

[597] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Fiorillo of the Coalcorp Material Facts on January 29, 2008 and that Fiorillo purchased Coalcorp shares with knowledge of the Coalcorp Material Facts on January 30 and 31, 2008, while the material facts were not generally disclosed.

3. Stephany

[598] Agueci and Stephany played tennis on January 29, 2008 from 8:00 to 10:00 p.m., shortly after Agueci received the Pala Group Proposal. The next morning, Stephany called Agueci at 9:16 a.m. for one minute and Agueci called Stephany at 9:26 a.m. for two minutes. We note that a one minute call may indicate no response, the call went to voice mail, or the call was of a short duration. Shortly after those calls, at 10:49 a.m. on January 30, 2008, Stephany bought 3,000 shares of Coalcorp at $1.80 per share.

[599] On January 31, 2008 at 2:55 p.m., Stephany entered an order to sell 1,500 Coalcorp shares at $2.22 per share and her order was filled at 3:11 p.m.

[600] On February 1, 2008, Agueci called Stephany at 9:12 a.m. for three minutes and at 9:36 a.m. for one minute. Shortly after the second call, at 9:53 a.m., Stephany sold her remaining 1,500 Coalcorp shares at $2.69 per share.

[601] Stephany's purchases of 3,000 Coalcorp shares on January 30, 2008 amounted to $5,430, which was not unusually large for Stephany (Exhibit 1020). We find that Stephany's purchases and sales of Coalcorp shares on January 30 through February 1, 2008 resulted in profit of almost 35% in two days. We find this to be a very short timeframe for such a high return, which supports an inference that Agueci informed Stephany of the Coalcorp Material Facts.

[602] We note that Stephany's purchase of Coalcorp shares was not out of character in view of other resource stocks that she purchased during 2007 and 2008. However, we do find that Stephany's purchase of Coalcorp shares in January 2008 was risky in the circumstances, considering she testified that she was borrowing money from friends at the time to assist her with the purchase of a new house.

[603] Stephany testified that she did not recall exactly why she invested in Coalcorp stock in January 2008. Despite agreeing with her counsel that press announcements referring to a shareholder rights plan and takeover bid could have triggered her interest in the company, at most Stephany's evidence was that generally speaking, she would have been interested "if it created a sort of demand for the stock and appearance of the price augmentation" (Merits Hearing Transcript of February 6, 2014 at pp. 94-95). The evidence indicates that on November 19, 2007, Coalcorp filed a material change report, which disclosed the adoption of a shareholder rights plan by Coalcorp. On December 14, 2007, Pala issued a press release announcing that it had acquired 5,000,000 shares of Coalcorp, increasing its holdings from 9.8% to 15.42% of the issued and outstanding shares of Coalcorp and on January 16, 2008, Pala issued another press release announcing that it had acquired another 3,500,800 shares of Coalcorp, increasing its ownership to 19.14%. Despite these public announcements, Stephany offered no explanation for why she waited until January 30, 2008 to buy Coalcorp shares. In fact, while Stephany's evidence was that the price and activity of a stock would go up after such announcements, the price and volume traded of Coalcorp shares went down in the two weeks between Pala's second press release and Stephany's purchase of Coalcorp shares.

[604] Again, Agueci submits that, at most, the evidence would support that she recommended stocks to the other Respondents. We are not satisfied that Stephany, an experienced market participant, would have purchased a stock based on a simple recommendation from Agueci.

[605] We infer, based on the combined weight of the evidence, that Agueci informed Stephany of the Coalcorp Material Facts. We find that Agueci learned of the Coalcorp Material Facts on January 29, 2008. Stephany and Agueci played tennis that evening and spoke the morning of January 30 before the market opened. Within the hour, Stephany bought 3,000 shares of Coalcorp. The purchases were proximate to contact with Agueci, which supports the finding that Stephany had the ability and opportunity to acquire knowledge of the Coalcorp Material Facts from Agueci and that she executed well-timed purchases of Coalcorp shares. Furthermore, the trades were highly profitable, at almost 35%, over a very short holding period of two days. Also, as stated above, we find that these purchases were risky relative to Stephany's circumstances, as she was borrowing money from friends to help her purchase a house.

[606] We are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Stephany of the Coalcorp Material Facts on January 29, 2008 and that Stephany purchased Coalcorp shares with knowledge of the Coalcorp Material Facts on January 30, 2008, while the material facts were not generally disclosed.

4. Raponi

[607] As stated above, Raponi is Agueci's first cousin. As family, Agueci and Raponi had frequent contact with each other, often in person, but also by email, text and phone. On January 30, 2008 at 11:40 a.m., Raponi called Agueci for one minute. As previously noted, phone calls of one minute could indicate a short conversation, no response or the call went to voice mail. Later

that day, at 2:52 p.m., Raponi entered her first order to buy 5,000 shares of Coalcorp at market and immediately cancelled that order. Two minutes later, at 2:54 p.m., Raponi entered her second order to buy 2,000 shares of Coalcorp at market and her order was immediately filled at $2.00 per share.

[608] Less than 45 minutes later, at 3:36 p.m. on January 30, 2008, Agueci called Raponi for two minutes. Shortly after that call, at 3:45 p.m., Raponi entered an order to buy an additional 2,000 shares of Coalcorp at $2.00 per share. At 3:59 p.m., the expiry date of that order was changed from January 30 to February 1, 2008. At 8:18 p.m. on January 30, 2008, Agueci called Raponi for three minutes. The next morning, at 7:13 a.m. on January 31, 2008, Raponi changed the price of her order for 2,000 Coalcorp shares to $2.05 per share and that order was filled at 9:31 a.m., immediately after the opening of the market on that day.

[609] Also on January 30, 2008, three minutes after she entered an order to buy 2,000 shares of Coalcorp, Raponi entered another order at 3:48 p.m. to buy a further 1,000 shares of Coalcorp at $2.00 per share. Following a similar pattern to her previous order, at 3:56 p.m., Raponi changed the expiry date of that order from January 30 to February 1, 2008 and at 7:13 a.m. on January 31, 2008, Raponi changed the price of her order for 1,000 Coalcorp shares to $2.05 per share and that order was filled at 9:31 a.m., immediately after the opening of the market on that day.

[610] On February 1, 2008 at 10:03 a.m., Raponi received a one-minute call from an unidentified caller. Staff submits that the caller was Agueci, calling from GMP. Raponi then sold her 5,000 Coalcorp shares at prices between $2.60 and $2.61 per share. The Panel places no weight on unidentified calls.

[611] Raponi is a high school teacher of languages, has limited stock market experience and has not been registered in any capacity in the securities industry. She could not, in our view, be considered an experienced investor and, by her own admission, was a novice.

[612] We find that Raponi's purchase of 5,000 Coalcorp shares for a total amount of $10,299 was risky because Raponi used her line of credit to make the purchase and it was approximately 12% of her annual income at the time (Exhibit 1020). Raponi's Coalcorp purchase was not, however, uncharacteristic relative to her other trades in size or type of stock in her limited history of trading. We also find that Raponi earned a profit of over 25% over two days, a very short time frame for such a substantial profit.

[613] In her compelled examination, when asked if she would research stocks, Raponi stated "… if she [Agueci] bought it, it was good enough for me" (Exhibit 1157 at p. 45) and "I want to buy what you [Agueci] buy" (Exhibit 1157 at p. 123). Raponi further stated that Agueci would not tell Raponi specifics, but that Agueci would tell Raponi if she thought a stock recommendation was a good one. However, in respect of Coalcorp, Raponi's evidence was that she invested because she had previously met Serafino Iacono, Coalcorp's CEO, in the early 2000s and had read a news article about the company, which was favourable. She did not provide any evidence of a news article about Coalcorp in January 2008. Raponi said she looked up Coalcorp and noticed that it had gone up. She testified that she bought the 2,000 shares on January 30, 2008 and then the next day noticed that it went up a little bit so she bought more. We have difficulty accepting Raponi's explanation for why she purchased Coalcorp shares on January 30 and 31, 2008. We note that the stock price of Coalcorp had not risen on January 29, 2008 prior to her first purchase.

[614] Staff's evidence of communication between Agueci and Raponi amounts to three calls on January 30, 2008: the first call at 11:40 a.m. was one minute and a few hours later, at 2:52 p.m., Raponi attempted to purchase 5,000 Coalcorp shares, but quickly cancelled that order and at 2:54 p.m., purchased 2,000 Coalcorp shares. The second call at 3:36 p.m. was for two minutes and within 10 minutes after that call, Raponi entered orders to purchase an additional 2,000 Coalcorp shares and another 1,000 Coalcorp shares. At 3:56 p.m. and 3:59 p.m., she extended the expiry of the two orders from January 30 to February 1, 2008. The third call at 8:18 p.m. was for three minutes and at 7:13 a.m. the next morning, well prior to the opening of the market, Raponi increased the price on her two orders from $2.00 to $2.05.

[615] Based on the evidence before us, the first call between Raponi and Agueci was one minute or less in length, or went to voice mail, or Raponi and Agueci did not actually connect. We are not satisfied that the evidence of communication between Agueci and Raponi is clear, convincing or cogent evidence of opportunity to communicate the Coalcorp Material Facts. In our view, it is equally plausible that Raponi`s first order for 5,000 shares, or her actual purchase of 2,000 shares, was based on Raponi`s research, as she had stated in her compelled examination. While her subsequent purchases were very proximate to calls with Agueci and we acknowledge that her trades were well-timed relative to the Coalcorp Announcement, were risky and earned a substantial profit over a short period, we are not satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Raponi of the Coalcorp Material Facts on January 30, 2008 and that Raponi purchased Coalcorp shares with knowledge of the Coalcorp Material Facts while the material facts were not generally disclosed.

[616] We are not persuaded on a balance of probabilities that there is clear and cogent evidence that Agueci informed Raponi of the Coalcorp Material Facts prior to Raponi's purchase of Coalcorp shares and, therefore, we cannot find that Raponi's conduct in relation to Coalcorp constituted insider trading contrary to subsection 76(1) of the Act.

E. Were Fiorillo and Stephany in a Special Relationship with Coalcorp?

[617] Staff submits that Fiorillo and Stephany knew or ought reasonably to have known, pursuant to subsection 76(5)(e) of the Act, that Agueci was a person in a special relationship with Coalcorp and that the information relating to the proposed acquisition of Coalcorp that Agueci communicated to them were material facts with respect to Coalcorp that had not been generally disclosed.

[618] We have found above that Coalcorp was a reporting issuer, that Agueci was in a special relationship with Coalcorp under subsection 76(5)(c) of the Act and that Fiorillo and Stephany learned from Agueci material facts with respect to Coalcorp that had not been generally disclosed.

1. Fiorillo

[619] As stated above, Fiorillo knew Agueci was executive assistant to McBurney, Chairman of GMP in the investment banking department. Fiorillo also knew that GMP's business included M&A.

[620] Fiorillo was aware that Agueci was an executive assistant in the mining group at GMP and that the group routinely worked on confidential mandates. We do not find Fiorillo's evidence credible that, although he knew Agueci's role, he was not aware Agueci would have exposure to material non-public information. As an experienced and active market participant and a former registrant, Fiorillo knew or ought reasonably to have known that Agueci was in a special relationship with Coalcorp when Agueci informed him of the Coalcorp Material Facts.

[621] Therefore, we find that Fiorillo was a person in a special relationship with Coalcorp, in accordance with subsection 76(5)(e) of the Act, by virtue of the fact that he learned of the Coalcorp Material Facts from Agueci, a person in a special relationship with Coalcorp, and because Fiorillo knew or ought reasonably to have known that Agueci was in such a relationship at the relevant time.

2. Stephany

[622] As stated above, Stephany knew Agueci was executive assistant to McBurney, Chairman of GMP in the investment banking department. Stephany also knew that GMP's business included M&A.

[623] As stated above, Stephany acknowledged she was a former registrant. Stephany knew Agueci worked at GMP as an executive assistant in the mining group, that the group did work on mining deals and that Agueci had access to confidential information. Stephany previously worked as an executive assistant herself to the head of the corporate finance group at First Marathon. As an experienced market participant, a registrant for various periods from 1981 to 2012, and a former executive assistant, Stephany knew or ought reasonably to have known that Agueci was in a special relationship with a number of issuers. Stephany knew or ought reasonably to have known that Agueci was in a special relationship with Coalcorp when Agueci informed her of the Coalcorp Material Facts.

[624] Therefore, we find that Stephany was a person in a special relationship with Coalcorp, in accordance with subsection 76(5)(e) of the Act, by virtue of the fact that she learned of the Coalcorp Material Facts from Agueci, a person in a special relationship with Coalcorp, and because Stephany knew or ought reasonably to have known that Agueci was in such a relationship at the relevant time.

F. Did Fiorini, Fiorillo, Stephany and/or Raponi Breach subsection 76(1) of the Act?

[625] As stated above, we are satisfied that there is clear and cogent evidence supporting a reasonable inference that Agueci informed Fiorillo and Stephany of the Coalcorp Material Facts and that Fiorillo and Stephany purchased Coalcorp shares with knowledge of the Coalcorp Material Facts while they were not generally disclosed. Having found that each of Fiorillo and Stephany was in a special relationship with Coalcorp at the relevant time, we find that Fiorillo`s and Stephany's purchases of Coalcorp shares on the relevant dates constituted insider trading, contrary to subsection 76(1) of the Act.

[626] Staff submits that Fiorini and Raponi engaged in conduct contrary to subsection 76(1) of the Act. Having found that there was not sufficient evidence to support a finding that Agueci informed Fiorini or Raponi of the Coalcorp Material Facts, we cannot conclude that Fiorini or Raponi breached subsection 76(1) of the Act.

G. Did Agueci, Fiorini, Fiorillo, Stephany and/or Raponi Engage in Conduct Contrary to the Public Interest?

[627] Staff submits that the activities of Agueci, Fiorini, Fiorillo, Stephany and/or Raponi in respect of trades in Coalcorp shares constituted, among other things, conduct contrary to the public interest.

1. Agueci

[628] As stated above, Agueci's position is that the Commission's public interest jurisdiction is not unlimited (*Asbestos, supra* at para. 41) and that the Commission ought not to treat findings of conduct contrary to the public interest as Staff's consolation prize in cases where Staff fails to prove a breach of the Act. Further, Agueci asks that the Panel consider that Ontario has not prohibited insiders from making recommendations to purchase or sell a security so long as that recommendation does not involve the passing of material non-public information. Furthermore, Agueci submits that the purpose of section 127 of the Act is not to override legislative choices made in respect of the elements of illegal insider trading and tipping.

[629] Having found that Agueci breached subsection 76(2) of the Act in respect of her informing each of Fiorillo and Stephany of the Coalcorp Material Facts before they had been generally disclosed, we find that Agueci's conduct in respect of each of those breaches was contrary to the public interest.

2. Fiorillo, Stephany, Fiorini and Raponi

[630] Having found that the purchases of Coalcorp shares by Fiorillo and Stephany were made contrary to subsection 76(1) of the Act, we find that the conduct of each of them in that respect constituted conduct contrary to the public interest. However, we do not find the conduct of Fiorini or Raponi in respect of Coalcorp was contrary to the public interest.

H. Conclusions

[631] Based on the foregoing, we find that Agueci informed Fiorillo and Stephany of the Coalcorp Material Facts, contrary to subsection 76(2) of the Act and contrary to the public interest. We also find that Fiorillo and Stephany purchased shares of Coalcorp, contrary to subsection 76(1) of the Act and contrary to the public interest.

[632] Based on the evidence, we find that as of January 29, 2008 to prior to the opening of the market on February 1, 2008:

1. Coalcorp was a "reporting issuer" within the meaning of the Act;

2. as an employee of GMP, Agueci was a person in a special relationship with Coalcorp within the meaning of subsection 76(5) (c) of the Act;

3. the Coalcorp Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the Coalcorp securities and were therefore "material facts" with respect to Coalcorp, within the meaning of the Act;

4. Agueci informed Fiorillo and Stephany other than in the necessary course of business, of the Coalcorp Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the Act and contrary to the public interest;

5. Fiorillo and Stephany each learned of the Coalcorp Material Facts from Agueci, and knew or ought reasonably to have known that Agueci was a person in a special relationship with Coalcorp and, as a result, were persons and a company in a special relationship with Coalcorp within the meaning of subsection 76(5)(e) of the Act; and

6. based on the foregoing, Fiorillo and Stephany each purchased Coalcorp securities with knowledge of the Coalcorp Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the Act and contrary to the public interest.

[633] We are not satisfied that Agueci informed Fiorini or Raponi of the Coalcorp Material Facts, contrary to subsection 76(2) of the Act or the public interest. Similarly, the Panel is not satisfied that Fiorini or Raponi purchased Coalcorp shares, contrary to subsection 76(1) of the Act or the public interest.

X. LAW AND ANALYSIS ON ALLEGATIONS OF MISLEADING STAFF

A. Relevant Law

[634] Subsection 122(1)(a) of the Act provides as follows:

> 122. (1) Every person or company that, (a) makes a statement in any material, evidence or information submitted to ... any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or

> does not state a fact that is required to be stated or that is necessary to make the statement not misleading; is guilty of an offence ...

[635] The Ontario Court of Appeal held in *Wilder et al v. Ontario Securities Commission* that the making of misleading or untrue statements contrary to subsection 122(1)(a) of the Act may be alleged in the context of administrative proceedings under section 127 of the Act. In that case, the Court stated:

> The remedial and enforcement provisions of the Act must be read in light of the fundamental purpose and aim of the legislation. […] The legislature has quite clearly manifested its intention to provide the OSC with a range of remedial options to assist the OSC in carrying out its statutory mandate [… including] administrative sanctions before the OSC itself pursuant to s. 127;
>
> (*Wilder et al v. Ontario Securities Commission* (2001), 53 OR (3d) 519, [2001] O.J. No. 1017 ("***Wilder***") at para. 23)

[636] The term a "material respect" is not defined in the Act. However, the Court of Appeal noted in *Wilder* that "[i]t is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring that those involved in those markets, whether as direct participants or as advisors, provide full and accurate information to the OSC" (*Wilder, supra* at para. 22). Furthermore, the Commission has stated that:

> Evasion, obfuscation, and untruth in responding to Staff inquiries serves to hinder Staff's performance of their responsibilities to monitor and enforce compliance with Ontario securities law; such conduct is an obstacle to effective regulation of the capital markets.
>
> (*Re DaSilva* (2012), 35 O.S.C.B. 8822 at para. 7, citing *Re Hennig*, 2008 ABASC 363 at para. 1296).

[637] Wing requested that the panel consider two authorities with respect to allegations that he misled Staff. In *Keith,* the Alberta Securities Commission considered allegations made by staff that respondents had made material, false and misleading statements relating to the opening of a bank account in which impugned securities were purchased and the origin of funds for the same, contrary to sections 93.4 [obstruction of justice] and 221.1 [misleading information] *ASA* (*Keith*, *supra* at paras. 108-115). The latter provision employs similar language to section 122 of the Act in that no person shall make a statement to the Commission, including employees, that "in a material respect and at the time and in light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated […] to make the statement not misleading." (section 221.1 of the *ASA*). In that case, the panel considered allegations in the context of having dismissed allegations of insider trading and/or tipping against the relevant respondents. Nevertheless, the panel noted that there was insufficient evidence for a determination that the statements made were misleading or untrue, and found that it was not clear that the precise details were material, as required by section 221.1 of the *ASA* (*Keith*, supra at paras. 111 and 114). That panel did not elaborate on the concept of materiality.

[638] The second case submitted by Wing was *Shire*, which was based on allegations relating to sections 93.4 [obstruction of justice] and 221.1 [misleading information] *ASA* (*Re Shire International Real Estate Investments Ltd.*, 2011 ABASC 608 ("***Shire***") at para. 107). The panel in that case considered that the respondent's failure to correct her statement in a timely manner, if at all, was proof of the respondent's concealment of information – an element of section 93.4 of the *ASA*, which does not exist in subsection 122(1)(a) of the Act in Ontario.

[639] With respect to corrections made to prior misleading statements, the Alberta Securities Commission noted in *Fletcher*:

> In light of these facts, we do not think it credible that Meena Singh, after being asked three times, could not recall the fairly recent $30 000 Tang Loan until presented with the banking documentation. The evidence is clear, and we find, that Meena Singh by her denials, which she did not correct until confronted with the banking documentation, attempted to conceal or withhold information during the Meena Singh Interview, a compelled Staff investigative interview. Her misstatements were, we find, not inadvertent. Thus, the first element of section 93.4(1) of the Act has been proved.
>
> (*Re Fletcher*, 2012 ABASC 222 at para. 112)

B. Analysis and Findings

[640] We consider below whether each of Wing and Agueci materially misled Staff during compelled examinations conducted as part of Staff's investigation, contrary to section 122 of the Act and contrary to the public interest.

1. Did Wing Engage in Conduct Contrary to section 122 of the Act?

[641] Staff submits that Wing misled Staff during his compelled examination held in 2011 pursuant to section 13 of the Act and thereby committed serious breaches of section 122 of the Act. We refer to the three dates of compelled examination of Wing, on August 17, 2011, November 17, 2011 and December 14, 2011, as "**Wing's Compelled Examination**".

[642] Staff specifically submits that Wing misled Staff regarding his activities and involvement with offshore entities and other brokerage and bank accounts, including:

a) failing to disclose his connection to Pollen;

b) failing to disclose his involvement in the significant trading done by Pollen in numerous jurisdictions and in different currencies;

c) failing to disclose his beneficial interest in the Pollen payments made by Pollen to himself and others for his own benefit, including payment of £5,000 to Agueci in September 2007; and

d) failing to disclose his own personal banking account in Switzerland, which had received over $1.3 million from the Pollen SG Account in Switzerland.

[643] Paragraphs 135 to 141 of the Amended Statement of Allegations (the "**Amended SOA**") in this matter set forth Staff's allegations that Wing misled Staff. Staff's submission that Wing failed to disclose payments to others including the payment to Agueci was not stated expressly in the Amended SOA. The Respondents did not take the position that it was not included in the Amended SOA. In our view, these activities are included under the allegations that he made misleading statements regarding offshore accounts and his denials that he had any beneficial interest in these accounts.

[644] Staff note that Wing continuously and repeatedly misled Staff throughout his examinations and did not correct his statements or provide facts which were required until he was confronted with the evidence to the contrary. They further argue that throughout his examinations, he only changed his responses to their questions when it became apparent that Staff had evidence which contradicted his statements and he revised his answers only slightly to correspond with each of the documents he was shown.

[645] Wing's submissions regarding Staff's allegations that he misled Staff contrary to section 122 of the Act include that:

1. he did not mislead Staff in any material respect;

2. he did not mislead Staff if he did not know that that statement was misleading;

3. he did not mislead Staff at the time and in light of the circumstances under which a statement was made; and

4. that any misstatement he made was corrected on a timely basis.

