The Ontario Securities Commission

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March 12, 2015

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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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Notices / News Releases

1.1 Notices

1.1.1 CSA Staff Notice 11-328 – Notice of Local Amendments in Alberta and the Adoption of Multilateral Amendments in Yukon

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 11-328
Notice of Local Amendments in Alberta and the Adoption of Multilateral Amendments in Yukon

March 12, 2015

From time to time, a local jurisdiction may amend a national or multilateral instrument to reflect changes that affect activity only in that particular local jurisdiction. The CSA recognize that such local amendments may nonetheless be of interest or importance beyond the local jurisdiction and CSA staff are issuing this Notice to identify the sections of certain national instruments affected by local amendments in Alberta and the adoption of multilateral amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) in Yukon. For public convenience, CSA members in other jurisdictions will update the text of the applicable consolidated instruments on their websites to reflect these local amendments.

Local Amendments – Alberta

On October 31, 2014, the *Securities Amendment Act, 2014* amended the *Securities Act* (Alberta) (the **Act**) to create a framework for derivatives regulation. Among other things, the Act has been amended to add a definition of derivative and to replace throughout the Act, where necessary, the terms “exchange contract” and “futures contract” with the term “derivative”. As a result, in Alberta, several national instruments were amended to make conforming changes regarding this terminology.

On January 11, 2015, the Alberta Securities Commission, along with the other members of the CSA, implemented amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*; however, the amendments in Alberta vary from the other CSA jurisdictions in Sections 8.20 and 8.20.1.

Annex A to this Notice sets out the Alberta local amendments.

Adoption of Multilateral Amendments – Yukon

On December 31, 2014, the Office of the Yukon Superintendent of Securities implemented amendments to NI 58-101 *Disclosure of Corporate Governance Practices* in coordination with Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Quebec and Saskatchewan. The Office of the Yukon Superintendent of Securities reached the decision to adopt the amendments subsequent to the publication of Multilateral CSA Notice of Amendments to NI 58-101 dated October 15, 2014.

You may direct questions regarding this Notice to:

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kari.horn@asc.ca

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Ontario Securities Commission
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Annex A
Local Amendments – Alberta

1. Section 1.4(1) of National Instrument 21-101 Marketplace Operation is amended by deleting "Alberta and***".***

2. Section 1.2 of National Instrument 23-102 Use of Client Brokerage Commissions is amended

(a) in paragraph (a) by deleting "Alberta,***" and deleting "***and***" at the end of the paragraph,***

(b) by adding ", and***" at the end of paragraph (b), and***

(c) by adding the following paragraph:

(c) in Alberta, "security" includes a derivative.**.**

3. National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended

(a) in Section 1.2 by deleting "Alberta,***",***

(b) in Section 1.2 by renumbering it as subsection 1.2(1) and by adding the following subsection:

(2) In Alberta, a reference to "securities" in this Instrument includes "derivatives", unless the context otherwise requires.**,**

(c) in Section 8.2 by deleting "Alberta,***,***

(d) in Section 8.2 by renumbering it as subsection 8.2(1) and by adding the following subsection:

(2) Despite section 1.2, in Alberta a reference to "securities" in this Division excludes derivatives which are traded on an exchange pursuant to standardized terms determined by the exchange and cleared by a clearing agency.***,***

(e) in Section 8.20 by

i. replacing subsection (1) with the following:

(1) In British Columbia, New Brunswick and Saskatchewan, the dealer registration requirement does not apply to a person or company in respect of a trade in an exchange contract by the person or company if one of the following applies:

(a) the trade is made through a registered dealer, if the dealer is registered in a category that permits the trade unless, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade;

(b) the trade is made to a registered dealer who is purchasing as principal, if the dealer is registered in a category that permits the trade.***, and***

ii. replacing subsection (1.1) with the following:

(1.1) In Alberta, the dealer registration requirement does not apply to a person or company in respect of a trade in a derivative on an exchange pursuant to standardized terms determined by the exchange and cleared by a clearing agency:

(a) the trade is made through a registered dealer, if the dealer is registered in a category that permits the trade unless, in furtherance of the trade, the person or company seeking the exemption solicits or contacts directly any purchaser or prospective purchaser in relation to the trade;

(b) the trade is made to a registered dealer who is purchasing as principal, if the dealer is registered in a category that permits the trade.***, and***

iii. repealing subsections (2) and (3).

(f) in Part 8 by adding the following section:

8.20.1 Exchange contract trades through or to a registered dealer – Alberta, British Columbia, New Brunswick and Saskatchewan

(1) In British Columbia, New Brunswick and Saskatchewan, the dealer registration requirement does not apply to a registered adviser, or an advising representative or associate advising representative acting on behalf of the registered adviser, in respect of trading activities related to exchange contracts that are incidental to its providing advice to a client, if the trade is made through a dealer registered in a category that permits the trade or a dealer operating under an exemption from the dealer registration requirement.

(1.1) In Alberta, the dealer registration requirement does not apply to a registered adviser, or an advising representative or associate advising representative acting on behalf of the registered adviser, in respect of trading activities related to a trade in a derivative on an exchange pursuant to standardized terms determined by the exchange and cleared by a clearing agency that are incidental to its providing advice to a client, if the trade is made through a dealer registered in a category that permits the trade or a dealer operating under an exemption from the dealer registration requirement.**.**

(g) in Section 8.26(1) by deleting "Alberta,***,***

(h) in Section 8.26 by adding the following subsection:

(1.1) Despite section 1.2, in Alberta a reference to "securities" in this section excludes derivatives which are traded on an exchange pursuant to standardized terms determined by the exchange and cleared by a clearing agency.**.**

4. National Instrument 55-104 Insider Reporting Requirements and Exemptions is amended

(a) in Section 1.1(1) in the definition of "derivative***"***

i. in paragraph (a) by adding "Alberta,***" before "***New Brunswick***", and***

ii. in paragraph (b) by adding "Alberta***" before "***New Brunswick***",***

(b) in Section 1.1(1) in the definition of "exchange contract***"***

i. in paragraph (a) by deleting "Alberta,***", and***

ii. in paragraph (b) by deleting "Alberta,***".***

The amendments noted in items 1, 2, 3(a) – (d), (g) and (h) and 4 became effective on October 31, 2014 and the amendments noted in items 3(e) and (f) became effective on January 11, 2015.

1.1.2 Notice of Correction – RBC Global Asset Management Inc. and RBC Global Asset Management (UK) Limited

In *RBC Global Asset Management Inc and RBC Global Asset Management (UK) Limited* (2015), 38 OSCB 1880, at page 1884, the signature line mistakenly reads:

"John Turner"

It should read:

"James Turner"

1.2 Notices of Hearing

1.2.1 A25 Gold Producers Corp. 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
A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

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., c. S.5, as amended (the "Act"), at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on the 5th day of March, 2015 at 10:00 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 it is in the public interest to approve the Settlement Agreement between Staff of the Commission ("Staff") and A25 Gold Producers Corp., David Amar, James Stuart Adams, and Avi Amar (collectively, the "Respondents") pursuant to sections 127 and 127.1 of the Act;

BY REASON OF the allegations set out in the Statement of Allegations of Staff, dated December 18, 2013, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that, should the Settlement Agreement not be approved, the hearing on the merits in this proceeding shall commence at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on the 5th day of March, 2015 at 12:00 p.m. or as soon thereafter as the hearing can be held;

AND TAKE FURTHER NOTICE that any party to the proceeding 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 4th day of March, 2015.

"Josée Turcotte"
Secretary to the Commission

1.4 Notices from the Office of the Secretary

1.4.1 A25 Gold Producers Corp. et al.

FOR IMMEDIATE RELEASE
March 4, 2015

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

AND

IN THE MATTER OF
A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

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 A25 Gold Producers Corp., David Amar, James Stuart Adams, and Avi Amar in the above named matter.

The hearing will be held on March 5, 2015 at 10:00 a.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 March 4, 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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1.4.2 Future Solar Developments Inc. et al.

FOR IMMEDIATE RELEASE
March 4, 2015

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

AND

IN THE MATTER OF
FUTURE SOLAR DEVELOPMENTS INC.,
CENITH ENERGY CORPORATION, CENITH AIR INC.,
ANGEL IMMIGRATION INC. and XUNDONG QIN
also known as SAM QIN

TORONTO – The Commission issued an Order in the above named matter which provides that pursuant to subsections 127(1) and 127(8) of the Act, the Temporary Order is extended until June 12, 2015, or until further order of the Commission; and that the hearing of this matter is adjourned until June 8, 2015, at 3:00 p.m. or on such other date and time as provided by the Office of the Secretary and agreed to by the parties.

A copy of the Temporary Order dated March 2, 2015 is available at www.osc.gov.on.ca.

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1.4.3 Bluestream Capital Corporation et al.

FOR IMMEDIATE RELEASE
March 5, 2015

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

AND

IN THE MATTER OF
BLUESTREAM CAPITAL CORPORATION,
BLUESTREAM INTERNATIONAL INVESTMENTS INC.,
KROWN CONSULTING CORP., 1859585 ONTARIO LTD.
(operating as SOVEREIGN INTERNATIONAL INVESTMENTS) and PETER BALAZS

TORONTO – Following the hearing on the merits held *In Writing* 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:

(a) The Respondents have until March 16, 2015, to notify the Secretary of the Commission that they, or any of them, require an oral sanctions hearing, which, if required, will then be scheduled by the Secretary;

(b) Failing notification, Staff shall serve and file its written submissions on sanctions and costs by March 23, 2015;

(c) The Respondents shall serve and file their written submissions on sanctions and costs by April 20, 2015; and

(d) Staff shall serve and file reply submissions on sanctions and costs, if any, by April 27, 2015.

A copy of the Reasons and Decision dated March 4, 2015 and the Order dated March 4, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.4 A25 Gold Producers Corp. et al.

FOR IMMEDIATE RELEASE
March 5, 2015

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

AND

IN THE MATTER OF
A25 GOLD PRODUCERS CORP., DAVID AMAR, JAMES STUART ADAMS and AVI AMAR

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND A25 GOLD PRODUCERS CORP., DAVID AMAR, JAMES STUART ADAMS and AVI AMAR

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and A25 Gold Producers Corp., David Amar, James Stuart Adams, and Avi Amar.

The dates for the hearing on the merits in the above named matter scheduled for March 5, 6, 9, 10, 11, 12, and 13, 2015 are vacated.

A copy of the Order dated March 5, 2015 and the Settlement Agreement dated March 3, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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1.4.5 2 Wongs Make It Right Enterprises Ltd. et al.

FOR IMMEDIATE RELEASE
March 6, 2015

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

AND

IN THE MATTER OF
2 WONGS MAKE IT RIGHT ENTERPRISES LTD.,
1409779 ALBERTA LTD. o/a CANREIG EDMONTON,
INTEGRITY PLUS MANAGEMENT INC.,
KHOM WONG, also known as KHOM NGOAN HUYNH,
and JANEEN WONG, also known as JANEEN M. SCHIMPF

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

(a) Staff's application to proceed by way of written hearing is granted;

(b) the Respondents shall advise of any objections they have to proceeding by way of a written hearing by March 25, 2015;

(c) the Commission will consider objections from the Respondents, if any, in accordance with Rule 11.7 of the Rules, and may determine to proceed by way of an oral hearing;

(d) In the absence of any objections from the Respondents as set out in (b), or if the Commission receives an objection and rejects it, the following timelines apply:

1. Staff's materials in respect of the written hearing shall be served and filed no later than April 1, 2015;

2. The Respondents' responding materials, if any, shall be served and filed no later than April 29, 2015; and

3. Staff's reply materials, if any, shall be served and filed no later than May 6, 2015.

A copy of the Order dated March 5, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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1.4.6 Thomas Hochhausen and Douglas Bender

FOR IMMEDIATE RELEASE
March 6, 2015

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

AND

IN THE MATTER OF
THOMAS HOCHHAUSEN and DOUGLAS BENDER

TORONTO – The Commission issued an Order in the above named matter pursuant to Subsections 127(1) and 127(10) of the *Securities Act*.

A copy of the Order dated March 5, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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1.4.7 International Strategic Investments et al.

FOR IMMEDIATE RELEASE
March 9, 2015

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

AND

IN THE MATTER OF
INTERNATIONAL STRATEGIC INVESTMENTS,
INTERNATIONAL STRATEGIC INVESTMENTS INC.,
SOMIN HOLDINGS INC., AND
NAZIM GILLANI AND RYAN J. DRISCOLL

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 against the Respondents will be held at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on May 13, 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 March 6, 2015 and the Order dated March 6, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

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1.4.8 Julian Robert Ricci

FOR IMMEDIATE RELEASE
March 9, 2015

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

AND

IN THE MATTER OF
JULIAN ROBERT RICCI

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION
OF A PANEL OF THE INVESTMENT INDUSTRY
REGULATORY ORGANIZATION OF CANADA
DATED JUNE 9, 2014

TORONTO – The Commission issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated March 6, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

For media inquiries:

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1.4.9 2196768 Ontario Ltd. et al.

FOR IMMEDIATE RELEASE
March 9, 2015

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

AND

IN THE MATTER OF
2196768 ONTARIO LTD. carrying on business as
RARE INVESTMENTS, RAMADHAR DOOKHIE,
ADIL SUNDERJI and EVGUENI TODOROV

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 March 6, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
SECRETARY

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1.4.10 Bradon Technologies Ltd. et al.

FOR IMMEDIATE RELEASE
March 9, 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 redacted Compendium of Staff's Key Documents, Staff's redacted written closing submissions dated January 21, 2015 and the schedules attached thereto, and the written Reply Submissions of Staff dated February 7, 2015 are exempted from the Commission's sealing order; and

2. the record be unsealed in its entirety when the remaining exhibits have been redacted in accordance with the Commission's Practice Guideline – April 24, 2014, *Use and Disclosure of Personal Information in Ontario Securities Commission's Adjudicative Proceedings* to remove personal information of investors from the exhibits.

A copy of the Order dated February 24, 2015 is available at www.osc.gov.on.ca.

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1.4.11 Eric Inspektor

FOR IMMEDIATE RELEASE
March 10, 2015

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

AND

IN THE MATTER OF
ERIC INSPEKTOR

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

1. The confidential March 4 PHC is adjourned to March 11, 2015 at 9:30 a.m.; and

2. Each party shall provide to the other party its hearing brief by March 16, 2015.

The pre-hearing conference will be held *in camera*.

A copy of the Order dated March 4, 2015 is 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 Element Financial Corporation

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted from requirement to provide audited financial statements of the acquired business in a business acquisition report. Filer granted relief to include alternative financial information, comprising an audited statement of assets acquired and liabilities assumed, a 12 month audited financial forecast and additional information about the acquisition as financial statement disclosure for a significant acquisition.

Applicable Legislative Provisions

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

March 4, 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
ELEMENT FINANCIAL CORPORATION
(THE "FILER" OR "ELEMENT")

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 (the "**Exemption Sought**") 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 with the applicable Canadian securities regulatory authorities in connection with the acquisition by the Filer of certain railcars (the "**Railcars**") and underlying leases (the "**Leases**" and, together with the Railcars, the "**Railcar Assets**") pursuant to a vendor finance program with Trinity Industries Inc. (the "**Trinity Vendor Program**").

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

(a) the Ontario Securities Commission (the "**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, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation formed under the *Business Corporations Act* (Ontario).

2. The principal and head office of the Filer is located in Toronto, Ontario.

3. The financial year end of the Filer is December 31.

4. The Filer is an equipment finance company in the business of providing financing to customers to facilitate purchases of equipment by its customers. Financing provided by the Filer typically involves the provision of equipment loans and leases. The Filer originates business through vendor finance programs established with equipment manufacturers.

5. The Filer is a reporting issuer in each of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador.

6. To its knowledge, the Filer is not in default of securities legislation in any such jurisdiction in Canada in which it is a reporting issuer.

7. The common shares, Cumulative 5-Year Rate Reset Preferred Shares, Series A, Cumulative 5-Year Rate Reset Preferred Shares, Series C, Cumulative 5-Year Rate Reset Preferred Shares, Series E and 5.125% Extendible Convertible Unsecured Subordinated Debentures of the Filer are listed on the Toronto Stock Exchange under the symbols "EFN", "EFN.PR.A", "EFN.PR.C", "EFN.PR.E" and "EFN.DB", respectively.

The Trinity Vendor Program and the Prior Tranches

8. On December 9, 2013, Element established the Trinity Vendor Program with Trinity Industries Inc. ("**Trinity**") to acquire Railcar Assets from Trinity and/or its affiliates over a two year period.

9. Under the terms of the Trinity Vendor Program, Element and Trinity formed a strategic alliance whereby Element is presented with preferred opportunities from time to time to acquire Railcar Assets from Trinity on financial terms to be agreed upon by the parties at the time of offer.

10. The identification of the Railcar Assets offered by Trinity to Element under the Trinity Vendor Program may include Leases for: (a) newly manufactured Railcars; (b) existing Railcars; and (c) secondary market purchases of Railcars from third parties identified by Trinity, and is based on predetermined diversification criteria, including limits on Railcar type, use, Lease duration, average age and credit quality of the lessee. Offers of qualifying Railcar Assets are to be made to Element by Trinity from time to time for the duration of the Trinity Vendor Program. Trinity and Element meet on a quarterly basis to report on and consult with respect to material business and process issues under the Trinity Vendor Program.

11. In connection with the Trinity Vendor Program, Element previously acquired approximately US$619 million of Railcar Assets (collectively, the "**2013/14 Tranches**") pursuant to an approximately US$105 million tranche completed on December 19, 2013, an approximately US$396 million second tranche completed on January 28, 2014 and an approximately US$118 million third tranche completed on March 27, 2014.

12. On May 26, 2014, the Commission, on behalf of the Canadian Securities Administrators, granted an order in response to an exemptive relief application made by the Filer in connection with the 2013/14 Tranches (the "**2013/14 Relief**"). The 2013/14 Relief provided that in lieu of historical financial statements required by Part 8 of NI 51-102 the Filer would provide alternative financial information in the BAR in respect of the 2013/14 Tranches comprised of: (a) an audited statement of assets acquired and liabilities assumed as at the date of each 2013/14 Tranche; (b) a 12 month financial forecast accompanied by an independent auditor's report reflecting the financial impact of the 2013/14 Tranches; and (c) additional information about the Trinity Vendor Program, including a description of the terms of the Trinity Vendor Program and a description of the Railcars and Leases acquired in the 2013/14 Tranches which includes disclosure of

the Leases in default, if any, the year of manufacture of the Railcars, credit ratings of the lessees, remaining Lease terms of the Leases acquired and average initial Lease rates.

13. On May 27, 2014, the Filer filed a BAR in connection with the 2013/14 Tranches.

14. On June 27, 2014, in connection with the Trinity Vendor Program, Element acquired approximately US$121.4 million of Railcar Assets (the "**June Tranche**").

15. On September 9, 2014, the OSC, on behalf of the Canadian Securities Administrators, granted an order in response to an exemptive relief application made by the Filer in connection with the June Tranche (the "**June Relief**"). The June Relief provided that in lieu of historical financial statements required by Part 8 of NI 51-102 the Filer would provide alternative financial information in the BAR in respect of the June Tranche comprised of: (a) an audited statement of assets acquired and liabilities assumed as at June 27, 2014; (b) a 12 month financial forecast accompanied by an independent auditor's report reflecting the financial impact of the June Tranche; and (c) additional information about the Trinity Vendor Program, including a description of the terms of the Trinity Vendor Program and a description of the Railcars and Leases acquired in the June Tranche which includes disclosure of the Leases in default, if any, the year of manufacture of the Railcars, credit ratings of the lessees, remaining Lease terms of the Leases acquired and average initial Lease rates.

16. On September 10, 2014, the Filer filed a BAR in connection with the June Tranche.

17. On September 29, 2014, in connection with the Trinity Vendor Program, Element acquired approximately US$135.2 million of Railcar Assets (the "**September Tranch**e", and together with the 2013/14 Tranches and the June Tranche, the "**Prior Tranches**").

18. On December 15, 2014, the OSC, on behalf of the Canadian Securities Administrators, granted an order in response to an exemptive relief application made by the Filer in connection with the September Tranche (the "**September Relief**", and together with the 2013/14 Relief and the June Relief, the "**Prior Relief**"). The September provided that in lieu of historical financial statements required by Part 8 of NI 51-102 the Filer would provide alternative financial information in the BAR in respect of the September Tranche comprised of: (a) an audited statement of assets acquired and liabilities assumed as at September 29, 2014; (b) a 12 month financial forecast accompanied by an independent auditor's report reflecting the financial impact of the September Tranche; and (c) additional information about the Trinity Vendor Program, including a description of the terms of the Trinity Vendor Program and a description of the Railcars and Leases acquired in the September Tranche which includes disclosure of the Leases in default, if any, the year of manufacture of the Railcars, credit ratings of the lessees, remaining Lease terms of the Leases acquired and average initial Lease rates.

19. On December 15, 2014, the Filer filed a BAR in connection with the September Tranche.

The New Tranche

20. In connection with the Trinity Vendor Program, on December 19, 2014, Element acquired approximately US$117.6 million of additional Railcars Assets from Trinity (the "**New Tranche**").

21. When aggregated with the Prior Tranches pursuant to Section 8.3(12) of NI 51-102, the New Tranche constitutes a "significant acquisition" under Part 8 of NI 51-102.

22. Sections 8.4(1) and 8.4(2) of NI 51-102 require that the Filer include in the BAR the following annual financial statements in respect of the business acquired:

    (a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for (i) the year ended December 31, 2013 (audited); and (ii) the year ended December 31, 2012 (not required to be audited);

    (b) a statement of financial position as at December 31, 2013 (audited) and December 31, 2012 (not required to be audited); and

    (c) notes to the required financial statements.

23. Sections 8.4(3) and 8.4(3.1) of NI 51-102 require that the Filer include in the BAR the following interim financial statements in respect of the business acquired:

(a) a statement of comprehensive income, a statement of changes in equity and a statement of cash flows for the nine month period ended September 30, 2014 and comparative financial information for the period ended September 30, 2013;

(b) a statement of financial position as at September 30, 2014; and

(c) notes to the required financial statements.

24. Section 8.4(5) of NI 51-102 requires that the Filer include the following pro forma financial statements of the Filer:

(a) a pro forma statement of financial position of the Filer as at September 30, 2014 that gives effect, as if the New Tranche and Prior Tranches had taken place as at the date of the pro forma statement of financial position, to the New Tranche and Prior Tranches;

(b) a pro forma income statement of the Filer that gives effect to the New Tranche and Prior Tranches as if they had taken place on January 1, 2013 for the year ended December 31, 2013; and

(c) a pro forma income statement of the Filer that gives effect to the New Tranche and Prior Tranches as if they had taken place on January 1, 2014 for the nine month period ended September 30, 2014.

25. The purchase price for the New Tranche was determined by Element based on the contractual rental payments for each of the individual Leases, the credit profile of the individual lessees underlying the Leases and the Filer's estimates of the residual value of the Railcars forming the Railcar Assets at the end of their respective lease term.

26. The Filer did not acquire any physical facilities, employees, marketing systems, sales forces, operating rights, production techniques or trade names of Trinity in connection with the New Tranche. Such items remained with Trinity following the completion of the New Tranche.

27. The Filer did not acquire a separate entity, a subsidiary or a division of Trinity. Pursuant to the Trinity Vendor Program, Trinity presents Element with opportunities from time to time to purchase Railcars and underlying Leases. The acquisition of the Leases and Railcars is an equipment financing transaction under the Trinity Vendor Program consistent with Element's business as a finance company.