[646] Wing submits that an answer to a question cannot be misleading if the recipient already knows the answer. In our view, this argument defies logic and is not persuasive. It implies that Wing's answers could not be misleading if Staff had in their possession information that would show whether the answer was truthful or misleading. In our opinion, whether a respondent is truthful or not does not depend on the knowledge of Staff.

[647] Wing also submits that he was induced by Staff to make misstatements. The example referred to in support of this submission relates to a question incorrectly stated concerning Wing's trading in certain impugned securities in a context where the question was clarified by another Staff member shortly thereafter at Wing's Compelled Examination. We did not find this argument persuasive or relevant to our determination of whether Wing misled Staff contrary to section 122 of the Act. There is no indication that Staff had any intention to induce Wing to make a misleading or untrue statement in the circumstances of any of the allegations considered below.

[648] At the relevant time, Wing had been employed in the securities industry for almost 35 years. He was a sophisticated and experienced market participant and had held several senior positions within the industry, including Chief Compliance Officer for First Marathon's international operations for 15 years and Chairman of First Marathon International for 20 years. During the period 2007-2011, Wing was President, CEO and Director of Fort House. In 2009, Wing wrote the Chief Compliance Officer Exam and became the CCO and Ultimate Designated Person ("**UDP**") for Fort House. In addition, Wing was a Fellow of the Canadian Securities Institute and a director of a number of companies.

[649] At the outset of his compelled examination on August 17, 2011, at which he was accompanied by counsel, Wing confirmed that he understood that it was an offence to make a statement that is misleading or untrue to the Commission. At the

continuation of his compelled examination on November 17, 2011, Wing reiterated that he understood that it was an offence to mislead the Commission. On December 14, 2011, the third date of his compelled examination, Wing was reminded that he was still under oath and that it was an offence to mislead Staff. We find that as a CCO, UDP and senior market participant, Wing would certainly have understood the seriousness of being summoned by the Commission and giving testimony under oath. In fact, Wing testified before us on January 15, 2014 that he understood that he held a gatekeeper role, that he had an obligation to ensure compliance, as follows:

> Q.[Staff] As the UDP and CCO of Fort House you were entrusted to ensure compliance by Fort House and the individuals who worked there, including yourself, with Ontario securities law?
>
> A.[Wing] Yes.
>
> Q. You knew that ensuring compliance was important because it was necessary to ensure fairness in the market, right?
>
> A. Yes.
>
> […]
>
> Q. Important to be transparent in the marketplace?
>
> A. Yes.
>
> Q. Including filling out account application forms truthfully and accurately?
>
> A. Correct.
>
> Q. Disclosing information that is required to be disclosed?
>
> A. Correct.
>
> Q. Being truthful to one's regulator?
>
> A. Correct.
>
> (Merits Hearing Transcript of January 15, 2014 at pp.173-174)

Further, Wing also testified at the Merits Hearing that he knew it was an offence to provide Staff with false or misleading information.

a. Failing to disclose his connection to Pollen

[650] On the first date of Wing's Compelled Examination, Wing was asked if he had any bank accounts outside Canada and he answered that he did not. He was then asked to disclose all of his brokerage accounts and he stated that he only had four accounts, all of which were at Fort House. He was specifically asked if he had any brokerage accounts outside Canada, if he had signing authority on any brokerage accounts outside Canada or any beneficial ownership in any brokerage accounts outside Canada. He stated that he did not. He did not disclose his knowledge of and relationship with the Pollen SG Account, the Swiss account for which he had sole signing authority. Wing testified under oath that SG Private was an institutional client of Fort House and that he was the investment advisor on their Fort House account, but had no knowledge of the client or clients for whom SG Private traded.

[651] Pollen was a company established in 2003 by Wing with the assistance of SG Private in Switzerland. Pollen was incorporated in the British Virgin Islands and its shares were held by The Honey Trust, whose beneficiaries are Wing's two sons. Wing established The Honey Trust through SG Private, funded it and was the protector, settlor and investment advisor of the trust. Pollen had various directors, but they did not have decision-making authority over its affairs or trading activity.

[652] The Pollen SG Account was opened in 2003. Wing testified at the Merits Hearing that he had sole authority to trade and directed 99% of trades in the Canadian subaccount. Yet, in Wing's Compelled Examination, on August 17, 2011, despite having opened the Pollen SG Account in 2003, he denied having any relationship to any offshore accounts. When Wing returned for his continued examination on November 17, 2011, Staff asked him about Pollen specifically and Wing denied knowing anything about Pollen:

Q.[Staff] Okay. Have you heard of a company called Pollen Services Limited?

A.[Wing] No. No.

Q. No?

A. Is it a Canadian company?

Q. I don't know.

A. No. No.

Q. It's P-O-L-L-E-N as in Nancy.

A. I have not, no.

(Exhibit 1015 at p. 209 – Q.907-910)

[653] However, after having been shown the account opening documents for the Pollen SG Account which listed Wing as attorney for the account and included a list of authorized signatures and a copy of his passport, Wing stated that the account documents appeared to include a copy of his passport but stated that he had no idea why his passport was included in the documents or how his signature came to be included on the list of authorized signatures for the account.

[654] Shortly thereafter, upon allowing Wing to review Pollen's account opening documents, Staff reminded Wing that misleading the Commission was an offence. Wing still maintained that he did not know the business of Pollen:

Q. Okay. Having looked at this document now, does it help you refresh your memory as to what Pollen Services Limited is?

A. I didn't remember that you said Pollen Services. You said Pollen something development or something.

MS. GEORGE: I said both.

THE DEPONENT: Okay. I don't.

BY MR. SHEIKH:[…] So what is Pollen Services Limited?

A. It appears to be the name of this account holder.

Q. I'm asking about the corporation, sir, what is Pollen Services Limited?

A. It's the account holder of this account, it appears.

Q. Aside from that, what is your understanding of Pollen Services Limited?

A. I know the name only. I don't know the business of the company, if that's what you are asking.

Q. How do you know the name?

A. You mentioned it earlier and I'm reading it right here.

(Exhibit 1015 at pp. 248-249, Q.1132-1136)

[655] Wing further stated that the only reason that he was listed on the documents as attorney to the account was that he was the advisor for the SG Private account at Fort House.

[656] Wing also denied ever having heard of The Honey Trust.

Q. Mr. Wing, have you heard of a trust called the Honey Trust?

A. Honey Trust?

Q. Yes.

A. No.

Q. No?

A. No.

(Exhibit 1015 at p. 210, Q. 913-915)

[657] Following an approximately 30 minute break at 1:19 p.m. on November 17, 2011, and conferring with his counsel, Wing advised Staff that he wanted to make a statement. Wing began by stating that Pollen was a name that he just didn't remember, and that he had set up The Honey Trust for his sons many years ago. Wing further stated that he set up The Honey Trust partly in order to put aside money for his sons because "I knew at some point my wife and I were going to part. I knew there was going to be a real issue with money with her. I wanted to make sure there was money put aside for the two of them." (Exhibit 1015 at pp. 272-273). He also stated that he didn't want to discuss this matter during his compelled examination because he was concerned about tax issues. Wing took the position that his involvement in trading activity for Pollen was as an Investment Advisor ("**IA**") strictly on the Canadian side, but the beneficiaries of the account were only his two sons. Finally, Wing expressly apologized to Staff for misleading them, stating "I apologize for misleading, and for some of those other remarks I made and I simply didn't recollect some of the things but I do now" (Exhibit 1015 at p. 274).

[658] We note that Wing had completed the account opening document for the SG Private account at Fort House, which executed trades for Pollen, with false information. To the question "Has I.A. a direct or indirect interest in the account other than an interest in commissions charged?", Wing checked "No" (Exhibit 34 at p. 9). In his testimony at the Merits Hearing, Wing admitted that he incorrectly filled out the IA relationship on the Fort House account opening documents, which should have stated that there was a relationship between the IA (i.e. Wing) and the SG Private account at Fort House, through Pollen.

[659] We find that Wing was not truthful to Staff during his compelled examination in 2011. Wing began his examination by advising Staff, under oath, that he had no knowledge of Pollen or The Honey Trust. After being shown documents, which clearly linked him to Pollen and The Honey Trust, Wing said that he had simply forgotten and did not have any recollection of SG Private or the Pollen SG Account because they had been set up some time ago for his sons. However, Pollen's SG Account statements record debits, in accordance with Wing's email instructions dated as recently as June 2011, just two months prior to the first date of Wing's Compelled Examination by Staff. While Wing appeared to return from his break, on November 17, 2011, to clarify the record, in our view he continued to mislead when he repeatedly stated that the only beneficiaries of The Honey Trust and Pollen were his two sons (Exhibit 1015 at pp. 272, 278, 287, 336-337, Q. 1216, 1236, 1288, 1560 and 1565). He also continued to deny knowing any of the individuals or entities who were listed as the directors of Pollen even though he had admitted that he was the "controlling mind" of Pollen Services. Therefore, we do not accept Wing's submission that he corrected his misstatements in all respects.

[660] We are satisfied that Wing's connection to Pollen was material in light of Staff's investigation. Wing was aware of the importance of transparency with the regulator, he was connected to Agueci and he had sole trading authority over the Pollen SG Account, which was an off-shore account that had engaged in trades of the impugned securities. Therefore, we find that Wing's statements in this regard were material and, at the time and in the light of the circumstances, misleading.

b. Failing to disclose involvement in the significant trading done by Pollen in numerous jurisdictions

[661] During Wing's Compelled Examination, on November 17, 2011, he was asked to describe how Pollen would execute a trade. He stated that he would direct SG Private (formerly Companie Bancaire Geneve, as defined above) as to what stocks to purchase.

[662] However, when asked how SG Private would execute those trades for Canadian stocks, Wing would answer the same question in different ways. He at first said that typically SG Private would execute a Canadian trade through Fort House although he stated that, in some circumstances, they might execute a trade that he had directed through another Canadian broker. Twice he stated that SG Private could use another Canadian broker:

Q. Was there any circumstance where that procedure could change?

A. No. I mean, he -- [w]ould he buy some securities from another Canadian broker,

yes, I believe that to be the case […]

(Exhibit 1015 at p. 324, Q. 1495)

[663] Then again:

> Q. So you are saying out of the Pollen account, they could use different Canadian brokers to execute the trades.
>
> A. They could. […]
>
> (Exhibit 1015 at p. 328, Q. 1513)

[664] Yet two questions later, when Staff asked if SG Private could use other brokers to do Canadian trades for Pollen, his answer was:

> A. No. I don't believe that that's the case, no. The only trades that they would do would be through me and they would be the same trades that are on those statements there. [referring to the Fort House statements for the SG Private account]
>
> (Exhibit 1015 at p. 328, Q. 1515)

[665] And again, later on the same day, when asked about the Pollen trades shown on the Fort House account list of trades, he stated that yes, those would be the only trades done for Pollen.

> Q. […]So all of the trades for Pollen are these trades in Exhibit 23 to your knowledge?
>
> A. To the best of my knowledge, absolutely.
>
> (Exhibit 1015 at p. 354, Q. 1655)

[666] At the continuation of Wing's Compelled Examination, on December 14, 2011, Staff asked and Wing responded:

> Q. […] These are statements for Pollen Services Limited. Other than this trading account, are there any other trading accounts for Pollen Services Limited either at Fort House or anywhere else?
>
> A. No.
>
> Q. In the world.
>
> A. No.
>
> Q. Okay. So these are all of the trades done by and for Pollen Services Limited; is that correct?
>
> A. At Fort House Inc., correct.
>
> Q. Say that again.
>
> A. At Fort House Inc., correct.
>
> Q. Well, I'm asking are these all the trades executed by and for Pollen Services Limited.
>
> A. Yes.
>
> (Exhibit 1016 at p. 458, Q. 2108-2112)

[667] Wing told Staff on December 14, 2011 that he did not know that the Pollen SG Account had subaccounts. However, on the same day, Wing admitted to having known and approved of trades for Pollen in other jurisdictions.

[668] Pollen's account statements at SG Private dated March 2007 to July 2008 show that the Pollen SG Account engaged in a significant amount of trading with trades that were significant in value, often representing investments of several hundred thousand dollars or even as much as $1 million. Staff submits that Pollen conducted trading activity around the world. The account statements provided in evidence indicate that Pollen had 12 subaccounts at SG Private held in various currencies,

including Swiss francs, Euros, US dollars, Canadian dollars. The Canadian dollar subaccount statement indicates that Pollen made trades in excess of $13 million in that period.

[669] At the Merits Hearing, Wing spoke in circles, stating that the Pollen SG Account in Switzerland was the same account as the SG Private account at Fort House, despite the fact that these were two different accounts at two different institutions. One was an account held in Pollen's name at SG Private in Switzerland (Account #2035700) and the other was the SG Private account at Fort House (Account #4NA052A). Wing was unclear and contradictory in his explanations; the Panel found his evidence neither cogent nor convincing.

[670] Pollen's trading activities and the location of that trading were material in light of Staff's investigation because Wing directed trades of impugned securities. Therefore, we find that Wing's statements in this regard were material and at the time and in the light of the circumstances, misleading.

c. Failing to disclose a beneficial interest in the Pollen SG Account

[671] As noted above, during Wing's Compelled Examination, Wing told Staff that the sole beneficiaries of the Pollen SG Account were his two sons.

[672] Wing explained that he withdrew funds from the Pollen SG Account to reimburse himself for expenses relating to his sons. However, despite repeatedly stating that the Pollen SG Account was solely for the benefit of his sons, the Pollen SG Account statements reveal consistent payments to others as follows:

1. payments in excess of $2.1 million USD to M.K., a woman with whom Wing was having a personal relationship and who subsequently became his second wife;

2. payments of approximately $1.3 million ($616,000 CAD and $730,000 USD) to Wing's own bank account at SG Private; and

3. payments to other corporate entities.

[673] Wing also directed payments of $645,020 USD from the Pollen SG Account to Avantair, an airplane chartering company which Wing acknowledged he used for business as well as personal purposes. When he was first asked by Staff on November 17, 2011 about these payments, Wing stated he had not heard of a company called Avantair and then changed his statement and restated that he chartered their services. In fact, the evidence indicates that Wing owned 1/16th of an Avantair plane and, as of June 2007, was making payments for the aircraft.

[674] Further evidence supports that Wing instructed the transfer of £5000 from the Pollen SG Account to C.M.'s account in London and subsequently advised Agueci how to obtain those funds from C.M. in London. Wing provided no supporting evidence that the monies flowing out of the Pollen SG Account was used for the benefit of his sons.

[675] We find that most, if not all, of the payments listed above were not made for the benefit of the beneficiaries of The Honey Trust as Wing represented to Staff. Therefore, despite the fact that Wing's sons were named as legal beneficiaries, the evidence indicates that Wing and others benefitted from funds paid out of the Pollen SG Account.

[676] We are satisfied that Wing made misleading statements concerning his activities and involvement with Pollen's offshore accounts, including his beneficial interest in the Pollen SG Account. Failure to disclose these payments from the Pollen SG Account was material in light of Staff's investigation because it demonstrates Wing's control over the trades and funds in the Pollen SG Account. In addition, Wing received money out of the Pollen SG Account and directed the flow of funds from that account, including funds resulting from impugned trades. Therefore, we find that Wing's statements in this regard were material and at the time and in the light of the circumstances, misleading.

d. Failing to disclose his own personal banking account in Switzerland

[677] At Wing's Compelled Examination on December 14, 2011, Wing denied having any personal accounts at SG Private:

Q. And then under Wing, Mr. Dennis Roy Wing, there's an account number

0148091, and then sub-account numbers. Is that an account that you have

at SG Private?

A. No. I don't have an account at SG Private.

(Exhibit 1016 at p. 593, Q. 2791)

[678] Staff submits that Wing did have a personal account off-shore at SG Private. At the Merits Hearing, Wing repeatedly denied having a personal account at SG Private and testified that the account Staff referred to was just an internal account set up by SG Private to transfer funds.

[679] On January 15, 2014, when asked directly if he thought he had a personal account at SG Private, Wing testified under oath that "No, I don't. Never have." (Merits Hearing Transcript of January 15, 2014 at p. 120). He repeated this testimony on January 16, 2014, stating that he "[n]ever had a personal account there [at SG Private]. The bank does their own internal whatever structuring when they do these things […] this was only an accounting thing that the bank did" (Merits Hearing Transcript of January 16, 2014 at pp. 64-65). Wing's testimony was that SG Private may have set up the account in question as a bank policy for the transfer of funds from the Pollen SG Account, but repeatedly denied having a personal banking account at SG Private.

[680] In cross-examination, despite being shown account opening documents, Wing continued to deny having a personal account at SG Private. SG Private records that were tendered into evidence included account opening documents signed by Wing, a copy of his passport, a beneficial owner's identity form naming him as beneficial owner, and a disclaimer for orders placed by telephone signed by Wing. The evidence indicates that the SG Private account opening records for this account were signed by Wing at least seven times. Additional evidence in the form of statements for the personal banking account showed clearly the heading "Account Holder: Dennis Roy Wing". Wing claimed this was a sub-account for Pollen, but did not provide documentary evidence to support his testimony that the two were linked.

[681] We do not accept Wing's submission that he did not know he had a personal account at SG Private and, therefore, that he was not misleading Staff. We do not accept Wing's testimony that he does not recollect how his signature appeared on the documents for this personal account, nor did we find his testimony credible that a transfer of $100,000 shown from Pollen's SG Account was not to his personal account. Wing denied receipt of the $100,000 in his personal account despite being shown the credit advice, which states "according to your instructions dated 14.02.11, we credit your account: USD $100,000" (Exhibit 31 p. 251; Merits Hearing Transcript of January 16, 2014 at pp. 60-62). On our review, there are multiple notices on the account statements of Wing's personal account at SG Private, which indicate "according to your instructions" and cite the date of the instructions.

[682] We also do not find it plausible that SG Private set up an account without Wing's knowledge for the purpose of making transfers out of the Pollen SG Account, because substantial evidence was presented that confirmed payments to third parties made directly out of the Pollen SG Account, at Wing's instruction. We do not find Wing's assertions credibile that the account in question was not his personal account when the evidence presented at the hearing contained his signature, his picture, a copy of his passport and various related account opening documents in relation to that account. We find that Wing did have a personal account at SG Private.

[683] As noted above, Wing's personal account at SG Private received approximately $1.3 million ($616,000 CAD and $730,000 USD) from the Pollen SG Account.

[684] Wing's failure to disclose his own personal account at SG Private was material in light of Staff's investigation because Wing traded in the impugned securities through the Pollen SG Account and the funds from that account went directly to him or to others as designated by him, not to his sons. Therefore, we find that Wing's statements in this regard were in a material respect, at the time and, in the light of the circumstances, both misleading and untrue.

e. Conclusion

[685] In our view, Wing was given many opportunities to correct and clarify his statements throughout the three days of Wing's Compelled Examination. He was repeatedly asked about his knowledge of Pollen and his connection with the Pollen SG Account and he repeatedly prevaricated in his answers, even at times continuing to deny knowledge despite the evidence to the contrary. We find that Wing did not "correct" his misleading answers until shown evidence which contradicted his previous statements, and thus misleading statements were not inadvertent (*Fletcher, supra* at para. 112). For example, when first asked about Pollen, he denied having heard of a company called Pollen Services. Later when shown the account opening documents for Pollen at SG Private, which listed Wing as the "attorney" on the account, and a copy of his passport, he continued to deny any knowledge of the account. Only after a break and consultation with counsel, did he return to say that he had forgotten that it was an account that he had set up for his sons many years ago. In making this clarification, he apologized for "misleading" Staff. The fact that he misled Staff is in no way mitigated by the fact that he restated his answers after having been confronted with the evidence to the contrary.

[686] Wing also admitted under oath at the Merits Hearing that he misled Staff. In cross-examination, he was asked if he recalled his answers about Pollen and if those answers were misleading to Staff and to both questions, he answered "Yes" (Merits Hearing Transcript of January 16, 2014 at p. 90). He was then asked if he recalled his answers about The Honey Trust and if those answers were misleading to Staff; he answered "Yes" to both (Merits Hearing Transcript of January 16, 2014 at pp. 90-91). He further stated that he did not reveal the correct information because he thought it wasn't relevant to insider trading and he wanted to keep the existence of the account private. He stated "So it was my mistake in that I looked at it on the basis that I wanted to keep that part of it private because it was a family thing and it was embarrassing to have that out there [in] public for lots of different reasons, and it really wasn't relevant to insider trading." (Merits Hearing Transcript of January 16, 2014 at p. 92). Again on January 17, 2014, Wing admitted that he misled Staff during his compelled examination in regard to his knowledge of Pollen and The Honey Trust, but continued to deny that he held a personal account at SG Private despite the evidence presented to the contrary.

[687] Therefore, we are satisfied that Wing's four statements noted above were material and, at the time, and in the light of the circumstances, were misleading, contrary to subsection 122(1)(a) of the Act.

2. Did Agueci Engage in Conduct Contrary to section 122 of the Act?

[688] Staffs submits that, contrary to section 122 of the Act, Agueci repeatedly misled Staff in a material way during the course of its investigation in her responses provided under oath at compelled examinations conducted pursuant to section 13 of the Act in 2011.

[689] They specifically allege that Agueci made misleading statements in regard to:

a) failing to disclose her direct or indirect interest and involvement in other brokerage accounts, including the First and Second Secret Accounts;

b) advising Staff that Iacono did not execute trades on her behalf in the Second Secret Account when in fact he did, and that she did not know what investments were in this account when in fact she did;

c) advising Staff that she assisted her mother in trading in the First Secret Account by at all times calling with her mother on the line and having her mother confirm her identity when in fact Agueci would impersonate her mother on the phone to make trades in her account; and

d) failing to disclose payments, including the nature or source of payments received and made by her as well as others on her behalf, including payments provided to her from the Second Secret Account.

[690] Agueci submits that she corrected each of the alleged misleading statements during the course of her compelled examination and that her initial responses were made in order to protect private, personal relationships. Also, she submits that her misstatements were not demonstrably made with the desire to mislead or deceive Staff or impede the investigation. Further, she submits that the misstatements were not in a "material respect" misleading or untrue given the close proximity of the subsequent corrections. With respect to each of the specific allegations detailed in the paragraph above, Agueci submits:

1. her failure to advise Staff of her interest in the Second Secret Account was not done in an attempt to mislead, but rather to protect a personal relationship and she corrected her misstatements shortly after they were made, providing full disclosure on how her interest came to be;

2. she opened an account for her mother and invested her mother's money, there was little trading in the account in 2006-2007 and it was closed in November 2007;

3. at the time of Agueci's compelled examinations in 2011, the First Secret Account had been closed for four years and she was asked to disclose her brokerage accounts for the last five years, which she answered accurately because she did not consider the First Secret Account to be 'her' brokerage account;

4. it was not inaccurate for Agueci to state that her mother did not trade at the time of the examination and she expressly acknowledged that if Staff wanted to ask about trading in her mother's account Staff should ask Agueci; and

5. her misstatements about payments received were made to protect personal, private relationships and she corrected those misstatements during a subsequent examination and explained why she didn't consider certain payments as "gifts" or "loans" because, for instance, in the Second Secret Account she viewed the funds as her own, and in other cases she forgot about payments made four years prior.

[691] On June 21, 2011, at the outset of her compelled examination, at which she was accompanied by counsel, Staff advised Agueci that it was an offence to make a statement that was misleading or untrue to the Commission and she confirmed that she understood that. At the time of her compelled examination of June 21, 2011, Agueci had been working in the securities industry for over 20 years and she knew her evidence was being given under oath.

[692] On June 22, 2011, Agueci was reminded again in her continued compelled examination that it was an offence to mislead the Commission and she confirmed that she understood.

a. Failing to disclose her direct or indirect interest and involvement in other brokerage accounts, including the First and Second Secret Accounts

[693] At her first compelled examination on June 21, 2011, Staff asked Agueci if she had trading accounts and she advised she had GMP and TD Waterhouse accounts, but had no other personal trading accounts or signing authority over other accounts and that her mother did not trade. Agueci also stated she had no financial interest in any other brokerage accounts.

[694] After the lunch break, Agueci advised that she wanted to expand upon answers she gave in the morning. Agueci explained that she was offered a private placement in 222 Pizza Express Corp. ("**222 Pizza**") in March 2008 and she told her brother-in-law, Iacono, to make the purchase and, in return, whatever he made would be split between them. Iacono operated the Second Secret Account and kept a spreadsheet, which identified Agueci's specific trades and withdrawals per year as well as her gains and losses on the same. In his compelled examination, Iacono told Staff that he managed the Second Secret Account, that half the proceeds of the 222 Pizza private placement were Agueci's and that he kept records on a spreadsheet as of 2008 when they purchased the private placement of 222 Pizza.

[695] A brokerage account was opened at RBC Action Direct Inc. (currently RBC Direct Investing Inc.) in 2004 in the name of Agueci's mother, referred to in this decision as the First Secret Account. We accepted, on consent of the parties, an Affidavit of Agueci's mother which states that Agueci opened the First Secret Account and that her mother did not understand trading and did not know how the trades were made. As stated above, the evidence presented included voice recordings of Agueci impersonating her mother and placing orders in the First Secret Account.

[696] After Agueci provided information about the Second Secret Account on June 21, 2011, Staff asked her again if she had other accounts and Agueci said no. On June 22, 2011, when asked about her mother's brokerage account, Agueci said she did not recall trading in Nu in that account. However, after being shown account records, on August 8, 2011, Agueci confirmed that she had, in fact, traded on behalf of her mother.

[697] Agueci's failure to disclose her direct or indirect interest in the First and Second Secret Accounts was material in light of Staff's investigation, because Agueci deliberately concealed that she was engaging in trading activity. Therefore, we find that Agueci's statements in this regard were in a material respect and at the time and in the light of the circumstances misleading.

b. Advising Staff that Iacono did not execute trades on her behalf in the Second Secret Account when, in fact, he did and that she did not know what investments were in this account when, in fact, she did

[698] On June 21, 2011, Agueci stated she did not know what was in her brother-in-law's portfolio, nor what stocks he traded in, but that she did tell him what she was buying. When asked about Iacono's account, Agueci stated that Iacono was not doing trades on her behalf, but gave her some of the profits because she had helped him invest in a private placement:

> A.[Agueci] He[Iacono] did investments and he made money in the private placement of the Pizza Express [sic].
>
> […]
>
> Q.[Staff] But you are saying, Do we have to pay? Why would you say "we"? What's your involvement in his capital gain -- in his brokerage account?
>
> A. Because he is sharing it with me. He wants to, whatever he does, give me half of what he makes or what he doesn't make.
>
> Q. Do you own any stock in his account?
>
> A. No. These are his stocks and he plays them and if there's anything that he gains, he wants to help me out and that's where the monies come from.
>
> […]

Q. So I'm just trying to understand, Eda, why do you have a capital gain in your brother-in-law's brokerage account?

A. Well, he's obviously doing some trades and he is calculating what my gains would be.

Q. So he is trading on behalf of you in his account?

A. No, he is not trading. He is doing his own thing and justifying what I'm going to get and what I'm going to pay.

(Exhibit 1004-A at pp. 103-104 and 106, Q.569, 575-576, 586-587).

[699] After the lunch break that day, Agueci advised Staff that she wanted to expand upon answers she gave in the morning and admitted to both telling Iacono to sell her position in 222 Pizza and directing him to trade in other securities with some of the proceeds of her portion of the profits in the Second Secret Account.

[700] In his compelled examination, Iacono told Staff that he operated the Second Secret account, that half the proceeds of the 222 Pizza private placement were Agueci's and that he kept records on a spreadsheet as of March 2008 when they made the investment. Iacono admitted that he knew Agueci traded stocks because he traded for her and stated that Agueci initiated orders by calling him to direct him to buy a stock.

[701] Agueci's initial statements implied that she had no involvement or knowledge of Iacono's trading activity. When expressly asked about the trading done in the account, Agueci denied having knowledge of shares held in the account. Yet, later in her compelled examination, Agueci admitted that she did tell Iacono which stocks to buy and sell for her. Her initial responses to Staff's questions were misleading and untrue.

[702] Agueci's statements were material in light of Staff's investigation because Agueci was concealing that she was engaging in trading activity, which could have included impugned trades. Therefore, we find that Agueci's statements in this regard were in a material respect and at the time and in the light of the circumstances, misleading or untrue.

c. Advising Staff that she assisted her mother in trading in the First Secret Account by calling with her mother on the line and having her mother confirm her identity when, in fact, Agueci would impersonate her mother on the phone and make the trades in her account

[703] On August 8, 2011, Agueci told Staff that in order to trade in the First Secret Account, she would have her mother on the phone line when calling to place orders. Shortly thereafter, Agueci stated that she traded on behalf of her mother.

[704] The Affidavit of Agueci's mother indicates that she did not understand trading and did not know how the trades were made in the First Secret Account. Copies of voice recordings were submitted in evidence of calls placed to RBC Direct by Agueci with Agueci impersonating her mother and placing orders in the First Secret Account. Subsequently, the voice was identified as Agueci's voice by Staff's investigator, George, and by McBurney at the Merits Hearing.

[705] We have found at paragraph 0 above that Agueci did in fact impersonate her mother to execute trades in the First Secret Account. Agueci subsequently misled Staff concerning her interest in that account.

[706] Agueci's statements were material in light of Staff's investigation because Agueci was concealing that she was personally engaging in trading activity, which could have included impugned trades. Therefore, we find that Agueci's statements in this regard were in a material respect and at the time and in the light of the circumstances misleading or untrue.

d. Failing to disclose payments, including the nature or source of payments received and made by her as well as others on her behalf, including payments provided to her from the Second Secret Account

[707] On June 21, 2011, Staff asked Agueci to disclose her sources of income and she responded that she only received a salary, bonus and some investment income. At that time, Agueci expressly stated that she had no other sources of income and no other investment income aside from the accounts she had discussed with Staff. Agueci also told Staff that she had not received loans, cash gifts, or non-cash consideration over $5,000 in the last five years.

[708] Subsequently, Agueci was presented with a number of documents showing payments made to her or to others on her behalf. Agueci was asked about $9,000 received from Iacono and confirmed that she did receive the $9,000, but stated that it was a loan and that she did not know what account it came from.

Q. Where did he get the $9,000 from?

A. From his account. I mean, he …

Q. From which account? Like, a bank account or a brokerage account?

A. I don't know. I don't know where.

Q. Or do you know?

A. I don't know what account it came from but he had the money, so he gave it to me.

(Exhibit 1004-A – p. 91, Q. 501-503)

[709] Agueci made no mention at this point of the Second Secret Account that they shared. Agueci then estimated that Iacono had given her approximately $25,000.

[710] Later, on June 21, 2011, Staff asked her whether she had received any other payments or loans from others and Agueci said no.

Q. […] Are there any other payments, loans received from others by you that you want to tell staff now?

A. No.

(Exhibit 1004-A – p. 193, Q. 960)

[711] Despite telling Staff that there were no other payments, Agueci later admitted that she had also received funds from Wing. The evidence supports that, in total, payments of $380,544 were made to, or on behalf of, Agueci from 2007 to 2011. Of that amount, we are satisfied that Agueci received or benefited from $250,933 from Iacono, related to the purchase of the 222 Pizza private placement in March 2008 in the Second Secret Account and subsequent profits from that purchase.

[712] Agueci submits that she corrected the alleged misleading statements. In our view, correction of a statement does not negate the fact that the misleading statements were not inadvertent and she only admitted certain conduct when confronted by evidence to the contrary (*Fletcher, supra* at para. 112) as for example when she was shown the email regarding the payments from Wing. We also do not accept Agueci's submission that she was trying to protect personal relationships. A respondent cannot make a misleading statement or omit the truth because of a "personal relationship"; this is not a defence available to a person in a compelled examination. Section 13 of the Act clearly provides that a person making an investigation or examination under section 11 or 12 has the power to summon and enforce the attendance of any person and to compel him or her to testify under oath or otherwise. Ms. Agueci confirmed that she appreciated that she was under oath and that it was an offence to mislead the Commission.

[713] We find that Agueci's statements were material in light of Staff's investigation because Agueci was concealing the source of substantial payments during the 2007-2011 period, which in turn attempted to conceal from Staff her relationship with several of the Respondents and others and their related trading activities. Therefore, we find that Agueci's statements in this regard were in a material respect and at the time and in the light of the circumstances misleading.

e. Conclusion

[714] Therefore, we are satisfied that Agueci's statements relating to the four issues above (specifically, her involvement with the First and Second Secret Accounts, her direction and knowledge of trades in the Second Secret Account, her trading in the First Secret Account by impersonating her mother and her failure to disclose the nature/source of payments received and made by her) were material and, at the time, and in the light of the circumstances, were misleading, contrary to subsection 122(1)(a) of the Act.

3. Did Wing and Agueci Engage in Conduct Contrary to the Public Interest?

[715] We find that Wing misled Staff repeatedly. We find his behaviour in this respect to be particularly concerning considering Wing's position as UDP and CCO of Fort House at that time, his experience in the industry and the importance of the integrity of Commission investigations. As a registrant, and particularly as UDP of a firm, Wing must be held to the highest standard of conduct and his conduct in light of this responsibility falls far below the standard expected of him. In our view, there is no question that Wing should have understood the seriousness of an investigation and examination by Staff. His attempts to mislead Staff while he was under oath represent a very serious abuse of his responsibilities and an egregious disregard for the

Commission's investigative process. We consider his conduct to be highly abusive of the capital markets and contrary to the public interest.

[716] As an employee of a registrant, Agueci was fully aware that she was not allowed to have any interest in undisclosed accounts and that she was required to report all trading activity to GMP. Agueci was required each year to attest to her understanding of GMP's compliance policies and procedures. We have found, at paragraphs 0 and 0 above, that Agueci's conduct and involvement with the First Secret Account and her impersonation of her mother when placing trades for that account constitute conduct contrary to the public interest.

[717] Although Agueci was not a registered individual, as an employee of a registrant, she must be held to a higher standard of conduct and her conduct fell far below the standard expected of her. The integrity of the regulatory framework for registrant firms depends upon the adherence of member firms to appropriate compliance structures. We consider her conduct in misleading Staff repeatedly to be abusive of the capital markets and, therefore, find that Agueci's conduct was conduct contrary to the public interest.

XI. DID WING AND IACONO ENGAGE IN FURTHER CONDUCT CONTRARY TO THE PUBLIC INTEREST?

[718] We note that Staff makes written submissions at paragarphs 1161 to 1163 with respect to conduct contrary to the public interest relating to actions described as "The Seriousness of Wing's Misconduct". Staff has not made allegations with respect to that conduct specifically in the Amended SOA. Although the Respondents did not take the position that it was not included in the Amended SOA, we make no findings in respect of those submissions.

[719] Staff alleges that Iacono's conduct in assisting Agueci to maintain and illicitly trade in the Second Secret Account, which was not disclosed to GMP, as well as the manner of withdrawals from this account, was contrary to the public interest. Staff's only submission with respect to this allegation against Iacono repeats the allegation in its entirety and states nothing further.

[720] Iacono submits that it was not improper to trade securities at Agueci's request in his brokerage account, nor was the manner of his withdrawals inappropriate. Iacono takes the position that he met the obligations of a market participant by trading in his account; he has never been an employee of GMP and is not restricted from trading securities on grey or restricted lists and did not believe that in trading for Agueci he was doing anything illegal. He submits he did not know that any of the traded securities were on GMP's grey or restricted lists. Further, Iacono argues that he did not intend to avoid regulatory detection by paying sums less than $10,000 because he made payments according to Agueci's requests. Iacono submits that he is not a sophisticated market participant, has never worked at a financial institution and is not a registrant and, therefore, cannot be held to the same standard.

[721] Staff bears the onus of satisfying the Panel that Iacono's conduct was contrary to the public interest and it has not. Iacono may have facilitated Agueci's conduct, but in the circumstances of this case, and as an employee of a registrant, we are of the opinion that Agueci was responsible for her conduct in the market. Therefore, we are not satifisfied that Iacono engaged in conduct contrary to the public interest.

XII. LAW AND ANALYSIS ON ALLEGATIONS OF BREACH OF CONFIDENTIALITY

A. Relevant Law

[722] Subsection 16(1) of the Act provides:

> 16.(1) Except in accordance with section 17, no person or company shall disclose at any time, except to his, her or its counsel,
>
> (a) the nature or content of an order under section 11 or 12; or
>
> (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13

[723] Consequently, the prohibition against disclosure is very broad and captures the fact that a person was examined under section 13 of the Act, any testimony or questions asked under section 13 of the Act, and the nature or content of any demand for production of any documents under section 13 of the Act.

[724] The purpose of section 16, the confidentiality provision of the Act, has been described as follows:

> The purpose of section 16 is twofold:
>
> (i) It protects the integrity of the investigation process. In the absence of such a provision, the Commission would have no control over the information that may be passed on regarding the investigation, including the fact that an investigation is being conducted. Public knowledge of such a fact or of particulars with respect to an investigation could, among other things:
>
> – prejudice the reputation of the person or company involved, before a decision is made to proceed with an enforcement proceeding;
>
> – and result in collusion among witnesses who may discuss their evidence and/or assert blanket defences.
>
> (ii) It provides statutory protections to a witness who provides information or documents pursuant to a summons under section 13 of the Act…
>
> In our view, the confidentiality provision in section 16 is an important element of the investigation provisions in the Act and serves the above-noted objectives of ensuring the integrity of the investigation process and protecting persons who provide information to the Commission in the course of an investigation…
>
> (Ministry of Finance, *Five Year Review Committee Final Report – Reviewing the Securities Act (Ontario)* (Toronto: Queen's Printer for Ontario, 2003) at 241 (the "**Five Year Review**"))

[725] In deciding the Compelled Evidence Motion, the Panel agreed that section 16 serves to maintain the integrity of Staff investigations: As expressed in the Five Year Review, *supra,* section 16 of the Act serves to maintain the integrity of Commission investigations, among other things.

B. Analysis and Findings

1. Submissions of the Parties

[726] Staff alleges that Agueci breached subsection 16(1) of the Act by disclosing the nature and content of her confidential examinations with Staff to others, including other Respondents to this proceeding. Staff submits that Agueci provided advance knowledge of Staff's investigation to others, which undermined the integrity of Staff's investigation. Such disclosures to other witnesses included:

1. the fact that she had been summoned;
2. particulars of the securities being reviewed by Staff;
3. the timeframe of Staff's investigation;
4. the documents and other information in Staff's possession; and
5. the questions Staff asked (together with the answers she gave).

[727] Agueci's counsel submits that if Staff is found to have made out the necessary elements of section 16 of the Act against Agueci, it will have done so on the basis of the evidence of the Respondents whose testimony it seeks to discredit in relation to other allegations.

2. Did Agueci engage in conduct contrary to section 16 of the Act and contrary to the public interest?

[728] On June 21, 2011, at the outset of her compelled examination, Staff advised Agueci of the confidentiality aspects of the investigation and she confirmed that she understood that, stating "Absolutely, yeah." (Exhibit 1004-A at p. 8). At the end of her first day of compelled examination, Agueci was told by Staff that "section 16 does prohibit you from discussing anything that we have talked about here today with anyone else" (Exhibit 1004-A at p. 216).

[729] The Panel notes that Agueci was accompanied by legal counsel to each of her examinations and her counsel, as well as Staff, repeatedly advised her of the confidentiality of the proceedings. On August 10, 2011, Agueci was also advised by Staff that a number of individuals had alerted Staff that Agueci told them of certain details of her examinations, in breach of section 16 of the Act.

[730] The evidence strongly supports a pattern of communications after each of Agueci's examinations between Agueci and several of the Respondents and other individuals interviewed by Staff, including Stephany, Raponi, Iacono, Fiorillo and Wing. During his compelled examination with Staff on August 5, 2011, Iacono advised Staff that he had met with Agueci prior to his own examination, but after Agueci's first two examinations. They discussed, among other things, a private placement which had been of interest to Staff, trades in various securities, including impugned securities, and trading activity from 2007 onward.

[731] At the Merits Hearing, Fiorillo testified that Agueci initially told him that GMP was being investigated and later stated that she had been examined by the Commission about certain payments to her account, her trading activity and a real estate transaction.

[732] As noted above, Agueci submits that Staff is attempting to use evidence of the Respondents whose testimony it seeks to discredit in relation to other allegations. While Staff is relying on the examination of Iacono and the testimony of Fiorillo, the Panel found both to be credible with respect to the question of whether Agueci breached confidentiality. Their responses were consistent with the information details, specifics and time frames. That is, what they said Agueci told them was consistent with what actually occurred during Agueci's examinations.

[733] Moreover, Staff relies not only on the evidence of Fiorillo and Iacono, but on a preponderance of communications between Agueci and more than 10 individuals, both the Respondents and other individuals interviewed by Staff. The number of communications was substantial. For example, there were 11 calls between Agueci and Stephany in the evening following the first day of Agueci's compelled examination on June 21, 2011. Following the second day of Agueci's compelled examination, on June 22, 2011, Agueci contacted Wing, Stephany, Raponi, Iacono, I.T., E.P., B.G. and M.B., the latter four being individuals examined by Staff who were not respondents. On June 25, 2011, Agueci exchanged 20 SMS text messages with M.B. Agueci was further examined by Staff on August 8, 9 and 10, 2011; in and around this time, Agueci communicated with Wing seven times, with Stephany eight times, with Iacono three times, as well as with Raponi, M.B. and S.F. The communication between Agueci and so many of the individuals interviewed by Staff, as well as the sheer amount of contact with each of them, in and around the time of her compelled examination by Staff, corroborates that Agueci breached the confidentiality provision of the Act.

[734] We agree with Staff's submission that by discussing her compelled examination with certain of the Respondents, Agueci provided them with an opportunity to tailor their evidence prior to being interviewed by Staff and interfered with the evidence gathering process, which undermines Staff's ability to meet its statutory mandate.

[735] We are satisfied that Agueci's disclosure of: (1) the fact that she had been summoned; (2) the particulars of the securities being reviewed by Staff; (3) the timeframe of Staff's investigation; and (4) the questions Staff asked and the answers she gave, was a breach of section 16 of the Act and was conduct contrary to the public interest.

C. Conclusion

[736] We conclude that Agueci disclosed information to certain of the Respondents contrary to section 16 of the Act and contrary to the public interest.

XIII. CONCLUSION

[737] Upon considering the evidence tendered, submissions made and legal authorities cited to us by the parties with respect to each allegation, and for each of the Respondents, we make the following conclusions:

1. With respect to allegations relating to Nu:

   (a) the Panel is not satisfied that on or before April 16, 2007 Gornitzki advised Agueci of the Nu Material Facts, contrary to subsection 76(2) of the Act or the public interest. Accordingly, the Panel does not find that Agueci informed Wing, Iacono, Raponi, Fiorillo or Fiorini of the Nu Material Facts or that Iacono informed Serpa of those facts, contrary to subsection 76(2) of the Act or the public interest. Similarly, the Panel cannot conclude that Agueci, Wing, Iacono, Raponi, Fiorillo, Fiorini or Serpa traded with knowledge of the Nu Material Facts, contrary to subsection 76(1) of the Act or the public interest;

   (b) the Panel is not satisfied that Gornitzki's possible recommendation of Nu as a good stock represents conduct contrary to the public interest.

   (c) the Panel does find that Agueci's conduct and involvement with the First Secret Account, her lack of disclosure of that account to her employer and her impersonation of her mother when placing trades in that account constitute conduct contrary to the public interest.

2. With respect to allegations relating to EMC, we find that on May 8, 2007 through May 18, 2007:

   (a) EMC was a "reporting issuer" within the meaning of the Act;

   (b) as an employee of GMP, Agueci was a person in a special relationship with EMC within the meaning of subsection 76(5)(c) of the Act;

   (c) the EMC Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the EMC securities and were therefore "material facts" with respect to EMC, within the meaning of the Act;

   (d) Agueci informed Wing, Pollen, through Wing, Fiorillo and Stephany, other than in the necessary course of business, of the EMC Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the Act and contrary to the public interest;

   (e) Wing, Pollen, through Wing, Fiorillo and Stephany each learned of the EMC Material Facts from Agueci, and knew or ought reasonably to have known that Agueci was a person in a special relationship with EMC and, as a result, were persons and a company in a special relationship with EMC within the meaning of subsection 76(5)(e) of the Act;

   (f) based on the foregoing, Wing, Pollen, Fiorillo and Stephany each purchased EMC securities with knowledge of the EMC Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the Act and contrary to the public interest;

   (g) Wing authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law in respect of the purchases of EMC shares, such that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act;

   (h) Stephany's conduct in recommending to her client, S.P., that he buy EMC, and in executing orders to purchase those shares with knowledge of the EMC Material Facts received from Agueci, was contrary to the public interest;

   (i) the Panel is not satisfied that Agueci informed Fiorini, Raponi or Iacono of the EMC Material Facts or that Iacono informed Serpa of those facts, contrary to subsection 76(2) of the Act or the public interest; and

   (j) the Panel is not satisfied that Fiorini, Raponi, Iacono or Serpa purchased EMC shares, contrary to subsection 76(1) of the Act or the public interest.