28. The financial information in respect of the individual Railcar Assets and operations of Trinity necessary to produce historical financial statements for the New Tranche has not been made available to Element. Trinity did not prepare financial statements in respect of the Railcar Assets. The Filer has made every reasonable effort to obtain historical financial statements for the Railcar Assets and has been unable to do so.

29. The Filer has established a financing program whereby it expects to securitize substantially all of the Railcar Assets acquired in the New Tranche through the sale of such Railcar Assets to a special purpose vehicle or other entity, which entity issues notes secured by such Railcar Assets.

30. The Filer does not believe that historical financial statements for the New Tranche would be relevant to investors or assist investors in understanding the New Tranche or the Trinity Vendor Program as any such historical financial statements would require extensive assumptions regarding Trinity and would not reflect the financial impact of the Railcar Assets in the hands of the Filer.

31. In lieu of the historical financial statements required by Part 8 of 51-102, the Filer proposes to provide alternative financial information (the "**Alternative Financial Information**") in respect of the New Tranche as follows:

(a) an audited statement of assets acquired and liabilities assumed as at December 19, 2014 that:

(i) is comprised of the Railcar Assets acquired and liabilities assumed in the New Tranche, such information to be presented in a single statement;

(ii) includes a statement that the statement of assets acquired and liabilities assumed is prepared using accounting policies that are permitted by IFRS and would apply to those line items if those line items were presented as part of a complete set of financial statements prepared in accordance with IFRS;

(iii) includes a description of the accounting policies used to prepare the statement;

(iv) is accompanied by an independent auditor's report that reflects the fact the statement was prepared in accordance with the basis of accounting disclosed in the notes to the statement;

(b) a 12 month financial forecast covering the period from January 1, 2015 to December 31, 2015 accompanied by an independent auditor's report on the financial forecast reflecting the financial impact of the New Tranche; and

(c) additional information about the Trinity Vendor Program, including a description of the terms of the Trinity Vendor Program and a description of the Railcars and Leases acquired in the New Tranche which includes disclosure of the leases in default, if any, the year of manufacture of the Railcars, credit ratings of the lessees, remaining lease terms of the leases acquired and average initial lease rates.

32. The Exemption Sought is consistent with the Prior Relief.

33. The Filer submits that the Exemption Sought would not be prejudicial to the public interest because the Alternative Financial Information will provide investors with the information material to their understanding of the New Tranche and the Filer believes that the presentation of financial statements prepared strictly in compliance with Section 8.4 of NI 51-102 would not be more meaningful or relevant to investors than the Alternative Financial Information.

34. Any subsequent acquisition under the Trinity Vendor Program that qualifies as a significant acquisition pursuant to Part 8 of NI 51-102 shall not be part of the exemptive relief sought hereunder.

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 Exemption Sought is granted in respect of the New Tranche, provided that the BAR for the New Tranche includes the Alternative Financial Information.

"Sonny Randhawa"
Manager, Corporate Finance Branch
Ontario Securities Commission

2.1.2 Domtar (Canada) Paper Inc. – s. 1(10)(a)(ii)

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).

March 4, 2015

Domtar (Canada) Paper Inc.
395 de Maisonneuve Blvd. West
Montreal (Quebec) H3A 1L6

Dear Sirs/Ms.:

Re: Domtar (Canada) Paper Inc. (the Applicant) – application for a decision under the securities legislation of Quebec, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut (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"
Director, Continuous Disclosure
Autorité des marchés financiers

2.1.3 NexGen Financial Limited Partnership and Sterling Mutuals Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement in s.3.2(2), NI 81-101 to deliver a fund facts document to investors for subsequent purchases of mutual fund securities made pursuant to pre-authorized investment plans, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2(2), 6.1.

December 16, 2014

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
NEXGEN FINANCIAL LIMITED PARTNERSHIP
(THE FILER)

AND

IN THE MATTER OF
STERLING MUTUALS INC.
(THE REPRESENTATIVE DEALER)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the mutual funds that are or will be managed from time to time by the Filer or by an affiliate or successor of such Filer (the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the requirement in the Legislation to send or deliver the most recently filed fund facts documents (the **Fund Facts**) at the same time and in the same manner as otherwise required for the prospectus (the **Fund Facts Delivery Requirement**), not apply in respect of purchases of securities of the Funds pursuant to a pre-authorized investment plan, including employee purchase plans, capital accumulation plans, or any other contracts or arrangements for the purchase of a specified amount on a dollar or percentage basis of securities of the Funds on a regularly scheduled basis (each an **Investment Plan**) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (**OSC**) 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, Ontario, Quebec, Newfoundland and Labrador and Northwest Territories (the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 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 head office of the Filer is located in Ontario.

2. The Funds are, or will be, reporting issuers in one or more of the Jurisdictions. Securities of the Funds are, or will be, qualified for sale on a continuous basis pursuant to a simplified prospectus.

3. Neither the Filer nor any of its Funds is in default of any of the requirements of securities legislation in any Jurisdiction.

4. Securities of each Fund are, or will be, distributed through dealers which are not affiliated with the Filer (individually, each dealer that distributes securities of a Fund managed by a Filer is a **Dealer** and collectively, the **Dealers**).

5. Each Dealer is, or will be, registered as a dealer in one or more of the Jurisdictions.

6. Securities of the existing Funds may be purchased through the Representative Dealer.

7. Each of the investors may be offered the opportunity to invest in a Fund on a regular or periodic basis pursuant to an Investment Plan.

8. Under the terms of an Investment Plan, an investor instructs a Dealer to accept additional contributions on a pre-determined frequency and/or periodic basis and to apply such contributions on each scheduled investment date to additional investments in specified Funds. The investor authorizes a Dealer to debit a specified account or otherwise makes funds available in the amount of the additional contributions. An investor may terminate the instructions, or give amended instructions, at any time.

9. An investor who established an Investment Plan (a **Participant**) received a copy of the latest simplified prospectus relating to the relevant securities of the Fund at the time the Investment Plan was established.

10. An agreement of purchase and sale of mutual fund securities is not binding on the purchaser if a Dealer receives notice of the intention of the purchaser not to be bound by the agreement of purchase and sale within a specified time period.

11. The terms of an Investment Plan are such that a Participant can terminate the instructions to the Dealer at any time. Therefore, there is no agreement of purchase and sale until a scheduled investment date arrives and the instructions have not been terminated. At this point, the securities are purchased.

12. With the implementation of the amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and consequential amendments as described in *Stage 2 of Point of Sale Disclosure for Mutual Funds – Delivery of Fund Facts* (**Stage 2 POS**), Dealers must deliver the Fund Facts in lieu of delivering the simplified prospectus to all investors, including the Participants, pursuant to the Fund Facts Delivery Requirement, effective June 13, 2014.

13. Prior to June 13, 2014, a Dealer not acting as an agent for the applicable investor was obligated to send or deliver to all Participants who purchase securities of the Funds pursuant to an Investment Plan, the latest simplified prospectus of the applicable Funds at the time the investor entered into the Investment Plan and thereafter, any subsequent simplified prospectus or amendment thereto (a **Renewal Prospectus**).

14. Pursuant to the Fund Facts Delivery Requirement, a Dealer not acting as agent of the purchaser, who receives an order or subscription for a security of a Fund offered in a distribution to which the Legislation applies, must, unless it has previously done so, send to the purchaser the Fund Facts most recently filed either before entering into an agreement of purchase and sale resulting from the order or subscription or not later than midnight of the second day, exclusive of Saturdays, Sundays and holidays, after entering into such agreement.

15. The Filer had obtained an exemption (**PAC Relief**) (pursuant to a decision document dated March 14, 2007) from the requirement to deliver the Renewal Prospectus of the Funds to Participants in an Investment Plan unless the Participant asks to receive them.

16. Due to the wording in the PAC Relief, it may not be possible or appropriate to “read in” Fund Facts in place of references to the simplified prospectus in the PAC Relief. Therefore, the Exemption Sought is required in order to provide certainty as to the disclosure document that must be delivered to Participants.

17. As the PAC Relief is unable to be used on or after June 13, 2014, since this date, the Fund Facts Delivery Requirement obligated each Dealer to deliver the Fund Facts to any new or existing Participant in an Investment Plan.

18. There are approximately 300 Participants who purchased securities of the Funds under an Investment Plan since June 13, 2014.

19. During the 4 month period between June 13, 2014 and October 30, 2014, the most current Fund Facts of each Fund was dated May 28, 2014 (**May Fund Facts**). On October 31, 2014, the Filer amended the prospectus in respect of each Fund, including the Fund Facts, to disclose a proposed change of control of the Filer. As a result, the most current Fund Facts during the period between November 17, 2014 (being the date of the receipt for the amendment) and the date of this Decision are the Fund Facts dated October 31, 2014 (**October Fund Facts**).

20. It is likely that any investor who became a Participant between June 13, 2014 and the date of this Decision (a **New Participant**) would have received a copy of the most current Fund Facts (being either the May Fund Facts or the October Fund Facts) from the investor's Dealer at the time of initial investment, in compliance with the Dealer's obligation under the Fund Facts Delivery Requirement.

21. To the extent that a New Participant made a subsequent purchase of securities of a Fund under the Investment Plan following November 17, 2014, it is likely that such investor would not have received the October Fund Facts from their Dealer, and so would no longer have the most current Fund Facts document.

22. It is likely that any investor who was a Participant in an Investment Plan established prior to June 13, 2014 (a **Current Participant**) did not receive either the May Fund Facts or the October Fund Facts from their Dealer and so would not have been sent or delivered the most current Fund Facts for any investment in a Fund made following June 13, 2014.

23. On November 19, 2014, investors in the Funds were mailed notice of the proposed change of control of the Filer (the **Notice**), as required pursuant to National Instrument 81-102 *Investment Funds*.

24. Although certain Participants may not have received the October Fund Facts, the Notice informs such investors about the proposed material change that triggered the Filer's obligation to amend its Fund Facts and therefore each Participant is not prejudiced by the failure to be sent or delivered the October Fund Facts.

25. To ensure that all Participants have received the most current Fund Facts, the Filer will send or deliver the October Fund Facts to all investors who are Participants as of the date of this Decision, together with a notice advising the Participant of the information described in condition 1 below.

26. The proposed amendments to NI 81-101 and consequential amendments as described in Stage 3 of the Point of Sale Disclosure for Mutual Funds – Point of Sale Delivery of Fund Facts, and published for comment on March 26, 2014, contemplate an exception from the Fund Facts Delivery Requirement for Investment Plans (**Proposed Exception**).

27. Until the Canadian Securities Administrators publish final amendments to implement the Proposed Exception, the Filer would like the Investment Plans to continue to operate in the same manner and using the same process as the existing regime under the PAC Relief with the exception of the delivery of a Fund Facts to a Participant instead of a simplified prospectus.

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 Exemption Sought is granted provided that:

1. A one-time notice is sent or delivered to current Participants, no later than the next scheduled annual reminder notice required by the Filer's current PAC Relief, in lieu of receiving a Fund Facts for any purchase of securities under the Investment Plan, advising the current Participants:

    (a) that they will not receive the Fund Facts document when they purchase securities of the applicable Fund under the Investment Plan unless

        (i) the Participant requests the Fund Facts; or

        (ii) the Participant has previously instructed that they want to receive the simplified prospectus, in which case, the Fund Facts will now be sent or delivered in lieu of the simplified prospectus;

    (b) that they may request the most recently filed Fund Facts by calling a specified toll-free number or by sending a request via mail or e-mail to a specified address or email address;

(c) that the most recently filed Fund Facts will be sent or delivered to any Participant that requests it at no cost to the Participant;

(d) that the most recently filed Fund Facts may be found either on the SEDAR website or on the Filer's website;

(e) that they will not have the right to withdraw from an agreement of purchase and sale (a Withdrawal Right) in respect of a purchase of securities of any Funds made pursuant to an Investment Plan, but they will have the right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into any Renewal Prospectus contains a misrepresentation (a Misrepresentation Right), whether or not they request the Fund Facts; and

(f) that they will continue to have the right to terminate the Investment Plan at any time before a scheduled investment date.

2. Investors who become Participants and invest in any Funds on or after the date of this Decision will be sent or delivered the most recently filed Fund Facts document and a one-time notice advising the Participants:

(a) that they will not receive the Fund Facts when they subsequently purchase securities of the applicable Fund under the Investment Plan unless they request the Fund Facts at the time they initially invest in an Investment Plan or subsequently request the Fund Facts by calling a specified toll-free number or by sending a request via mail or email to a specified address or email address;

(b) that the most recently filed Fund Facts will be sent or delivered to any Participant that requests it at no cost to the Participant;

(c) that the most recently filed Fund Facts may be found either on the SEDAR website or on the Filer's website;

(d) that they will not have a Withdrawal Right in respect of a purchase made pursuant to an Investment Plan, other than in respect of the initial purchase and sale, but they will have a Misrepresentation Right, whether or not they request the Fund Facts; and

(e) that they have the right to terminate an Investment Plan at any time before a scheduled investment date.

3. Following either 1 or 2 above, Participants will be advised annually in writing as to how they can request a current Fund Facts document and that they have a Misrepresentation Right.

The decision, as it relates to a Jurisdiction, will terminate on the effective date following any applicable transition period for any legislation or rule dealing with the Proposed Exception.

"Vera Nunes"
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.4 UBS Global Asset Management (Canada) Inc. as manager of the UBS (Canada) Global Allocation Fund and UBS (Canada) American Equity Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Funds deemed to cease to be reporting issuers under securities legislation – Funds unable to rely upon CSA Staff Notice 12-307 because they are reporting issuers in British Columbia, and, in the case of one of the Funds, units are held by more than 50 persons – Funds are distributed on exempt basis to accredited investors pursuant to available regulatory exemptions from prospectus requirements – Funds not available to the retail public.

Applicable Legislative Provisions

Securities Act (Ontario), s.1(10)(a)(ii).

March 4, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA,
QUEBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR,
PRINCE EDWARD ISLAND, YUKON, NORTHWEST TERRITORIES, NUNAVUT
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
UBS GLOBAL ASSET MANAGEMENT (CANADA) INC.
(the Applicant) AS MANAGER OF THE
UBS (CANADA) GLOBAL ALLOCATION FUND AND
UBS (CANADA) AMERICAN EQUITY FUND
(the Funds and together with the Applicant, the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Funds no longer be reporting issuers under the Legislation (the **Exemptive Relief Sought**).

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Applicant

1. The Applicant is a corporation existing under the laws of the Province of Nova Scotia with its head office located in Toronto, Ontario.

2. The Applicant is registered under the *Securities Act* (Ontario) (the **OSA**) as a dealer in the category of exempt market dealer, as an adviser in the category of portfolio manager and as an investment fund manager and, under the *Commodity Futures Act* (Ontario), as an adviser in the category of commodity trading manager. The Applicant is also registered as a dealer in the category of exempt market dealer and as an adviser in the category of portfolio manager in all other provinces and territories of Canada, as an investment fund manager in Québec and Newfoundland and Labrador and as an adviser under the *Commodity Futures Act* in Manitoba.

3. The Applicant is currently the portfolio manager and investment fund manager of the Funds.

4. The Applicant and the Funds are not in default of securities, commodity futures or derivatives legislation in any jurisdiction in Canada.

The Funds

5. The Funds are established as Ontario domiciled trusts.

6. The Funds are reporting issuers in each of the Jurisdictions and are not in default of any of their respective obligations thereunder.

7. The details of the simplified prospectuses for the Funds are as follows:

   a) UBS (Canada) Global Allocation Fund, Series A, D and F Units – Simplified Prospectus dated as of June 2, 2014; and

   b) UBS (Canada) American Equity Fund, Series A, D and F Units – Simplified Prospectus dated February 19, 2014,

   (collectively, the **Simplified Prospectuses**).

8. The Funds are authorized to issue one class of units (**Units**) and within each class an unlimited number of series of Units (each a **Series**) and an unlimited number of Units of each Series. Each Fund has three Series of Units that are qualified by the Simplified Prospectuses and at least one other Series that is not qualified by the Simplified Prospectuses.

9. As at the date hereof, there are no unitholders in the Series of the Funds that are qualified by the Simplified Prospectuses. The purpose of creating these series was part of making the Funds available for retail distribution. Shortly after the simplified prospectuses were receipted, there was a change of priorities which did not include the distribution of retail funds. The Applicant does not intend to sell any Units under the Simplified Prospectuses and does not intend to renew the Simplified Prospectuses following their lapse date.

10. The unitholders in the other (non-prospectus qualified) Series of Units of these Funds are either institutional accredited investors that do not rely on the Simplified Prospectuses to purchase Units or are clients of an affiliate of the Applicant who is also a registrant (UBS Investment Management Canada Inc., hereinafter, the "**Affiliate**"). The Affiliate offers investment management and financial counselling services, primarily to high net worth individuals (each, a "**Client**") through a managed account ("**Managed Account**"). Each Client who wishes to receive the investment management services of the Affiliate executes a written agreement whereby the Client appoints the Affiliate to manage the investment portfolio of the Client with discretionary authority to trade in securities for the Managed Account without obtaining the specific consent of the Client on the underlying securities that will be held in the Managed Account. At no time have these underlying Clients of the Affiliate been provided with the simplified prospectus or advised that there was a simplified prospectus. The Funds are only distributed to Managed Account Clients of the Affiliate or institutional accredited investors of the Applicant and therefore not widely distributed.

11. The Funds do not charge a commission or a management fee directly to investors of the Affiliate. The Applicant and the Affiliate have entered into a bulk subscription agreement whereby the Affiliate pays the Applicant a fee based on the assets under management. With respect to the relationship between the Client and the Affiliate, under its agreement, the Client agrees to pay the Affiliate a management fee. The terms of the fees are detailed in each Client's agreement. However, there are no redemption fees applicable to the Funds.

12. Each institutional accredited investor receives a monthly statement showing current holdings and a summary of all transactions carried out in their account as well as a comprehensive quarterly portfolio reporting package that includes current holdings, capital allocation, asset mix and performance. The Applicant will send a notice to each institutional accredited investor that holds units of the Funds in their next comprehensive quarterly portfolio reporting package advising that the Funds have ceased to be reporting issuers and explaining the implications of such fact. As there are no redemption charges payable by unitholders in the Funds, all institutional accredited investors will be permitted to instruct the Applicant if they no longer wish to be invested in the Funds and there will be no fees associated with such redemption. In addition, the Affiliate has confirmed that they send each Client a monthly statement showing current holdings and a summary of all transactions carried out in their Managed Account during the month as well as a comprehensive quarterly portfolio reporting package that includes current holdings, capital allocation, asset mix and performance. The Applicant will send a notice to the Affiliate to distribute to all Clients of the Funds in their next comprehensive quarterly portfolio reporting package advising that the Funds have ceased to be reporting issuers and explaining the implications of such fact. All Clients will be permitted to instruct the Affiliate if they no longer wish to be invested in the Funds and there will be no fees associated with such redemption.

13. Investors in the Funds are only comprised of and will in the future only be comprised of investors who qualify as "accredited investors" as defined in NI 45-106. In the bulk subscription agreement with the Affiliate, the Affiliate represents to the Applicant that all investors that the Affiliate puts into the Funds are accredited investors falling within either the income test or the asset test as set forth in NI 45-106 Part 1, definition of Accredited Investor, paragraphs (j), (k) and (l). This is confirmed annually by the Affiliate to the Applicant in a certificate addressed to the Applicant.

14. Ceasing to be a reporting issuer for each of these Funds will reduce the regulatory and financial burdens associated therewith, such as the costs of the preparation of Management Reports of Fund Performance and maintenance of an Independent Review Committee. This will be a benefit to the Unitholders, as the management expense ratio of the Funds will be reduced to the extent the costs and expenses associated with these requirements will no longer be applicable.

15. Each of the Funds will continue as pooled funds subject to NI 81-106 (being mutual funds in Ontario) and the regulatory obligations therein, and will continue to be subject to the self-dealing and conflict of interest requirements in Part XXI of the OSA.

16. The UBS (Canada) Global Allocation Fund is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because it is a reporting issuer in British Columbia. The UBS (Canada) Global Allocation Fund does represent that:

    a. the outstanding units of the UBS (Canada) Global Allocation Fund including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada.

    The UBS (Canada) American Equity Fund is not eligible to use the simplified procedure under CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* because (a) it is a reporting issuer in British Columbia and (b) it has more than 51 unitholders in Canada.

    The Funds represent that:

    a. no securities of any of the Funds are traded on a marketplace as defined in National Instrument 21-101 Marketplace Operation;

    b. the Applicant is applying for a decision that the Funds are not a reporting issuer in all of the jurisdictions in Canada in which they are currently a reporting issuer;

    c. the Funds are not in default of their obligations under the Legislation as a reporting issuer.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Sarah B. Kavanagh"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Future Solar Developments Inc. et al. – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF
FUTURE SOLAR DEVELOPMENTS INC.,
CENITH ENERGY CORPORATION,
CENITH AIR INC., ANGEL IMMIGRATION INC.
and XUNDONG QIN also known as SAM QIN

TEMPORARY ORDER
(Subsections 127(1) and 127(8))

WHEREAS on February 17, 2015, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order (the "Temporary Order") pursuant to subsection 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering the following:

1. pursuant to paragraph 2 of subsection 127(1) of the Act, Future Solar Developments Inc. ("FSD"), Cenith Energy Corporation ("Cenith Energy"), Cenith Air Inc. ("Cenith Air"), Angel Immigration Inc. ("Angel Immigration") (together the "Corporate Respondents") and Xundong Qin (also known as Sam Qin) ("Qin") (together with the Corporate Respondents, the "Respondents") cease trading in all securities;

2. pursuant to paragraph 2 of subsection 127(1) of the Act, all trading in the securities of FSD shall cease; and

3. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to any of the Respondents;

AND WHEREAS the Commission ordered that pursuant to subsection 127(6) of the Act, the Temporary Order shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on February 19, 2015, the Commission issued a Notice of Hearing (the "Notice of Hearing") to consider the extension of the Temporary Order, to be held on March 2, 2015 at 11:00 a.m.;

AND WHEREAS Staff of the Commission ("Staff") served the Respondents with copies of the Temporary Order, the Notice of Hearing and Staff's supporting materials as evidenced by Affidavit of Service filed with the Commission;

AND WHEREAS the Commission held a hearing on March 2, 2015 and counsel for Staff and Qin, on behalf of himself and behalf of the Corporate Respondents, attended the hearing;

AND WHEREAS the Panel considered the submissions of Staff and the Respondents and the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that pursuant to subsections 127(1) and 127(8) of the Act, the Temporary Order is extended until June 12, 2015, or until further order of the Commission;

IT IS FURTHER ORDERED that the hearing of this matter is adjourned until June 8, 2015, at 3:00 p.m. or on such other date and time as provided by the Office of the Secretary and agreed to by the parties.

DATED at Toronto this 2nd day of March, 2015.

"Mary G. Condon"

2.2.2 Bluestream Capital 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
BLUESTREAM CAPITAL CORPORATION,
BLUESTREAM INTERNATIONAL INVESTMENTS INC.,
KROWN CONSULTING CORP., 1859585 ONTARIO LTD.
(operating as SOVEREIGN INTERNATIONAL INVESTMENTS)
and PETER BALAZS

ORDER
(Sections 127 & 127.1)

WHEREAS on March 12, 2014, 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 March 11, 2014, in respect of Bluestream Capital Corporation ("**Bluestream Capital**"), Bluestream International Investments Inc. ("**Bluestream International**"), Krown Consulting Corporation ("**Krown Consulting**"), 1859585 Ontario Inc. (operating as Sovereign International Investment) ("**Sovereign International**") (together, the "**Corporate Respondents**") and Peter Balazs ("**Balazs**") (collectively, the "**Respondents**").