3. With respect to allegations relating to Northern Orion and Meridian, we find that on May 28, 2007 through June 18, 2007:

   (a) Northern Orion and Meridian were "reporting issuers" within the meaning of the Act;

   (b) as an employee of GMP, Agueci was a person in a special relationship with Northern Orion and Meridian within the meaning of subsection 76(5)(c) of the Act;

   (c) the NNO Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of Northern Orion and Meridian securities and were therefore "material facts" with respect to Northern Orion and Meridian, within the meaning of the Act;

   (d) Agueci informed Pollen, through Wing, other than in the necessary course of business, of the NNO Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the Act and contrary to the public interest;

   (e) Pollen, through Wing, learned of the NNO Material Facts from Agueci, and knew or ought reasonably to have known that Agueci was a person in a special relationship with Northern Orion and Meridian and, as a result, was a company in a special relationship with Northern Orion and Meridian within the meaning of subsection 76(5)(e) of the Act;

   (f) based on the foregoing, Pollen, through Wing, purchased Northern Orion and Meridian securities with knowledge of the NNO Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the Act and contrary to the public interest;

(g) Wing authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law in respect of the purchases of Northern Orion and Meridian shares, such that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act; and

(h) the Panel is not satisfied that Agueci informed Fiorini of the NNO Material Facts, contrary to subsection 76(2) of the Act or the public interest or that Fiorini purchased Northern Orion shares, contrary to subsection 76(1) of the Act or the public interest.

4. With respect to allegations relating to HudBay, we find that from July 17, 2007 to September 18, 2007:

(a) HudBay was a "reporting issuer" within the meaning of the Act;

(b) as an employee of GMP, Agueci was a person in a special relationship with HudBay within the meaning of subsection 76(5) (c) of the Act;

(c) the HudBay Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the HudBay securities and were therefore "material facts" with respect to HudBay, within the meaning of the Act;

(d) Agueci informed Wing, Pollen, through Wing, Fiorillo and Stephany, other than in the necessary course of business, of the HudBay Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the Act and contrary to the public interest;

(e) Wing, Pollen, through Wing, Fiorillo and Stephany each learned of the HudBay Material Facts from Agueci, and knew or ought reasonably to have known that Agueci was a person in a special relationship with HudBay and, as a result, were persons and a company in a special relationship with HudBay within the meaning of subsection 76(5)(e) of the Act;

(f) based on the foregoing, Wing, Pollen, Fiorillo and Stephany each purchased HudBay securities with knowledge of the HudBay Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the Act and contrary to the public interest;

(g) Wing authorized, permitted or acquiesced in Pollen's non-compliance with Ontario securities law in respect of the purchases of HudBay shares, such that Wing is deemed to also have not complied with Ontario securities law, pursuant to section 129.2 of the Act;

(h) Stephany's conduct in recommending to her client, S.P., that he buy HudBay, and in executing orders to purchase those shares with knowledge of the HudBay Material Facts received from Agueci, was contrary to the public interest;

(i) the Panel is not satisfied that Agueci informed Fiorini, Raponi or Iacono of the HudBay Material Facts or that Iacono informed Serpa of those facts, contrary to subsection 76(2) of the Act or the public interest; and

(j) the Panel is not satisfied that Fiorini, Raponi, Iacono or Serpa purchased HudBay shares, contrary to subsection 76(1) of the Act or the public interest.

5. With respect to allegations relating to Coalcorp, we find that as of January 29, 2008 to prior to the opening of the market on February 1, 2008:

(a) Coalcorp was a "reporting issuer" within the meaning of the Act;

(b) as an employee of GMP, Agueci was a person in a special relationship with Coalcorp within the meaning of subsection 76(5) (c) of the Act;

(c) the Coalcorp Material Facts were facts that would reasonably be expected to have a significant effect on the market price or value of the Coalcorp securities and were therefore "material facts" with respect to Coalcorp, within the meaning of the Act;

(d) Agueci informed Fiorillo and Stephany other than in the necessary course of business, of the Coalcorp Material Facts before they had been generally disclosed, contrary to subsection 76(2) of the Act and contrary to the public interest;

(e) Fiorillo and Stephany each learned of the Coalcorp Material Facts from Agueci, and knew or ought reasonably to have known that Agueci was a person in a special relationship with Coalcorp and, as a result, were persons and a company in a special relationship with Coalcorp within the meaning of subsection 76(5)(e) of the Act;

(f) based on the foregoing, Fiorillo and Stephany each purchased Coalcorp securities with knowledge of the Coalcorp Material Facts that had not been generally disclosed, contrary to subsection 76(1) of the Act and contrary to the public interest;

(g) the Panel is not satisfied that Agueci informed Fiorini or Raponi of the Coalcorp Material Facts, contrary to subsection 76(2) of the Act or the public interest; and

(h) the Panel is not satisfied that Fiorini or Raponi purchased Coalcorp shares, contrary to subsection 76(1) of the Act or the public interest.

6. With respect to the allegation that Wing misled Staff, we are satisfied that Wing's statements were material and, at the time, and in the light of the circumstances, were misleading, contrary to subsection 122(1)(a) of the Act and the public interest.

7. With respect to the allegation that Agueci misled Staff, we are satisfied that Agueci's statements were material and, at the time, and in the light of the circumstances, were misleading, contrary to subsection 122(1)(a) of the Act and the public interest.

8. With respect to allegations that Wing and Iacono otherwise acted contrary to the public interest, we make no further findings with respect to Wing and we are not satisfied that Iacono engaged in conduct contrary to the public interest.

9. With respect to the allegation that Agueci disclosed information to certain of the Respondents in breach of a confidentiality provision in the Act, we find that Agueci acted contrary to section 16 of the Act and contrary to the public interest.

[738] For the reasons outlined above, we will also issue an order dated February 11, 2015 which sets down the dates of April 13 and 14, 2015 for a hearing with respect to sanctions and costs in this matter.

Dated at Toronto this 11th day of February, 2015.

"Edward P. Kerwin"

"AnneMarie Ryan" *"Deborah Leckman"*

3.1.2 2241153 Ontario Inc. et al.

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE, SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV and EVGUENI TODOROV

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND SARBJEET SINGH AND 2241153 ONTARIO INC.

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to approve this settlement agreement and to make certain orders in respect of Sarbjeet Singh ("Singh") and 2241153 Ontario Inc. ("2241153") (collectively, the "Respondents").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agrees to recommend settlement of the proceeding commenced by Notice of Hearing against the Respondents (the "Proceeding") according to the terms and conditions set out in Part VI of this Settlement Agreement (the "Settlement Agreement"). The Respondents agree to the making of an order in the form attached as Schedule "A", based on the facts set out below.

3. For the purposes of this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts as set out in Parts III and V and the conclusion in Part IV of the Settlement Agreement.

PART III – AGREED FACTS

A. OVERVIEW

4. Between November 2011 to August 2012 (the "Relevant Period"), Singh was an officer and a director of 2241153. During the Relevant Period, 2241153 issued a promissory note to one investor for $200,000 (the "Promissory Note"). The Promissory Note stated that the investor would receive an interest rate of 5 percent per month on her investment. At the direction of others, Singh signed the Promissory Note in his capacity as a director of 2241153.

5. The Respondents engaged in acts in furtherance of a trade without being registered and when no exemptions from registration were available under the Act. The conduct was in breach of subsection 25(1)(a) of the Act and contrary to the public interest.

B. INDIVIDUALS AND CORPORATION

6. 2241153 was incorporated on April 20, 2010 pursuant to the laws of Ontario. 2241153 has never been a reporting issuer in Ontario and has never been registered with the Commission in any capacity.

7. Evgueni Todorov ("Todorov") is a resident of Toronto, Ontario. During the Relevant Period, Todorov was the directing mind of 2241153. Todorov has never been registered with the Commission in any capacity.

8. Dipak Banik ("Banik") is a resident of Toronto, Ontario. In December 2011, Banik was made vice-president, president and a director of 2241153. Banik has never been registered with the Commission in any capacity.

9. Singh is a resident of Brampton, Ontario. Throughout the Relevant Period, Singh was president and a director of 2241153. Singh was registered with the Commission in the category of Scholarship Plan Dealer from October 1999 to December 2003.

C. BACKGROUND

10. Several months prior to the trade at issue in this Settlement Agreement, Singh had invested his own personal funds with Todorov, who he had never previously met and had been introduced to by Banik.

11. In the summer of 2011, Singh was approached and convinced by Todorov to invest with him. Singh was told that his investment would be traded by Todorov in the foreign currency markets for profit and that Todorov had developed a trading strategy that would guarantee no loss on the investment. Todorov did not disclose to Singh that he was unregistered to trade in securities. Singh was also unaware that Todorov was actively being investigated by Staff for unrelated foreign currency trading, which resulted in a finding of fraud, unregistered trading and an illegal distribution by the Commission against Todorov as set out in its decision in 2196768 Ontario Ltd. (c.o.b. RARE Investments) (Re) (2014), 27 OSCB 6281 (the “RARE Decision”).

12. On July 29, 2011, on the basis of Todorov's representations, Singh entered into a promissory note with Todorov in which Singh invested $50,000 of his own funds, all of which was drawn from his personal line of credit (the "Singh Promissory Note"). In return for his investment, the terms of the Singh Promissory Note stated that Singh was entitled to receive an interest rate of 10 percent per month with repayment of the principal one year from the date of the note.

13. Contrary to those terms, between July and October 2011, Singh received only one interest payment from Todorov in the amount of $2,500.

14. On October 22, 2011, at the direction of Todorov, Singh opened a bank account in the name of 2241153 at a bank branch located in Ontario (the “2241153 Bank Account”).

15. On November 9, 2011, at the direction of Todorov, Singh submitted an application to open a trading account in the name of 2241153 with a foreign exchange market broker (the “2241153 Trading Account”). Singh provided Todorov with the username and password to the trading account in order that Todorov could execute trades in the account. At no time during the Relevant Period was Todorov designated as having formal trading authority over the Trading Account, although the broker was aware of Todorov's involvement in the account and, at times, would correspond directly with him.

D. THE INVESTMENT

16. On November 8, 2011, an investor ("Investor A"), through her personal corporation ("Company A"), entered into a promissory note with 2241153 (referred to above as the "Promissory Note").

17. Singh had never previously met Investor A and had little to no direct discussion with her prior to her investment, all such discussions having taken place directly between Todorov and Investor A. Singh understands from Staff that Investor A was told that the investment would be traded by Todorov in the foreign currency markets for profit.

18. The terms of the Promissory Note stated that, in return for her investment of $200,000, Investor A would receive an interest rate of 5 percent per month with repayment of the principal one year from the date of the note. At the direction of Todorov, Singh signed the Promissory Note on behalf of 2241153 in his capacity as a director of 2241153. The Promissory Note was also signed by Todorov and Banik.

19. The funds were subsequently wired by Investor A into the 2241153 Bank Account from Company A's bank account. On November 11, 2011, approximately $170,000 was transferred by Singh from the 2241153 Bank Account into the 2241153 Trading Account at Todorov’s direction. Approximately $30,000 of the investment monies were retained in the 2241153 Bank Account.

20. The Promissory Note entered into by 2241153 was a “note or other evidence of indebtedness” and an “investment contract”, and therefore a “security”, as defined in subsection 1(1) of the Act.

E. DISBURSEMENT OF THE INVESTOR FUNDS

21. Over the course of the Relevant Period, Singh made a series of withdrawals from the 2241153 Trading Account and payments from the 2241153 Bank Account, primarily at the direction of Todorov.

22. Prior to making each of the payments or withdrawals, Singh was advised by Todorov that the profits generated in the 2241153 Trading Account had substantially increased as a result of Todorov's trading and that the amounts withdrawn from the 2241153 Trading Account represented "trading profits". In almost all cases, prior to each withdrawal or payment, Singh was

provided with contemporaneous brokerage statements and other documents by Todorov from the 2241153 Trading Account which Todorov had explained to Singh demonstrated that the account's net profits had substantially increased. Singh has no experience in foreign currency trading whatsoever and now understands that those statements may have been false.

23. The withdrawals and payments that were made are detailed as follows:

(a) On November 16, 2011, three payments were made from the 2241153 Bank Account, which included a transfer to Singh in the amount of $9,500. The two other payments, totalling $19,000, went to Banik and Todorov, or entities associated with them.

(b) On November 21, 2011, $30,000 was withdrawn from the 2241153 Trading Account, which was sent via wire transfer to the 2241153 Bank Account.

(c) On November 22, 2011, three payments were made from the 2241153 Bank Account, which included a transfer to Singh in the amount of $9,500. The two other payments, totalling $19,000, went to Banik and Todorov, or entities associated with them.

(d) On November 24, 2011, $60,000 was withdrawn from the 2241153 Trading Account, which was sent via wire transfer to the 2241153 Bank Account.

(e) On November 24, 2011, three payments were made from the 2241153 Bank Account, which included a deposit to Singh in the amount of $10,000. The two other payments, totalling $50,000, went to Banik and Todorov, or entities associated with them.

(f) On November 28, 2011, $60,000 was withdrawn from the 2241153 Trading Account, which was sent via wire transfer to the 2241153 Bank Account.

(g) On November 28, 2011, two payments were made from the 2241153 Bank Account to Todorov and Banik, or entities associated with them, totalling $40,000. On November 29, 2011, a payment of $20,000 was made from the 2241153 Bank Account to a company associated with Singh via a bank draft.

(h) On December 19, 2011, the Respondent transferred $15,000 from his personal bank account back to the 2241153 Bank Account. At that time, Todorov informed Singh that the 2241153 Trading Account “was down” and he was unable to close positions in the account without a loss. Todorov advised Singh that Investor A would not be paid her first interest payment which had now become due under the Promissory Note. Despite Singh's demands that Investor A be paid by Todorov, Todorov refused to do so. As a result, Singh transferred his own funds to the 2241153 Bank Account to ensure that Investor A would be paid.

(i) On December 19, 2011, Investor A received a $10,000 interest payment via bank draft, which was debited from the 2241153 Bank Account.

(j) On December 20, 2011, Singh returned $5,000 from his own personal bank account back to the 2241153 Bank Account.

(k) On December 30, 2011, Singh withdrew $3,000 from the 2241153 Bank Account, being part of the balance of the $15,000 deposit he made.

(l) In early 2012, Singh made two further withdrawals from the 2241153 Bank Account in the amount of $2,000.

24. Aside from the $10,000 interest payment received on December 19, 2011, Investor A has not recovered her investment principal.

F. BENEFIT ACCRUING TO THE RESPONDENT

25. The Respondents admit and acknowledge that Singh realized a net amount of $34,000 from Investor A's investment and amounts withdrawn from the 2241153 Trading Account.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

26. By engaging in the conduct described above, the Respondents admit and acknowledge to having breached Ontario securities law by contravening subsection 25(1)(a) of the Act and having acted contrary to the public interest.

PART V – POSITION OF THE RESPONDENTS

27. The Respondents request that the settlement hearing panel consider the following mitigating circumstances:

(a) The Respondents cooperated with Staff and provided considerable amounts of evidence to further Staff's investigation in this matter;

(b) The Respondents sought to settle this matter with Staff at the earliest opportunity and have foregone a full hearing, saving the Commission considerable time and resources;

(c) Singh has voluntarily agreed to pay any amounts that were obtained from Investor A and from the 2241153 Trading Account, totaling $34,000. Singh has further agreed to make such amounts available on the date of the approval of the Settlement Agreement;

(d) Singh had no knowledge whatsoever of foreign currency trading and was harmed by and suffered a significant loss through his own $50,000 investment with Todorov;

(e) The Respondents played a very limited role in the transaction that led to the trade involving Investor A. Singh subsequently returned funds to Investor A as part of her first interest payment, when Todorov refused to do so. Singh later also repeatedly contacted Todorov insisting on the return of Investor A's principal as well as his own, despite Todorov's refusal to do so;

(f) Singh was subsequently hospitalized and suffered depression as a result of his above-noted involvements with Todorov and his unsuccessful attempts to obtain the return of Investor A's and his own principal; and

(g) Singh was entirely unaware of Staff's investigation in relation to Todorov trading which had been ongoing at the time of the Singh Promissory Note and Investor A's Promissory Note and which resulted in a findings of fraud, unregistered trading and an illegal distribution by the Commission against Todorov in the RARE Decision. Had Singh been aware of this fact, he would have not had any involvement with Todorov.

PART VI – TERMS OF SETTLEMENT

28. The Respondents agree to the terms of settlement listed below and to the Order attached hereto, made pursuant to subsection 127(1) of the Act that:

(a) the Settlement Agreement is approved;

Singh

(b) pursuant to paragraph 2, of subsection 127(1) of the Act, trading in any securities or derivatives by Singh ceases for a period of 4 years, commencing on the date of the Commission's order, except that:

(i) Singh may trade in or acquire securities in any registered retirement savings plan ("RRSP") accounts and/or tax-free savings accounts ("TFSA") and/or registered education savings plan ("RESP") and/or personal or joint trading accounts, for which he has sole legal and beneficial ownership, or is a sponsor, or for any immediate family member, provided that:

1. Singh carries out any permitted trading though a registered dealer; and

2. Singh must give a copy of the Settlement Agreement and Order to any registered dealer through which he trades in advance of any trading;

(ii) Singh may trade in or acquire Mortgage Instruments (as defined below) and/or securities of a Closely Held Private Company (as defined below);

(c) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, except that Singh is permitted to acquire securities to allow the trading in securities permitted by and in accordance with paragraph (b);

(d) pursuant to paragraph 3, of subsection 127(1) of the Act, any exemptions in Ontario securities law shall not apply to Singh for a period of 4 years, commencing on the date of the Commission's order, except those exemptions used in respect of trading in or acquisition of securities in accordance with paragraphs (b) and (c) or required to engage in the conduct permitted under paragraphs (f) and (g);

(e) pursuant to paragraph 6, of subsection 127(1) of the Act, Singh be reprimanded;

(f) pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1) of the Act, Singh shall resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, except that Singh will be permitted to continue to act as a director or officer of:

(i) any issuer that distributes, issues or trades in securities evidencing indebtedness secured or to be secured by a mortgage or charge on real property in Canada or that provides promissory notes or enters into loan agreements incidental thereto in accordance with local provincial legislative requirements ("Mortgage Instruments"); and/or

(ii) any issuer that has no more than five beneficial owners being family, friends or business associates of Singh and does not distribute securities of the issuer other than to family, friends and business associates of the beneficial owners (a "Closely Held Private Company");

(g) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, from becoming or acting as a director or officer of an issuer, registrant or investment fund manager, except that Singh will be permitted to become, or act as a director or officer of any issuer that distributes, issues or trades in Mortgage Instruments (as defined above) or any Closely Held Private Company (as defined above);

(h) pursuant to paragraph 8.5 of subsection 127(1), Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(i) Singh shall disgorge to the Commission the amount of $34,000 by certified cheque prior to the settlement hearing which shall be designated for allocation by the Commission to or for the benefit of third parties, including Investor A, in accordance with subsection 3.4(2)(b) of the Act;

(j) Singh will cooperate with the Commission and Staff in this matter and will appear and testify at the hearing in this matter if requested by Staff;

2241153 Ontario Inc.

(k) pursuant to paragraph 2, of subsection 127(1) of the Act, trading in any securities or derivatives by 2241153 ceases for a period of 4 years, commencing on the date of the Commission's order;

(l) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by 2241153 is prohibited for a period of 4 years, commencing on the date of the Commission's order; and

(m) pursuant to paragraph 3, of subsection 127(1) of the Act, any exemptions in Ontario securities law shall not apply to 2241153 for a period of 4 years, commencing on the date of the Commission's order.

29. The Respondents undertake to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in paragraph 28 above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

30. Singh agrees to attend in person at the hearing before the Commission to consider the proposed settlement.

PART VII – STAFF COMMITMENT

31. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 32 below.

32. If the Commission approves this Settlement Agreement and a Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against that Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and Singh fails to comply with the terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in paragraph 28(i) above.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

33. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for February 11, 2015 at 1:00 p.m., or on another date agreed to by Staff and the Respondents, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

34. Staff and the Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

35. If the Commission approves this Settlement Agreement, the Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

36. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

37. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

38. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

(a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the settlement hearing takes place will be without prejudice to Staff and the Respondents; and

(b) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

39. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve the Settlement Agreement, the terms of the Settlement Agreement remain confidential indefinitely, unless Staff and the Respondents otherwise agree or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

40. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

41. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated at Toronto this 10th day of February, 2015.

"*Sarbjeet Singh*"
Sarbjeet Singh

"*Usman Sheikh*"
Witness

"*Sarbjeet Singh*"
for 2241153 Ontario Inc.

"*Usman Sheikh*"
Witness

"*Tom Atkinson*"
Tom Atkinson
Director, Enforcement Branch

SCHEDULE "A"

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

AND

IN THE MATTER OF
2241153 ONTARIO INC., SETENTERPRICE, SARBJEET SINGH, DIPAK BANIK,
STOYANKA GUERENSKA, SOPHIA NIKOLOV and EVGUENI TODOROV

AND

IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND SARBJEET SINGH AND 2241153 ONTARIO INC.

ORDER
(Subsection 127(1))

WHEREAS on [date], the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsection 127(1) 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 make orders, as specified therein, against and in respect of Sarbjeet Singh ("Singh") and 2241153 Ontario Inc. ("2241153") (collectively, the "Respondents"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated [date];

AND WHEREAS the Respondents entered into a Settlement Agreement with Staff dated [date] (the "Settlement Agreement") in which the Respondents agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated [date], subject to the approval of the Commission;

AND WHEREAS on [date], the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement entered into between Staff and the Respondents;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff, and upon hearing submissions from counsel for the Respondents and from Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

(a) the Settlement Agreement is approved;

Singh

(b) pursuant to paragraph 2, of subsection 127(1) of the Act, trading in any securities or derivatives by Singh ceases for a period of 4 years, commencing on the date of the Commission's order, except that:

(i) Singh may trade in or acquire securities in any registered retirement savings plan ("RRSP") accounts and/or tax-free savings accounts ("TFSA") and/or registered education savings plan ("RESP") and/or personal or joint trading accounts, for which he has sole legal and beneficial ownership, or is a sponsor, or for any immediate family member, provided that:

1. Singh carries out any permitted trading though a registered dealer; and

2. Singh must give a copy of the Settlement Agreement and Order to any registered dealer through which he trades in advance of any trading;

(ii) Singh may trade in or acquire Mortgage Instruments (as defined below) and/or securities of a Closely Held Private Company (as defined below);

(c) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, except that Singh is permitted to acquire securities to allow the trading in securities permitted by and in accordance with paragraph (b);

(d) pursuant to paragraph 3, of subsection 127(1) of the Act, any exemptions in Ontario securities law shall not apply to Singh for a period of 4 years, commencing on the date of the Commission's order, except those exemptions used in respect of trading in or acquisition of securities in accordance with paragraphs (b) and (c) or required to engage in the conduct permitted under paragraphs (f) and (g);

(e) pursuant to paragraph 6, of subsection 127(1) of the Act, Singh be reprimanded;

(f) pursuant to paragraphs 7, 8.1, and 8.3 of subsection 127(1) of the Act, Singh shall resign all positions he holds as a director or officer of any issuer, registrant or investment fund manager, except that Singh will be permitted to continue to act as a director or officer of:

(i) any issuer that distributes, issues or trades in securities evidencing indebtedness secured or to be secured by a mortgage or charge on real property in Canada or that provides promissory notes or enters into loan agreements incidental thereto in accordance with local provincial legislative requirements ("Mortgage Instruments"); and/or

(ii) any issuer that has no more than five beneficial owners being family, friends or business associates of Singh and does not distribute securities of the issuer other than to family, friends and business associates of the beneficial owners (a "Closely Held Private Company");

(g) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, from becoming or acting as a director or officer of an issuer, registrant or investment fund manager, except that Singh will be permitted to become, or act as a director or officer of any issuer that distributes, issues or trades in Mortgage Instruments (as defined above) or any Closely Held Private Company (as defined above);

(h) pursuant to paragraph 8.5 of subsection 127(1), Singh is prohibited for a period of 4 years, commencing on the date of the Commission's order, from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(i) Singh shall disgorge to the Commission the amount of $34,000 by certified cheque prior to the settlement hearing which shall be designated for allocation by the Commission to or for the benefit of third parties, including the investor described in paragraph 16 of the Settlement Agreement, in accordance with subsection 3.4(2)(b) of the Act;

(j) Singh will cooperate with the Commission and Staff in this matter and will appear and testify at the hearing in this matter if requested by Staff;

2241153 Ontario Inc.

(k) pursuant to paragraph 2, of subsection 127(1) of the Act, trading in any securities or derivatives by 2241153 ceases for a period of 4 years, commencing on the date of the Commission's order;

(l) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by 2241153 is prohibited for a period of 4 years, commencing on the date of the Commission's order; and

(m) pursuant to paragraph 3, of subsection 127(1) of the Act, any exemptions in Ontario securities law shall not apply to 2241153 for a period of 4 years, commencing on the date of the Commission's order.

DATED at Toronto, this [day] day of [month], 2015.

3.1.3 The Juniper Fund Management Corporation et al.

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

AND

IN THE MATTER OF
THE JUNIPER FUND MANAGEMENT CORPORATION, JUNIPER INCOME FUND,
JUNIPER EQUITY GROWTH FUND and
ROY BROWN (a.k.a. ROY BROWN-RODRIGUES)

REASONS AND DECISION ON SANCTIONS AND COSTS

Hearing:	October 25, 2013 and November 22, 2013		
Decision:	February 12, 2015		
Panel:	Vern Krishna, CM, QC	–	Chair of the Panel
Appearances:	Derek Ferris	–	For Staff of the Commission
	Roy Brown (a.k.a. Roy Brown-Rodrigues)	–	For himself
			No one appeared for Juniper Fund Management Corporation, Juniper Income Fund and Juniper Equity Growth Fund

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. Background

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 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 make an order with respect to sanctions and costs against the Juniper Fund Management Corporation ("JFM"), Juniper Income Fund ("JIF"), Juniper Equity Growth Fund ("JEGF") and Roy Brown ("Brown") (collectively, the "Respondents").

[2] The hearing on the merits in this matter took place on September 19-23, 28-29, 2011; October 5, 2011; November 9, 2011; December 21, 2011, February 14 and 22, 2012; April 4, 2012; May 28 and 30, 2012; June 8, 2012; and September 4, 2012. During the hearing on the merits, Brown represented himself and no one appeared for JFM, JIF and JEGF.

[3] The decision on the merits was issued on April 11, 2013 (*Re Juniper Fund Management Corporation* (2013), 36 O.S.C.B. 4243 (the "Merits Decision")). A separate hearing to consider sanctions and costs was scheduled for June 14, 2013 (the "Sanctions and Costs Hearing").

[4] By email dated April 13, 2013, Brown advised the Secretary's Office that he was unavailable to attend the sanctions and costs hearing on June 14, 2013 due to travel commitments and a planned vacation. An appearance was held on May 7, 2013 to consider Brown's request to adjourn the date of the Sanctions and Costs Hearing. At this appearance, Brown informed the Commission that he was making efforts through Pro Bono Law Ontario ("PBLO") to obtain counsel and Staff did not oppose a short adjournment to accommodate Brown's attempt to seek the assistance of PBLO counsel. As a result, the June 14, 2013 Sanctions and Costs Hearing date was vacated and the parties were ordered to appear before the Commission on July 4, 2013 so that Brown could provide the Commission with an update on his efforts to retain counsel.

[5] On July 4, 2013, Brown provided an update to the Commission that he was still in the process of attempting to recruit the appropriate legal counsel for this file and that this process may take another two to four weeks. Staff submitted that the Sanctions and Costs Hearing should be scheduled far enough in advance that it would provide Brown sufficient time to retain counsel and sufficient time for that counsel to prepare for the Sanctions and Costs Hearing. In the Commission's view, it was appropriate to schedule the Sanctions and Costs Hearing at the end of October (more than three and half months from the date of the July 4, 2013 and more than six months after the issuance of the Merits Decision) and that such timing would provide adequate time for Brown to retain counsel and for that counsel to prepare for the Sanctions and Costs Hearing. As result, the Commission issued an order on July 4, 2013 scheduling the Sanctions and Costs Hearing for October 25, 2013.

[6] The Sanctions and Costs Hearing was attended by Staff of the Commission ("Staff") and Brown represented himself and participated by telephone for portions of the Sanctions and Costs Hearing, described in greater detail below starting at paragraph 24 of these reasons. No one appeared on behalf of JFM, JIF and JEGF.

[7] Staff provided Written Submissions on Sanctions and Costs which included an appendix with Staff's Bill of Costs, along with a Book of Authorities, Reply Submissions and Time Costs Analysis. Brown provided Written Submission on Sanctions and Costs and two binders, Respondent's Exhibits and Submissions, which was marked as Exhibit 2 and Exhibit 8 from the Merits Hearing, which was marked as Exhibit 3 in the Sanctions and Costs Hearing. During the hearing I heard submissions from the parties about certain documents contained in Exhibit 2 which dealt with confidential matters or topics discussed on a without prejudice basis. As a result, Tabs 6 and 8 were removed from Exhibit 2 and together are marked as a confidential exhibit, Exhibit 4.

[8] These are my Reasons and Decision as to the appropriate sanctions and costs to order against Brown and JFM.

II. The Merits Decision

[9] The Merits Decision dealt with alleged breaches of various sections of the Act and National Instruments 81-102 ("NI 81-102") and 81-106 ("NI 81-106"), which can be summarized into five main areas as follows:

(a) The Respondents failed to maintain proper books and records in respect of JIF and JEGF (collectively, the "Funds") (subsections 19.1 of the Act, 18.1 of NI 81-102, and 14.2(1) and 14.4 of NI 81-106);

(b) JFM was not properly registered or exempt from the registration requirements in the Act (subsection 25(1)(a) of the Act, which was in force at the time the alleged conduct took place);

(c) The Respondents failed to provide full, true and plain disclosure of all material facts relating to the Funds and mislead Staff of the Commission (subsections 56(1) of the Act and 15.2 of NI 81-102);

(d) The Respondents engaged in inappropriate transactions within the Funds (subsections 111(1)(a), 111(2)(c)(ii), 111(3), and 112 of the Act and 2.6, 6.1(1), and 6.1(6) of NI 81-102);

(e) JFM and Brown breached the statutory standard of care required in respect of the Funds (subsection 116(1) of the Act and 9.4, and 11.1 of NI 81-102); and

(f) Brown, as an officer and director of JFM, authorized, permitted or acquiesced in the conduct referred to above and is responsible for JFM's breaches of securities law pursuant to s. 129.2 of the Act.

(Merits Decision, *supra* at paras. 3 and 4)

[10] Upon reviewing all the evidence, the applicable law and the submissions made, the Panel concluded in the Merits Decision that:

(a) The Respondents failed to keep books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of the Funds in accordance with Ontario securities law, contrary to subsection 19(1) of the Act and section 18.1 of NI 81-102, and failed to record JEGF's daily NAV calculations contrary to subsection 14.2(1) and section 14.4 of NI 81-106;

(b) JFM acted as a mutual fund dealer for purchases and redemptions in units of the Funds without being registered as a mutual fund dealer contrary to subsection 25(1)(a) of the Act, which was in force at the time the conduct occurred;

(c) The Respondents failed to provide full, true and plain disclosure in the JEGF simplified prospectus of all material facts contrary to subsection 56(1) of the Act and the JEGF simplified prospectus, information circular and AIF contained certain inaccurate and misleading statements contrary to subsection 15.2(1) of NI 81-102;

(d) JEGF provided prohibited loans and held prohibited investments contrary to sections 111 and 112 of the Act and paragraph 2.6 of NI 81-102 and, in doing so, the Respondents breached their custodial obligations contrary to subparagraphs 6.1(1) and (6) of NI 81-102;

(e) The Respondents breached their statutory duty of care contrary to subsection 116(1) of the Act and have failed to properly settle and deposit funds in accordance with sections 9.4 and 11.1 of NI 81-102; and

(f) Brown, as an officer and director of JFM, authorized, permitted and acquiesced in breaches of subsections 19(1), 25(1)(a), 56(1), 111, 112, and 116(1) of the Act, subsections 2.6, 6.1(1), 6.1(6), 9.4, 11.1, 15.2(1) and 18.1 of NI 81-102, and subsections 14.2(1) and 14.4 of NI 81-106 and, pursuant to section 129.2 of the Act is liable for JFM's breaches of Ontario Securities law and engaged in a conduct contrary to the public interest.

(Merits Decision, *supra* at para. 192)

[11] It is this conduct that I must consider when determining the appropriate sanctions to impose in this matter.

III. Sanctions and Costs Requested

1. Staff's Position

[12] Staff has requested that the following order be made against Brown and JFM:

1. With respect to Brown:

   a. an order that Brown cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act;

   b. an order that the acquisition of any securities by Brown is prohibited permanently pursuant to clause 2.1 of subsection 127(1) of the Act;

   c. an order that any exemptions contained in Ontario securities law do not apply to Brown permanently pursuant to clause 3 of subsection 127(1) of the Act;

   d. an order that Brown be reprimanded pursuant to clause 6 of subsection 127(1) of the Act;

e. an order that Brown resign all positions he holds as a director or officer of an issuer, registrant or investment fund manager pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act;

f. an order that Brown is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act; and

g. an order that Brown is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter pursuant to clause 8.5 of subsection 127(1) of the Act.

2. With respect to JFM:

a. an order that JFM cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act;

b. an order that the acquisition of any securities by JFM is prohibited permanently pursuant to clause 2.1 of subsection 127(1) of the Act; and

c. an order that any exemptions contained in Ontario securities law do not apply to JFM permanently pursuant to clause 3 of subsection 127(1) of the Act.

3. With respect to both Brown and JFM:

a. an order requiring Brown, on a joint and several basis with JFM, to pay an administrative penalty of $500,000, pursuant to paragraph 9 of section 127(1) of the Act, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

b. an order requiring Brown, on a joint and several basis with JFM, to disgorge to the Commission $2,331,076.71 obtained as a result of his non-compliance with Ontario securities law, pursuant to paragraph 10 of section 127(1) of the Act, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act; and

c. an order requiring Brown, on a joint and several basis with JFM, to pay $669,136.76 for costs incurred in the investigation and hearing of this matter pursuant to subsection 127.1 of the Act.

[13] Staff does not seek any sanctions against the Funds as both Funds have been liquidated as the result of votes at JEGF and JIF unitholder meetings on November 15, 2007. The initial temporary cease trade order on the Funds was revoked by Commission order dated February 22, 2008 to permit the Receiver to complete a distribution of redemption proceeds to JEGF unitholders at JIF unitholders.

[14] In Staff's submission, the sanctions requested are appropriate in light of the conduct of Brown and JFM and take into account the multiple breaches of the Act that occurred. In addition, Staff submits that their proposed sanctions will both deter Brown and JFM as well as like-minded individuals from involvement in similar conduct in the future.

2. Brown's Position

[15] Brown submits that the sanctions and costs requested by Staff are extremely severe in the circumstances and lesser sanctions would be appropriate and proportionate. Considering fairness and equitable principles, coupled with mitigating factors present, such as the Respondents' cooperation with the Receiver, Staff and the fact that the Respondents have never had a prior disciplinary record, Brown submits that the following sanctions would be appropriate in the circumstances:

(a) Individual Respondent be prohibited from acting as a Director or Officer of a Reporting Issuer for a period of two years;

(b) Individual Respondent be prohibited in acting as a Director or Officer of a fund manager, promoter, or registrant for a period of seven years;

(c) exemptions available in the Act, will not be available to the Respondents for a period of two years;

(d) Respondents cease trading in securities for a two year period, except that Individual Respondent can trade on his and/or his children's own account during this two year period and only through a registered dealer;

(e) Respondents be reprimanded;

(f) that Respondents jointly and severally pay an administrative penalty of between $50,000 to $100,000;

(g) Respondents jointly and severally pay costs of $50,000.

(Brown's written submissions at page 41)

[16] To support his argument that the sanctions requested by Staff are too harsh, Brown points out that the case law Staff relied upon deals with much more egregious breaches of the Act (such as fraud) and in addition, many of the cases relied upon by Staff have even ordered lesser sanctions than those sought by Staff in this case. Brown also submits that in many cases or settlement agreements referred to by Staff, the affected respondents were provided with carve-outs concerning trading in their own account as long as the trades are done with a dealer. According to Brown, a trading carve-out should apply to him to allow him to trade on his and his children's behalf.

[17] Notwithstanding, Brown submitted that sanctions should not be ordered until he has been able to present evidence, and conduct proper and efficient cross examination of certain of Staff witnesses, in a fair merits hearing or other judicial adjudicative forum. According to Brown, the Commission will not be aware of entire, complete and full version of the facts concerning the Juniper matter.

[18] However, in his written submissions, Brown recognizes his improprieties. Brown did acknowledge his misconduct and the impact it had on the Funds and accepted that he had a responsibility to ensure proper accounting for the Funds. Specifically, in his written submissions at page 24, Brown explained:

> The Respondent acknowledges that during periods in 2005 JEGF's net asset values per unit were not always properly calculated, due to infrequent JEGF bank and security portfolio reconciliations, and the timeliness of these valuations on daily and monthly basis.
>
> JFM and Respondent employed a NAV system that was not sufficiently robust nor possessed sufficient financial accounting functionality to calculate JEGF's net asset values. JFM did take steps to remedy this matter, by installing a new system called ViewPort in late September of 2005.
>
> JFM and Respondent had a responsibility to ensure that it had efficient and functional systems to produce accurate net asset value calculations and reporting, which it did not possess at all times during 2005. Having noted this, there were mitigating factors that affected the inaccuracy of these NAV calculations which JFM and Respondent attempted to remedy and correct, leading to the installation of the ViewPort NAV calculation system. Nonetheless, JFM and Respondent should have been more vigilant in launching the ViewPort NAV calculation and reporting system sooner in 2005.

[19] In hindsight, Brown remarks that "… it is now clear, these account balances were not accurate, which JFM discovered after completing its reconciliation process that started in December of 2005 and was completed at the end of February 2006" (Brown's Written Submissions at page 17).

[20] Brown also submits that he always acted in the best interests of the Funds. Specifically, he explains at page 25 of his written submissions that:

> The Respondent view of this is that he at all times acted in best interest of JEGF unitholders. JFM, Respondent and Related Parties were significant unitholders of JEGF since May of 2004. The parties had much of its family's savings in JEGF; including monies it had borrowed from its personal bank to acquire units of JEGF. As such, the decisions that were undertaken by JFM during its tenure as fund manager, were at all the times for best interest of its unitholders, which included JFM, Respondent and its related Parties. So acts of dishonesty that would have hurt JEGF unitholders would of also have directly hurt JFM and individual Respondent in the same way and magnitude, and that is simply not reasonable that the Respondents would have employed dishonest tactics to hurt themselves as unitholders of JEGF, or any other unitholder for that matter.

[21] Overall, in his submissions, Brown acknowledged his misconduct and submitted that he is remorseful for his mistakes. As stated on page 2 of Brown's Written submissions:

> In delivering this submission to the Commission, the Respondent is once again expressing his continued remorse he continues to have for Juniper Equity Growth Fund ("JEGF") unitholders, as well as for the Receiver and others involved in this matter. The Respondent is especially remorseful for not having adequate record keeping systems, proper monthly or quarterly reconciliations of its record keeping in – house and dealer unitholder accounts, and in hindsight should have disposed of its RecordSource record

keeping system earlier on in 2005, after acquiring the RecordSource software from 1276046 Ontario Ltd (operating as D-Tech Consulting) and MJC Software Inc.

IV. Preliminary Issues

1. Brown's Participation at the Sanctions and Costs Hearing

[22] While Brown was present by telephone at the commencement of the Sanctions and Costs Hearing on October 25, 2013, shortly after the start of the hearing he informed the Commission that he did not wish to listen to all of Staff's submissions and that he would prefer to make submissions first and then disconnect from the line. Brown was provided with an explanation as to how the hearing would unfold, that Staff would make submissions first, then Brown would provide submissions and then Staff would have an opportunity to make reply submissions. It was also explained to Brown that if he chose not to listen to Staff's submissions, he might be inadvertently prejudicing himself as he would be depriving himself from hearing Staff's submissions and although the choice is up to Brown to decide whether he wants to participate or not, it was recommended that he listen to Staff's submissions. Brown elected not to stay on the line and stated "Well, then you're going to have to do it, sir, respectfully, you're going to have to do it without me because I cannot listen to this" (October 25, 2013 Transcript, page 30 lines 17-19). Brown was instructed that:

> THE CHAIR: You've said so. I invite you to stay and that's all I can do.
>
> MR. BROWN: Yes, I understand that.
>
> …
>
> THE CHAIR: Well, we will certainly advise you when the time comes for your submissions and we would have done that whether you were present in the room or not to indicate to you that it was now your turn and we will certainly advise you of that by telephone.
>
> Once again, I repeat that you are strongly advised to stay on the line and listen to Mr. Ferris's submissions so that you can adequately respond to them with full information.
>
> (October 25, 2013 Transcript, page 38, lines 4-22)

[23] Since Brown elected to disconnect from the phone line, in order to ensure that Brown could call in anytime if he changed his mind regarding his participation in the Sanctions and Costs Hearing, the Commission kept the telephone conference line open and Brown was provided with an email providing him the dial-in number so that he could participate at any time. That email was marked as Exhibit 1 in the Sanctions and Costs Hearing.

[24] Later that morning on October 25, 2013, Brown dialed in to rejoin the Sanctions and Costs Hearing. Once Staff finished with their submissions on sanctions and costs, Brown requested an adjournment in order to prepare his closing submissions. Brown took the position that he needed the transcript of Staff's oral submissions of that same day (October 25, 2013) in order to prepare otherwise he would be prejudiced and unable to do a good job of providing his own oral submissions. According to Brown he required the transcript for two reasons:

> One, so I can understand what's been said and the gravity of what's been said and then, secondly, so I have an opportunity to make an intelligent and appropriate and specific submission on what's been said.
>
> I can't do this on the fly right now. I just can't, I'm just not capable. I wish I could. I just don't have that proficiency.
>
> (October 25, 2013 Transcript, page 101 lines 1-8)

[25] Brown was granted his request to adjourn and bifurcate the Sanctions and Costs Hearing, in order to provide him with time to prepare his oral submissions. As a result, the Sanctions and Costs Hearing resumed on November 22, 2013 on a peremptory basis. Brown was also provided with a copy of the October 25, 2013 transcript. Brown was accommodated because he was unrepresented and this adjournment provided him with the time to prepare and to ensure he could review Staff's oral submissions.

2. Brown's Attempt to Re-litigate the Merits Decision

[26] As mentioned above, Brown objected to having sanctions imposed on him until he has been able to present their evidence and conduct proper and efficient cross examination of certain Staff witnesses.

[27] I reject Brown's argument and note that Brown was accommodated throughout the hearing on the merits and had every opportunity to participate if he so chose, including the opportunity to provide evidence.

[28] As noted in the Merits Decision at paragraph 12, this matter had a lengthy procedural history which involved:

> … a purposeful balancing of the various interests in this matter. Upon each adjournment request, the Panel weighed the Respondents' and the investors' interests in reaching its decision.

[29] The full details of the multiple adjournments are set out in the Merits Decision from paragraphs 12 to 31. I will now refer to the following important considerations which prompted us to complete the merits hearing and deny Brown's adjournment requests and requests to reopen the case to present more evidence.