AND WHEREAS on June 26, 2014, the Commission ordered that the hearing on the merits commence on January 12, 2015 at 10:00 a.m. at the offices of the Commission;

AND WHEREAS on December 29, 2014, the Commission converted this matter to a hearing in writing;

AND WHEREAS on March 4, 2015, the Commission issued its Reasons and Decision on the merits in this matter;

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

IT IS ORDERED THAT:

(a) The Respondents have until March 16, 2015, to notify the Secretary of the Commission that they, or any of them, require an oral sanctions hearing, which, if required, will then be scheduled by the Secretary;

(b) Failing notification, Staff shall serve and file its written submissions on sanctions and costs by March 23, 2015;

(c) The Respondents shall serve and file their written submissions on sanctions and costs by April 20, 2015; and

(d) Staff shall serve and file reply submissions on sanctions and costs, if any, by April 27, 2015.

DATED at Toronto this 4th day of March, 2015.

"Alan J. Lenczner"

2.2.3 Besra Gold Inc. – s. 144

Headnote

Section 144 of the Securities Act (Ontario) – application for a partial revocation of a cease trade order issued by the Commission – issuer cease traded due to failure to file certain continuous disclosure documents required by Ontario securities law – issuer has applied for a partial revocation of the cease trade order to permit the issuer to proceed with a private placement with accredited investors (as such term is defined in National Instrument 45-106 Prospectus and Registration Requirements) – issuer will use proceeds from private placement to prepare and file continuous disclosure documents and pay related fees – partial revocation granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
BESRA GOLD INC.

ORDER
(Section 144)

WHEREAS the securities of Besra Gold Inc. (the "**Applicant**") are subject to a temporary cease trade order made by the Director of the Ontario Securities Commission (the "**Commission**") dated December 17, 2014 pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act and a further cease trade order issued by the Director of the Commission on December 29, 2014 pursuant to paragraph 2 of subsection 127(1) of the Act (together, the "**Cease Trade Order**") directing that trading in securities of the Applicant cease until further order by the Director;

AND WHEREAS additional cease trade orders were issued by the British Columbia Securities Commission (the **BCSC**) on December 17, 2014 and the Autorité des marchés financiers (the **AMF**) on January 5, 2015 (the "**Additional Cease Trade Orders**");

AND WHEREAS notwithstanding the Additional Cease Trade Orders, the Applicant has applied only to the Commission pursuant to section 144 of the Act for a partial revocation of the Cease Trade Order;

AND WHEREAS the Applicant has represented to the Commission that:

1. The Applicant is incorporated under the *Canada Business Corporations Act*.

2. The Applicant's registered office is located at Suite 500, 10 King Street East, Toronto, Ontario MC3 15C.

3. The Applicant is a reporting issuer under the securities legislation (the "**Legislation**") of the Provinces of Ontario, British Columbia, Alberta and Quebec.

4. The Applicant's principal regulator, as determined in accordance with part 3 of National Policy 11-203 *Process for exemptive relief applications in multiple jurisdictions* (**NP 11-203**) is Ontario.

5. The Cease Trade Order and Additional Cease Trade Orders were issued due to the failure of the Applicant to file its financial statements, management's discussion and analysis and certifications of the foregoing filings for the year ended June 30, 2014 and the interim period ended September 30, 2014.

6. The Applicant is not currently subject to a cease trade order from the Alberta Securities Commission, however, the Applicant is currently in default in Alberta for failure to file the following:

   (a) audited annual financial statements for the year ended June 30, 2014;

   (b) management's discussion and analysis for the year ended June 30, 2014;

(c) certifications of the foregoing filings for the year ended June 30, 2014;

(d) interim financial statements for the period ended September 30, 2014;

(e) management's discussion and analysis for the period ended September 30, 2014; and

(f) certifications of the foregoing interim filings for the period ended September 30, 2014.

7. The Applicant is not, to its knowledge, in default of any of the requirements of the Act, or the rules and regulations made pursuant thereto, other than the following:

(a) the Applicant failed to file audited annual financial statements for the year ended June 30, 2014;

(b) the Applicant failed to file management's discussion and analysis for the year ended June 30, 2014;

(c) the Applicant failed to file certifications of the foregoing filings for the year ended June 30, 2014;

(d) the Applicant failed to file interim financial statements for the period ended September 30, 2014;

(e) the Applicant failed to file management's discussion and analysis for the period ended September 30, 2014;

(f) the Applicant failed to file certifications of the interim filings for the period ended September 30, 2014; and

(g) the Applicant failed to pay annual participation fees.

8. The Applicant has not previously been subject to a cease trade order of the Commission or in any other jurisdiction, other than the Cease Trade Order and the Additional Cease Trade Orders, and a Management Cease Trade Order dated October 10, 2014 issued by the Commission related to the Applicant's failure to file audited annual financial statements and management's discussion and analysis for the year ended June 30, 2014 and certifications of the foregoing filings for such period.

9. The Applicant's authorized capital consists of an unlimited number of common shares (the "**Common Shares**"), of which 378,781,274 Common Shares are issued and outstanding.

10. Other than (i) outstanding incentive stock options exercisable for an aggregate of 43,883,264 Common Shares, (ii) outstanding warrants to purchase an aggregate of 54,551,652 Common Shares, (iii) outstanding convertible securities convertible into an aggregate of 48,014,958 Common Shares, no Common Shares are reserved for issuance pursuant to outstanding convertible securities.

11. Prior to the date hereof, the Applicant has not remedied the deficiencies described in the Cease Trade Order as it does not have sufficient funds to do so.

12. The Applicant proposes to raise up to $15,000,000 by way of a limited private placement financing (the "**Proposed Financing**") in order to

(i) raise sufficient funds to prepare and file the outstanding continuous disclosure documents and related filing fees to bring it into compliance with its obligations as a reporting issuer, and the associated fees of professional advisors; and

(ii) pay outstanding accounts and fund continuing operations, as described more fully in representation 15 below. The Proposed Financing will be conducted on a prospectus exempt basis and will be limited to no more than three subscribers (each, a "**Potential Investor**") who is an accredited investor (as such term is defined in National Instrument 45-106 *Prospectus and Registration Exemptions*).

13. The trades under the Proposed Financing will take place in Ontario.

14. The Applicant has undertaken to bring itself back into compliance with its continuous disclosure obligations by filing all outstanding continuous disclosure documents that are required to be filed in all jurisdictions and to pay all outstanding filing fees and participation fees owing within sixty (60) days of the date of closing of the Proposed Financing.

15. Following closing of the Proposed Financing, the Applicant intends to use the proceeds from the Proposed Financing solely to permit the Applicant to satisfy certain outstanding debts, filing fees and other expenses as described below:

Description		Cost
(a)	the settlement of certain debt with its auditors to facilitate the release of the audit for the year ended June 30, 2014 and to complete other filings	$560,000
(b)	the services of legal counsel with regard to the Proposed Financing, the application for this Order and the final full revocation orders and other miscellaneous costs and expenses of the foregoing including application fees	$20,000
(c)	payments to supplier creditors	$4,850,000
(d)	payments to financial creditors and financing costs	$4,950,000
(e)	ongoing project acquisition costs	$2,500,000
(f)	general working capital	$2,120,000
Total Financing Required		**$15,000,000**

16. Prior to the completion of the Proposed Financing, the Applicant will:

    (a) provide each Potential Investor with a copy of the Cease Trade Order;

    (b) provide each Potential Investor with a copy of the Order herein sought; and

    (c) obtain and, upon receipt, provide to the Commission a signed and dated acknowledgement from each Potential Investor in the Proposed Financing, which clearly states that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future and that all of the Applicant's securities, including the securities to be issued in connection with the Proposed Financing, will remain subject to the Cease Trade Order until it is revoked.

17. The Applicant believes that the proceeds from the Proposed Financing will be sufficient to bring its continuous disclosure obligations up to date and to pay all related outstanding fees. The Applicant will use the proceeds of the Proposed Financing first to pay for the costs associated with bringing its continuous disclosure record up to date. Any remaining amounts will be used to pay for other costs as outlined in representation 15 above.

18. The Applicant has applied for a partial revocation of the Cease Trade Order so as to permit the Applicant to proceed with the Proposed Financing as described in this Order. As the Proposed Financing will involve trades in securities of the Applicant, the Proposed Financing cannot be completed without a variation of the Cease Trade Order.

19. The Applicant is not considering, nor is it involved in any discussion relating to a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.

20. Following the filing of all outstanding continuous disclosure documents and the payment of all outstanding filing fees owing, the Applicant intends to make a further application to the Commission for a full revocation of the Cease Trade Order and also intends to make an application to the BCSC and the AMF for a full revocation of the Additional Cease Trade Orders.

21. The Common Shares of the Applicant are listed and posted for trading on the Australian Stock Exchange ("**ASX**") and the OTC Markets ("**OTC**"), however, trading in such shares on the ASX was suspended on October 10, 2014 because of the Applicant's failure to file its financial statements for the year ended June 30, 2014. The Common Shares were de-listed from the Toronto Stock Exchange and downgraded from OTCQB® to the OTC Pink® marketplace on October 30, 2014 because of the Applicant's failure to file its financial statements for the year ended June 30, 2014.

22. Other than on the ASX and OTC, the securities of the Applicant are not currently listed or quoted on any exchange or market in Canada or elsewhere.

AND WHEREAS considering the application and the recommendation of the staff of the Commission;

AND WHEREAS the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 144 of the Act, that the Cease Trade Order be and is hereby partially revoked solely to permit the trades and acts in furtherance of trades that are necessary for and are in connection with the Proposed

Financing and all other acts in furtherance of the Proposed Financing that may be considered to fall within the definition of "trade" within the meaning of the Act, provided that:

(a) prior to the completion of the Proposed Financing, each Potential Investor in the Proposed Financing:

(i) receives a copy of the Cease Trade Order;

(ii) receives a copy of this Order; and

(iii) receives a written notice from the Applicant, and provides a signed and dated acknowledgement to the Applicant, clearly stating that all of the Applicant's securities, including the securities to be issued in connection with the Proposed Financing, will remain subject to the Cease Trade Order until it is revoked, and that the granting of this Order does not guarantee the issuance of a full revocation order in the future;

(b) prior to the completion of the Proposed Financing, the Applicant provides the signed and dated written acknowledgments referred to in paragraph (a)(iii) above to staff of the Commission; and

(c) the Order will terminate on the earlier of the closing of the Proposed Financing and 60 days from the date hereof.

DATED at Toronto, Ontario on this 4th day of March, 2015.

"Kathryn Daniels"
Deputy Director, Corporate Finance

2.2.4 A25 Gold Producers Corp. et al. – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

ORDER
(Subsections 127(1) and 127.1)

WHEREAS on December 19, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) 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 orders, as specified therein, against and in respect of A25 Gold Producers Corp. ("A25"), David Amar, James Stuart Adams ("Adams") and Avi Amar (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 December 18, 2013;

AND WHEREAS the Respondent(s) entered into a Settlement Agreement with Staff dated March 3, 2015 (the "Settlement Agreement") in which the Respondent(s) agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 19, 2013, subject to the approval of the Commission;

AND WHEREAS on March 4, 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 a 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 Avi Amar has undertaken to the Commission (i) to refrain from acting or becoming an officer or director of an issuer or affiliated company of an issuer, as such terms are defined in the Act, until he attends and passes a course, acceptable to Staff, the subject matter of which includes the study of the duties of directors and officers; and (ii) to refrain from trading in any securities or derivatives until such time as he attends and passes a course, acceptable to Staff, the subject matter of which includes the study of the standards and codes of ethics underlying securities regulation;

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 Settlement Agreement is approved;
2. trading in any securities or derivatives by and/or of A25 cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;
3. trading in any securities or derivatives by David Amar cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;
4. trading in any securities or derivatives by Adams cease for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2 of subsection 127(1) of the Act;
5. trading in any securities or derivatives by Avi Amar cease for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2 of subsection 127(1) of the Act;
6. acquisition of any securities by A25 and David Amar is prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
7. acquisition of any securities by Adams is prohibited for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
8. acquisition of any securities by Avi Amar is prohibited for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
9. any exemptions contained in Ontario securities law do not apply to A25 or David Amar permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;
10. any exemptions contained in Ontario securities law do not apply to Adams for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act;
11. any exemptions contained in Ontario securities law do not apply to Avi Amar for a period of 2 years commencing on the date of the

Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act;

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

13. David Amar, Adams, and Avi Amar (the "Individual Respondents") resign all positions that they hold as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

14. the Individual Respondents resign all positions that they hold as a director or officer of a registrant, pursuant to paragraph 8.1 of the Act;

15. the Individual Respondents resign all positions that they hold as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of the Act;

16. David Amar is prohibited from becoming or acting as a director or officer of any issuer permanently, pursuant to paragraph 8 of subsection 127(1) of the Act;

17. Adams is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8 of subsection 127(1) of the Act;

18. Avi Amar is prohibited from becoming or acting as a director or officer of any issuer for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8 of subsection 127(1) of the Act;

19. David Amar is prohibited from becoming or acting as a director or officer of any registrant permanently, pursuant to paragraph 8.2 of the Act;

20. Adams is prohibited from becoming or acting as a director or officer of any registrant for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.2 of the Act;

21. Avi Amar is prohibited from becoming or acting as a director or officer of any registrant for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.2 of the Act;

22. David Amar is prohibited from becoming or acting as a director or officer of any investment fund manager permanently, pursuant to paragraph 8.4 of the Act;

23. Adams is prohibited from becoming or acting as a director or officer of any investment fund manager for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.4 of the Act;

24. Avi Amar is prohibited from becoming or acting as a director or officer of any investment fund manager for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement], pursuant to paragraph 8.4 of the Act;

25. A25 and David Amar are prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

26. Adams is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

27. Avi Amar is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

28. A25 and David Amar each pay an administrative penalty in the amount of $150,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act;

29. Adams pay an administrative penalty in the amount of $50,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act;

30. A25 disgorge to the Commission the amount of $2,000,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 10 of subsection 127(1) of the Act;

31. David Amar disgorge to the Commission the amount of $797,917, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 10 of subsection 127(1) of the Act;

32. David Amar shall pay costs in the amount of $75,000, pursuant to section 127.1 of the Act;

33. Adams shall pay costs in the amount of $25,000, pursuant to section 127.1 of the Act; and

34. The Individual Respondents' right to (i) call at any residence for the purpose of trading in securities, or (ii) telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in securities, is cancelled, pursuant to subsection 37(1) of the Act.

DATED at Toronto, this 5th day of March, 2015.

"Mary G. Condon"

2.2.5 Duluth Metals Limited – s. 1(6) of the OBCA

Headnote

Subsection 1(6) of the Business Corporations Act (Ontario) – application for an order that than issuer is deemed to have ceased to be offering its securities to the public – the applicant is a wholly owned subsidiary of another issuer as a result of a plan of arrangement under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, C. B.16, AS AMENDED
(THE "OBCA")

AND

IN THE MATTER OF
DULUTH METALS LIMITED
(THE "APPLICANT")

ORDER
(SUBSECTION 1(6) OF THE OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the "**Commission**") for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA, and has an authorized capital consisting of an unlimited number of common shares (the "**Shares**"). The Applicant has no other securities outstanding, including debt securities.

2. The head office of the Applicant is located at 80 Richmond Street West, Suite 1500, Toronto, Ontario M5H 2A4.

3. On January 20, 2015, Antofagasta Investment Company Limited ("**Antofagasta**"), a wholly-owned subsidiary of Antofagasta plc, completed the acquisition of the Applicant by way of a court-approved plan of arrangement under Section 182 of the OBCA, pursuant to which Antofagasta acquired 117,537,422 Shares of the Applicant, which, together with the 24,341,673 Shares already held by Antofagasta and its affiliates, represented 100% of the issued and outstanding Shares of the Applicant as at such date.

4. The Shares, which were listed on the Toronto Stock Exchange (the "**TSX**") under the symbol "DM", were delisted from the TSX at the close of business on January 22, 2015.

5. No securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or on any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

6. The Applicant is not a reporting issuer, or the equivalent, in Ontario or in any other jurisdiction in Canada.

7. The Applicant has no intention to seek public financing by way of an offering of securities.

8. Upon the granting of the relief requested, the Applicant will not be an "offering corporation" or equivalent in any jurisdiction of Canada.

AND UPON the Commission being satisfied to do so would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purpose of the OBCA.

DATED at Toronto on this 27th day of February, 2015.

"Catherine Bateman"
Ontario Securities Commission

"Judith Robertson"
Ontario Securities Commission

2.2.6 2 Wongs Make It Right Enterprises Ltd. et al. –- ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
2 WONGS MAKE IT RIGHT ENTERPRISES LTD.,
1409779 ALBERTA LTD. o/a CANREIG EDMONTON,
INTEGRITY PLUS MANAGEMENT INC.,
KHOM WONG, also known as KHOM NGOAN HUYNH,
and JANEEN WONG, also known as JANEEN M. SCHIMPF

ORDER
(Subsections 127(1) and 127(10) of the Securities Act)

WHEREAS on January 29, 2015, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of 2 Wongs Make It Right Enterprises Ltd. ("2 Wongs"), 1409779 Alberta Ltd. o/a CANREIG Edmonton ("779"), Integrity Plus Management Inc. ("Integrity Plus"), Khom Wong, also known as Khom Ngoan Huynh ("Khom"), and Janeen Wong, also known as Janeen M. Schimpf ("Janeen") (collectively, the "Respondents");

AND WHEREAS on January 28, 2015, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on March 2, 2015, Staff brought an application to convert the matter to a written hearing, in accordance with Rule 11.5 of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4168 (the "Rules"), and subsection 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended;

AND WHEREAS on March 2, 2015, Staff filed an affidavit of service sworn by Lee Crann on February 25, 2015, and marked as Exhibit 1, indicating steps taken by Staff to serve the Respondents with the Notice of Hearing, Statement of Allegations, and Staff's disclosure materials;

AND WHEREAS the Respondents did not appear, although properly served;

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) Staff's application to proceed by way of written hearing is granted;

(b) the Respondents shall advise of any objections they have to proceeding by way of a written hearing by March 25, 2015;

(c) the Commission will consider objections from the Respondents, if any, in accordance with Rule 11.7 of the Rules, and may determine to proceed by way of an oral hearing;

(d) In the absence of any objections from the Respondents as set out in (b), or if the Commission receives an objection and rejects it, the following timelines apply:

1. Staff's materials in respect of the written hearing shall be served and filed no later than April 1, 2015;

2. The Respondents' responding materials, if any, shall be served and filed no later than April 29, 2015; and

3. Staff's reply materials, if any, shall be served and filed no later than May 6, 2015.

DATED at Toronto this 5th day of March, 2015.

"Mary Condon"

2.2.7 Thomas Hochhausen and Douglas Bender – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
THOMAS HOCHHAUSEN and DOUGLAS BENDER

ORDER
(Subsections 127(1) and 127(10) of the Securities Act)

WHEREAS on January 20, 2015, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Thomas Hochhausen ("Hochhausen") and Douglas Bender ("Bender");

AND WHEREAS on January 20, 2015, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on February 27, 2014, Hochhausen and Bender entered into a Settlement Agreement and Undertaking with the Alberta Securities Commission (the "Settlement Agreement");

AND WHEREAS in the Settlement Agreement, Hochhausen and Bender each agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta;

AND WHEREAS pursuant to paragraph 5 of subsection 127(10) of the Act, an order may be made in respect of a person or company if the person or company has agreed with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements;

AND WHEREAS on March 2, 2015, Staff appeared before the Commission, made submissions, and filed (i) an affidavit of service sworn by Lee Crann, and marked as Exhibit 1, outlining steps taken by Staff to serve Hochhausen and Bender with the Statement of Allegations, Notice of Hearing, and Staff's disclosure materials; (ii) Staff's Hearing Brief, marked as Exhibit 2 containing the consents from each of Hochhausen and Bender to the making of this order, and (iii) an affidavit of service sworn by Lee Crann, and marked as Exhibit 3, outlining steps taken by Staff to serve Hochhausen and Bender with Staff's Hearing Brief;

AND WHEREAS Hochhausen and Bender did not appear, but consented to the making of this order which reciprocates the Settlement Agreement;

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) against Hochhausen that:

i. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Hochhausen resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager, except that Hochhausen may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public;

ii. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Hochhausen be prohibited until February 27, 2024 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that Hochhausen may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public; and

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities laws do not apply to Hochhausen until February 27, 2024;

(b) against Bender that:

i. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Bender resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager, except that Bender may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public;

ii. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Bender be prohibited until February 27, 2019 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that Bender may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public; and

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities laws do not apply to Bender until February 27, 2019.

DATED at Toronto this 5th day of March, 2015.

"Mary Condon"

2.2.8 International Strategic Investments 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
INTERNATIONAL STRATEGIC INVESTMENTS,
INTERNATIONAL STRATEGIC INVESTMENTS INC., SOMIN HOLDINGS INC.,
AND NAZIM GILLANI AND RYAN J. DRISCOLL

ORDER
(Sections 127 & 127.1)

WHEREAS on March 6, 2012, 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 March 5, 2012, in respect of International Strategic Investments, International Strategic Investments Inc., (together "**ISI**"), Somin Holdings Inc. ("**Somin**") (collectively, the "**Corporate Respondents**"), Nazim Gillani ("**Gillani**") and Ryan J. Driscoll ("**Driscoll**") (collectively, the "**Respondents**");

AND WHEREAS on December 12, 2013, the Commission converted this matter to a hearing in writing;

AND WHEREAS the parties made themselves available for cross-examinations, which occurred over the course of three hearing days;

AND WHEREAS on March 6, 2015, the Commission issued its Reasons and Decision on the merits in this matter;

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

IT IS ORDERED THAT:

(a) Staff shall serve and file its written submissions on sanctions and costs by March 31, 2015;

(b) the Respondents shall serve and file their written submissions on sanctions and costs by April 24, 2015;

(c) Staff shall serve and file reply submissions on sanctions and costs, if any, by May 4, 2015;

(d) the hearing to determine sanctions and costs against the Respondents will be held at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on May 13, 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

(e) 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 proceedings.

DATED at Toronto this 6th day of March, 2015.