[30] Firstly, the Merits Decision took into account the balancing of interests of Brown and the unitholders. To justify the denial of Brown's adjournment requests, the Merits Decision explains at paragraphs 16 and 17 that:

> Ultimately, we determined that the JEGF and JIF unitholders would be prejudiced by a further adjournment of the Merits Hearing. Staff was prepared to proceed and arranged for many witnesses to give evidence. In addition to scheduling inconveniences caused to these witnesses, we were mindful that the memories of witnesses may fade over time and further delay may affect the quality of their oral testimony. In terms of costs incurred, the Receiver gave evidence that 95% of JEGF assets have been distributed and there remains approximately $450,000 in trust to cover professional fees and final distributions. Each time the matter is adjourned the Receiver has to prepare for the case, which work is billed to the Funds, which reduces the amount available for distribution to the unitholders. We found this to be an unfair burden to the unitholders at this point in time. Further, the Receiver cannot wind up the Funds until this proceeding is completed, which means that unitholders will have to wait longer to get any amounts owing to them and to have this matter resolved if an adjournment was granted.
>
> For all of these reasons, we determined that the balance tipped in favour of investor interests and, as such, an adjournment was denied subject to Brown's requests for reasonable accommodations during the course of the hearing. [emphasis added]

[31] During the merits hearing Brown was accommodated and was provided options to enable him to participate in the hearing on the merits. Specifically, as stated in paragraph 30 of the Merits Decision:

> Throughout the Merits Hearing we balanced all of the interests affected by this proceeding. In particular, we were mindful of Brown's right to a fair hearing, the rights of the Funds' unitholders, and the public interest at large. After the Merits Hearing commenced, we granted Brown a number of adjournments to accommodate him. Notwithstanding that Brown provided minimal evidence of his inability to participate in the Merits Hearing, we repeatedly deferred to his interests and offered him numerous accommodations including the ability to participate by teleconference, videoconference, and in-writing. On April 4, 2012, we advised Brown that his request for an adjournment was being granted for the last time subject to any further evidence of his ability to participate. He indicated his understanding of the Panel's decision. On May 30, 2012, however, Brown requested a further adjournment without any new evidence. [emphasis added]

[32] For example, during the merits hearing, Brown was provided with the following instructions and opportunities to provide evidence to defend his case:

- we dispensed with the requirement for Brown to bring a motion to recall Staff's witnesses and ordered, among other things, that Brown need only provide a list of those witnesses that he wished to recall in advance of the next appearance (Merits Decision, *supra* at para. 24);
- prior to the April 4, 2012 hearing date, Brown served Staff with a list of witnesses whom he wished to recall for cross-examination but at the same time requested another adjournment (Merits Decision, *supra* at para. 25);
- Brown's request for an adjournment was denied, but he was granted his request to submit written interrogatories for Staff's witnesses by May 30, 2012, in accordance with the previously scheduled Merits Hearing dates (Merits Decision, *supra* at para. 26);
- Brown brought additional adjournment requests which were denied, but Brown was granted his request to submit his defence by way of affidavit evidence by no later than June 8, 2012 in accordance with the previously scheduled Merits Hearing dates (Merits Decision, *supra* at para. 27);

- Brown was permitted to testify by way of videoconference on June 8, 2012 instead of by affidavit if he chose to do so and further ordered that Staff could cross-examine Brown by videoconference in order to accommodate Brown (Merits Decision, *supra* at para. 27);

- On June 8, 2012, instead of being ready to testify and present evidence, Brown requested another adjournment and did not provide any evidence to support this adjournment motion. At this point, the panel for the hearing on the merits denied Brown's adjournment request, and in light of Brown's submissions, determined that the defence's case was closed and set dates for closing submissions (Merits Decision, *supra* at para. 28).

[33] Ultimately, it was determined that the balance of interest tipped in favour of concluding the merits hearing in order to bring finality to this matter and to provide closure to the Funds' unitholders and protect the public interest. (Merits Decision, *supra* at para. 31)

[34] Now at the sanctions stage, Brown is seeking to have the opportunity to present evidence and cross-examine Staff's witnesses. Brown was provided with these opportunities during the course of the merits hearing but he chose not to act on them. In fact, Staff kept Brown advised of the witnesses as they testified and offered to recall any Staff witnesses for cross-examination as requested by Brown. The Commission also provided Brown with transcripts of the evidence of Staff witnesses, opportunities to present oral evidence or file affidavit evidence.

[35] If Brown were permitted to provide evidence at this stage and cross-examine Staff's witnesses, this would be tantamount to re-opening the merits and the re-litigation of the findings on the merits in this matter. The Sanctions and Costs Hearing is not the appropriate forum to present evidence on the merits and argue and re-litigate the merits findings. That should be addressed as part of any appeal, if any. Further, Brown was accommodated and provided with ample time and instructions from the merits panel as to how to provide evidence during the merits hearing if he so chose to do so. Brown cannot assert now that he has been prejudiced by not providing evidence because he was provided with every opportunity to do so during the merits hearing.

V. The Law on Sanctions

[36] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] 2 S.C.R. 132 ("*Asbestos*"), the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventive, and it is intended to prevent future harm to Ontario's capital markets (at para. 42). Specifically:

> … the above interpretation is consistent with the scheme of enforcement in the Act. The enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties. The administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as "Orders in the public interest". Such orders are not punitive: *Re Albino* (1991), 14 O.S.C.B. 365. Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600. In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the Act respectively: see D. Johnston and K. Doyle Rockwell, *Canadian Securities Regulation* (2nd ed. 1998), at pp. 209-11.
>
> …
>
> … pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. … In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation.
>
> (*Asbestos*, *supra* at paras. 43 and 45 [emphasis added])

[37] In determining the appropriate sanctions to order in this matter, I must keep in mind the Commission's preventive and protective mandate set out in section 1.1 of the Act, and I must also consider the specific circumstances in this case and ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1134).

[38] The case law sets out the following list of non-exhaustive factors that are important to consider when imposing sanctions:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) the need to deter a respondent, and other like-minded individuals, from engaging in similar abuses of the capital markets in the future;

(f) whether the violations are isolated or recurrent;

(g) the size of any profit gained or loss avoided from the illegal conduct;

(h) any mitigating factors, including the remorse of the respondent;

(i) the effect any sanction might have on the livelihood of the respondent;

(j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;

(k) in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective;

(l) the size of any financial sanctions or voluntary payment when considering other factors.

(*Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

[39] The applicability and importance of each factor will vary according to the facts and circumstances of each case.

[40] Deterrence is another important factor that the Commission could consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("*Cartaway*"), the Supreme Court of Canada explained that deterrence is "…an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive" (at para. 60). Further, the Supreme Court emphasized that deterrence may be specific to the respondent or general to deter the public at large:

> Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see C. C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct.
>
> (*Cartaway*, *supra* at para. 52)

[41] As stated above, the sanctions imposed must be protective and preventive. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600:

> … 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.
>
> (*Mithras*, *supra* at 1610 and 1611)

VI. Appropriate Sanctions in this Case

1. Specific Sanctioning Factors Applicable in this Matter

[42] Overall, the sanctions I impose must protect investors and Ontario capital markets by barring or restricting Brown and JFM from participating in those markets in the future.

[43] In considering the sanctioning factors set out above in the case law, I find the following specific factors and circumstances to be relevant in this matter:

(a) The seriousness of the allegations: The Respondents breached a number of key provisions of the Act. When Respondents breach multiple sections of the Act, the Commission may consider the seriousness of the breaches both individually and collectively.

In particular, the Commission found that Brown and JFM failed to uphold their statutory duty of care toward unitholders. Brown and JFM did not act in the best interests of the Funds, and thereby breached their statutory duty of care under section 116 of the Act by engaging in the following conduct (see paras. 184 to 189 of the Merits Decision):

(i) failing to record the off-book purchases;

(ii) failing to maintain proper daily NAV calculations;

(iii) borrowing against JEGF's assets through the JEGF custodial account;

(iv) engaging in prohibited investments;

(v) failing to maintain account books and records;

(vi) failing to advise NBCN of incorrect transfers and purchases of JEGF units;

(vii) failing to require Brown, JFM and related parties to settle trades with T+3 business days; and

(viii) failing to be properly registered as a mutual fund dealer.

Specifically, with respect to the failure to maintain proper records, Brown admitted during his voluntary interview with Staff that he not only failed to maintain proper records for Juniper, but took active steps not to correct inaccuracies with NBCN in order to avoid looking foolish to NBCN (Merits Decision, *supra* at para. 147).

When Brown did provide NBCN with a reconciliation spreadsheet, he was unable to explain the reason for not reconciling errors in his records (Merits Decision, *supra* at para. 151). In my view, Brown's failure to maintain proper books and records led to the very type of lack of transparency that this Commission is wary of and led to breaches of subsection 19(1) of the Act and NI 81-102 and NI 81-106.

The Merits Decision also outlined a number of inaccurate statements, made in the simplified prospectus, information circular and AIF, contrary to subsection 56(1) of the Act and subsection 15.2(1) of NI 81-102. These statements were misleading, breached the disclosure obligations in the Act and amounted to serious misconduct by the Respondents. For example, the Respondents materially overstated the asset value of the funds managed by JFM. JFM represented that it managed assets of $130 million when in fact it managed only $15 million worth of assets (Merits Decision, *supra* at para. 171).

I agree with Staff's submission that the conduct in this matter is serious and undermines investor protection and confidence and the integrity of the Ontario capital market.

(b) Whether the Respondents' violations are isolated or recurrent: Brown's record keeping mistakes were a reoccurring problem and he failed to fix these mistakes once they came to his knowledge. This was not an isolated event. For example, as stated in paragraph 152 of the Merits Decision:

> During the Brown Interviews, Brown explained that he recorded certain transactions as "buys" instead of "transfers" by his own mistake but that he did not correct these transactions with NBCN. His reason was simply that he failed to understand any need to make any corrections. [emphasis added]

Both the Receiver and Staff concluded that material errors were made in respect of the Funds' records as a result of these ongoing record keeping mistakes (Merits Decision, *supra* at para. 154).

(c) The Respondents' experience in the marketplace: The Commission has found that a registrant is expected to have a higher level of awareness of their duties than a non-registrant and that, consequently, a registrant's breach of Ontario securities law is very serious as they ought to have known to comply with Ontario securities law.

In the case before me, Brown was the president of JFM, the fund manager, trustee and fund administrator of the Funds since approximately May 2004 when he acquired all shares of JFM. Brown was also the president of Polysecurities Inc., which was registered as a limited market dealer with the Commission. As for Brown's registration history with the Commission, evidence of section 139 certificates showed that Brown was registered as a trading officer and was also officer, director and designated compliance officer of Polysecurities Inc. from August 22, 2002 until approximately the end of December 2005.

JFM was not registered with the Commission but was a market participant by virtue of being a fund manager for the Funds (I note the requirement for fund managers to be registered with the Commission only came into force on September 28, 2009).

The Merits Decision found that Brown and JFM failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances in those positions held by these respondents. As a result, the Merits Decision concluded that Brown and JMF breached their statutory duty of care and acted contrary to subsection 116(10) of the Act (Merits Decision, *supra* at paras. 185-186)

(d) The Respondents' activity in the marketplace: Investor funds invested into the Funds was significant. JEGF was a mutual fund which had approximately $15 million in assets under administration and as of December 31, 2005, it had approximately 110 unitholders. JIF had approximately $350,000 in assets under administration and as of December 31, 2005 it had approximately 40 unitholders.

(e) Investor harm and impact on value of the Funds: The nature of Brown and JFM's misconduct impacted the value of the Funds, caused significant losses to the Funds' unitholders and compromised the integrity of and the confidence in, the capital markets. As found by the Commission in the Merits Decision at para. 156:

> The Respondents' poor recordkeeping has a significant impact on the Funds, resulting in a trail of miscalculations and errors throughout their history with RBCDS, Felcom, and NBCN and was likewise a trigger for both (1) NBCN to come to the Commission with their concerns; and (2) Chak to recommend a freeze on the bank accounts. Recordkeeping is vital for the proper, transparent maintenance of a fund and proper participation in the capital markets and the Respondents have failed to act responsibly and within the standards required in accordance with the Act and NI 81-102 and NI 81-106. [emphasis added]

Further, the Commission found that without proper unitholder records relation to the issue and redemption of and distributions of the Funds, it is impossible to calculate the proper NAV of the units and therefore the proper records of the funds (Merits Decision, *supra* at para. 155).

In addition, at paragraph 154 of the Merits Decision, the Commission found the following detrimental impact on the Funds was as follows:

> … The NAV statements for JEGF were overstated in value with respect to its 10% investment in PAM, which the Receiver determined did not have any assets. Further, the JEGF assets were encumbered in the NBCN JFM Custodial Account in order to borrow funds for non-equity related uses, and which encumbrances were not disclosed to the unitholders.

Furthermore, the Merits Decision found that JEGF held 88% of the shares in PAM, which investment was contrary to subsections 111(2) and 111(3) of the Act (Merits Decision, *supra* at para. 180). Investors were harmed by the fact that this illegal investment was made. PAM was a private company whose securities were not exchange traded and thus had an illiquid market and in addition PAM had no assets (see Mertis Decision, *supra* at paras. 10, 88 and 119).

Moreover, the borrowing practice engaged in by the Funds put the Funds at risk. Specifically, Brown borrowed up to $1,248,000 from the NBCN JEGF Custodial Account (Merits Decision, *supra* at para. 179). This money

was ultimately applied against the mortgage of Brown's residential property. A debit in the NBCN JEGF Custodial Account would first be covered by liquidating JEGF's assets and then claiming against JFM. As explained in the Merits Decision at paragraph 180:

> We find that JEGF made an investment by way of loan to Brown and JFM contrary to subsections 111(1) and 112 of the Act, and section 2.6 of NI 81-102. JFM caused JEGF to knowingly enter into a prohibited arrangement resulting in JEGF being liable in respect of JFM's actions. The borrowing that occurred in this account was not *de minimis* and was not used for short term cash management of redemptions. Although JFM was permitted to borrow against the JEGF assets in the NBCN JEGF Custodial Account for specific purposes, JFM and Brown used borrowed funds from that account for purposes contrary to the Act and, in doing so, placed the JEGF assets at risk. Further, JFM was prohibited from making an investment in PAM, contrary to subsections 111(2) and 111(3) of the Act.

Overall, the Merits Decision found that the evidence presented demonstrated that Brown and JFM breached their statutory obligations under section 116 of the Act by failing to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise by specifically:

(i) Failing to advise NBCN of incorrect transfers-in and purchases of JEGF units when the Respondents knew they had given NBCN incorrect information;

(ii) Failing to record the Off-Book Purchases;

(iii) Failing to maintain proper daily NAV calculations for the units in the Funds;

(iv) Borrowing against JEGF's assets through the NBCN JEGF Custodial Account for purposes that were not related to JEGF;

(v) Failing to require related parties to settle purchases and redemptions within three business days of the trade date;

(vi) Engaging in prohibited investments;

(vii) Failing to maintain proper and accurate books and records of the Funds; and

(viii) JFM failing to be properly registered as a mutual fund dealer.

(Merits Decision, *supra* at para. 186)

(f) The size of any profit gained or loss avoided from the illegal conduct: As a result of their non-compliance of Ontario securities law, Brown and JFM obtained the following amounts:

i. As a result of the off-book transactions, JMF and Brown obtained $2,247,998.74 from JFM's margin account and Brown's margin account;

ii. Brown and related parties benefitted in the amount of $83,077.97 through the settlement of approximately 16 trades in JEGF units outside the statutory T+3 time frame as set out in the Receiver's Fifth Report;

iii. As a result of the above debit balances, NBFL filed a proof of claim in the Juniper receivership in the amount of $451,557.56 and NBCN filed a proof of claim in the amount of $2,291,043.38 and the Receiver agreed to a payment of $2,154,389 to settle these proof of claims, which resulted in an aggregate loss to NBCN and NBFL (including interest) of $588,212; and

iv. As set out in the Agreed Statement of Facts filed by the parites. JFM received $1,840,063.89 from JFM's NBCN margin account and Brown received $407,934,85 from Brown's NBFL margin account, for a total margin debit of $2,247,988.74.

(g) Deterrence: As set out in the case law, both specific and general deterrence are very important considerations. I agree with Staff's submission that any sanctions imposed must be proportionate to Brown's and JFM's egregious conduct and will serve as a specific and general deterrent.

(g) Mitigating factors: I note that Brown did try to cooperate with Staff in this matter. Specifically, Brown reached a 19 page agreed statement of facts with Staff. In addition, after the OSC investigation commenced, and after the initial cease trade order was issued, the Respondent met voluntarily with Staff on four different instances to answer Staff's questions and assist in Staff's investigation. Brown also submitted that during the period April to June 2008, Staff and Respondent met to discuss and negotiate a settlement and that while unsuccessful, Brown should still get credit for his attempt to cooperate and resolve the matter.

2. Trading and Other Prohibitions

Trading

[44] Staff takes the position that in the circumstances of this case, it would be appropriate to order that Brown and JFM should be subject to permanent trading, acquisition, exemption and D&O bans based on their conduct. Staff referred us to the case *Re St. John* (1998) 32 O.S.C.B. 3851 at page 38 which sets out the principle that individuals who engage in abusive conduct in the capital markets should be permanently banned from participating in those capital markets and Staff submitted that this principle should apply in the present case as well:

> In our view [the respondent] is not a person whom we can safely trust to participate in the capital markets in any way. We have no confidence whatsoever that if [the respondent] is permitted to participate as an investor for [their] own account, [the respondent] will not once again push the envelope by engaging in conduct which is detrimental to other and abusive of our capital markets. Accordingly, we order that trading in any securities by [the respondent] cease permanently.

[45] Staff also submitted that participation in the capital markets is a privilege, not a right (*Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Sup. Ct.) at para. 56). As stated in *Manning v. Ontario (Securities Commission)*, [1996] O.J. No. 3414 at para. 47:

> There is no right of any individual to participate in the capital markets in Ontario. … the Act provides certain exemptions which allows individuals to make certain trades without being registered, however, the OSC has explicit jurisdiction to remove the exemptions if an individual engages in conduct contrary to the letter or spirit of the Act, whether such conduct causes damage to investors or is detrimental to the integrity of the capital markets.

[46] Brown disagreed with Staff's submission that a permanent trading ban is necessary. In his view, a trading ban of two years with a carve-out to permit him to trade in his own account and children's accounts through a registered dealer would be appropriate.

[47] In Staff's view, such a carve-out should not be granted in situations where the respondent cannot be trusted to govern themselves appropriately in the capital markets. Brown's misconduct shows a pattern of refusing to follow rules and correct errors he made with the Funds. Staff argues in the alternative that if a limited carve-out is provided to permit Brown to trade securities listed on a defined stock exchange within his RRSP and children's RESPs, then the Commission should follow its practice and order that any carve-out only becomes effective once the monetary sanctions and costs imposed have been paid.

[48] With respect to the appropriate length of a trading ban, I am mindful that there was harm to the Funds' unitholders. As set out in the Merits Decision at paragraph 11, "Ultimately, however, the Respondents were not competent to participate in the capital markets and, as a result, caused financial harm to the Funds' unitholders". To summarize,

> Brown and JFM engaged in improper encumbrances of the Funds by permitting JEGF to guarantee JFM's balances in its NBCN margin accounts. The Respondents encumbered the JEGF assets when funds were borrowed for non-JEGF purposes. While JFM, as trustee, would have been permitted to use borrowed funds on a *de minimis* basis for purposes of short term cash management of JEGF redemptions and to settle securities transactions, they did not borrow for these purposes. The encumbrances were improper, not disclosed to the JEGF unitholders and contrary to the public interest.
>
> The Respondents also diverted funds by using the margin available in the NBCN JEGF Custodial Account (defined below) for their personal benefit. The Respondents borrowed funds from that account for purposes contrary to the Act and, in doing so, placed the JEGF assets at risk. The assets in the NBCN JEGF Custodial Account were assets belonging to JEGF and not to the Respondents. [emphasis added]
>
> (Merits Decision, *supra* at paras. 8 and 9)

[49] As well, the Respondents breached multiple provisions of the Act and National Instruments, including:

(a) The Respondents failed to keep books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of the Funds in accordance with Ontario securities law, contrary to subsection 19(1) of the Act and section 18.1 of NI 81-102, and failed to record JEGF's daily NAV calculations contrary to subsection 14.2(1) and section 14.4 of NI 81-106;

(b) JFM acted as a mutual fund dealer for purchases and redemptions in units of the Funds without being registered as a mutual fund dealer contrary to subsection 25(1)(a) of the Act, which was in force at the time the conduct occurred;

(c) The Respondents failed to provide full, true and plain disclosure in the JEGF simplified prospectus of all material facts contrary to subsection 56(1) of the Act and the JEGF simplified prospectus, information circular and AIF contained certain inaccurate and misleading statements contrary to subsection 15.2(1) of NI 81-102;

(d) JEGF provided prohibited loans and held prohibited investments contrary to sections 111 and 112 of the Act and paragraph 2.6 of NI 81-102 and, in doing so, the Respondents breached their custodial obligations contrary to subparagraphs 6.1(1) and (6) of NI 81-102;

(e) The Respondents breached their statutory duty of care contrary to subsection 116(1) of the Act and have failed to properly settle and deposit funds in accordance with sections 9.4 and 11.1 of NI 81-102; and

(f) Brown, as an officer and director of JFM, authorized, permitted and acquiesced in breaches of subsections 19(1), 25(1)(a), 56(1), 111, 112, and 116(1) of the Act, subsections 2.6, 6.1(1), 6.1(6), 9.4, 11.1, 15.2(1) and 18.1 of NI 81-102, and subsections 14.2(1) and 14.4 of NI 81-106 and, pursuant to section 129.2 of the Act is liable for JFM's breaches of Ontario Securities law and engaged in a conduct contrary to the public interest.

(Merits Decision, *supra* at para. 192)

[50] Considering the multiple breaches, the harm to the Funds' unitholders, the seriousness of the conduct in this matter as described above, I find it appropriate to order that both Brown and JFM shall cease trading and acquiring securities permanently and any exemptions in Ontario securities law do not apply to them permanently.

[51] With respect to any1 trading carve-out, I find that a trading carve-out is only appropriate once Brown has paid in full the administrative penalty, disgorgement and costs amounts ordered in this decision. Once these amounts are paid, the following carve-out shall be available to Brown:

> Upon payment in full of the administrative penalty, disgorgement and costs ordered in this matter, Brown is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans, and Registered Education Savings Plan as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Brown and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order):(i) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 – *Marketplace Operation* provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or (ii) any security issued by a mutual fund that is a reporting issuer; (iii) and exemptions are permitted for the purpose of trades described herein.

Director and Officer Bans

[52] Staff also requested that Brown resign from any position that he may hold as a director or officer of any issuer, registrant or investment fund manager and that he be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager permanently. Further, Staff requested that Brown be prohibited from becoming or acting as a registrant, an investment fund manager or as a promoter.

[53] Brown objected to such a broad ban on his activities in the capital markets. Specifically, Brown submitted that:

> To say that I cannot be a director or officer ever again, again is completely unfair and affects livelihood and income-related livelihood. I think something more along the lines of not being a director or officer of a reporting issuer or a public company participating in the capital markets in Ontario for a period of time is more consistent with what I've read in other sanctions.
>
> (November 22, 2013 Transcript, page 20, lines 8-15)

[54] Staff submitted in reply that a carve-out to permit Brown to be an officer and director of a non-reporting issuer is difficult to permit when there are currently no details about the type of private company and its activities. Staff pointed out that such carve-outs have been provided to respondents in the past for their private businesses, but only when there was sufficient detail to understand the activity that the business would be involved in. For example, in a settlement in the *Re Sbaraglia* (2013), 36 O.S.C.B. 2572 the respondent was dentist and was permitted to remain an officer and director of his dentistry company.

[55] In *Mithras*, the Commission explained that the removal of individuals from the capital markets is an effective mechanism for protecting the public. One such method is to ban individuals from becoming officers or directors and holding other positions as registrants. This prevents such persons from participating in the capital markets through positions of control or direction within an issuer, registrant or investment fund manager.

[56] I find that it is appropriate that Brown resign from any positions he holds as a director or officer of any issuer, registrant or investment fund manager and that he be prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager permanently. In addition, Brown shall be prohibited from becoming or acting as a registrant, an investment fund manager or as a promoter.

[57] In my view, the use of such bans will ensure that Brown will not be put in a position of direction or trust with any issuer, registrant or investment fund manager. This is important because the misconduct in this matter took place when Brown was a director of JFM (the fund manager, trustee and fund administrator of the Funds) and is president, chief executive officer and sole shareholder of JFM. Brown was the principal administrator and controlled the daily operations of JFM (Merits Decision, *supra* at paras. 32 and 35). By his own admission, Brown was the primary person in charge of all aspects of JFM and the Funds and it was found in the Merits Decision that Brown and JFM breached their statutory duty of care owed to the Funds and unitholders (Merits Decision, *supra* at paras. 189 and 190).

[58] The positions of officers and directors carry with them the responsibility to act in the best interests of the shareholders and/or unitholders. I refer to Staff's submissions on this point that are set out in paragraph 184 of the Merits Decision:

[59] Staff rely on the jurisprudence developed under fiduciary duty provisions found in section 134 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 and section 122(1) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44. Staff submits that the principles developed in regard to fiduciary duties owed by directors to corporations are applicable by analogy to the fiduciary duty owed by mutual fund managers to the mutual fund unitholders. Staff rely on one of the seminal cases regarding fiduciary duty:

> Staff rely on the jurisprudence developed under fiduciary duty provisions found in section 134 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 and section 122(1) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44. Staff submits that the principles developed in regard to fiduciary duties owed by directors to corporations are applicable by analogy to the fiduciary duty owed by mutual fund managers to the mutual fund unitholders. Staff rely on one of the seminal cases regarding fiduciary duty:
>
> > The statutory fiduciary duty requires directors and officers to act honestly and in good faith vis-à-vis the corporation. They must respect the trust and confidence that have been reposed in them to manage the assets of the corporation in pursuit of the realization of the objects of the corporation. They must avoid conflicts of interest with the corporation. They must avoid abusing their position to gain personal benefit. They must maintain the confidentiality of information they acquire by virtue of their position. Directors and officers must serve the corporation selflessly, honestly and loyally: see K. P. McGuinness, *The Law and Practice of Canadian Business Corporations* (1999), at p. 715. (*Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, [2004] 3 SCR 461 at para. 35)

[60] Brown's conduct in this matter fell short of what is expected of an officer and director of an issuer, registrant and/or investment fund manager. Also, his conduct was only possible by virtue of the fact that Brown was the principal administrator and controlled the daily operations of JFM. In particular, his position enabled him to divert funds by using margin available in a custodial account for his personal benefit and borrowed funds for purposes contrary to the Act and in doing so put the assets of JEGF at risk. As a result, Brown should be permanently banned from acting as a director or officer of any issuer, registrant or investment fund manager and becoming a registrant, an investment fund manager or as a promoter.

[61] At this time I agree with Staff that there is insufficient information to provide Brown with a carve-out to permit him to be an officer and director of a private company. There is also the risk that Brown would use any such private company to participate in the capital markets and that would not be acceptable to the Commission.

[62] The combined sanctions of trading bans and prohibitions on participating in the Ontario capital markets is intended to provide general and specific deterrence to help ensure that similar conduct does not take place in the future.

Reprimand

[63] As stated above, Brown breached multiple provisions of the Act and National Instruments. This conduct was contrary to the public interest.

[64] I find it appropriate that Brown be reprimanded. The reprimand is intended to provide strong censure of his misconduct and to impress on the public the importance of complying with the Act and National Instruments. Brown is hereby reprimanded for the conduct set out in the Merits Decision.

3. Administrative Penalty

[65] Paragraph 9 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to "pay an administrative penalty of not more than $1 million for each failure to comply".

[66] The Commission has held that an administrative penalty should be of a magnitude sufficient to ensure effective specific and general deterrence. The goals of specific and general deterrence are most effectively met by administrative penalties that are proportional to each respondent's culpability in the matter. Important considerations in determining an administrative penalty may include: the scope and seriousness of a respondent's misconduct; whether there were multiple and/or repeated breaches of the Act; whether the respondent realized any profit as a result of his or her misconduct; the amount of money raised from investors; the harm caused to investors; and the level of administrative penalties imposed in other cases (*Re Goldpoint Resources Corporation et al* (2013), 36 O.S.C.B. 1464 at para. 75; and *Limelight*, *supra* at paras. 71 and 78).

[67] The significance of the quantum of an administrative penalty to be an effective deterrent was also emphasized by the Commission in *Re Rowan* (2010), 33 O.S.C.B. 91 at paragraph 74:

> An administrative monetary penalty may not act as a sufficient deterrent if its magnitude is inadequate compared with the benefit obtained by non-compliance. In some instances, even a $1 million administrative penalty may not act as a sufficient deterrent if the benefit of non compliance exceeded $1 million or if the probability of detection was very low. As such, there is a need for regulatory sanctions to create economic incentives to foster compliance or alternatively, remove economic incentives for non-compliance.

[68] Staff submits that Brown and JFM should be subject to a $500,000 administrative penalty on a joint and several basis. Brown objects and submits that he should only be ordered to pay an administrative penalty in the range of $50,000 to $100,000. He submits that the cases relied on by Staff are not analogous to the facts in this case and that there is case law where much lower administrative penalties were imposed.

[69] In looking at the criteria to impose an administrative penalty set out above, I am influenced by the following:

- The misconduct in this matter is serious and was not an isolated occurrence described in paragraph 43 of these reasons.

- On a repeated basis, Brown did not rectify errors in the Funds' records. Specifically, the problems with the Funds' records are described as follows at paragraphs 154 to 164 of the Merits Decision:

  > We find that the activity in the Funds was inaccurately recorded. Both the Receiver and Staff concluded material errors in this regard. The NAV statements for JEGF were overstated in value with respect to its 10% investment in PAM, which the Receiver determined did not have any assets. Further, the JEGF assets were encumbered in the NBCN JFM Custodial Account in order to borrow funds for non-equity related uses, and which encumbrances were not disclosed to the unitholders.
  >
  > We find that the Respondents breached subsections 14.2(1) and 14.4 of NI 81-106 by failing to maintain proper books and records. Without proper unitholder records relating to the issue and redemption of securities and distributions of the Funds, it is impossible to calculate the proper NAV of the units and therefore the proper records of the Funds.
  >
  > The Respondents' poor recordkeeping had a significant impact on the Funds, resulting in a trail of miscalculations and errors throughout their history with RBCDS, Felcom, and NBCN and was likewise a trigger for both (1) NBCN to come to the Commission with their concerns; and (2) Chak to recommend a freeze on the bank accounts. Recordkeeping is vital for the proper, transparent maintenance of a fund and proper participation in the capital markets and the Respondents have failed to act responsibly and within the standards required in accordance with the Act and NI 81-102 and NI 81-106.

- As set out in paragraph 49 of these reasons, Brown and JFM breached multiple sections of the Act and National Instruments.

- Unitholders were harmed as described in paragraphs 43 and 48 of these reasons.

[70] In my view the imposition of an administrative penalty in the amount of $500,000 on Brown and JFM on a joint and several basis is in the range of administrative penalties imposed in other Commission cases dealing with fund managers.

[71] For example, in *Re Sextant Capital Management Inc.* (2011), 34 O.S.C.B. 5863, a case which also dealt with a fund manager breaching their statutory duties, the following administrative penalties were ordered against the respondents in that case: $1 million for Otto Spork, $250,000 for Ekonomidis and $50,000 for Natalie Spork. Like Brown, Otto Spork managed the Sextant Funds through companies he controlled. As a person in control who held the responsibility for the funds at issue, it was deemed appropriate that he pay the highest administrative penalty of $1 million. A distinguishing factor in this case is that Otto Spork was also found to commit fraud, and in general when fraud is committed, the seriousness of that misconduct merits higher sanctions. There are no allegations or findings of fraud against Brown and JFM in this case, although as discussed above, they still engaged in very serious misconduct. As a result, an administrative penalty of $500,000 is appropriate.

[72] In *Re Norshield Asset Management (Canada) Ltd.* (2010) 33 O.S.C.B. 2139 ("*Norshield*"), the Commission dealt with conduct related to the collapse of a hedge fund and investor losses of approximately $159 million. It was found that these respondents materially misled Staff, failed to safeguard Norshield's records and failed to deal fairly and honestly with clients. Given the loss of almost all of the $159 million invested by close to 2000 retail investors, the Commission ordered each of Smith and Xanthoudakis to pay administrative penalties of (i) $1 million for their breaches of section 2.1 of OSC Rule 31-505; (ii) $1 million for their breaches of section 19 of the Act; and (iii) $125,000 for misleading Staff contrary to subsection 122(1)(a) of the Act. In the present case, the losses were not as high as in *Norshield* and in the present case the Receiver did distribute monies to JEGF and JIF unitholders. As set out in paragraph 16 of the Merits Decision, "the Receiver gave evidence that 95% of JEGF assets have been distributed and there remains approximately $450,000 in trust to cover professional fees and final distributions". As a result, the administrative penalties imposed should be less than those in *Norshield*, and $500,000 is a more appropriate amount in the present case.

[73] Considering the amount ordered to be disgorged (discussed below) together with the totality of the sanctions imposed including permanent bans, and balancing the magnitude of the harm committed by Brown and JFM, the quantum of $500,000 (joint and several against Brown and JFM) will serve the necessary specific and general deterrent purposes.

[74] Therefore, the Brown and JFM shall pay an administrative penalty in the amount of $500,000 on a joint and several basis and this amount shall be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b)(i) or (ii) of the Act.

4. Disgorgement

[75] Paragraph 10 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained" as a result of the non-compliance.

[76] The Commission has previously held that "all money illegally obtained from investors can be ordered to be disgorged, not just the 'profit' made as a result of the activity". As explained in *Limelight*, *supra* at paragraph 49:

> We note that paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity. This approach also avoids the Commission having to determine how "profit" should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test. In our view, where there is a breach of Ontario securities law that involves the widespread and illegal distribution of securities to members of the public, it is appropriate that a respondent disgorge all the funds that were obtained from investors as a result of that illegal activity. In our view, such a disgorgement order is authorized under paragraph 10 of subsection 127(1) of the Act.

[77] *Re Limelight Entertainment Inc.*, (2008), 31 O.S.C.B. 12030 ("*Limelight*"), sets out a non-exhaustive list of disgorgement factors to consider at paragraph 52, which include:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the Act;

(b) the seriousness of the misconduct and the breaches of the Act and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the Act is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and other market participants.

[78] The *Limelight* case also states that Staff has the onus to prove on a balance of probabilities the amount obtained by a respondent as a result of his or her non-compliance with the Act. Subject to that onus, any risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose non-compliance with the Act gave rise to the uncertainty (*Limelight*, *supra* at para. 53).

[79] In addition, in *Re Maple Leaf Investment Fund Corp.* (2012), 35, O.S.C.B. 3075, the Commission recognized that where appropriate, disgorgement ordered should be tailored to amounts specifically obtained by individuals and calculated net of repayments. For example, at paragraphs 34 to 36 of that decision, the Commission explained:

> We note that of the total amount of $4,475,000 that was raised, $1,342,894 was returned to investors. More specifically, $1,275,000 was returned to investors and $67,894 was paid out as purported interest to holders of the MLIF bonds (Merits Decision, *supra*, at para. 201). To avoid double counting, in our determination of the disgorgement order to be made, we find it appropriate to take into account that some of the funds have been returned to investors in the form of purported redemptions or interest payments.
>
> The evidence shows that Tulsiani and Tulsiani Investments obtained $70,000 in commissions (Merits Reasons, *supra*, at para. 195). We find that it is appropriate to require Tulsiani and Tulsiani Investments to disgorge the $70,000 that they received to ensure that they do not retain any financial benefit from their respective breaches of the Act and to provide general and specific deterrence. As the role of Tulsiani and Tulsiani Investments was limited to the solicitation of funds and not their application, we do not find it appropriate to order that they jointly and severally disgorge $1,712,082 as requested by Staff.
>
> In our view, Chau and MLIF should jointly and severally disgorge the net amount that they obtained through the scheme, being $3,132,106, and that Tulsiani and Tulsiani Investments should be jointly and severally liable with Chau and MLIF to disgorge the commissions that they obtained, being $70,000. Accordingly, we make an order to that effect, namely, that Chau and MLIF jointly and severally disgorge $3,062,106 and MLIF, Chau, Tulsiani and Tulsiani Investments jointly and severally disgorge $70,000.

[80] Staff takes the position that Brown and JFM should be ordered to disgorge $2,331,076.71 on a joint and several basis. No other regulatory or civil order has been made in respect of these amounts. According to Staff the amount to be disgorged is based on the following factors:

- investors received $2,154,389 less as a result of the Receiver's payment to NBFL/NBLN in settlement of the proof of claims,
- the Receiver concluded that NBCN and RBCDS were entitled to assume that valid JEGF units were being created,
- the Respondents' breaches of securities law are serious as discussed in detail in these reasons,
- most importantly, the amounts gained by the Respondents have been agreed upon by the parties and established by the evidence,
- the JEGF and JIF unitholders did not approve any holdback for a claim against JFM and/or Brown and therefore no civil claims have been advanced for these amounts, and
- a disgorgement order is needed to ensure that Brown and JFM do not benefit from their serious breaches of Ontario securities law.

[81] Staff also points out that unitholders bore the costs of the Receivership, however these amounts have not been included in the requested disgorgement order as they were not amounts obtained by the Respondents.

[82] Brown submits that he should not be held to disgorge any funds. According to the funds he received from the NBCN margin account were appropriate under the terms of the margin agreement and Brown did intend to pay them back but was prevented from doing so. As explained by Brown in his written submissions at pages 39 and 40:

> Concerning disgorgement, the Respondent borrowed monies from NBCN under its margin account terms and conditions as per the account agreement. It did not obtain monies from NBCN. NBCN loaned JFM monies as per the NBCN-JFM Margin Accountholder agreement. Furthermore, the Respondent along with one of JFM's Directors visited and voluntarily informed NBCN that the pledged security in the JFM margin account was deficient, and that it was JFM's intention and objective, to either make arrangements to repay the loan, or simply replace the amount of the JEGF unit deficiency with other tangible financial or real assets, which NBCN initially and in the first instance agreed to with the Respondent.
>
> When the Respondents had the financial resources to repay NBCN, they were denied a fundamental right in the first instance by NBCN, and thereafter by Staff, under the Margin Account terms and conditions to remedy any margin account deficiencies. Now some seven years later, and after the Respondents have been left financially in distress by this entire ordeal, Staff is seeking a disgorgement for monies the Respondent has been found to have obtained. First off, and as noted herein already, the Respondent did not obtain these monies, it borrowed these monies based on what it thought was an NBCN margin account that was in good standing.

[83] In addition, Brown submits that the Commission should take into account his financial status and his own economic losses he experienced in this matter. Specially, as hesubmits at page 40 of Brown's written submissions:

> Furthermore, the type of disgorgement that Staff is seeking does not consider the economic losses suffered by the Respondent which in other Security Commission jurisdictions are used and balanced against monies Respondents have been found to have received through security Act breaches. It is the view of the Respondents, that due to the uniqueness of the JFM and JEGF matter, and financial losses incurred by the Respondents as a JEGF unitholder and as shareholders of JFM, these quantifiable losses must be factored and balanced against the disgorgement amount that Staff is seeking.

[84] I find it is appropriate for Brown and JFM to disgorge $2,331,076.71 on a joint and several basis. In my view, an order for disgorgement of the entire amount of the margin debit balances incurred by Brown and JFM (an amount which is ascertainable and agreed by the parties) acknowledges the objective of general and specific deterrence. This amount was obtained through conduct that did not comply with the Act and as discussed about this conduct was very serious in nature and involved multiple breaches of provisions of the Act and National Instruments. There are also no other civil claims relating to this amount.

[85] It is also appropriate that the entire amount of $2,331,076.71 be disgorged on a joint and several basis since Brown essentially ran JFM and was the principal administrator and controlled the daily operations of JFM.

[86] Therefore, Brown and JFM shall disgorge, on a joint and several basis the amount of $2,331,076.71 and this amount shall be designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b)(i) or (ii) of the Act.

VII. Costs

[87] Pursuant to section 127.1 of the Act, the Commission has the discretion to order a person or company to pay the costs of the investigation and hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest. Rule 18.2 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 sets out a number of factors a Panel may consider in exercising its discretion to order costs.

[88] Staff requested, pursuant to subsection 127.1(1) and (2) of the Act, that Brown and JFM be ordered to pay, jointly and severally, $669,136.76 to cover the costs related to the investigations and merits hearing in this matter and disbursements. Staff submits that they took a conservative approach as they have only claimed costs for two Staff members on this file, Mr. Ferris (the senior litigator) and Ms. Chak (the senior forensic accountant). Staff points out that they did not claim costs for five other enforcement staff employees who worked on the file, whose costs totalled an aggregate of $155,885.

[89] Staff submits that the costs claimed in this case as a result of the following factors:

(a) comprehensive investigation resulted in 45 large binders of disclosure;

(b) the need to obtain a Temporary Cease Trade Order given the issues raised by NBCN about the accuracy of the Funds' NAV and the number of JEGF units;

(c) the need for nine attendances to extend the temporary order, one appearance to vary the cease trade order and seven appearances to schedule dates for the hearing on the merits;

(d) requests for two Commission Directions to freeze eight separate accounts of Brown and JFM bank accounts when Brown failed to disclose all JEGF bank accounts;

(e) the appointment of Grant Thornton Ltd. as receiver on May 18, 2006 when Brown would not provide Staff with information on the purchase proceeds of the off-book transactions;

(f) following up on Felcom documents once further records were received;

(g) multiple adjournment requests made by Brown;

(h) Brown's unwillingness to admit breaches of Ontario securities law;

(i) Brown's failure to provide complete information to Staff when initially requested; and

(j) ten appearances after the conclusion of Staff's evidence during the merits hearing to schedule dates for Brown to call witnesses and testify himself and then his failure to do so.

[90] In support of the costs request, Staff provided a Bill of Costs and detailed dockets (as required by Rule 18.1(2)(b) of the Commission's *Rules of Procedure*). These timesheets provided dates, numbers of hours worked and details of the tasks performed by each of the individuals listed in the Bill of Costs. The Bill of costs was broken down to show the costs claimed over seven distinction time periods:

Time period	Event that triggered the new time period	Costs incurred
Feb. 2, 2006 to May 18, 2006	Juniper file opened on Feb. 6, 2006	$83,210.00
May 19, 2006 to March 31, 2008	Appointment of Receiver on May 18, 2006	$271,200.00
April 1, 2008 to June 6, 2008	First adjournment request by Brown on March 31, 2008	$41,042.50
June 7, 2008 to April 30, 2010	Staff's adjournment request on June 6, 2008	$35,836.25
May 1, 2010 to Nov. 5, 2010	New hearing dates scheduled on April 30, 2010	$59,285.00
Nov. 6, 2010 to Sept. 29, 2011	Hearing dates adjourned due to Commissioner availability on November 5, 2010	$85,677.50
Sept. 30, 2011 to Sept. 4, 2012	Conclusion of Staff's evidence in the merits hearing on September 29, 2011 and oral submissions in the merits hearing on September 4, 2012	$82,792.50
TOTAL COSTS		$659,043.75
DISBURSEMENTS		$10,093.01
GRAND TOTAL		$669,136.76

[91] Staff explained that its costs were calculated in accordance with Staff's schedule of hourly rates for various members of Staff of the Enforcement Branch ($205 an hour for Litigation Staff and $185 for Investigation Staff).

[92] Brown objected to the costs requested by Staff. In his written submissions, Brown stated that costs ought to be capped at $50,000.

[93] First of all, Brown submitted that there is no way for him to verify the times and activities recorded on Staff's Bill of Costs, which in his view seem excessive and exaggerated. Further, Brown submits that extra costs were incurred as a result of adjournments that were granted for Staff and because the Commission did not have availability. As stated by Brown on page 36 of his written submissions:

> It is the Respondent's view that the docket entries for Staff and its Legal team are skewed and excessive, and there is no means to validate these dockets.

> The Respondents are of the view that the excessive hours spent by Staff were done at its own discretion, to their own demise, when two pre-emptive merit Hearings, were adjourned: one in June 2008, by Staff, and the other in November 2010 by Staff and Commission, which are clearly circumstances outside the Respondent's control, but to which Staff is still seeking punishment against the Respondent's for these adjournments.
>
> Naturally, both adjournments have severely prejudiced the Respondent, causing them to incur additional and unnecessary costs related to this matter, which Staff is now attempting to recover. How can that be deemed fair and equitable?

[94] Brown emphasized that he was prejudiced by the adjournments as he was ready to proceed with the hearing on the merits in 2008. Therefore, in his view, at a minimum, he should not be responsible for any of the costs incurred after June 7, 2008. Referring back to the costs table in paragraph 90, costs incurred from February 2, 2006 up until June 6, 2008 covered costs in the first three time periods totalling $395,452.50 ($83,210.00 + $271,200.00 + $41,042.50).

[95] Brown also submitted that this matter was not all that complicated and Staff's costs should have been less. As submitted at page 37 of his written submissions:

> Other matters before the Commission, with much more complexity, and in certain cases, requiring other enforcement measures, have been heard and adjudicated by the Commission resulting, in substantially lesser costs ordered against that respective Respondent(s).
>
> In the Respondent's view, the costs being sought by Staff is outrageous and terribly excessive and does not account for any the prejudices that have been imposed on the Respondents due to the two (2) adjourned merit Hearings, outside of the Respondent's control. Furthermore, there is no way the Respondents can audit or validate the docket sheets of Staff or that of its legal team, to ensure accuracy and legitimacy.

[96] Brown also pointed out that he did try to settle with Staff and that he did enter into a lengthy Agreed Statement of Facts which contributed to a shorter hearing. According to Brown, he should also not be held responsible for costs incurred while engaging in good faith negotiations to settle and enter into an Agreed Statement of Facts.