"Alan J. Lenczner"

2.2.9 2196768 Ontario Ltd. 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
2196768 ONTARIO LTD. carrying on business as RARE INVESTMENTS,
RAMADHAR DOOKHIE, ADIL SUNDERJI and EVGUENI TODOROV

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on November 22, 2011, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in relation to a Statement of Allegations filed by Staff of the Commission ("**Staff**") on that date pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, in respect of 2196768 Ontario Ltd carrying on business as RARE Investments ("**RARE**"), Ramadhar Dookhie ("**Dookhie**"), Adil Sunderji ("**Sunderji**") and Evgueni Todorov ("**Todorov**");

AND WHEREAS on March 15, 2013, the Commission approved a Settlement Agreement, dated March 13, 2013, between Staff and Sunderji;

AND WHEREAS the Commission conducted a hearing on the merits with respect to the remaining respondents, RARE, Dookhie and Todorov (collectively, the "**Respondents**") on May 22, 23, 24 and 27, 2013 and September 5, 2013 (the "**Merits Hearing**");

AND WHEREAS following the Merits Hearing, the Commission issued its Reasons and Decision with respect to the Respondents on June 27, 2014;

AND WHEREAS on June 27, 2014, the Commission ordered that:

1. Staff shall serve and file its written submissions on sanctions and costs by July 23, 2014;

2. The Respondents shall serve and file their written submissions on sanctions and costs by August 15, 2014;

3. Staff shall serve and file any reply submissions on sanctions and costs by August 25, 2014; and

4. The hearing to determine sanctions and costs against the Respondents will be held at the offices of the Commission at 20 Queen Street West, Toronto, ON, on Thursday, August 28, 2014 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 WHEREAS on June 27, 2014, the Commission further ordered 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;

AND WHEREAS on June 30, 2014, new counsel for Dookhie filed a Notice of Change of Lawyer to indicate that he is the lawyer of record for Dookhie;

AND WHEREAS Staff filed its written submissions on sanctions and costs dated July 17, 2014, a Bill of Costs dated July 18, 2014, a Brief of Authorities and the Affidavit of Laura Filice sworn July 23, 2014;

AND WHEREAS on August 6, 2014, counsel for Dookhie requested an adjournment of the hearing to determine sanctions and costs scheduled for August 28, 2014, and Staff did not object to his request;

AND WHEREAS on August 8, 2014, counsel for Dookhie informed the Commission and the other parties that he was able to conduct the hearing as originally scheduled;

AND WHEREAS counsel for Dookhie filed Dookhie's written submissions dated August 11, 2014 and the Affidavit of Ramadhar Dookhie sworn August 19, 2014;

AND WHEREAS on August 28, 2014, a hearing to consider sanctions and costs in this matter (the "**Sanctions and Costs Hearing**") was held before the Commission, Staff and counsel for Dookhie appeared and made oral submissions, and Dookhie appeared in person;

AND WHEREAS on August 28, 2014, following the Sanctions and Costs Hearing, the Commission was informed that Todorov did not attend the hearing due to a misunderstanding as to the date of the Sanctions and Costs Hearing;

AND WHEREAS on September 17, 2014, the Panel permitted Todorov to make oral submissions on sanctions and costs at a continuation of the Sanctions and Costs Hearing on November 4, 2014;

AND WHEREAS counsel for Dookhie advised the parties and the Panel to proceed in his absence, with the opportunity to file submissions in reply;

AND WHEREAS on November 4, 2014, Staff and Todorov appeared and made submissions;

AND WHEREAS on March 6, 2015, the Commission released its Reasons and Decision on Sanctions and Costs with respect to the Respondents;

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) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by RARE, Dookhie and Todorov shall cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by RARE, Dookhie and Todorov shall be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to RARE, Dookhie and Todorov permanently;

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

(e) pursuant to paragraph 7 of subsection 127(1) of the Act, Dookhie and Todorov shall resign any position that they hold as a director or officer of an issuer;

(f) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Dookhie and Todorov shall be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(g) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dookhie and Todorov shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(h) pursuant to paragraph 9 of subsection 127(1) of the Act, Dookhie shall pay an administrative penalty of $250,000 for his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, Todorov shall pay an administrative penalty of $150,000 for his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(j) pursuant to paragraph 10 of subsection 127(1) of the Act, Dookhie and RARE shall jointly and severally disgorge to the Commission a total of $722,210.58 that was obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(k) pursuant to paragraph 10 of subsection 127(1) of the Act, Todorov shall disgorge to the Commission a total of $324,471.42 that was obtained as a result of his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(l) pursuant to subsection 127.1 of the Act, Dookhie and RARE shall jointly and severally pay $184,499.45 for the costs incurred in this matter;

(m) pursuant to subsection 127.1 of the Act, Todorov shall pay $82,891.05 for the costs incurred in this matter.

DATED at Toronto this 6th day of March, 2015.

"Edward Kerwin"

2.2.10 ITOK Capital Corp. – s. 144

Headnote

Section 144 of the Securities Act (Ontario) – application for partial revocation of a cease trade order – issuer cease traded due to failure to file interim financial statements and audited annual financial statements with the Commission – issuer applied for partial revocation of the cease trade order to permit the issuer to proceed with a private placement with an accredited investor (as such term is defined in National Instrument 45-106 Prospectus and Registration Requirements) resident in Alberta – issuer will use proceeds from private placement to prepare and file continuous disclosure documents and pay related fees – partial revocation granted subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
ITOK CAPITAL CORP.

ORDER
(Section 144)

WHEREAS the securities of ITOK Capital Corp. (the **Filer**) are subject to a temporary cease trade order made by the Director dated May 13, 2013 under paragraph 2 of subsection 127(1) and subsection 127(5) of the Act and a further cease trade order issued by the Director on May 27, 2013 pursuant to subsection 127(1) of the Act (together, the **OSC CTO**) directing that trading in the securities of the Filer cease until the OSC CTO is revoked;

AND WHEREAS the Filer has applied to the Ontario Securities Commission (the **Commission**) pursuant to section 144(1) of the Act for a partial revocation of the OSC CTO (the **Application**);

AND WHEREAS the Filer has represented to the Commission that:

1. The Filer is a corporation that was incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990, c. B.16 (Ontario) on 21 January 2005.

2. The Filer's registered and head office is located at 200 Davis Drive, Suite #730, Newmarket, Ontario, L3Y 2R4.

3. The Filer is a reporting issuer in Ontario, British Columbia and Alberta. The Filer is not a reporting issuer in any other jurisdictions in Canada.

4. The authorized capital of the Filer consists of an unlimited number of common shares and an unlimited number of preference shares. As at the date hereof, 1,333,332 common shares (the **Shares**) and no preference shares were issued and outstanding.

5. The Filer was originally a Capital Pool Company as defined in Exchange Policy 2.4 of the TSX Venture Exchange and listed on the TSX Venture Exchange on May 8, 2008. The Filer did not complete its Qualifying Transaction by May 12, 2010, in accordance with the Exchange Policies and its Shares were transferred to the NEX Exchange of the TSX Venture Exchange. The Shares were subsequently delisted from the NEX Exchange on January 30, 2014, for failure to pay the quarterly listing and maintenance fees.

6. The OSC CTO was issued as a result of the Filer's failure to file its annual audited financial statements, annual management's discussion and analysis (**MD&A**), and certification of annual filings for the year ended 31 December 2012; and interim unaudited financial statements, interim management's discussion and analysis, and certification of interim filings for the interim period ended 31 March 2013 (the **Unfiled Documents**).

7. The Unfiled Documents were not filed in a timely manner as a result of financial difficulties.

8. Subsequent to the failure to file the Unfiled Documents, the Filer also failed to file the following documents:

   a. annual audited financial statements for the year ended December 31, 2013;

   b. interim unaudited financial statements for the interim periods ended June 30, 2013, September 30, 2013, March 30, 2014, June 30, 2014, and September 30, 2014;

   c. MD&A relating to the financial statements referred to in paragraphs (a) and (b) above; and

   d. certificates required to be filed in respect of the financial statements referred to in paragraphs (a) and (b) above under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

   (together with the Unfiled Documents, the **Unfiled Continuous Disclosure**).

9. The Filer is also subject to cease trade orders issued by the British Columbia Securities Commission on May 13, 2013 and the Alberta Securities Commission on August 26, 2013, for failure to file required filings under applicable securities laws (the **Other CTOs**). Applications for partial revocations of the Other CTOs were made concurrently with the Application.

10. The Filer is seeking to complete the issuance of a secured convertible debenture in the principal amount of Cdn$90,000.00 (the **Debenture**) with NCEG Ltd., a private Alberta corporation (the **Investor**). The Investor is an accredited investor (as such term is defined in National Instrument 45-106 *Prospectus and Registration Exemptions*). The Debenture will have a maturity date of one year from the date of issue, bear interest at a rate of 12% per annum and be convertible (as to both principal and interest) into units of the Filer at a price of $0.05 per unit (the **Units**). Each unit will be comprised of one common share and one common share purchase warrant entitling the holder to purchase one additional common share at a price of $0.05 per share for a period of 5 years from the date the Debenture is issued. The conversion of the Debenture into Units is subject to the approval of the shareholders of the Filer.

11. The Investor is not a related party of the Filer and will not become an insider of the Filer on the completion of the Debenture.

12. The Filer intends to prepare and file the Unfiled Continuous Disclosure within a reasonable period of time following the completion of the Debenture.

13. Other than the failure to file the Unfiled Continuous Disclosure, the Filer is not in default of any of the requirements of the Act or the rules and regulations made pursuant thereto. The Filer's SEDAR and SEDI profiles are up to date.

14. After the completion of the Debenture, the Filer intends to file the Unfiled Continuous Disclosure and pay all outstanding fees. The Filer also intends to apply to the applicable securities regulators to have the OSC CTO and the Other CTOs fully revoked.

15. The following is a breakdown of the use of proceeds of the Debenture based upon raising $90,000:

Description	**Cost**
Fees and penalties for late filing of financial disclosures and expenses for the lifting of the Cease Trade Orders (including legal fees)	$32,000.00
Cost associated with preparation and filing of Unfiled Continuous Disclosure (including audit fees for 2012, 2013 and 2014 and legal fees)	$25,000.00
Outstanding office rent for 2011 and 2012	$6,933.57
Outstanding fees payable to NEX	$8,475.00
Past audit fees due	$9,168.00
Working capital	$8,423.43
TOTAL	$90,000.00

16. The Filer reasonably believes that the proceeds of the Debenture will be sufficient to bring its continuous disclosure obligations up to date and pay all related outstanding fees and provide it with sufficient funds to maintain its business.

17. As the Debenture would involve a trade of securities and acts in furtherance of trades, the Debenture could not be completed without a partial revocation of the OSC CTO.

18. The Debenture will be completed in accordance with all applicable laws.

19. Prior to the completion of the Debenture, the Filer will:

    (a) provide the Investor with:

        i. a copy of the OSC CTO; and

        ii. a copy of the partial revocation order for which this application has been made; and

    (b) obtain from the Investor a signed and dated acknowledgement which clearly states that all of the Filer's securities, including the securities issued in connection with the Debenture, will remain subject to the OSC CTO and the Other CTOs, and that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.

20. Upon issuance of this order, the Filer will issue a press release announcing the order and the intention to complete the Debenture. Upon completion of the Debenture, the Filer will issue a press release and file a material change report. As other material events transpire, the Filer will issue appropriate press releases and file material change reports as applicable.

AND UPON considering the application and the recommendations of staff of the Commission;

AND UPON the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to s.144 of the Act, that the OSC CTO is partially revoked solely to permit trades in securities of the Filer (including for greater certainty, acts in furtherance of trades in securities of the Filer) that are necessary for and are in connection with the Debenture, provided that:

(a) prior to the completion of the Debenture, the Filer will:

    i. provide to the Investor a copy of the OSC CTO;

    ii. provide to the Investor a copy of this partial revocation order; and

    iii. obtain from the Investor a signed and dated acknowledgement, which clearly states that all of the Filer's securities, including the securities issued in connection with the Debenture, will remain subject to the OSC CTO, and the Other CTOs, and that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.

(b) The Filer will make available a copy of the written acknowledgement referred to in paragraph (a)iii. to staff of the Commission on request; and

(c) This order will terminate on the earlier of the closing of the Debenture and 60 days from the date hereof.

DATED at Toronto, Ontario on this 3rd day of March, 2015.

“Shannon O’Hearn”
Manager, Corporate Finance
Ontario Securities Commission

2.2.11 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 written 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 on February 11, 2015, the Commission granted the adjournment request and ordered that the hearing on the merits continue at 10:00 a.m. on February 24, 2015, for the purpose of hearing oral closing submissions of the parties;

AND WHEREAS on February 24, 2015, Staff and counsel for Compta and Bradon appeared before the Commission and made closing submissions. German and Ensign did not appear;

AND WHEREAS Staff indicated that the Compendium of Key Documents and Staff's written closing submissions and the schedules attached thereto have been redacted to remove investors' personal information;

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 redacted Compendium of Staff's Key Documents, Staff's redacted written closing submissions dated January 21, 2015 and the schedules attached thereto, and the written Reply Submissions of Staff dated February 7, 2015 are exempted from the Commission's sealing order; and

2. the record be unsealed in its entirety when the remaining exhibits have been redacted in accordance with the Commission's Practice Guideline – April 24, 2014, *Use and Disclosure of Personal Information in Ontario Securities Commission's Adjudicative Proceedings* to remove personal information of investors from the exhibits.

DATED at Toronto this 24th day of February, 2015.

"James E.A. Turner"

2.2.12 Telus Corporation – s. 104(2)(c)

Headnote

Subsection 104(2)(c) of the Act – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 2,400,000 of its common shares from one of its shareholders – due to the discounted purchase price, proposed purchases cannot be made through the TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Act and in accordance with the TSX rules governing normal course issuer bid purchases – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and has not, for a minimum of 30 days prior to the date of the application seeking the relief, purchased common shares of the Issuer in anticipation or contemplation of a sale of common shares to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or public shareholders – proposed purchases exempt from the issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the Issuer not purchase, in the aggregate, more than one-third of the maximum number of shares permitted to be purchased under its normal course issuer bid by way of off-exchange block purchases, and that the Issuer will not make any proposed purchase unless it has first obtained written confirmation that between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94 to 94.8, 97 to 98.7, 104(2)(c).

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

AND

IN THE MATTER OF
TELUS CORPORATION

ORDER
(Clause 104(2)(c))

UPON the application (the "**Application**") of TELUS Corporation (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to clause 104(2)(c) of the *Securities Act* (Ontario) (the "**Act**") exempting the Issuer from the requirements of sections 94 to 94.8, inclusive, and sections 97 to 98.7, inclusive, of the Act (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 2,400,000 (the "**Subject Shares**") of its Common Shares (the "**Common Shares**") in one or more trades with The Toronto-Dominion Bank (the "**Selling Shareholder**").

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 11, 23, 24, 25 and 28 as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (British Columbia).

2. The Issuer maintains its registered office at Floor 5, 3777 Kingsway, Burnaby, British Columbia and its executive office at Floor 8, 555 Robson, Vancouver, British Columbia.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the Common Shares of the Issuer are listed for trading on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange (the "**NYSE**") under the symbols "T" and "TU", respectively. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized share capital of the Issuer consists of 4,000,000,000 shares, divided into: (i) 2,000,000,000 Common Shares without par value; (ii) 1,000,000,000 First Preferred shares without par value; and (iii) 1,000,000,000 Second Preferred shares without par value. As at January 31, 2015, 608,669,986 Common Shares, no First Preferred shares and no Second Preferred shares were issued and outstanding.

5. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario. The trades contemplated by this application will be executed and settled in the Province of Ontario.

6. The Selling Shareholder has advised the Issuer that it does not directly or indirectly own more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder is the beneficial owner of at least 2,400,000 Common Shares. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

8. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer or an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions*.

9. Pursuant to a "Notice of Intention to Make a Normal Course Issuer Bid" filed with the TSX as of September 28, 2014, (the "**Notice**"), the Issuer is permitted to make normal course issuer bid (the "**Normal Course Issuer Bid**") purchases for up to 16,000,000 Common Shares, representing 2.58% of the Issuer's public float of Common Shares as of the date specified in the Notice, subject to a maximum aggregate purchase price consideration of $500.0 million. In accordance with the Notice, the Normal Course Issuer Bid is conducted through the facilities of the TSX, the NYSE or alternative Canadian trading platforms, or such other means as may be permitted by the TSX or a securities regulatory authority, in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**"), including, private agreements under an issuer bid exemption order issued by a securities regulatory authority (each, an "**Off-Exchange Block Purchase**").

10. On September 30, 2014, the Issuer entered into an automatic repurchase plan (the "**ARP**") with a broker providing for automatic purchases of Common Shares to be conducted by the broker on the TSX or alternative Canadian trading platforms within pre-determined parameters as part of the Normal Course Issuer Bid at such times when the Issuer would not be permitted to trade in its shares during internal blackout periods, including regularly scheduled quarterly blackout periods. Under the ARP, at times it is not subject to blackout restrictions, the Issuer may, but is not required to, instruct the designated broker to make purchases under its Normal Course Issuer Bid in accordance with the terms of the ARP. Such purchases under the ARP will be determined by the designated broker in its sole discretion based on parameters established by the Issuer prior to any blackout period in accordance with TSX rules, applicable securities laws (including this Order) and the terms of the agreement between the broker and the Issuer. The ARP was approved by the TSX and is in compliance with the TSX NCIB Rules, applicable securities law and this Order and was implemented on October 1, 2014. The Issuer will instruct the broker not to conduct a Block Purchase (defined below) in accordance with the TSX NCIB Rules during the calendar week in which the Issuer completes a Proposed Purchase (defined below). No Subject Shares will be acquired under the ARP or otherwise during the Issuer's blackout periods.

11. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an "**Agreement**") pursuant to which the Issuer will agree to acquire some or all of the Subject Shares from the Selling Shareholder by one or more purchases each occurring before March 20, 2015 (each such purchase, a "**Proposed Purchase**") for a purchase price (each, a "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price, in each case, will be at a discount to the prevailing market price of the Common Shares on the TSX and below the bid-ask price on the TSX for the Common Shares at the time of each Proposed Purchase.

12. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

13. The purchase of the Subject Shares by the Issuer pursuant to each Agreement will constitute an "issuer bid" for purposes of the Act to which the Issuer Bid Requirements would apply.

14. Because the Purchase Price, in each case, will be at a discount to the prevailing market price and below the bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

15. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares through the facilities of the TSX as a "block purchase" (a "**Block Purchase**") in accordance with the block purchase exception in section 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

16. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

17. The Notice contemplates that purchases under the Normal Course Issuer Bid may be made by such other means as may be permitted by the TSX or a securities regulatory authority, including, private agreements under an issuer bid exemption order issued by a securities regulatory authority.

18. For each Proposed Purchase, the Issuer will be able to acquire the Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

19. The Issuer is of the view that it will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase Common Shares under the Normal Course Issuer Bid through the facilities of the TSX and the exemption from the Issuer Bid Requirements available pursuant to section 101.2(1) of the Act, and the Issuer is of the view that this is an appropriate use of the Issuer's funds on hand.

20. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders and it will not materially affect the control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other shareholders of the Issuer to otherwise sell Common Shares in the open market at the then prevailing market price. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

21. To the best of the Issuer's knowledge, as of January 31, 2015, the "public float" (calculated in accordance with the TSX NCIB Rules) for the Common Shares represented more than 99.81% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.

22. The Common Shares are "highly liquid securities" within the meaning of section 1.1 of OSC Rule 48-501 *Trading During Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

23. Other than the Purchase Price, no fee or other consideration will be paid in connection with the Proposed Purchases.

24. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Common Shares. The Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of the Subject Shares pursuant to the Proposed Purchases between the date of this Order and the date on which a Proposed Purchase is to be completed.

25. At the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the trading products group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

26. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to 5,333,333 Common Shares as of the date of this Order.

27. The Issuer will not purchase Common Shares pursuant to the Proposed Purchases during designated blackout periods administered in accordance with the Issuer's corporate policies.

28. No Common Shares were purchased by, or on behalf of, the Selling Shareholder on or after January 18, 2015, being the date that was 30 days prior to the date of the application of the Issuer seeking this Order, in anticipation or contemplation of a sale of Common Shares to the Issuer.

29. The Commission granted the Issuer one previous order on December 12, 2014 (the "**December Order**") pursuant to clause 104(2)(c) of the Act exempting the Issuer from the Issuer Bid Requirements in connection with Off-Exchange Block Purchases by the Issuer of up to 1,200,000 Common Shares in one or more trades from an arm's length selling shareholder. As at February 20, 2015, an aggregate of 3,663,900 Common Shares have been acquired by the Issuer pursuant to the Normal Course Issuer Bid, including 1,200,000 Common Shares under the December Order.

30. Assuming completion of the purchase of the Subject Shares, being 2,400,000 Common Shares, the Issuer will have purchased under the Normal Course Issuer Bid an aggregate of 3,600,000 Common Shares pursuant to Off-Exchange

Block Purchases, representing approximately 22.5% of the 16,000,000 Common Shares authorized to be purchased under the Normal Course Issuer Bid.

AND UPON the Commission being satisfied to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX NCIB Rules or an Off Exchange Block Purchase during the calendar week that it completes each Proposed Purchase and will not make any further purchases under the Normal Course Issuer Bid for the remainder of that calendar day on which it completes each Proposed Purchase;

c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of such Proposed Purchase;

d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid and in accordance with the Notice and the TSX NCIB Rules, as applicable, subject to condition (i) below;

e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;

f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the trading products group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

g) in advance of the first Proposed Purchase, the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases, and (ii) that information regarding each Proposed Purchase, including the number of Common Shares purchased and the aggregate purchase price, will be available on the System for Electronic Document Analysis and Retrieval ("SEDAR") following the completion of each such Proposed Purchase;

h) the Issuer will report information regarding each Proposed Purchase, including the number of Common Shares purchased and the aggregate purchase price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such purchase;

i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares the Issuer can purchase under the Normal Course Issuer Bid, such one-third being equal to, as of the date of this Order, 5,333,333 Common Shares; and

j) the Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing that between the date of this Order and the date on which such Proposed Purchase is to be completed, the Selling Shareholder has not purchased, or had purchased on its behalf, or otherwise accumulated, any Common Shares.

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

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Deborah Leckman"
Commissioner
Ontario Securities Commission

2.2.13 Eric Inspecktor

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

AND

IN THE MATTER OF
ERIC INSPEKTOR

ORDER

WHEREAS on March 28, 2014, 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 relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on March 28, 2014, to consider whether it is in the public interest to make certain orders against Eric Inspektor (the "Respondent");

AND WHEREAS the Notice of Hearing set a hearing in this matter for April 15, 2014 at 10:00 a.m.;

AND WHEREAS on April 8, 2014, the hearing was rescheduled by the Commission to commence on April 30, 2014 at 10:00 a.m.;

AND WHEREAS on April 30, 2014, Staff submitted *inter alia* that its disclosure to the Respondent would be substantially completed before the end of May 2014;

AND WHEREAS on April 30, 2014, the Commission ordered that the hearing be adjourned to June 18, 2014;

AND WHEREAS on June 18, 2014, Staff confirmed that disclosure to the Respondent was substantially complete, and counsel to the Respondent submitted that she would require some time to review Staff's disclosure and address any issues arising from such disclosure;

AND WHEREAS on June 20, 2014, the Commission ordered that the hearing be adjourned to September 17, 2014;

AND WHEREAS on September 2, 2014, counsel for the Respondent, Crawley MacKewn Brush LLP ("CMB"), filed a notice of motion, pursuant to Rule 1.7.4 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the "Rules"), for leave to withdraw as representative for the Respondent and requesting that the motion be heard in writing (the "Withdrawal Motion");

AND WHEREAS the affidavit filed by CMB states that the Respondent intends to represent himself;

AND WHEREAS on September 15, 2014, the Commission ordered that the Withdrawal Motion be heard in writing and granted CMB leave to withdraw as representative for the Respondent;

AND WHEREAS on September 17, 2014, the Respondent advised that he was seeking an order pursuant to section 17 of the Act authorizing disclosure of certain documents which the Respondent received from Staff pursuant to Staff's disclosure obligations (the "Section 17 Motion");

AND WHEREAS on September 17, 2014, the Commission adjourned the hearing to November 3, 2014;

AND WHEREAS on October 21, 2014, the Section 17 Motion was heard *in camera* and on December 10, 2014, the Commission delivered its Reasons and Decision on the Section 17 Motion (*Re Eric Inspektor* (2014), 37 O.S.C.B. 11271);

AND WHEREAS on November 3, 2014, Staff and the Respondent appeared and made submissions before the Commission;

AND WHEREAS the Respondent advised that he is seeking a summons authorizing disclosure of a legal opinion provided by a law firm to a bank regarding one or more companies named in the Statement of Allegations in this matter;

AND WHEREAS on November 3, 2014, the Commission ordered that: (a) the hearing on the merits begin on April 8, 2015 and continue on April 9, 13, 14, 15, 16, 17, 20, 22, 23, 24 and April 27, 2015; (b) a confidential pre-hearing conference (a "PHC") be held on December 15, 2014; (c) the Respondent file a request for summons to the Office of the Secretary indicating

the document that the Respondent seeks to be produced and the reasons for the request; and (d) if necessary, a hearing be held on January 15, 2015 to consider a motion by the Respondent for additional disclosure;

AND WHEREAS on December 15, 2014, a confidential PHC was held at which the Commission considered submissions of Staff and the Respondent;

AND WHEREAS on December 15, 2014, the Commission ordered that: (a) the Respondent make initial disclosure to Staff of documents in the Respondent's possession that the Respondent intends to produce, enter as evidence or rely upon at the hearing on the merits by December 29, 2014; (b) the hearing date of January 15, 2015 be vacated; (c) a hearing be held on January 30, 2015 to consider a motion by Staff or the Respondent for additional disclosure, if necessary; (d) a further confidential PHC be held on March 4, 2015 (the "March 4 PHC"); (e) each party make best efforts to provide to the other party its hearing brief by March 9, 2015; and (f) the Respondent make best efforts to provide Staff a complete witness list and witness summary for each witness by March 19, 2015;

AND WHEREAS on February 11, 2015, the Respondent requested an adjournment (the "Adjournment") of the hearing on the merits to June 2015;

AND WHEREAS on February 12, 2015, Staff advised that Staff did not object to the Adjournment;

AND WHEREAS on February 19, 2015, the Commission declined to grant the Adjournment but indicated that it was willing to consider submissions from the parties on the Adjournment at the confidential March 4 PHC;

AND WHEREAS on March 4, 2015, the confidential March 4 PHC was held at which the Commission considered submissions of Staff and the Respondent;

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

IT IS ORDERED that:

1. The confidential March 4 PHC is adjourned to March 11, 2015 at 9:30 a.m.; and

2. Each party shall provide to the other party its hearing brief by March 16, 2015.

DATED at Toronto, this 4th day of March, 2015.

"Alan J. Lenczner"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Bluestream Capital 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
BLUESTREAM CAPITAL CORPORATION,
BLUESTREAM INTERNATIONAL INVESTMENTS INC.,
KROWN CONSULTING CORP.,
1859585 ONTARIO LTD. (operating as SOVEREIGN INTERNATIONAL INVESTMENTS)
and PETER BALAZS

REASONS AND DECISION
(SECTIONS 127 & 127.1)

Hearing:	In writing		
Decision:	March 4, 2015		
Panel:	Alan J. Lenczner	–	Commissioner and Chair of the Panel
Submissions by:	Christie Johnson	–	For the Ontario Securities Commission

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I. OVERVIEW

A. The Nature of the Hearing

[1] This is 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 determine whether it is in the public interest to make an Order against Bluestream Capital Corporation ("**Bluestream Capital**"), Bluestream International Investments Inc. ("**Bluestream International**"), Krown Consulting Corporation ("**Krown Consulting**"), 1859585 Ontario Inc. (operating as Sovereign International Investment) ("**Sovereign International**") (together, the "**Corporate Respondents**") and Peter Balazs ("**Balazs**") (collectively, the "**Respondents**").

[2] On June 26, 2014, the Commission ordered that the hearing on the merits was scheduled to commence on January 12, 2015 at 10:00 a.m. at the offices of the Commission. On December 29, 2014, the Commission converted this matter to a hearing in writing.

[3] Although served with the Notice of Hearing, Statement of Allegations and the Order converting the substantive matter to a hearing in writing, the Respondents have not appeared nor did they give submissions and have not objected to the matter on the merits being determined on the written record.

[4] The written record which I have reviewed consists of the compelled examinations of the Respondents, John Glaysher, Fred Camerlengo, Andy Nicolaidis and Adriano Lisi.

[5] The evidence includes a fulsome affidavit of Daniella Kozovski, Investigative Staff Counsel, setting out the corporate structure and inter-relationship of the Respondents, the representations made by the Respondents to investors, the investment contracts given to investors, the periodic client statements and the trading performance.

[6] The evidence also includes an affidavit of a Senior Forensic Accountant, Jody Sikora, who testified to the various bank accounts operated by the Respondents, the source and use of funds, the funds paid to investors and monies used for personal expenses by the Respondents and related persons.

B. Allegations Made by Staff of the Commission

[7] Staff of the Commission ("**Staff**") made the following allegations against the Respondents:

(a) the Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in securities without being registered to do so and without an available exemption from the registration requirements, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(a) of the Act for the period on and after September 28, 2009;

(b) the Respondents 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) the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(1)(b) of the Act;

(d) Balazs, being an officer or director of the Corporate Respondents, authorized, permitted or acquiesced in the non-compliance of the Corporate Respondents with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act; and

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

C. Overview of the Evidence

[8] This proceeding involves the solicitation and acceptance of investments from residents in Ontario for the purpose of trading in the foreign currency exchange market for profit by Balazs. The solicitation and acceptance of investor money by the Respondents occurred between August 2008 and May 2012 (the "**Material Time**").

[9] The Respondents received funds from, and entered into investment contracts with investors and facilitated their investment with Bluestream International. Balazs was an officer and director and the directing mind of all of the Corporate Respondents. During the Material Time, none of the Respondents were registered in any capacity with the Commission. Further,

none of the Corporate Respondents filed a preliminary prospectus or prospectus with the Commission or filed any reports of exempt distributions.

[10] Balazs directed the flow of investor funds through various bank and trading accounts held in the name of the Corporate Respondents, all of which he had control over directly or indirectly. The financial records show a minority of investor funds going into trading accounts being traded in the foreign currency exchange market. Further, the financial records show that investor funds were used by Balazs for personal expenditures, paid to existing investors as withdrawals or redemptions, withdrawn in cash, or transferred to related parties.

[11] The evidence in this case establishes that Balazs and the Corporate Respondents engaged in, or held themselves out as engaging in, the business of trading and engaged in numerous acts in furtherance of trading. The evidence establishes the following:

(a) Balazs accepted and encouraged word of mouth referrals from existing investors;

(b) Balazs engaged in individual meetings with some investors where Balazs explained the investment opportunity and answered potential investors' questions about foreign currency exchange trading and the terms of the investment;

(c) Balazs created the investment agreement and other relevant documentation, including information sheets and website content in the nature of marketing material, which were distributed to investors;

(d) Balazs signed agreements with investors on behalf of Bluestream International and instructed them to direct their investment to Bluestream International;

(e) Balazs personally accepted investor funds and deposited those funds in banking and trading accounts in the names of the Corporate Respondents that were controlled, directly or indirectly, by Balazs;

(f) Balazs was responsible for directing the flow of investor funds through the bank and brokerage accounts in the names of the Corporate Respondents, which were controlled, directly or indirectly, by Balazs;

(g) Balazs made trades with investor money in the foreign currency exchange market; and

(h) Balazs directed the payment of interest and the repayment of principal to investors from the accounts of the Corporate Respondents and signed cheques making the interest and principal payments.

[12] There is compelling evidence to establish that the Respondents engaged in many acts of deceit, falsehoods and other fraudulent means which deprived investors of their funds, including that:

(a) Balazs represented that his trading in the foreign currency exchange market was profitable and that he was able to generate significant returns in the range of 5% monthly, when in fact no such success occurred;

(b) Balazs represented that investments in Bluestream International would be used to trade in the foreign currency exchange market and did not advise investors that their funds would be used for any other purpose, when in fact the vast majority of the funds were transferred into bank accounts held in the names of the Corporate Respondents and ultimately used to make withdrawal payments to other investors or pay for personal expenses, were withdrawn in cash, or paid to related parties;

(c) Balazs created and provided documents and materials to investors and made oral representations concerning the status of their investment, knowing that potential investors would rely upon the representations in making and maintaining their investment;

(d) Balazs created and distributed investor statements from Bluestream International and Sovereign International showing returns which in no way accurately reflected the overall losses he was experiencing in the trading accounts into which investor funds were transferred;

(e) Balazs represented to investors that they were receiving profits derived from trading in the foreign currency exchange market when in fact payments made to investors were primarily sourced from new investor funds; and

(f) Balazs raised a total of approximately CDN$2,620,815.00 and US$907,097.00 from 63 individuals and companies of which only CDN$1,076,891.00 and US$595,430.00 was paid back to investors, meaning the majority of investors have not recovered the full amount of their investment principal.

[13] The evidence demonstrated that Balazs knew he was undertaking dishonest acts which resulted in a deprivation to investors and therefore perpetrated a fraud:

(a) Balazs was the directing mind of all of the Corporate Respondents and controlled their day-to-day operations, including executing trades in the trading accounts held in the names of Bluestream International and Bluestream Capital;

(b) Balazs established and directed the activity in the bank and trading accounts in the names of the Corporate Respondents into which investor funds flowed;

(c) Balazs executed the trades and had access to the bank and trading statements for accounts in the names of the Corporate Respondents and knew that the trading was not profitable enough to meet his obligations to investors, yet he continued to accept investor funds; and

(d) Balazs was responsible for the purchase of personal items and services using funds from the bank accounts held in the names of the Corporate Respondents.

II. ANALYSIS AND DECISION

A. The Commission's Public Interest Jurisdiction

[14] The Commission's mandate in upholding the purposes of the Act is set out in section 1.1 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.

[15] The Commission is guided by certain fundamental principles in upholding and achieving the purposes of the Act. These principles include:

(a) requirements for timely, accurate and efficient disclosure of information;

(b) restrictions on fraudulent and unfair market practices and procedures; and

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

[16] The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets.

[17] The scope of the Commission's discretion in defining the public interest is limited only by the general purposes of the Act.

[18] The evidence in this case is clear that the public interest has been abused.

B. Standard of Proof

[19] The civil standard of proof and the nature of the evidence which is required to meet that standard are integral to the duty of administrative tribunals to provide a fair hearing. It is well established that the standard of proof that must be met in administrative proceedings is the civil standard of the "balance of probabilities" *F. (H.) v. McDougall*, [2008] S.C.J. No. 54 ("***McDougall***"),

[20] The Supreme Court of Canada went on to state that "the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall*, *supra*, at para. 46). However, this requirement of clear, convincing and cogent evidence does not elevate the standard of proof beyond the balance of probabilities.

III. UNREGISTERED TRADING IN SECURITIES

A. Importance of Registration in the Regulatory Context

[21] Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating in the Ontario capital markets, individuals and companies must comply with Ontario securities laws. Compliance is paramount, ensuring the protection of the public and the integrity of the capital markets:

> [A]lthough activity in the securities sphere is of immense economic value to society generally, it must be remembered that participants engage in this licensed activity of their own volition and ultimately for their own profit. In return for permitting persons to obtain the fruits of participation in this industry, society requires that market participants also undertake certain corresponding obligations in order to safeguard the public welfare and trust. Participants must conform with the extensive regulations and requirements set out by the provincial securities commissions ...
>
> *British Columbia Securities Commission v. Branch*, [1995] 2 SCR 3 at para. 77.

[22] The registration requirement found in section 25 of the Act is one of the cornerstones of the regulatory framework of the Act. Registration serves an important gate-keeping function by ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by person who therein carry on such business.
>
> *Gregory & Co. Inc. v. Quebec Securities Commission et al.*, [1961] SCR 584 at para. 11.

Through the registration process, the Commission attempts to ensure that those who engage in trading activities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards.

B. Section 25: Prior to September 28, 2009

[23] Prior to September 28, 2009, subsection 25(1) of the Act stated that no person or company shall trade in a security unless that person or company is registered with the Commission as a dealer, or as a salesperson, partner, or officer of a registered dealer. Subsection 25(1)(a) read:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer.

C. Section 25: On and After September 28, 2009

[24] The current subsection 25(1) came into force on September 28, 2009. The subsection provides that a person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading unless the person or company is registered with the Commission. The current subsection reads as follows:

> Unless a person or company is exempt under Ontario securities law from the requirements to comply with this subsection, the person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading in securities unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as a dealer; or
>
> (b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[25] There is no question that the respondents contravened the requirements of registration.

D. Definition of "Trade"

[26] To incur liability under subsection 53(1) and both the previous and current version of section 25 of the Act, it is necessary for the Respondents to "trade in a security" within the meaning of the Act. The definition of "trade" under subsection 1(1) describes a very broad concept that encompasses not only any sale or disposition of securities for valuable consideration, but also includes any act, advertisement, solicitation, conduct, or negotiation directly or indirectly in furtherance of such a sale or disposition.

[27] The inclusion of the word "indirectly" in the definition of "trade" under the Act reflects an express intention on the part of the Legislature to capture conduct which seeks to avoid the registration and prospectus requirement by doing indirectly that which is prohibited directly.

[28] Pursuant to the definition in section 1(1), an "investment contract" is a "security" within the meaning of the Act. "Investment contract" is not a term defined in the Act, but its interpretation has been the subject of a long line of established jurisprudence.

1. Investment Contract

Supreme Court of Canada's Decision in *Pacific Coast Coin*

[29] In the leading case, *Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission)*, [1978] 2 SCR 112 ("***Pacific Coast Coin***"), the Supreme Court of Canada considered what constitutes an "investment contract" within the meaning of the Act.

[30] The Supreme Court of Canada's formulation of the test for establishing an "investment contract" in *Pacific Coast Coin* requires the following:

(a) an investment of money;

(b) with an intention or expectation of profit;

(c) a common enterprise, in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties; and

(d) that the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

[31] The application of the investment contract test, as formulated by the Supreme Court of Canada in *Pacific Coast Coin*, must be consonant with the important public policy goals and mandate of the Commission. To achieve the purposes of the Act, the definition of "investment contract" must embody a flexible rather than a static principle, one that adapts to the countless investment schemes devised by those who seek to use others money on the promise of profits.

[32] Investors provided their funds to Bluestream International with the expectation of participation in profits arising from trades made in the foreign currency exchange market. In doing so, the Respondents and investors engaged in a common enterprise in which the success of the investment was dependent upon the efforts of Balazs, as the principal of Bluestream International, to engage in profitable trading. Balazs' "sole managerial efforts" were the only factor which determined the success or failure of the investment.

[33] It is clear in this case that the investment agreements offered by Bluestream International and that the investors purchased were "investment contracts" within the meaning of subsection (n) of the definition of "security", as defined in the Act and as interpreted by the case law cited above.

E. Acts in Furtherance of a Trade

[34] The definition of "trade" in subsection 1(1) of the Act provides five different categories of "acts in furtherance of trading". The definition under this subsection will be satisfied by any of the following that is found to be "directly or indirectly in furtherance of a trade": (1) an act; (2) an advertisement; (3) a solicitation; (4) any conduct; or (5) a negotiation.

[35] Cases considering the issue of acts in furtherance of trading reflect a contextual approach that examines the totality of the conduct and the setting in which it occurs. In this analysis, the primary emphasis is on the intended effect of the acts on those at whom they are directed, and on the proximity of the acts to an actual or potential trade in securities.

[36] The Commission has found a variety of activities that constitute acts in furtherance of trading, including:

(a) accepting money from investors and depositing investor cheques for the purchase of shares in a bank account;

(b) providing potential investors with subscription agreements to execute;

(c) issuing and signing share certificates;

(d) preparing and disseminating forms of agreements for signature by investors;

(e) meeting with individual investors; and

(f) preparing and disseminating promotional materials describing investment programs, including posting materials and information on internet websites.

[37] Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade.

[38] An act in furtherance of a trade does not require that an actual trade occur. Any claim that an actual trade must occur for there to be an act in furtherance of a trade would necessarily limit the effectiveness and negate the purpose of the Act, which is to regulate those who trade, or who purport to trade, in securities.

[39] During the Material Time, none of the Respondents were registered with the Commission in any capacity. The Respondents engaged in activities or a course of conduct that constituted "trading" or "acts in furtherance" of a trade and engaged or held themselves out as engaging in the business of trading securities without being registered

IV. DISTRIBUTING SECURITIES WITHOUT A PROSPECTUS

[40] Section 53 of the Act provides that no person or company shall trade in a security if the trade would be a distribution of the security unless a preliminary prospectus and prospectus have been filed and receipts issued by the Director. Subsection 53(1) reads:

> No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[41] The definition of "distribution" in the Act includes the following:

(a) a trade in securities of an issuer that have not been previously issued, …

[42] As the Commission held in *Re Limelight Entertainment Inc. et al* (2008), 31 O.S.C.B. 1727, a prospectus is fundamental to the protection of the investing public because it ensures that investors have full, true and plain disclosure of information to properly assess the risks of an investment and make an informed decision.

[43] The evidence establishes that there was no preliminary prospectus or prospectus filed and no receipt issued in this matter and that the investment contracts sold to investors constituted securities that were not previously issued.

V. FRAUD

[44] Section 126.1(1)(b) of the Act prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud:

> (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> (b) … perpetrates a fraud on any person or company.

[45] Fraud is one of the most egregious securities regulatory violations and is both an affront to the individual investors directly targeted and decreases confidence in the fairness and efficiency of the entire capital market system generally.

[46] Although "fraud" is not defined in the Act, several Commission decisions have adopted the definition of the term in the decision of the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)* 192 B.C.C.A. 7, which in turn adopts the definition from the Supreme Court of Canada's decision in *R v. Théroux*, [1993] 2 S.C.R. 5 (S.C.C.) ("***Théroux***"). The elements of fraud under subsection 126.1(b) of the Act are as follows:

> ... the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist of actual loss or the placing of the victims' pecuniary interest at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and

> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist of knowledge that the victim's pecuniary interests are put at risk).
>
> *Théroux*, *supra*, at para. 27

[47] With respect to a corporate respondent, to prove a breach of subsection 126.1(1)(b) of the Act, it is sufficient to show that its directing mind knew that the acts of the corporation perpetrated a fraud. The evidence has established that Balazs was the directing mind and an officer and director of all the Corporate Respondents. The particulars of his fraudulent conduct are enumerated in paragraphs 12 and 13 herein.

VI. AUTHORIZE, PERMIT OR ACQUIESCE

[48] Pursuant to section 129.2 of the Act, a director or officer is deemed to be liable for a breach of securities law by a corporation where the director or officer authorized, permitted or acquiesced in the corporation's non-compliance with the Act.

A. "Director" and "Officer" Defined

[49] The degree of knowledge or intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. In *R. v. Armaugh Corp.*, 1993 CarswellOnt 906 ("***Armaugh***") the Ontario Court of Justice interpreted the words "authorized, permitted or acquiesced" as used in the Act:

> The terms "authorized", "permitted" and "acquiesced" imply, in the opinion of this court...
>
> In *Websters New World Dictionary*, 3rd college edition, *acquiesce* means to agree or consent quietly without protest. *Authorize* is defined in as part as to give official approval or permission, to give power or authority, to give justification for and *permit* is defined as to allow, consent to tolerate, to give permission, authorize permission, especially in writing, a document granting permission, licence, warrant.
>
> In my opinion, the definition of all three words implies a knowing or an intentional act [...]
>
> *Armaugh*, *supra* paragraph 20.

[50] Although the terms authorize, permit and acquiesce have been interpreted to include some form of knowledge or intention, the threshold for liability is low, as merely acquiescing to the conduct or activity in question will satisfy the requirements for liability; in other words, passive consent is all that is required.

[51] As an officer and director and directing mind of all of the Corporate Respondents during the Material Time, Staff submits that Balazs is liable for any breaches of Ontario securities law by the Corporate Respondents.

VII. RELIANCE ON LEGAL ADVICE RELEVANT TO SANCTIONS

[52] In his compelled interview with Staff, Balazs stated that he was advised by legal counsel that as long as he did not solicit the general public for investment then the conduct was not offside securities law. To date, Balazs has not provided any documentation or other information to Staff that would be of any probative value in this matter in determining whether there was appropriate reliance on legal advice. Further, the law makes clear that due diligence is no defence to unregistered trading and illegal distribution.

VIII. CONCLUSION

[53] I find that:

(a) During the Material Time, the Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an available exemption from the registration requirements, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(1) of the Act for the period on and after September 28, 2009;

(b) During the Material Time, the Respondents 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 Material Time, the Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(1)(b) of the Act;

(d) During the Material Time, Balazs, being an officer or director of the Corporate Respondents, authorized, permitted or acquiesced in the non-compliance of the Corporate Respondents with Ontario securities law and accordingly failed to comply with Ontario securities law, contrary to section 129.2 of the Act; and

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

[54] An order will issue as follows:

(a) The Respondents have until March 16, 2015 to notify the Secretary of the Commission that they, or any of them, require an oral sanctions hearing, which, if required, will then be scheduled by the Secretary;

(b) Failing notification, Staff shall serve and file its written submissions on sanctions and costs by March 23, 2015;

(c) The Respondents shall serve and file their written submissions on sanctions and costs by April 20, 2015; and

(d) Staff shall serve and file reply submissions on sanctions and costs, if any, by April 27, 2015.

Dated at Toronto this 4th day of March, 2015.

"Alan J. Lenczner"

3.1.2 A25 Gold Producers Corp. et al.

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

AND

IN THE MATTER OF
A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS, and AVI AMAR

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 make certain orders in respect of A25 Gold Producers Corp. ("A25"), David Amar, James Stuart Adams ("Adams"), and Avi Amar (collectively, the "Respondents").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated December 19, 2013 (the "Proceeding") against the Respondents 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 Part III and the conclusion in Part IV of the Settlement Agreement.

PART III – AGREED FACTS

A. OVERVIEW

4. Between March 1, 2007 and December 31, 2012, (the "Relevant Period"), the Respondents sold securities of A25 from Ontario through unregistered trading and illegal distributions to an investor in Canada and investors in Europe, and David Amar and Adams breached section 126.1(b) of the Act as that section existed during the Relevant Period (and which is now clause 126.1(1)(b) of the Act).

B. BACKGROUND

5. A25 is a corporation incorporated in the province of British Columbia on March 1, 2007. It operated out of David Amar's condominium in Toronto, Ontario.

6. David Amar is a resident of Toronto, Ontario. David Amar is the directing mind of and a *de facto* director of A25. He controls A25. David Amar is the directing mind of and is an officer and a director of Worldwide Graphite Producers Ltd. ("Worldwide Graphite") and Western Fortune Graphite Ltd. ("Western Fortune"), which are the companies that sold mining claims to A25.

7. Adams is a resident of Toronto, Ontario. He is a director of A25 and carried the title of President of A25 during the Relevant Period.

8. Avi Amar is a resident of Toronto, Ontario. He is the son of David Amar. He is a director of A25 and carried the titles of Secretary and Treasurer of A25 during the Relevant Period. He is also an officer and director of Western Fortune and Worldwide Graphite

9. Between March 2007 and December 2010, the Respondents caused or permitted A25 to acquire mining claims from Western Fortune and Worldwide Graphite (the "Mining Claim Transfers"). These mining claims were sold to A25 at prices much higher than it cost to stake and maintain them; and, in some cases, they were sold to A25 shortly after they were staked.

10. As consideration for the Mining Claim Transfers, A25 agreed to provide Western Fortune and Worldwide Graphite cash payments over time and A25 shares. During the Relevant Period, A25 made some of these cash payments. A25 defaulted on paying the remainder of the cash payments, and they remained a liability of A25.

11. As a result of the Mining Claim Transfers,

a. David Amar, the directing mind of Western Fortune and Worldwide Graphite, directly or indirectly, owned or controlled substantially all of the 30 million outstanding shares of A25.

b. As well, the cash payment liabilities owed by A25 to Western Fortune and Worldwide Graphite arising from the Mining Claims Transfers remained to be paid; and, any money raised by A25 from the sale of its shares or otherwise would need to be paid to Western Fortune and Worldwide Graphite to satisfy these liabilities.

c. Furthermore, as a result of A25's default on the cash payments, depending on the terms of the Mining Claim Transfer agreements, Western Fortune and Worldwide Graphite could either revoke the ownership of the mining claims from A25 or not be required to transfer ownership to A25 (as some of the agreements did not have ownership being transferred until full payment was received).