[97] In reply oral submission, Staff provided a breakdown of the costs incurred during the time period of November 6, 2010 to September 29, 2011. The costs incurred in this time period were after the Commission informed the parties that due to Commissioner availability the hearing on the merits has to be rescheduled. Staff broke down those costs as follows:

Costs incurred from Nov. 5, 2010 to Sept. 18, 2011	$53,775.00
Costs incurred from Sept. 19, 2011 to Sept. 29, 2011	$31,902.50

[98] Staff had this to say about the breakdown of those costs:

> So from November 5, 2010 to September 18, 2011, which was the day before the hearing commenced, there's $53,775 in time, so the theory would be if the hearing got started on November 6th or thereabouts, we wouldn't have incurred that time or those costs and, therefore, we wouldn't be claiming them against Mr. Brown.
>
> (November 22, 2013 Transcript, page 7 line 25 to page 8 line 6)
>
> Obviously, the time under that 31,902.50, that's the amount of time necessary to put the case in, and we were going to incur that cost in either event, whenever the hearing got started.
>
> (November 22, 2013 Transcript, page 8, lines 18-21)

[99] In my view, it is inappropriate to expect a respondent to incur costs due to rescheduling the hearing on the merits that was a result of Commissioner availability. Staff has informed us that $53,775.00 was incurred in costs that would not have been incurred otherwise because of this rescheduling, so as a result I will subtract $53,775.00 from the total costs claimed by Staff and reduce the costs to $615,361.76.

[100] With respect to the adjournment requested by Staff on June 6, 2008, I note that while this did create some delay and extra cost, however, Brown also requested multiple adjournments which added to the delays and costs in this matter prior to the merits hearing, during the merits hearing, prior to the Sanctions and Costs Hearing and even during the Sanctions and Costs Hearing. Nevertheless, in addition, I also find that it is appropriate to reduce costs by $31,902.50 upon considering Brown's submissions and personal circumstances. As a result, the total costs payable are reduced to $583,459.26.

[101] Rule 18.2 of the Commission *Rules of Procedure* sets out a non-exhaustive list of factors to consider when exercising discretion to order costs. In the case before me the following factors are highly relevant:

- whether the respondent contributed to a shorter, more efficient, and more effective hearing, or whether the conduct of the respondent unnecessarily lengthened the duration of the proceeding;
- whether the respondent participated in the proceeding in a way that helped the Commission understand the issues before it;
- whether the respondent participated in a responsible, informed and well-prepared manner; and
- whether the respondent co-operated with Staff and disclosed all relevant information.

[102] While Brown did enter into an Agreed Statement of Facts, other actions of Brown lengthened the duration of this proceeding. Specifically, as set out in the Merits Decision at paragraphs 12 to 31, Brown requested multiple adjournments which led to cost and delay.

[103] Further, Brown was accommodated during the merits hearing and provided with the opportunity to provide: witness lists (Merits Decision, *supra* at para. 24), written interrogatories for Staff's witnesses (Merits Decision, *supra* at para. 26), affidavit evidence (Merits Decision, *supra* at para. 27), testimony by way of videoconference or by affidavit if he so chose (Merits Decision, *supra* at para. 27) in order to assist the Commission understand the issues before it. Although he requested such accommodation, in the end Brown did not provide witness lists, written interrogatories, or affidavits.

[104] Brown also did not cooperate with Staff and disclose all relevant information. As stated in paragraph 123 of the Merits Decision, "Staff decided to seek the appointment of a Receiver on the basis that $3,000,000 was unaccounted for, bank accounts were not being disclosed to Staff and Brown had continuously failed to explain where the missing funds had gone." This of course contributed to the length and costs of the investigation.

[105] Therefore, in the circumstances, I find that Brown and JFM shall pay costs, jointly and severally, in the amount of $583,459.26.

VIII. Decision on Sanctions and Costs

[106] In my view, it is important in this case to: (1) impose sanctions that reflect the seriousness of the securities law violations that occurred in this matter; and (2) impose sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[107] In my view, an order permanently removing Brown and JFM from the capital markets, requiring disgorgement of all funds obtained in breach of Ontario securities law and requiring JFM and Brown to pay a significant administrative monetary penalty is appropriate. Such an order will signal both to the Respondents and to like-minded individuals who engage in similar conduct will be dealt with severely by the Commission.

[108] I will issue a separate order giving effect to my decision on sanctions and costs and I order that:

(i) With respect to Brown:

(a) an order that Brown cease trading in securities permanently from the date of this order pursuant to clause 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by Brown is prohibited permanently, pursuant to clause 2.1 of subsection 127(1) of the Act;

(c) an order that any exemptions contained in Ontario securities law do not apply to Brown permanently, pursuant to clause 3 of subsection 127(1) of the Act;

(d) an order that Brown be reprimanded pursuant to clause 6 of subsection 127(1) of the Act;

(e) an order that Brown resign all positions he holds as a director or officer of an issuer, registrant or investment fund manager pursuant to clauses 7, 8.1, and 8.3 of subsection 127(1) of the Act;

(f) an order that Brown is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act; and

(g) an order that Brown is permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter pursuant to clause 8.5 of subsection 127(1) of the Act.

(ii) With respect to JFM:

(a) an order that JFM cease trading in securities permanently pursuant to clause 2 of subsection 127(1) of the Act;

(b) an order that the acquisition of any securities by JFM is prohibited permanently pursuant to clause 2.1 of subsection 127(1) of the Act; and

(c) an order that any exemptions contained in Ontario securities law do not apply to JFM permanently pursuant to clause 3 of subsection 127(1) of the Act.

(iii) With respect to both Brown and JFM:

(a) an order requiring Brown, on a joint and several basis with JFM, to pay an administrative penalty of $500,000, pursuant to paragraph 9 of section 127(1) of the Act, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act;

(b) an order requiring Brown, on a joint and several basis with JFM, to disgorge to the Commission $2,331,076.71 obtained as a result of his non-compliance with Ontario securities law, pursuant to paragraph 10 of section 127(1) of the Act, which is designated for allocation or use by the Commission pursuant to subsections 3.4(2)(b)(i) or (ii) of the Act; and

(c) an order requiring Brown, on a joint and several basis with JFM, to pay $583,459.26 for costs incurred in the investigation and hearing of this matter pursuant to subsection 127.1 of the Act.

(iv) After the payments set out in subparagraphs (iii)(a), (iii)(b) and (iii)(c) are made in full, as an exception to the provisions of paragraphs (i)(a), (i)(b) and (i)(c) of this Order above, Brown is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Brown and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order): (1) any “exchange-traded security” or “foreign exchange-traded security” within the meaning of National Instrument 21-101 – *Marketplace Operation* provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or (2) any security issued by a mutual fund that is a reporting issuer; (3) and exemptions are permitted for the purpose of trades described in this subparagraph. Until the entire amount of the payments set out in subparagraphs (iii)(a), (iii)(b) and (iii)(c) of this Order above, are paid in full, the prohibitions set out in subparagraphs (i)(a), (i)(b) and (i)(c) shall continue in force without any limitation as to time period.

Dated at Toronto this 12th day of February 2015.

“Vern Krishna”

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Innovative Composites International Inc.	04 February 2015	17 February 2015	17 February 2015	
AgriMinco Corp.	05 February 2015	18 February 2015		19 February 2015
Boomerang Oil, Inc.	06 February 2015	18 February 2015		20 February 2015
SEL Exchange Inc.	3 February 2015	13 February 2015	13 February 2015	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS TO REPORT THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Mahdia Gold Corp.	13 January 2015	26 January 2015	26 January 2015		

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORT OF TRADES ON FORM 45-106F1 AND 45-501F1

There are no Reports of Exempt Distribution on Forms 45-106F1 or 45-501F1 (Reports) in this Bulletin.

Reports filed on or after February 19, 2014 must be filed electronically.

As a result of the transition to mandated electronic filings, the OSC is considering the most effective manner to make data about filed Reports available to the public, including whether and how this information should be reflected in the Bulletin. In the meantime, Reports filed with the Commission continue to be available for public inspection during normal business hours.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Aston Hill Corporate Bond Fund
Aston Hill U.S. Growth Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated February 10, 2015
NP 11-202 Receipt dated February 13, 2015
Offering Price and Description:
Series A, F, I, UA, UF and X Units
Underwriter(s) or Distributor(s):
Aston Hill Asset Management Inc.
Promoter(s):
Aston Hill Asset Management Inc.
Project #2308028

Issuer Name:
Bombardier Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Base Shelf Prospectus dated February 12, 2015
NP 11-202 Receipt dated February 12, 2015
Offering Price and Description:
Cdn$2,500,000,000.00
Debt Securities
Preferred Shares
Class B Shares (Subordinate Voting)
Subscription Receipts
Warrants
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
UBS SECURITIES CANADA INC.
CIBC WORLD MARKETS INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
Promoter(s):
-
Project #2307518

Issuer Name:
Cara Operations Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 12, 2015
NP 11-202 Receipt dated February 13, 2015
Offering Price and Description:
$ * - * Subordinate Voting Shares
Price: $ * per Subordinate Voting Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #2308034

Issuer Name:
Crew Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated February 13, 2015
NP 11-202 Receipt dated February 13, 2015
Offering Price and Description:
$100,002,000 - 16,667,000 Common Shares
Price: $6.00 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
TD Securities Inc.
Cormark Securities Inc.
Macquarie Capital Markets Canada Ltd.
RBC Dominion Securities Inc.
Raymond James Ltd.
Peters & Co. Limited
BMO Nesbitt Burns Inc.
AltaCorp Capital Inc.
Canaccord Genuity Corp.
Dundee Securities Ltd.
FirstEnergy Capital Corp.
Promoter(s):
-
Project #2306670

Issuer Name:
Grenville Strategic Royalty Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated February 12, 2015
NP 11-202 Receipt dated February 12, 2015
Offering Price and Description:
$10,000,360 - 17,242,000 Common Shares
Price: $0.58 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
GMP Securities L.P.
Haywood Securities Inc.
Raymond James Ltd.
Clarus Securities Inc.
Cormark Securities Inc.
Laurentian Bank Securities Inc.
PI Financial Corp.
Promoter(s):
William R. Tharp
Steven Parry
Project #2306684

Issuer Name:
National Bank U.S. $ Global Tactical Bond Fund
Principal Regulator - Quebec
Type and Date:
Preliminary Simplified Prospectus dated February 13, 2015
NP 11-202 Receipt dated February 13, 2015
Offering Price and Description:
Units of Advisor, F and O Series.
Underwriter(s) or Distributor(s):
National Bank Investments Inc.
Promoter(s):
National Bank Investments Inc.
Project #2308140

Issuer Name:
Northern Dynasty Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated February 6, 2015
NP 11-202 Receipt dated February 10, 2015
Offering Price and Description:
$15,499,939 - 35,962,735 Common Shares on Exercise of 35,962,735 Special Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2306448

Issuer Name:
PowerShares FTSE RAFI Canadian Small-Mid Fundamental Index ETF
PowerShares FTSE RAFI Global+ Fundamental Index ETF
PowerShares FTSE RAFI U.S. Fundamental Index ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated February 12, 2015
NP 11-202 Receipt dated February 12, 2015
Offering Price and Description:
CAD Units and USD Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
INVESCO CANADA LTD.
Project #2307789

Issuer Name:
The Intertain Group Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated February 11, 2015
NP 11-202 Receipt dated February 11, 2015
Offering Price and Description:
$420,000,000 - 28,000,000 Subscription Receipts
Price: $15.00 per Subscription Receipt
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
NATIONAL BANK FINANCIAL INC.
CLARUS SECURITIES INC.
CANTOR FITZGERALD CANADA CORPORATION
Promoter(s):
-
Project #2305985

Issuer Name:
Aston Hill Voya Floating Rate Income Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated February 4, 2015
NP 11-202 Receipt dated February 10, 2015
Offering Price and Description:
Series A, F and I Units
Underwriter(s) or Distributor(s):
Aston Hill Asset Management Inc.
Promoter(s):
Aston Hill Asset Management Inc.
Project #2306860

Issuer Name:
Aston Hill Strategic Yield Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated Simplified Prospectus and Annual Information Form dated February 4, 2015 (the amended prospectus) amending and restating the Simplified Prospectus and Annual Information Form dated December 11, 2014
NP 11-202 Receipt dated February 10, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Aston Hill Asset Management Inc.
Promoter(s):
Aston Hill Asset Management Inc.
Project #2277236

Issuer Name:
Fidelity Global Consumer Industries Fund (Series A, Series B, Series F and Series O units)
Fidelity Canadian Bond Fund (Series A, Series B, Series F and Series O units)
Fidelity Canadian Short Term Bond Fund (Series A, Series B, Series F and Series O units)
Fidelity Corporate Bond Fund (Series A, Series B, Series F and Series O units)
Fidelity Tactical Fixed Income Fund (Series A, Series B, Series F and Series O units)
Fidelity Canadian Asset Allocation Fund (Series A, Series B, Series F, Series T5, Series T8,
Series S5, Series S8, Series F5, Series F8 and Series O units)
Fidelity Canadian Balanced Fund (Series A, Series B, Series F, Series T5, Series T8, Series S5,
Series S8, Series F5, Series F8 and Series O units)
Fidelity Global Asset Allocation Fund (Series A, Series B, Series F, Series T5, Series T8, Series
S5, Series S8, Series F5, Series F8 and Series O units)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated February 5, 2015 to the Annual Information Form dated October 29, 2014
NP 11-202 Receipt dated February 11, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
Promoter(s):
FIDELITY INVESTMENTS CANADA ULC
Project #2260605

Issuer Name:
Fidelity Premium Fixed Income Private Pool (Series B, Series I and Series F securities)
Fidelity Premium Tactical Fixed Income Private Pool (Series B, Series I and Series F securities)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated February 5, 2015 to the Annual Information Form dated September 29, 2014
NP 11-202 Receipt dated February 11, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
FIDELITY INVESTMENTS CANADA ULC
Project #2247318

Issuer Name:
Global Educational Trust Plan
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 9, 2015
NP 11-202 Receipt dated February 11, 2015
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
GLOBAL RESP CORPORATION
Promoter(s):
GLOBAL EDUCATIONAL TRUST FOUNDATION
Project #2298199

Issuer Name:
InterRent Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 11, 2015
NP 11-202 Receipt dated February 11, 2015
Offering Price and Description:
$75,001,600 (11,719,000 trust units)
Price: $6.40 per Offered Unit
Underwriter(s) or Distributor(s):
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
EURO PACIFIC CANADA, INC.
Promoter(s):
-
Project #2305324

Issuer Name:
Kirkland Lake Gold Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 10, 2015
NP 11-202 Receipt dated February 10, 2015
Offering Price and Description:
$30,015,000
6,900,000 Common Shares
$4.35 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
MacQuarie Capital Markets Canada Ltd.
Sprott Private Wealth LP
BMO Nesbitt Burns Inc.
Clarus Securities Inc.
Promoter(s):
-
Project #2303262

Issuer Name:
Nautilus Minerals Inc.
Principal Regulator - British Columbia
Type and Date:
Final Base Shelf Prospectus dated February 11, 2015
NP 11-202 Receipt dated February 11, 2015
Offering Price and Description:
Cdn$500,000,000.00
COMMON SHARES
WARRANTS
DEBT SECURITIES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2280966

Issuer Name:
Questrade Russell 1000 Equal Weight US Consumer Discretionary Index ETF Hedged to CAD
Questrade Russell 1000 Equal Weight US Health Care Index ETF Hedged to CAD
Questrade Russell 1000 Equal Weight US Industrials Index ETF Hedged to CAD
Questrade Russell 1000 Equal Weight US Technology Index ETF Hedged to CAD
Questrade Russell US Midcap Growth Index ETF Hedged to CAD
Questrade Russell US Midcap Value Index ETF Hedged to CAD
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 10, 2015
NP 11-202 Receipt dated February 13, 2015
Offering Price and Description:
Exchange traded fund at net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
QUESTRADE WEALTH MANAGEME INC.
Project #2295468

Issuer Name:
RBC Canadian Small & Mid-Cap Resources Fund
(Series A, Series D and Series F units)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated February 3, 2015 to the Simplified Prospectus and Annual Information Form dated June 27, 2014
NP 11-202 Receipt dated February 13, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Royal Mutual Funds Inc.
RBC Global Asset Management Inc.
Royal Mutual Funds Inc./RBC Direct Investing Inc.
Royal Mutual Funds Inc.
RBC Dominion Securities Inc.
Royal Mutual Funds Inc./RBD Direct Investing Inc.
The Royal Trust Company
Promoter(s):
RBC Global Asset Management Inc.
Project #2211387

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Firm Name Change	From: BMO Harris Investment Management Inc./BMO Harris Gestion De Placements Inc. To: BMO Private Investment Counsel Inc./BMO Gestion Privee De Placements Inc.	Investment Fund Manager, Exempt Market Dealer, Portfolio Manager, Commodity Trading Counsel and Commodity Trading Manager	February 2, 2015
New Firm	The Murray Wealth Group Inc.	Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	February 3, 2015
Change in Registration Category	TAHO Capital Management, Inc.	From: Investment Fund Manager, Exempt Market Dealer, Portfolio Manager To: Investment Fund Manager, Exempt Market Dealer, Portfolio Manager, Commodity Trading Manager	February 12, 2015
Change of Registration Category	Septentrion Macro Advisers Inc.	From: Portfolio Manager, Commodity Trading Manager, Exempt Market Dealer and Investment Fund Manager To: Portfolio Manager and Commodity Trading Manager	February 10, 2015
Change of Registration Category	Razorbill Advisors Inc.	From: Portfolio Manager and Commodity Trading Manager To: Portfolio Manager, Commodity Trading Manager and Exempt Market Dealer	February 13, 2015

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 TriAct Canada Marketplace LP – Notice of Withdrawal – Event Driven Matching

TRIACT CANADA MARKETPLACE LP

NOTICE OF WITHDRAWAL

EVENT DRIVEN MATCHING

TriAct has withdrawn a previously approved event driven matching facility. This functionality was approved by the OSC on November 11, 2014 (2014), 37 OSCB 10327.

13.2.2 Chi-X Canada ATS Limited – Notice of Proposed Changes and Request for Comment – MOC Orders

CHI-X CANADA ATS LIMITED
NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Chi-X Canada ATS Limited has announced its plans to implement the change described below for Chi-X Canada ATS on May 1st, 2015 subject to regulatory approval. We are publishing this Notice of Proposed Changes in accordance with the requirements set out in OSC Staff Notice 21-703 "Transparency of the Operations of Stock Exchanges and Alternative Trading Systems." Pursuant to OSC Staff Notice 21-703, market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by Monday, March 23, 2015 to:

Market Regulation Branch
Ontario Securities Commission
22nd Floor, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax 416 595 8940
Email: marketregulation@osc.gov.on.ca

And to

Matt Thompson
Chief Compliance Officer
Chi-X Canada ATS Limited
130 King St., W, Suite 2105
Toronto, ON M5X 1E3
Email: matthew.thompson@chi-x.com

Comments received will be made public on the OSC website. Upon completion of the Review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

CHI-X CANADA ATS LIMITED
NOTICE OF PROPOSED CHANGES

Chi-X Canada ATS Limited ("Chi-X Canada" or "we") has announced its plans to implement the change described below for Chi-X Canada ATS on May 1st, 2015 subject to regulatory approval. We are publishing this Notice of Proposed Changes in accordance with the requirements set out in OSC Staff Notice 21-703.

Summary of Proposed Changes

Chi-X Canada ATS ("CXC") is proposing to introduce a new market on close order type, or MOC Order. CXC MOC orders are hidden and available for entry from 8:30am to a time just shortly before 3:40pm. These orders are unpriced and once matched will reference the listing exchange's closing prices when they become available. Order matching will follow broker-time priority. Subscribers will be given the option to route any unmatched orders to the listing exchange MOC facility or to have these parts of the order be rejected back to them. Additionally, MOC orders can be entered as a Board lot, an Odd lot or a Mixed lot.

Regarding the time when orders will not be eligible to be received before 3:40pm we seek feedback from stakeholders regarding what time they believe will be optimal.

Expected Date of Implementation

The expected date of implementation is May 1st 2015.

Rationale and Relevant Supporting Analysis

Although multiple marketplaces now operate in Canada and competition exists for continuous trading, there continue to be specialty trading sessions that operate as individual monopolies. Such monopolies effectively hold customers captive for their services and enable providers to charge disproportionate high fees due to the lack of competitive forces that would otherwise drive prices lower.

The Toronto Stock Exchange's (TSX) Market-On-Close Facility (MOC) is one such example of this type of monopoly. This facility offers customers the assurance of receiving the closing price for MOC eligible securities. It offers a particular benefit to index funds that are benchmarked to the closing price of each index constituent at the close of each trading day. At this time, given that the TSX closing price is used by several index methodologies for pricing purposes, we believe that by offering an MOC order type that will be competitively priced will offer the benefit of lowering trading costs while also ensuring the appropriate benchmark can be achieved.

We note that the CSA recently made clear in its Notice and Request for Comment to Proposed change to the Order Protection Rule that any proposed regulatory restrictions on trading fees that may be introduced will address active trading fees and not specialty trading sessions. We consequently propose that the introduction of the MOC order type is a commercial solution to lowering trading costs for the Market-On-Close Facility which in turn will pass these savings back to the industry.

Expected Impact on Market Structure Impact of the Changes

Little to no impact is expected from this change as customers will continue to control their choice of services.

Expected impact of Fee Change or Significant Change on Chi-X Canada's Compliance with Ontario Securities Law and particularly with regard to Fair Access and the Maintenance of a Fair and Orderly Market

We see no impact from the proposed amendment on Chi-X Canada's ability to comply with the fair access provisions or the obligation to maintain a fair and orderly market under NI 21-101.

Consultation and Review

This change is being made in response to requests by subscribers.

Estimated Time Required by Subscribers and Vendors (or why a reasonable estimate is not provided)

Whether or not a subscriber or vendor requires any additional development to support this new order type will depends on the subscriber or vendor's system. It is likely some work may be required by certain front end systems which is anticipated to not require much time.

Discussion of any alternatives considered

No alternatives were considered.

Will Proposed Fee Change or Significant Change introduce a Fee Model or Feature that Currently Exists in other Markets or Jurisdictions

The proposed MOC order type will introduce a new feature to the Canadian market. We note however that similar order types exist in other regions. One example is Chi-X Australia that supports a Market-On-Close order that prints offsetting orders at the closing price of the listing exchange.

Any questions regarding these changes should be addressed to Matt Thompson, Chi-X Canada: matthew.thompson@chi-x.com, T: 416-304-6376

13.3 Clearing Agencies

13.3.1 OSC Staff Notice of Request for Comment – CDS Clearing and Depository Services Inc. (CDS®) – Material Amendments to CDS Fee Schedule – New York Link/DTC Direct Link Services

The Ontario Securities Commission is publishing for public comment the proposed CDS fee schedule changes for the New York Link and DTC Direct Link services. The changes will eliminate the current 3-tiered pricing structure, to be replaced by a single fee, and the introduction of a new fee, "New York Link and DTC Direct Link Liquidity Premium", to cover the increased costs of the CDS liquidity facility.

The comment period ends on March 20, 2015.

A copy of the CDS notice is published on our website at http://www.osc.gov.on.ca.

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