12. The only A25 shares that were listed on the Frankfurt Stock Exchange were the 30 million A25 shares owned or controlled, directly or indirectly, by David Amar as a result of the initial Mining Claim Transfers.

14. David Amar, Adams, and A25 caused A25 to hire salespersons and an escrow agent who marketed and sold A25 treasury shares directly to an investor in Canada and investors in Europe in 2009 and 2010. David Amar also hired salespersons, brokers and an escrow agent who marketed and sold the shares he owned or controlled and that were listed on the Frankfurt Stock Exchange. Commissions arising from these sales for salespersons, brokers and escrow agents ranged from 35% to as high as 71%.

15. Throughout 2010, David Amar, Adams, and Avi Amar (the "Individual Respondents") caused A25 to, and A25 did issue a series of press releases that provided A25 investors or prospective investors an inaccurate, incomplete, and/or misleading indication of the number of mining claims acquired by A25. These press releases referred to the following mineral properties: Golden Peak, White Star, Prident, IXL, Pillars of Boaz, and tenure 689804. In fact, during this period, there was only a single acquisition by A25 of mineral tenure 689804 that was completed on or about November 26, 2010.

16. On or about November 17, 2010, David Amar caused Worldwide Graphite to write to A25's Board of Directors to "authorize and direct" them to consolidate A25's shares 1000:1 (the "Share Consolidation"). Worldwide Graphite represented to the A25 Board that it and its shareholders directly owned or controlled through proxy votes 72.28% of the issued and outstanding shares of A25. A25's Board, including Adams and Avi Amar, passed a resolution authorizing the Share Consolidation, and proceeded to implement the Share Consolidation.

C. CONDUCT CONTRARY TO SECTION 126.1(b) OF THE ACT

17. Within the sales approach used for A25 securities during the Relevant Period, David Amar Adams, A25 and/or their salespersons, brokers or escrow agents misled A25 investors and prospective A25 investors by failing to state facts and/or concealing facts, including, among other facts, that:

a. the Mining Claim Transfers were related party transactions;

b. David Amar was the directing mind of A25 and of the parties that sold the mining claims acquired by A25 in the Mining Claim Transfers;

c. David Amar had determined the terms of the Mining Claim Transfers including the price;

d. the mining claims acquired by A25 in the Mining Claim Transfers were sold to A25 at prices much higher than it cost to stake and maintain the mining claims; and, in some cases, they were sold to A25 shortly after they were staked;

e. as a result of A25's default on some of the cash payments owing under the terms of the Mining Claims Transfers, depending on the wording of the specific Mining Claims Transfer agreement, Western Fortune and Worldwide Graphite could either revoke the mining claims acquired by A25 in the Mining Claims Transfers or not be required to transfer ownership to A25;

f. David Amar, directly or indirectly, owned or controlled all the A25 shares listed to be sold on the Frankfurt Stock Exchange; and

g. the money raised from the sale of A25 treasury shares would be used substantially to pay commissions of salespersons, brokers and/or escrow agents for selling and marketing the A25 shares, and to repay A25's cash payment liabilities owed indirectly to David Amar as a result of the Mining Claim Transfers.

18. Additionally, within the sales approach used for A25 securities during the Relevant Period, David Amar, Adams, and A25 and/or their salespersons, brokers or escrow agents provided or participated in providing information to A25 investors and prospective A25 investors that was false, inaccurate and/or misleading with respect to, but not limited to, the following matters:

a. the current state of and future plans for the development of the A25 mining claims,

b. the number of mining claims acquired by A25, and

c. the use of funds raised by the distribution of the A25 shares.

19. Once in possession of funds from A25 investors through the sale of A25 shares, David Amar, Adams and A25 caused or participated in causing the funds raised to be utilized for purposes other than as intended and disclosed to the investors. In particular, of the approximately $2 million[1] raised from A25 investors,

a. none was used to explore or improve the A25 mining claims;

b. approximately 60% was used to pay commissions to salespersons, brokers and/or escrow agents; and

c. approximately 40% was used not to A25's benefit but for the personal benefit of the of David Amar, with Adams' knowledge or in circumstances that he ought reasonably to have had knowledge.

20. The value of the direct or indirect personal benefit to David Amar described in subparagraph 19(c) above is approximately $797,917[2]. David Amar received this benefit purportedly as a result of the fact, as is described above, that he directly or indirectly owned or controlled most of the A25 shares sold.

21. After the Share Consolidation, David Amar was again left as the owner, directly and indirectly, of substantially all of the outstanding A25 shares as a result of the following:

a. Within the two months preceding the Share Consolidation, David Amar caused, with Adams' and A25's authorization, permission, and or acquiesce, A25 to receive the proceeds of the sale of 11.66 million of the A25 shares indirectly owned or controlled by David Amar, so that A25 could repay some of the debt obligation A25 owed directly or indirectly to David Amar as a result of the Mining Claim Transfers; and, within two days of the Share Consolidation, David Amar requested from A25 and received 11.66 million post Share Consolidation A25 shares to replace those he had caused to be sold;

b. Within the month following the Share Consolidation, David Amar caused, with Adams' and A25's authorization, permission, and or acquiesce, A25 to enter another Mining Claim Transfer as a result of which David Amar received indirectly 9 million post Share Consolidation A25 shares and A25 received three mining tenures – two of which had been already transferred into A25's name in 2008 and one of which had been claimed by David Amar one month before he initiated the Share Consolidation; and

c. Within two days of the Share Consolidation, with Adams' and A25's authorization, permission, and or acquiesce, David Amar requested A25 to provide him directly or indirectly post Share Consolidation A25 shares, and A25 did so provide him within the Relevant Period, to meet A25's obligation under a Mining Claim Transfer that was entered and was according to its terms to be closed prior to the Share Consolidation.

[1] Converted to Canadian dollars using exchange rates as of the date of the Statement of Allegations.

[2] Converted to Canadian dollars using exchange rates as of the date of the Statement of Allegations.

D. UNREGISTERED TRADING

22. During the Relevant Period, none of the Respondents were registered in any capacity with the Commission.

23. During the Relevant Period, the Respondents participated in acts, solicitations, conduct, or negotiations, directly or indirectly, in furtherance of the sale or disposition of A25 securities for valuable consideration, in circumstances where there were no exemptions available to the Respondents under the Act. Among other things, the Respondents engaged from Ontario salespersons, brokers, and/or escrow agents, or representatives of A25 who contacted members of the public in Canada and Europe to solicit them to purchase A25 securities.

E. ILLEGAL DISTRIBUTIONS

24. No prospectus or preliminary prospectus was filed with the Commission and no receipt for them has ever been issued by the Director as required by subsection 53(1) of the Act with respect to the trades of A25 securities set out above.

F. LIABILITY OF DIRECTORS AND OFFICERS

25. During the Relevant Period, the Adams and Avi Amar as directors and/or officers of A25, and David Amar as a *de facto* director and/or officer of A25, authorized, permitted or acquiesced in A25's non-compliance with Ontario securities law.

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 that they have breached Ontario securities law by contravening sections 25 and 53 of the Act, the Respondents A25, David Amar and Adams admit and acknowledge that they have also breached Ontario securities law by contravening section 126.1(b) of the Act as that section existed during the Relevant Period (and which is now clause 126.1(1)(b) of the Act), and the Individual Respondents admit and acknowledge that they have breached Ontario securities law by contravening section 129.2 of the Act, and the Respondents acknowledge that they have acted contrary to the public interest in that:

a. the Respondents A25, David Amar, and Adams directly or indirectly engaged or participated in an act, practice or course of conduct relating to A25 securities that they knew or reasonably ought to have known perpetrated a fraud on persons purchasing A25 securities, contrary to section 126.1(b) of the Act as that section existed during the Relevant Period (and which is now clause 126.1(1)(b) of the Act);

b. the Respondents traded in securities without being registered to trade in securities contrary to section 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced in March 2007, and contrary to subsection 25(1) of the Act, as subsequently amended on September 28, 2009;

c. The trading of A25 securities as set out above constituted distributions of these securities by the Respondents in circumstances where there were no prospectus exemptions available to them under the Act contrary to subsection 53(1) of the Act; and

d. the Adams and Avi Amar as directors and/or officers of A25, and David Amar as a *de facto* director and/or officer of A25, authorized, permitted or acquiesced in A25's non-compliance with Ontario securities law as set out above, and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the Act.

PART V – RESPONDENTS' POSITION

27. The Respondents request that the settlement hearing panel consider the following mitigating circumstances:

Avi Amar:

a. Avi Amar is a resident of the City of Toronto in the Province of Ontario and is currently 32 years of age;

b. Previous to the Relevant Period, he had had limited experience in the marketplace;

c. Previous to the Relevant Period, he had limited knowledge of securities, rules and regulations;

d. His primary role in the business of A25 was the research, location and electronic staking of mineral claims. Since 2008, he learned those skills from Mr. Horst Klassen, the prospector previously engaged by A25 and other Amar family companies, the professional geologists retained by A25, and his own research;

e. His educational background at Trent and York University was in the Liberal Arts having studied political science and marketing. His employment experience prior to starting with A25 in 2008 was in unrelated endeavors related to marketing and customer service;

f. He exercised decision making authority with respect to the sale of A25's treasury shares in Europe or the sale of any shares of A25 in any jurisdiction.

g. He relied on whatever advice and guidance was provided to him by Adams with respect to matters related to corporate governance;

h. He relied on reports prepared by qualified geologists, including valuations related to the A25 claims, and had no reason to believe any of the reports to be inaccurate or improper;

i. He essentially did what he was told by his father, David Amar, and Adams; and

j. He is prepared to undertake to refrain from acting or becoming an officer or director of an issuer, applying to be registered, or trading until he attends and passes a course, acceptable to Staff, the subject matter of which includes the study of the duties of directors and officers.

David Amar:

a. David Amar is currently 67 years of age and suffers from severe cardiac health problems for which he has recently undergone surgery and is currently under treatment. His cardiac condition is unstable. He has a surgically implanted pacemaker and defibulator;

b. He was born in Morocco and his family escaped Morocco as refugees to Israel;

c. He completed grade school in Morocco and has had no formal education thereafter. His native language is Hebrew;

d. In December of 1968, David Amar moved to Canada. He played professional soccer and had started his own painting business. Thereafter, he was self-employed in the food industry, then the fashion industry and, thereafter, the gem stone business which led to his interest in mining in 1989;

e. He has no formal training or understanding of the securities industry; and

f. He has had no formal training in corporate governance or securities rules and regulations.

Adams:

a. James Adams is a resident of the City of Toronto in the Province of Ontario and is currently 57 years of age;

b. He obtained his degree in journalism from Ryerson and since 2000 has been self-employed as a consultant in the areas of IT, web design and business planning. In 2009, he formed a company to provide transfer agent services on junior exchanges; and

c. He has had no formal training in the securities industry.

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) and section 127.1 of the Act that:

(a) the settlement agreement is approved;

(b) trading in any securities or derivatives by and/or of A25 cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

(c) trading in any securities or derivatives by David Amar cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

(d) trading in any securities or derivatives by Adams for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2 of subsection 127(1) of the Act;

(e) trading in any securities or derivatives by Avi Amar for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2 of subsection 127(1) of the Act;

(f) acquisition of any securities by A25 and David Amar is prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(g) acquisition of any securities by Adams is prohibited for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(h) acquisition of any securities by Avi Amar is prohibited for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(i) any exemptions contained in Ontario securities law do not apply to A25 or David Amar permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;

(j) any exemptions contained in Ontario securities law do not apply to Adams for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act;

(k) any exemptions contained in Ontario securities law do not apply to Avi Amar for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act;

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

(m) the Individual Respondents resign all positions that they hold as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(n) the Individual Respondents resign all positions that they hold as a director or officer of a registrant, pursuant to paragraph 8.1 of the Act;

(o) the Individual Respondents resign all positions that they hold as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of the Act;

(p) David Amar is prohibited from becoming or acting as a director or officer of any issuer permanently, pursuant to paragraph 8 of subsection 127(1) of the Act;

(q) Adams is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8 of subsection 127(1) of the Act;

(r) Avi Amar is prohibited from becoming or acting as a director or officer of any issuer for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8 of subsection 127(1) of the Act;

(s) David Amar is prohibited from becoming or acting as a director or officer of any registrant permanently, pursuant to paragraph 8.2 of the Act;

(t) Adams is prohibited from becoming or acting as a director or officer of any registrant for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.2 of the Act;

(u) Avi Amar is prohibited from becoming or acting as a director or officer of any registrant for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.2 of the Act;

(v) David Amar is prohibited from becoming or acting as a director or officer of any investment fund manager permanently, pursuant to paragraph 8.4 of the Act;

(w) Adams is prohibited from becoming or acting as a director or officer of any investment fund manager for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.4 of the Act;

(x) Avi Amar is prohibited from becoming or acting as a director or officer of any investment fund manager for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement], pursuant to paragraph 8.4 of the Act;

(y) A25 and David Amar are prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(z) Adams is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(aa) Avi Amar is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(bb) A25 and David Amar each pay an administrative penalty in the amount of $150,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act;

(cc) Adams pay an administrative penalty in the amount of $50,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act;

(dd) A25 disgorge to the Commission the amount of $2,000,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 10 of subsection 127(1) of the Act;

(ee) David Amar disgorge to the Commission the amount of $797,917, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 10 of subsection 127(1) of the Act;

(ff) David Amar shall pay costs in the amount of $75,000, pursuant to section 127.1 of the Act;

(gg) Adams shall pay costs in the amount of $25,000, pursuant to section 127.1 of the Act;

(hh) The Individual Respondents' right to (i) call at any residence for the purpose of trading in securities, or (ii) telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in securities, is cancelled, pursuant to subsection 37(1) of the Act; and

(ii) Avi Amar undertakes to the Commission (i) to refrain from acting or becoming an officer or director of an issuer or affiliated company of an issuer, as such terms are defined in the Act, until he attends and passes a course, acceptable to Staff, the subject matter of which includes the study of the duties of directors and officers; and (ii) to refrain from trading in any securities or derivatives until such time as he attends and passes a course, acceptable to Staff, the subject matter of which includes the study of the standards and codes of ethics underlying securities regulation.

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 sub-paragraphs 28(b) to (aa) and 28(hh) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

30. The Respondents agree 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 the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondents. 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 the Respondents fail 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 subparagraphs 28 (bb) to (gg) 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 10:00 a.m. on Thursday March 5, 2015, 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 Respondent's 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, no 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. All 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 3rd day of March, 2015.

"*Jim Adams"*
A25 GOLD PRODUCERS CORP.
Per: Jim Adams [print]

"Carla Caramanda"
Carla Caramanda [print]
Witness

I am authorized to bind the corporation.

Dated at Toronto this 3rd day of March, 2015.

"David Amar"
DAVID AMAR

"Avi Amar"
Avi Amar [print]
Witness

Dated at Toronto this 3rd day of March, 2015.

"Jim Adams"
JAMES STUART ADAMS

"Carla Caramanda"
Carla Caramanda [print]
Witness

Dated at Toronto this 3rd day of March, 2015.

"Avi Amar"
AVI AMAR

"David Amar"
David Amar [print]
Witness

Dated at Toronto this 3rd day of March, 2015.

"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
A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND
A25 GOLD PRODUCERS CORP., DAVID AMAR,
JAMES STUART ADAMS and AVI AMAR

ORDER
(Subsections 127(1) and 127.1)

WHEREAS on December 19, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) 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 orders, as specified therein, against and in respect of A25 Gold Producers Corp. ("A25"), David Amar, James Stuart Adams ("Adams") and Avi Amar (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 December 18, 2013;

AND WHEREAS the Respondent(s) entered into a Settlement Agreement with Staff dated [date] (the "Settlement Agreement") in which the Respondent(s) agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 19, 2013, subject to the approval of the Commission;

AND WHEREAS on [date], 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 a 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 Avi Amar has undertaken to the Commission (i) to refrain from acting or becoming an officer or director of an issuer or affiliated company of an issuer, as such terms are defined in the Act, until he attends and passes a course, acceptable to Staff, the subject matter of which includes the study of the duties of directors and officers; and (ii) to refrain from trading in any securities or derivatives until such time as he attends and passes a course, acceptable to Staff, the subject matter of which includes the study of the standards and codes of ethics underlying securities regulation;

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 Settlement Agreement is approved;

2. trading in any securities or derivatives by and/or of A25 cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

3. trading in any securities or derivatives by David Amar cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

4. trading in any securities or derivatives by Adams for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2 of subsection 127(1) of the Act;

5. trading in any securities or derivatives by Avi Amar for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2 of subsection 127(1) of the Act;

6. acquisition of any securities by A25 and David Amar is prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

7. acquisition of any securities by Adams is prohibited for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

8. acquisition of any securities by Avi Amar is prohibited for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

9. any exemptions contained in Ontario securities law do not apply to A25 or David Amar permanently, pursuant to paragraph 3 of subsection 127(1) of the Act;

10. any exemptions contained in Ontario securities law do not apply to Adams for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act;

11. any exemptions contained in Ontario securities law do not apply to Avi Amar for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 3 of subsection 127(1) of the Act;

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

13. David Amar, Adams, and Avi Amar (the "Individual Respondents") resign all positions that they hold as a director or officer of an issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

14. the Individual Respondents resign all positions that they hold as a director or officer of a registrant, pursuant to paragraph 8.1 of the Act;

15. the Individual Respondents resign all positions that they hold as a director or officer of an investment fund manager, pursuant to paragraph 8.3 of the Act;

16. David Amar is prohibited from becoming or acting as a director or officer of any issuer permanently, pursuant to paragraph 8 of subsection 127(1) of the Act;

17. Adams is prohibited from becoming or acting as a director or officer of any issuer for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8 of subsection 127(1) of the Act;

18. Avi Amar is prohibited from becoming or acting as a director or officer of any issuer for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8 of subsection 127(1) of the Act;

19. David Amar is prohibited from becoming or acting as a director or officer of any registrant permanently, pursuant to paragraph 8.2 of the Act;

20. Adams is prohibited from becoming or acting as a director or officer of any registrant for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.2 of the Act;

21. Avi Amar is prohibited from becoming or acting as a director or officer of any registrant for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.2 of the Act;

22. David Amar is prohibited from becoming or acting as a director or officer of any investment fund manager permanently, pursuant to paragraph 8.4 of the Act;

23. Adams is prohibited from becoming or acting as a director or officer of any investment fund manager for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.4 of the Act;

24. Avi Amar is prohibited from becoming or acting as a director or officer of any investment fund manager for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement], pursuant to paragraph 8.4 of the Act;

25. A25 and David Amar are prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

26. Adams is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 5 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

27. Avi Amar is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 2 years commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

28. A25 and David Amar each pay an administrative penalty in the amount of $150,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act;

29. Adams pay an administrative penalty in the amount of $50,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 9 of subsection 127(1) of the Act;

30. A25 disgorge to the Commission the amount of $2,000,000, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 10 of subsection 127(1) of the Act;

31. David Amar disgorge to the Commission the amount of $797,917, which shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act, pursuant to paragraph 10 of subsection 127(1) of the Act;

32. David Amar shall pay costs in the amount of $75,000, pursuant to section 127.1 of the Act;

33. Adams shall pay costs in the amount of $25,000, pursuant to section 127.1 of the Act; and

34. The Individual Respondents' right to (i) call at any residence for the purpose of trading in securities, or (ii) telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in securities, is cancelled, pursuant to subsection 37(1) of the Act.

DATED at Toronto, this [day] day of [month], [year].

3.1.3 International Strategic Investments 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
INTERNATIONAL STRATEGIC INVESTMENTS,
INTERNATIONAL STRATEGIC INVESTMENTS INC., SOMIN HOLDINGS INC.,
AND NAZIM GILLANI AND RYAN J. DRISCOLL

REASONS AND DECISION
(Sections 127 & 127.1)

Hearing:	February 2, 3 & 6, 2015		
Decision:	March 6, 2015		
Panel:	Alan J. Lenczner	–	Commissioner
Appearances:	Nazim Gillani	–	For himself
	David Sischy	–	For Ryan J. Driscoll
	Cameron Watson	–	For the Ontario Securities Commission

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REASONS AND DECISION

I. BACKGROUND

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 March 5, 2012, regarding International Strategic Investments, International Strategic Investments Inc., (together "**ISI**"), Somin Holdings Inc. ("**Somin**") (collectively, the "**Corporate Respondents**"), Nazim Gillani ("**Gillani**") and Ryan J. Driscoll ("**Driscoll**") (collectively, the "**Respondents**"), alleging that the Respondents engaged in conduct in breach of the Act and contrary to the public interest.

[2] This matter proceeded by way of a written hybrid hearing. On December 12, 2013, the Commission ordered it to proceed by written record with the parties making themselves and witnesses available for cross-examination. Cross-examinations occurred over the course of three hearing days (the "**Merits Hearing**").

B. Facts

[3] From February 2009 to December 2009 (the "**Material Time**"), Gillani engaged in a course of conduct in which he held himself out to HD Retail Solutions Inc. ("**HDRS**") and its management ("**HDRS Management**") as a successful venture capitalist and ISI as a boutique investment company with the ability to access millions of dollars in financing. Relying on these representations, ISI and HDRS entered into an agreement pursuant to which, among other things, ISI would raise capital for the benefit of HDRS. Gillani made representations to HDRS Management that he could obtain the German Public Listing (defined below) for HDRS. Gillani continually assured HDRS Management that he was anticipating the receipt of millions of dollars of venture capital funds in "bridge financing" for the benefit of HDRS when he knew, in fact, that no such funds were forthcoming.

[4] On March 7, 2009 ISI entered into a Memorandum of Understanding (the "**MOU**") with HDRS, the main objective of which was to achieve a public listing of HDRS on the Frankfurt and Xetra markets in Germany (the "**German Public Listing**"). Under the MOU, ISI agreed to a number of deliverables and services including, an obligation to credit HDRS with at least $400,000 Euros in cash or liquid securities within ninety days of the listing date and to provide broker dealer and retail distribution services.

[5] Gillani also encouraged a group associated with HDRS, referred to as the G9, to invest in their own company to demonstrate to other investors their confidence HDRS. Gillani delivered stock subscription agreements (the "**Subscription Agreements**") for the purchase of HDRS securities (the "**HDRS Securities**") to the G9 and to other prospective investors. The Subscription Agreements contained instructions to deliver the funds in trust to ISI's in house lawyer, Michael Taylor ("**Taylor**") (now deceased). Pursuant to the Subscription Agreements, the G9 bought approximately $300,000 worth of HDRS Securities. Another approximately $1.17 million dollars was raised by Gillani and the Corporate Respondents through the sale of HDRS Securities to other investors. Together this totalled approximately $1.47 million dollars between 14 individuals (the "**HDRS Investors**").

[6] By May 2009 the financing promised by Gillani failed to materialize. The G9 demanded the return of their investment in the HDRS Securities. Gillani had withdrawn the funds from Taylor's trust account for purposes other than those permitted, without the knowledge or consent of the G9. In order to conceal what Gillani admitted was fraudulent conduct, Gillani wrote a cheque on a closed bank account and purported to make the payee Taylor's trust account. Then, using a screenshot of the trust account, he falsely demonstrated to the G9 that their investment was still intact. Having convinced to the G9 that their investment was safe, Gillani convinced them to allow ISI to continue to hold their funds. Gillani admitted that this course of conduct was fraudulent.

[7] In May 2009, Gillani informed HDRS that the German Public Listing was not proceeding and that HDRS should instead pursue a reverse takeover (the "**RTO**") of a Nevada based company, Greenwind Power Corp. ("**Greenwind USA**"). Gillani advised HDRS that Greenwind USA would trade on the OTC Pink Tier of the Pink OTC Markets Inc. (the "**Pinksheets**") and that, through the RTO, HDRS would become a publicly listed company.

[8] As Gillani and the Corporate Respondents had already spent the funds raised through the sale of the HDRS Securities, Gillani recruited Driscoll to raise the necessary funds for the RTO. Gillani contracted with Driscoll to promote the RTO as an investment opportunity, in return for which Driscoll earned a commission of approximately 15% on the investment made by each investor. Driscoll was informed that the sale of the Greenwind USA securities (the "RTO Securities") would occur through Somin, which Gillani represented to Driscoll was a registrant and the legal owner of the RTO Securities.

[9] During the Material Time, Driscoll recruited 19 individuals (the "**RTO Investors**") to invest in HDRS through the RTO. He brought his clients to the ISI premises where, after a presentation, they were given share purchase agreements (the "**Share Purchase Agreements**") to execute. The RTO Investors invested approximately $500,000.

[10] The Share Purchase Agreements indicated that Somin was selling the RTO Securities to the RTO Investors. Somin was never the legal owner of these securities. While Gillani generally had his nominee director, David Munro, sign for Somin, on at least one occasion, Gillani executed one of the Share Purchase Agreements for the RTO Securities on behalf of Somin. Gillani did not inform HDRS Management of any of the investments made by the RTO Investors.

[11] During the Material Time, Gillani represented ISI as a corporation and himself as its Chief Executive Officer. In fact, ISI was never incorporated, nor did it ever have a bank account. Instead Gillani used Somin and another corporation, 1021050 Ontario Inc. ("**102**"), to transact the ISI business and banking related to the HDRS Securities and RTO Securities. Gillani was not a director of 102 or Somin, but instead relied on nominee directors to act in those roles while he in fact controlled those corporations and their banking. In his compelled testimony, Gillani admitted that ISI, 102 and Somin functioned as a single business enterprise, stating "you can't draw a line and say is this ISI business, is this Somin business, is this 102 business … there's literally no difference to me".

[12] Gillani never had his own bank account. He utilized Taylor's trust account, Driscoll's credit card and Somin's debit card to fund his personal expenses and some business expenses of ISI.

[13] During the Material Time, HDRS Investors paid approximately $1.47 million and the RTO Investors paid approximately $500,000 for the purchase of HDRS Securities and RTO Securities respectively, for a total of approximately $1.97 million. Of this total, approximately $1.2 million was deposited into bank accounts controlled by or paid by way of cash to Gillani, of which only approximately $508,000 was disbursed to the benefit of HDRS.

II. THE ISSUES

[14] Did the Respondents:

(a) engage in unregistered trading; and

(b) engage in unregistered advising.

[15] Did Gillani and the Corporate Respondents:

(a) engage in a course of conduct that they knew or reasonably ought to have known perpetrated a fraud on persons or companies;

(b) make misleading oral and written representations contrary to section 38(3) of the Act; and

[16] Did Gillani:

(a) authorize, permit or acquiesce in the non-compliance with the Act by the Corporate Respondents and Driscoll.

III. ANALYSIS AND DECISION

1. The Commission's Public Interest Jurisdiction

[17] The Commission's mandate in upholding the purposes of the Act is set out in section 1.1 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.

[18] The Commission is guided by certain fundamental principles in upholding and achieving the purposes of the Act. These principles include:

(a) requirements for timely, accurate and efficient disclosure of information;

(b) restrictions on fraudulent and unfair market practices and procedures; and

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

[19] The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets.

[20] The scope of the Commission's discretion in defining the public interest is limited only by the animating principles of the Act, principally to protect investors and enhance the integrity of the public markets.

2. Standard of Proof

[21] The civil standard of proof and the nature of the evidence which is required to meet that standard are integral to the duty of administrative tribunals to provide a fair hearing. It is well established that the standard of proof that must be met in administrative proceedings is the civil standard of the "balance of probabilities" *F. (H.) v. McDougall*, [2008] S.C.J. No. 54 ("***McDougall***"),

[22] The Supreme Court of Canada went on to state that "the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall*, *supra*, at para. 46). However, this requirement of clear, convincing and cogent evidence does not elevate the standard of proof beyond the balance of probabilities.

C. Registration

1. Importance of Registration in the Regulatory Context

[23] Participants who engage in the securities industry do so voluntarily and for their own profit. In exchange for the privilege of participating in the Ontario capital markets, individuals and companies must comply with Ontario securities laws. Compliance is paramount, ensuring the protection of the public and the integrity of the capital markets.

[24] The registration requirement found in section 25 of the Act is one of the cornerstones of the regulatory framework of the Act. Registration serves an important gate-keeping function by ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by person who therein carry on such business.
>
> *Gregory & Co. Inc. v. Quebec Securities Commission et al.*, [1961] SCR 584 at para. 11.

[25] Through the registration process, the Commission ensures that those who engage in marketplace activities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards. During the Material Time none of the Respondents were registered with the Commission in any form.

D. Unregistered Trading

2. Section 25: Prior to September 28, 2009

[26] Prior to September 28, 2009, subsection 25(1)(a) read:

> No person or company shall,
>
> a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer.

3. Section 25: On and After September 28, 2009

[27] On September 28, 2009 the Commission adopted the current version of subsection 25(1) (the "**Trading Registration Amendments**"). The current subsection reads as follows:

> Unless a person or company is exempt under Ontario securities law from the requirements to comply with this subsection, the person or company shall not engage in or hold himself, herself, or itself out as engaging in the business of trading in securities unless the person or company,
>
> a) is registered in accordance with Ontario securities law as a dealer; or

b) is a representative registered in accordance with Ontario securities law as a dealing representative of a registered dealer and is acting on behalf of the registered dealer.

[28] The Commission has held that the language contained the Trading Registration Amendments is broader than the previous language (*Re Empire Consulting Inc.* (2012) 35 O.S.C.B. 7775 ("***Re Empire Consulting***"). A breach of section 25 prior to the amendments will qualify as a breach after the amendments were enacted. In this case, Staff have alleged that trading in the HDRS Securities and in the RTO Securities occurred before the Trading Registration Amendments. As I find that Staff met its burden of proof under the old language, it is therefore unnecessary to conduct an analysis under the new language as well.

4. The "business trigger" for registration requirement for trading

[29] The requirement for registration is determined by a "business trigger". In determining whether a person or company is trading in securities for a business purpose, section 1.3 of Companion Policy 31-103 sets out a number of relevant factors that are derived from case law and regulatory decisions that have interpreted the "business purpose test" for securities matters. The relevant factors are as follows:

- engaging in activities similar to a registrant, including promoting securities or stating that an individual or company will buy or sell securities;
- directly or indirectly carrying on the activity with repetition, regularity or continuity, especially trading in any way that produces, or is intended to produce, profits;
- being, or expecting to be, remunerated or compensated for trading and it is irrelevant if the individual or company actually received compensation or in what form; and
- directly or indirectly soliciting, including contacting anyone by any means to solicit securities transactions.

[30] There is no question that the Respondents engaged in the sale of the HDRS Securities and RTO Securities for a business purpose and therefore contravened the registration requirements of the Act.

5. Definition of "Trade"

[31] To establish a breach of the previous and current versions of section 25 of the Act, it is necessary for the Respondents to "trade in a security" within the meaning of the Act. The definition of "trade" under subsection 1(1) describes a very broad concept that encompasses not only any sale or disposition of securities for valuable consideration, but also includes any act, advertisement, solicitation, conduct, or negotiation directly or indirectly in furtherance of such a sale or disposition.

[32] The inclusion of the word "indirectly" in the definition of "trade" under the Act reflects an express intention on the part of the Legislature to capture conduct which seeks to avoid the registration and prospectus requirement by doing indirectly that which is prohibited directly.

[33] Cases considering the issue of acts in furtherance of trading reflect a contextual approach that examines the totality of the conduct and the setting in which it occurs. In this analysis, the primary emphasis is on the intended effect of the acts on those at whom they are directed, and on the proximity of the acts to an actual or potential trade in securities (*Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603) ("***Re First Federal***"). Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade.

[34] The Commission has found a variety of activities that constitute acts in furtherance of trading, including:

(a) accepting money from investors and depositing investor cheques for the purchase of shares in a bank account;

(b) providing potential investors with subscription agreements to execute;

(c) distributing promotional materials concerning potential investments;

(d) issuing and signing share certificates;

(e) preparing and disseminating forms of agreements for signature by investors;

(f) conducting information sessions with groups of investors; and

(g) meeting with individual investors;

(See *Re Hrappstead*, [1999] 15 B.C.S.C.W.S. 13; *R. v Sussman* cited above, *R. v Guard* cited above; *Re First Federal*, *supra*; *Re Dodsley* (2003), 26 O.S.C.B. 1799; *Del Bianco v. Alberta (Securities Commission)*, [2004] A.J. No. 1222 (Alta C.A.)).

[35] An act in furtherance of a trade does not require that an actual trade occur. Any claim that an actual trade must occur for there to be an act in furtherance of a trade would necessarily limit the effectiveness and negate the purpose of the Act, which is to regulate those who trade, or who purport to trade, in securities.

[36] Gillani and ISI traded in securities with regards to the sale of the HDRS Securities. Gillani delivered the Subscription Agreements to investors and Gillani and ISI received money from investors pursuant to the sale and purchase of HDRS Securities.

[37] By recruiting Driscoll to sell the RTO Securities and by executing the sale of securities pursuant to a Share Purchase Agreement, Gillani also engaged in "trading" and "acts in furtherance of trading" as defined by the Act. While Somin didn't actually own the securities that it purported to sell, a sale of securities is not required to find that a "trade" occurred.

[38] Driscoll recruited potential investors and brought them to the ISI premises for presentations on the benefits of purchasing RTO securities. By meeting with individual investors, by bringing them to the ISI premises for the purpose of investing, and by expecting to be remunerated on the basis of any investment an individual made, Driscoll engaged in "acts in furtherance of a trade" as defined by the Act.

[39] The evidence establishes, to a balance of probabilities, that Gillani, ISI, Somin and Driscoll traded in securities with regards to the sale of the RTO securities.

6. Accredited Investor Exemption

[40] Gillani submits that if he and any of the Corporate Respondents did engage in trading, that they did so pursuant an accredited investor exemption and are therefore exempt from the registration requirement under the Act. During the Material Time, National Instrument 45-106 ("**NI 45-106**") provided certain exemptions from the registration requirements for trading in securities. One of the categories of exemptions contained in NI 45-106 included the sale of securities to "accredited investors". The accredited investor exemption permits an issuer to sell its securities to a class of sophisticated investors with fewer regulatory demands, including the requirement that an issuer be registered.

[41] Section 2.3 of NI 45-106 provided that sections 25 and 53 of the Act did not apply to trades in securities if the purchaser is an accredited investor and purchases as principal. However, section 2.43(b) provided that the accredited investor exemption was not available for market intermediaries.

[42] The definition of market intermediary was set out at section 204(1) of the Regulation:

> "market intermediary" means a person or company that engages or holds himself, herself or itself out as engaging in Ontario in the business of trading in securities as principal or agent, other than trading in securities purchased by the person or company for his, her or its own account for investment only and not with a view to resale or distribution, and, without limiting the generality of the foregoing, includes a person or company that engages or holds himself, herself or itself out as engaging in the business of,
>
> a) entering into agreements or arrangements with underwriters or issuers, in connection with distributions of securities, to purchase or sell such securities;
>
> b) participating in distributions of securities as a selling group member,
>
> c) making a market in securities, or
>
> d) trading in securities with accounts fully managed by the person or company as agent or trustee, whether or not the person or company engages in trading in securities purchased for investment only.

[43] I find that the evidence shows that Gillani and the Corporate Respondents acted as market intermediaries and not as principals. Therefore the accredited investor exemption was not available to them.

7. Trade By Person Acting Solely through a Registered Dealer

[44] Driscoll submits that if he is found to have traded contrary to section 25 of the Act, that he be allowed to take advantage of the exemption that existed at the time at part 3.1 of NI 45-106. Part 3.1 provided that "the dealer registration requirement does not apply in respect of a trade by a person acting solely through an agent who is a registered dealer."

[45] Driscoll submits that he be allowed to take advantage of the exemption even though Somin was not a registered dealer because Gillani had represented to him that Somin was registered. Furthermore, Driscoll submits that it would be unreasonable to expect him to have conducted any due diligence regarding Somin's registration status as this would be akin to looking "behind the representation that ScotiaMcLeod is registered."

[46] The registration requirement of the Act is a cornerstone of the gatekeeping function to ensure that only licensed registrants can trade in securities. It would undermine this important principle if an individual could escape the requirements by relying on a simple representation. Not only is a contravention of section 25 a strict liability offence but, in this case, Driscoll conducted no due diligence to determine whether Somin was a registered dealer. A simple search on the Commission's website would have indicated to him that neither Somin nor Gillani were ever registered with the Commission. Driscoll cannot rely on the purported exemption.

E. Unregistered Advising

1. Section 25: Prior to September 28, 2009

[47] Prior to September 28, 2009, subsection 25(1) of the Act stated that:

> No person or company shall,
>
> (c) act as an adviser unless the person or company is registered as an adviser or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of the adviser
>
> ... and the registration has been made in accordance with Ontario securities law. ...

2. Section 25: On and After September 28, 2009

[48] On September 28, 2009, the Commission adopted amendments to the registration requirements (the "**Advising Registration Amendments**") where subsection 25(1)(c) was repealed and replaced with subsection 25(3). Subsection 25(3) reads:

> Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in the business of, or hold himself, herself or itself out as engaging in the business of advising anyone with respect to investing in, buying or selling securities unless the person or company,
>
> (a) is registered in accordance with Ontario securities law as an adviser; ...

[49] The Commission has held that the language contained the Advising Registration Amendments is broader than the previous language (*Empire Consulting*, *supra*). A breach of section 25 prior to the Advising Registration Amendments will qualify as a breach after they came into force. In this case, Staff allege that the advising with respect to the HDRS Securities and in the RTO Securities began before the Trading Registration Amendments. As I find that Staff meets its burden of proof under the old legislation regarding Gillani and the Corporate Respondents, an analysis under the current language is unneeded. I find that Driscoll's actions do not meet the definition of advising, and given that this definition did not change throughout the Material Time, a further analysis is not required in his case.

3. The "business trigger" for registration as an adviser

[50] The requirement for registration is determined by a "business trigger". In determining whether a person or company is advising for a business purpose, section 1.3 of Companion Policy 31-103 sets out a number of relevant factors that are derived from case and law and regulatory decisions that have interpreted the "business purpose test" for securities matters. The relevant factors are as follows:

- engaging in activities similar to a registrant;

- directly or indirectly carrying on the activity with repetition, regularity or continuity, especially advising in any way that produces, or is intended to produce, profits;

- being, or expecting to be, remunerated or compensated for advising and it is irrelevant if the individual or company actually received compensation or in what form; and

- offering advice for the purpose of directly or indirectly soliciting securities.

[51] The Commission has held that a business purpose exists where the adviser expects to be remunerated. Remuneration or expected remuneration, whether direct or indirect, reflects a business purpose *Re Costello* (2003), 26 O.S.C.B. 1617 at paras 34-35; *Re Maguire*, (1995), 18 O.S.C.B. 4623 at pp. 2-3 ("***Re Maguire***"); *Re First Federal*, *supra* at para 29).

[52] The evidence demonstrates that Gillani and the Corporate Respondents engaged in activities similar to a registrant and were remunerated for their efforts. There is no question that Gillani and the Corporate Respondents engaged in advising regarding the HDRS Securities and RTO Securities for a business purpose and therefore contravened the registration requirements of the Act.

4. Definition of Advising

[53] "Adviser" is defined in subsection 1(1) of the Act as:

> a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities.

[54] A person is acting as an adviser if the person (i) offers an opinion about an issuer or its securities, or makes a recommendation about an investment in an issuer or its securities, and (ii) if the opinion or recommendation is offered in a manner that reflects a business purpose. A person who recommends an investment is advising in securities. (*Re Donas*, 1995 L.N.B.C.S.C. 18 ("***Re Donas***") at p 6; *Re Maguire* (1995), 18 O.S.C.B. 4623 at pp 2-3; *Re First Federal*, *supra* at paras 28-29)

[55] The nature of the information given or offered by a person is the key factor in determining whether that person is advising with respect to investment in or the purchase or sale of securities. A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities (*Re Donas*, *supra* at p 6).

[56] The evidence demonstrated that Gillani and ISI advised HDRS to pursue the German Public Listing. Gillani further advised the G9 to invest in their own company in order to show that they had confidence in their own business the German Public Listing.

[57] When the German Public Listing failed, Gillani and the Corporate Respondents advised HDRS to pursue the RTO as a means to have the company publicly listed.

[58] Under cross examination, Gillani admitted that he was present during the presentations given to prospective RTO Investors. He admitted that he would provide his opinion on the RTO plan to prospective investors and admitted to, at least on one occasion, giving the presentation himself.

[59] I find that the conduct engaged in by Gillani and the Corporate Respondents meets the definition of advising under the Act.

[60] Staff submits that the Panel can and should infer from the fact that Driscoll brought prospective investors to ISI for the purpose of investing and that some did invest in the RTO Securities, that Driscoll "advised" those investors as defined by the Act regarding the RTO Securities.

[61] Driscoll denies this allegation and submits that he did not go beyond stating factual information about the investment. Furthermore, he submits the affidavits of two RTO Investors who agree with Driscoll's submission regarding this allegation.

[62] Staff did not ask Driscoll to submit to cross-examination at the Merits Hearing. I am therefore left to make a decision based upon the affidavits of Staff and of Driscoll and the compelled testimony submitted as part of the hearing brief. Without having *viva voce* evidence tested under cross-examination, I am not prepared to weigh the evidence from affidavits provided by witnesses and to make credibility findings against Driscoll. Staff has failed to meet its burden of proof that Driscoll engaged in unlawful advising under the Act.

F. Fraud

[63] Staff allege that Gillani and the Corporate Respondents breached Section 126.1(1)(b) of the Act, which prohibits conduct relating to securities that a person or company knows or reasonably ought to know would perpetrate a fraud:

> (1) A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> a) …
>
> b) … perpetrates a fraud on any person or company.

[64] Fraud is one of the most egregious securities regulatory violations and is both an affront to the individual investors directly targeted and decreases confidence in the fairness and efficiency of the entire capital market system generally.

[65] With respect to a corporate respondent, to prove a breach of subsection 126.1(1)(b) of the Act, it is sufficient to show that its directing mind knew that the acts of the corporation perpetrated a fraud.

[66] Under cross examination Gillani repudiated his position in his affidavit and admitted to committing fraud contrary to 126.1(1)(b). In May 2009, with the financing promised to HDRS having failed to materialize, the G9 demanded the return of their investment in the HDRS Securities from ISI. Gillani, however, had disbursed these funds from Taylor's trust account, without the knowledge or consent of the G9. Gillani admitted that in order to conceal his fraudulent conduct, he wrote a cheque on a closed bank account and purported to make the payee Taylor's trust account. He then used a screenshot of the trust account to convince the G9 that their investment was still intact and that they should continue to allow Gillani and ISI to hold it in trust. Gillani admitted that this course of conduct was fraudulent.

G. Misleading Representations

[67] The basis for an allegation of a misleading representation is found under section 38(3) of the Act:

> (3) Listing – Subject to the regulations, no person or company, with the intention of effecting a trade in a security or derivative, shall, except with the written permission of the Director, make any written or oral representation that the security or derivative will be listed on an exchange or quoted on a quotation and trade reporting system, or that application has been or will be made to list the security or derivative on an exchange or quote the security or derivative on a quotation and trade reporting system, unless,
>
> a) in the case of securities, application has been made to list or quote the securities and other securities issued by the same issuer are already listed on an exchange or quoted on a quotation or trade reporting system; or
>
> b) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the securities or derivatives, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation.

[68] Under cross examination, Gillani recanted from his position in his affidavit and admitted to breaching section 38(3) in connection with the representations he made to the HDRS Management that HDRS would be listed on a German public market when the Director had not provided written permission to Gillani or ISI to make these representations.

H. Authorizing, Permitting, or Acquiescing in Non-Compliance

[69] Pursuant section 129.2 of the Act, a director or officer is deemed to be liable for a breach of securities law by the a company or person where the director or officer authorized, permitted or acquiesced in the company or person's non-compliance with the Act. Given my conclusions that Gillani has breached sections 25 and 38, I do not find it necessary to address Staff's allegations under section 129.2.

IV. CONCLUSION

[70] I find that:

(a) during the Material Time, the Respondents traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so and without an available exemption from the

registration requirements, contrary to subsection 25(1)(a) of the Act for the period before September 28, 2009 and contrary to subsection 25(1) of the Act for the period on and after September 28, 2009;

(b) during the Material Time, Gillani and the Corporate Respondents advised and engaged in or held themselves out as engaging in the business of advising members of the public with respect to investing in, buying or selling securities without being registered to do so and without an available exemption from the registration requirements, contrary to subsection 25(1)(c) of the Act for the period before September 28, 2009 and contrary to subsection 25(3) of the Act for the period on and after September 28, 2009;

(c) during the Material Time, Gillani and the Corporate Respondents engaged or participated in acts, practices or courses of conduct relating to securities that they knew or ought to have known perpetrated a fraud on persons or companies contrary to subsection 126.1(1)(b) of the Act;

(d) during the Material Time, Gillani made misleading oral and written representations to when the Director had not provided written permission to Gillani to make these representations, contrary to section 38(3) of the Act; and

(e) during the Material Time, the Respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

[71] An order will issue as follows:

(a) Staff shall serve and file its written submissions on sanctions and costs by March 31, 2015;

(b) the Respondents shall serve and file their written submissions on sanctions and costs by April 24, 2015;

(c) Staff shall serve and file reply submissions on sanctions and costs, if any, by May 4, 2015;

(d) the hearing to determine sanctions and costs against the Respondents will be held at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on May 13, 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

(e) 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 proceedings.

Dated at Toronto this 6th day of March, 2015.

“Alan J. Lenczner”

3.1.4 Julian Robert Ricci – ss. 8(3), 27.1

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

AND

IN THE MATTER OF
JULIAN ROBERT RICCI

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF A PANEL OF
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
DATED JUNE 9, 2014

REASONS AND DECISION
(Section 27.1 and Subsection 8(3) of the Act)

Hearing:	November 24, 2014		
Decision:	March 6, 2015		
Panel:	Christopher Portner	–	Commissioner
Counsel:	Scott C. Hutchison Matthew C. Gourlay	–	For Julian Robert Ricci
	Susan Kushneryk Alexandra Clark	–	For Staff of the Investment Industry Regulatory Organization
	Albert Pelletier	–	For Staff of the Ontario Securities Commission

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REASONS AND DECISION

I. BACKGROUND

A. Introduction

[1] On November 24, 2014, the Ontario Securities Commission (the "**Commission**") held a hearing to consider an application by Julian Robert Ricci ("**Ricci**") dated July 9, 2014 (the "**Application**") under section 27.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") for a hearing and review of a decision of a hearing panel (the "**Panel**") of the Investment Industry Regulatory Organization of Canada ("**IIROC**") dated June 9, 2014 (the "**Decision**").

[2] The Decision was issued by the Panel following a sanctions hearing (the "**Hearing**") that was based on an Agreed Statement of Facts and Contraventions dated May 22, 2014 and a Supplementary Agreed Statement of Facts dated May 28, 2014 (together, the "**Agreed Statement of Facts**").

[3] In the Agreed Statement of Facts, Ricci admitted two contraventions of IIROC Rule 29.1, namely, that, from or about August 2011 to April 2013:

(a) He engaged in conduct unbecoming a registrant or detrimental to the public interest in that he made misrepresentations to his firm's compliance staff by inflating the net worth of certain clients; and

(b) He falsely endorsed the signatures of several clients on account documentation and other forms.

[4] In the Decision, the Panel ordered that:

(a) Ricci be prohibited from reapplying for registration with IIROC for a period of 24 months from the date of the Decision, and thereafter until the fines, costs and interest thereon as set out in its order are paid in full;

(b) Should Ricci obtain registration, he be subject to strict supervision for a period of one year; and

(c) Ricci pay a fine of $200,000 and costs of $15,000.

[5] Ricci seeks to set aside the 24 month suspension and submits that the Commission should substitute a shorter period of suspension of eight months. He does not seek to set aside the other sanctions imposed on him by the Panel.

B. The Application

[6] Ricci applied for a hearing and review of the Decision by the Commission on the following grounds:

(a) The Panel's decision to prohibit Ricci from applying for re-registration for a period of 24 months was overly harsh in the circumstances and lengthier than necessary to accomplish the public interest objectives sought to be furthered by the imposition of a penalty.

(b) The 24 month suspension was overly harsh and inconsistent with prior dispositions of IIROC hearing panels imposed in materially analogous circumstances.

(c) The Panel overlooked material circumstances that would have led to a shorter period of prohibition being imposed. In particular, the Panel did not advert to that fact that Ricci had already served the functional equivalent of a lengthy suspension due to his inability to be registered throughout the course of the process and, as a consequence, imposed a period of suspension that was disproportionate in the circumstances and in excess of what was required by the public interest.

(d) The Panel overlooked material evidence in mitigation of the penalty. In particular, although the Panel adverted to the evidence of the three character witnesses who testified on Ricci's behalf, the Panel did not advert to the close to 100 reference letters that were entered into evidence and, based on paragraph 22 of the Decision, did not actually consider the letters in its deliberations.

(e) The Panel erred by not permitting Ricci to make an oral statement to the Panel at the end of the Hearing on his own behalf.

[7] Ricci made no written or oral submissions in this proceeding with respect to the ground for appeal described in paragraph [6](e) above, and, accordingly, I have not addressed the matter.

II. THE ISSUES

[8] In considering the Application, we will address the following issues:

(a) The Commission's jurisdiction to intervene in this matter;

(b) The appropriate standard of review under section 21.7 of the Act;

(c) Whether the Applicant has established any of the grounds on which the Commission may intervene in the Decision; and

(d) If there are grounds to intervene in the Decision, what the appropriate disposition of the matter by the Commission should be in the circumstances.

III. SUBMISSIONS OF THE PARTIES

A. Applicant's Submissions

1. The Need for Commission Intervention

[9] Ricci submits that the intervention of the Commission is required because the Panel committed errors in its treatment of the evidence of support from Ricci's clients and the evidence of the amount of time Ricci had not been registered at the time of the Hearing, and in imposing an inappropriate suspension which is in excess of what the public interest requires.

2. Evidence of Support from Ricci's Clients

[10] Ricci submits that the Panel overlooked material evidence in that it did not advert in the Decision to 95 letters from Ricci's former clients which were entered into evidence and which expressed support for his return to the industry. Ricci submits that the letters were essential evidence to understand the context and nature of his misconduct and properly determine a fit penalty. More specifically, Ricci submits that:

> Unfortunately, the Panel declined to even advert to these letters in its Reasons and gave no indication of even having read them. The Applicant submits that if they had, they would have imposed a more lenient penalty.
>
> (Ricci's Memorandum of Fact and Law at para. 45)

[11] Ricci further submits that the Panel's failure to advert to the letters should be placed in the context of the Panel's direction to Ricci's counsel to shorten the proceeding and limit the number of Ricci's clients from whom the Panel would hear oral evidence. As discussed in greater detail below, the Panel advised Ricci that it did not agree that evidence of client support should be given much weight. Ricci had intended to have 12 clients testify, but ultimately only three testified. Ricci submits that:

> The understanding that the Panel would consider the client evidence contained in the letters also explains why counsel was willing, at the Panel's suggestion, to drastically abridge the anticipated *viva voce* [i.e., live] evidence. With respect, it was unfair to extract this compromise from the Applicant on live witness testimony and then not consider the substantial paper record that compensated for the witness' absence.
>
> (Ricci's Memorandum of Fact and Law at para. 54)

[12] Ricci emphasized that the Panel needed to appreciate the extraordinary extent to which [Ricci's] client base remained loyal to him even after finding out about his misconduct and many had been willing to testify before the Panel on his behalf. In Ricci's submission, the evidence of the support by his clients "persuasively demonstrated [Ricci's] commitment to his clients and the exceptionally positive value he provides to the industry." (Ricci's Memorandum of Fact and Law at para. 55)

3. Evidence Relating to Ricci's Non-Registered Time

[13] Ricci submits that the Panel overlooked material evidence in that it did not advert in the Decision to the fact that he had been unlicensed for 16 months by the date of the Hearing. Ricci submits that, if the Panel had considered the issue, any further suspension should not exceed eight months which would represent the functional equivalent of a two year suspension.

[14] Ricci further submits that, as the Panel did not advert to the issue in the Decision, it is not possible to know whether it was considered or overlooked and that the failure of the Panel to give any credit for the non-registered period of time was a clear error of principle.

4. Appropriate Length of Suspension

[15] Ricci submits that the Panel imposed a suspension that was unfit and in excess of what the public interest requires. He submits that the suspension imposed was outside the range established by prior decisions, and, in support of his submission, refers to a number of prior decisions involving similar conduct in which the suspensions imposed ranged from no suspension to a permanent ban. Ricci submits, as he did to the Panel, that the maximum suspension that should be imposed in the circumstances of his case should be two years and that he be given credit for non-registered time as described above.

[16] Ricci places particular emphasis on *Re Rotstein*, 2012 IIROC 27 ("***Re Rotstein***") and *Re Steinhoff*, 2010 IIROC 42, rev'd 2011 BCSECCOM 147 ("***Re Steinhoff***"), in which shorter suspensions of 12 months were imposed for conduct which Ricci submits was more egregious than his own. The two cases cited by Ricci are described in paragraph [25] below.

[17] Ricci also submits that the suspension imposed by the Panel was unfit because in its consideration of all of the facts, the Panel misapprehended the evidence regarding (i) the type of investment strategy his clients were placed in; (ii) the number of clients with respect to whom Ricci made misrepresentations; and (iii) the fact that Ricci had only been licensed for two years at the time the misconduct took place.

B. IIROC Staff's Submissions

1. Evidence of Support from Ricci's Clients

[18] IIROC Staff submits that evidence of support from 95 of Ricci's clients which addressed Ricci's character and their satisfaction with the services that he provided to them was received in evidence and formed part of the body of evidence in the case. IIROC Staff also submits that there is no basis to suggest that the Panel dealt unfairly or inappropriately with this evidence.

[19] IIROC Staff submits that the Panel correctly ascribed little weight to the evidence of support from Ricci's clients as such evidence is not relevant to the issue of whether Ricci engaged in fraudulent, misleading and wrongful activity. IIROC Staff also submits that such evidence is also not relevant to the issue of the appropriate penalty for such conduct.

[20] IIROC Staff submits that the Panel's reasons regarding this evidence are sufficient, and a more detailed treatment was not required.

2. Evidence of Ricci's Non-Registered Time

[21] IIROC Staff submits that evidence of Ricci's non-registered time and Ricci's arguments that he should be given credit for this time were squarely before the Panel. IIROC Staff also submits that the details relating to his non-registered time were set out in the Agreed Statement of Facts and are set out in paragraphs 3 and 4 of the Decision.

[22] IIROC Staff further submits that the Panel was not required to credit Ricci's non-registered time against the period of suspension it considered appropriate. IIROC Staff submits that Ricci was not out of the industry but was employed in the industry in a non-registered capacity and continued to receive 70% of the commissions generated by his client base. Accordingly, Ricci's situation cannot be directly compared with the prior decisions to which Ricci refers in which the respondent was given credit for time out of the industry.

[23] IIROC Staff submits that the Panel's reasons regarding Ricci's non-registered time are sufficient, and a more detailed treatment was not required.

3. Appropriate Length of Suspension

[24] IIROC Staff submits that the period of suspension imposed was appropriate, and there is no conflict between the Panel's perception of the public interest and that of the Commission. The period of suspension imposed by the Panel is within the range of suspensions recommended in the IIROC Dealer Member Disciplinary Sanction Guidelines (the "**Guidelines**"). Further, none of the prior decisions referred to by Ricci establish that the sanctions were inappropriately harsh.

[25] IIROC Staff submits that the two authorities on which Ricci relies in particular, namely, *Re Rotstein* and *Re Steinhoff*, involved conduct which was considerably less serious than that of Ricci. The respondent in *Re Rotstein* signed his clients' names as a convenience for them and with their authorization, and did not receive any financial benefit for doing so. Similarly, the respondent in *Re Steinhoff* allegedly directed her staff to re-use signatures and re-date documents to assist her clients and did not receive any financial benefit for doing so. Further, *Re Steinhoff* has no precedential value because the British Columbia Securities Commission found that the panel had erred in law, and set aside its liability and penalty decisions (*Re Steinhoff*, 2011 BCSECCOM 147).

[26] IIROC Staff further submits that the Panel reviewed *Re Pan*, 2012 IIROC 22 and *Re Thomas*, [2004] I.D.A.C.D. No. 47, two decisions of IIROC hearing panels which suggest that misrepresentations by a respondent to a member firm should lead to permanent registration bans.

[27] Finally, IIROC Staff notes that all of the prior decisions relied on by Ricci in connection with his application were before the Panel. The Panel weighed the facts of the case, which it did not misapprehend, against the facts in those decisions in coming to its determination of the appropriate sanction, and IIROC Staff submits that it is not the role of the Commission on an application for a hearing and review to engage in a re-weighing of those facts.

C. OSC Staff's Submissions

[28] Staff of the Commission ("**OSC Staff**") made submissions regarding the appropriate standard of review of the Decision and the grounds on which the Commission would intervene in the decision of an IIROC panel. OSC Staff took no position on whether Ricci had demonstrated that his case meets any of the grounds for intervention.

IV. ANALYSIS OF SUBSTANTIVE ISSUES RAISED ON THE APPLICATION

A. Jurisdiction to Intervene

[29] The Commission has the authority to review any direction, decision, order or ruling of a self-regulatory organization such as IIROC under section 21.7 of the Act which provides as follows:

> **21.7 (1) Review of Decisions** – The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may apply to the Commission for a hearing and review of the direction, decision, order or ruling.
>
> **(2) Procedure** – Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[30] Subsection 8(3) of the Act provides that, on a hearing and review, the Commission may confirm the decision under review or make such other decision as the Commission considers proper.

B. Standard of Review and Grounds for Intervention

[31] The Commission exercises original jurisdiction similar to conducting a new trial and may admit new evidence in a hearing and review under section 21.7 of the Act.

[32] The grounds on which the Commission will intervene in a decision of a self-regulatory organization were established in *Canada Malting Co. (Re)* (1986), 9 0SCB 3565 ("***Canada Malting***"). Based on the principles set out in *Canada Malting*, Ricci must demonstrate that his case fits squarely within at least one of the following grounds before the Commission will intervene in the Decision:

(a) The Panel proceeded on an incorrect principle;

(b) The Panel erred in law;

(c) The Panel overlooked material evidence;

(d) New and compelling evidence is presented to the Commission that was not before the Panel; or

(e) The Panel's perception of the public interest conflicts with that of the Commission.

(*Canada Malting* at para. 21; *Re Hudbay Minerals Inc.* (2009), 32 OSCB 3733("***Hudbay***") at para. 114).

[33] Ricci submits that the Panel committed the following errors thereby entitling the Commission to intervene based on the test articulated in Canada Malting:

(a) The Panel overlooked material evidence of support from Ricci's clients and of the amount of time Ricci had been non-registered prior to the Hearing;

(b) The Panel erred in principle or in law in not giving greater weight to the foregoing evidence; and

(c) The Panel imposed a penalty that was unfit and in excess of what the public interest requires.

[34] Although the scope of the Commission's authority on a hearing and review is well established, in practice the Commission takes a restrained approach to applications under section 21.7 of the Act, and will only substitute its decision for that of an IIROC hearing panel in rare circumstances (*Re Kasman* (2009), 32 OSCB 5729 at para. 43 ("***Re Kasman***"); and Hudbay at paras. 103-4, 114.

[35] The Commission recognizes the specialized expertise of an IIROC hearing panel and accords deference to factual determinations central to the panel's specialized competence (*Re Boulieris* (2004), 27 OSCB 1597, aff'd (2005), 28 OSCB 5174 (Div. Ct.); *Re Northern Securities Inc.* (2014), 37 OSCB 161 at para. 61; *Re Questrade Inc.* (2011), 34 OSCB 2595 at paras. 16-17; and *Re Kasman* at para. 43). The Commission accords even greater deference in matters of sanctions, and recognizes that IIROC hearing panels will have greater familiarity with IIROC's regulations and sanction guidelines than the Commission (*Re Benarroch* (2011), 34 OSCB 2041 at paras. 4 and 5). As stated by the Divisional Court in respect of the Commission's own expertise in matters of sanctions:

> [T]he standard of review on the penalties ordered against the appellant must be considered. Here again, the Commission has an expertise in the regulation of the markets and is entitled to deference as to its view of the appropriate penalty. We ought not to disturb the penalty imposed unless there is an error in principle or the punishment clearly does not fit the crime. Decisions as to penalty tend to be fact-intensive mixed questions of fact and law and are rarely determinative of future cases.
>
> (*Costello v. Ontario (Securities Commission)*, [2004] O.J. No. 2972 (Div. Ct.) at para. 31; see also *Erikson v. Ontario (Securities Commission)*, 2003 CanLii 245 (Div. Ct.) at paras. 55-57)

C. Analysis

1. Evidence of Support from Ricci's Clients

[36] The Panel describes in the Decision the evidence of the three former clients of Ricci who testified. The Panel also makes reference to the evidence tendered by the parties, which included the 95 letters from former clients of Ricci, but does not expressly refer to the letters.

[37] The Panel is not required to refer to every piece of evidence in the Decision. It is sufficient that the Decision when read in context shows why the Panel decided as it did. (*Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670 at paras. 29-31.)

[38] As noted above, the Panel heard from three of Ricci's former clients and heard submissions from Ricci about the importance of that evidence. The Panel disagreed with Ricci's submission that the evidence was important. It advised Ricci that it was "not sure how much weight" it was going to ascribe to the evidence that Ricci's former clients supported his return to the industry because "that isn't really what this case is about." With respect to the last of Ricci's former clients who testified, the Chair of the Panel made the following comments:

> THE CHAIR: Can't we just take his will-say statement into the record? If all he's going to say – with great respect to Mr. Hutchison, all he's going to say is, "Ricci was a great advisor and I'm going to follow him over to Chippingham," you know, we're not sure how much weight to provide to that sort of statement. (Transcript, May 28, 2014, p. 27: 11-17).
>
> …
>
> THE CHAIR: But you see, the panel – the panel is iffy – how do I phrase this? We accept that Ricci's clients love him and want to go with him wherever he goes, but that isn't really what this case is about.
>
> MR. HUTCHISON: Fair enough. But …
>
> THE CHAIR: This case is about Ricci falsely endorsing papers and inflating the net worth and, quite frankly, that is what this tribunal is going to be focusing on. … we don't really think [the testimony of the last of Ricci's former clients who was to testify] is going to add a heck of a lot, but we're quite happy to have it brought into the record as a will-say statement ... (Transcript, May 28, 2014, p. 28: 11-24)

[39] When the Decision is read in context, it is clear that the Panel did not expressly refer to the letters from Ricci's former clients, in addition to describing the oral evidence provided by three of his former clients, because it did not view that evidence to be material to its decision and ascribed little, if any, weight, to that evidence.

[40] While the Panel's views with respect to the weight to be ascribed to the evidence of Ricci's former clients could have been more clearly stated, the Decision, as it relates to the issue of the evidence of Ricci's former clients, is, in my view, sufficient when read in context. As a result, in my view, Ricci has not established that the Panel was required to ascribe greater weight to the client letters, and therefore, to impose a shorter period of suspension.

[41] The Guidelines include a non-exhaustive list of key considerations for an IIROC hearing panel to take into account in determining an appropriate sanction (*Re Kasman* at paras. 51-52). The Guidelines are not binding on IIROC hearing panels, but rather list general principles that a panel should consider in assessing appropriate sanctions (*Re Gareau*, [2005] I.D.A.C.D. NO. 25 at para. 52).

[42] Ricci did not identify any provision of the Guidelines that would have required the Panel to ascribe greater weight to the client letters, and therefore, to impose a shorter suspension.

[43] The conduct for which Ricci was sanctioned was directed at his employer and not his clients. Ricci was sanctioned for making misrepresentations to his firm's compliance staff and not to his clients. He was also sanctioned for making "false endorsements", which the Guidelines distinguish from "forgery" by the client's knowledge of or consent to the registrant forging his or her signature.

[44] Ricci's business partner, John Eley ("**Eley**"), was also sanctioned for making misrepresentations to his firm and for making false endorsements. In the decision regarding his sanctions, *Re Eley*, 2014 IIROC 52 ("***Re Eley***"), a different IIROC hearing panel expressly ascribed no weight to similar letters from Eley's clients. In that matter, the panel stated:

> We did not give weight to the clients' letters submitted by Mr. Eley. In our view, the clients were unaware and unaffected by Mr. Eley's conduct. Mr. Eley's error was to ignore or abuse his relationship with his employer and his obligations as a member of the investment industry, perhaps in his effort to accommodate his clients. The fact that he did so while not alienating his clients is not a factor to consider in his favour.
>
> (*Re Eley* at para. 61)

[45] Based on the foregoing, I find that the Panel did not proceed on an incorrect principle or err in law by not ascribing greater weight to the evidence of support from Ricci's clients

2. Evidence of Ricci's Non-registered Time

[46] Contrary to Ricci's submission, the Panel did advert to the fact that Ricci had been working in the industry in an unregistered capacity from April 2013 to March 2014, and was not working in the industry at the time of the Hearing.

[47] The Panel did not accept Ricci's submission that he should be given credit for his non-registered time and imposed a 24 month suspension commencing on the date of the Decision and not on the date that Ricci became unregistered.

[48] Ricci submits, as he did to the Panel, that the period of suspension should be reduced to account for the 16 months that he had been without registration by back-dating the period of suspension to the date on which he became unregistered in April 2013.

[49] Ricci referred to decisions in which non-registered time had been considered by IIROC hearing panels in determining the appropriate period of suspension.

[50] Ricci refers to the case in *Re Smith*, 2014 IIROC 16 ("***Re Smith***"), in which the respondent had been out of the industry following the termination of his employment for misconduct. The respondent entered into a settlement agreement which provided that he would be subject to a two-year suspension which would be deemed to have been served. The IIROC hearing panel in *Re Smith* endorsed the approach by stating the following:

> As the Respondent's two year absence from the industry came as a result of his conduct in this case, IIROC did not seek to extend the Respondent's time out of the industry beyond that two year period. IIROC's written submissions state the Respondent's record and any publications regarding this case will show a two year suspension. IIROC counsel also referred the Panel to a number of cases in which a suspension had been determined to commence at the time of the respondent's departure from the industry, rather than at the time of the panel decision. See *Re Bell* [2005] I.D.A.C.D. No 15, *Re Nott* 2011 LNIIROC 26, *Re Morrison* [2004] I.D.A.C.D. No. 63, *Re Conville*, 2013 IIROC 5, *Re Little* [2007] I.D.A.C.D. No. 24 and *Re Parkinson*, 2012 LNIIROC 18.
>
> (*Re Smith* at para. 21)

[51] Ricci also refers to other authorities in which the respondent was given credit for time spent out of the industry, including *Re Bell*, [2005] I.D.A.C.D. No 15 ("***Re Bell***"), *Re Morrison*, [2004] I.D.A.C.D. No. 63 ("***Re Morrison***"), and *Re Conville*, 2013 IIROC 5 ("***Re Conville***").

[52] *Re Smith* and the other authorities referred to by Ricci establish that non-registered time is one of the factors that may be considered by a panel in determining the appropriate period of suspension, but do not establish that such time must be credited against the period of suspension. Contrary to Ricci's submission, the Panel is not required to determine an appropriate period of suspension and then reduce the period of suspension by crediting the non-registered time; rather, the Panel is required to impose a suspension that is appropriate having regard to all of the circumstances. In *Re Eley* the panel stated that:

> …in an appropriate case an allowance can be made by a Hearing Panel for the time during which the respondent is effectively suspended from acting as a registrant. … [T]he preferable approach is to consider the amount of the suspension from a total, over-all perspective and decide what period of suspension is appropriate having regard to all of the facts.
>
> (*Re Eley* at para. 70)

[53] The weight, if any, which a panel ascribes to the respondent's non-registered time in its determination of the appropriate suspension varies and depends on the facts of the case. For example, in *Re Morrison* the panel accepted a settlement in which the one year suspension imposed was deemed served by the three years the respondent had been under strict or close supervision, because, among other things, the period of supervision had been imposed on the respondent in circumstances which the panel held were "patently unfair" (*Re Morrison* at paras. 61-65). In *Re Conville* the panel determined that the six month suspension it imposed should be back-dated by about three and a third months to the date when the respondent lost his employment in the industry. Unlike in *Re Morrison*, the panel did not reduce the suspension it determined was appropriate to account for the 40 months the respondent had been under strict supervision before he lost his employment. In *Re Eley*, the panel noted that one-for-one credit should not be given to the respondent since he was still employed in the industry, albeit in a non-registered capacity, but did not expressly stipulate how much credit was given. Finally, in *Re Bell* the panel noted *Re Spowart*, [2004] I.D.A.C.D. No. 17 ("***Re Spowart***") as representing a more egregious case in which the respondent benefited from his conduct. In *Re Spowart*, a three year suspension was imposed from the date of the decision and no credit was given for the 18 months the respondent had been out of the industry.

[54] Based on the foregoing, I find that the Panel did not proceed on an incorrect principle or err in law by imposing a suspension that commenced on the date of the Decision and by not expressly giving credit for the period of time that Ricci was not registered.

3. Appropriate Length of Suspension

[55] The suspensions recommended in the Guidelines for the type of conduct for which Ricci was sanctioned range from one month to a permanent ban. For false endorsements, the Guidelines recommend a suspension from one month to up to five years for egregious cases. In the case of misrepresentations, the Guidelines recommend a permanent ban for egregious cases, and do not comment on a minimum period of suspension.

[56] Ricci relies on *Re Bell*, which, he submits, provides general guidance on the principles to be applied to the determination of the appropriate length of suspension for the type of conduct for which he was sanctioned (at paras. 10, 11, and 35).

[57] In *Re Bell* the panel reviewed a number of prior decisions and noted that each case turns on its own facts and the sanctions imposed vary significantly depending on the facts of the case. The suspensions imposed in the decisions reviewed by the panel ranged from a one month suspension to a permanent ban.

[58] In *Re Bell* the panel found that certain factors suggested that a longer period of suspension be imposed. Two of those factors are noteworthy because they are present in Ricci's case. First, the panel found that cases involving some benefit to the respondent, such as commissions, were more egregious and should attract severe penalties. The panel cited *Re Spowart* in which a three year suspension was imposed, as an example of a case in which the respondent benefitted. Second, the panel found that cases involving a large number or pattern of forgeries or false endorsements even when there was no benefit to the respondent, are also more egregious and should attract severe penalties. The panel cited *Re Holowatiuk*, [2004] I.D.A.C.D. No. 64, in which a permanent ban was imposed, as an example of a case in which there was a large number or pattern of forgeries or false endorsements without a benefit to the respondent.

[59] Ricci refers to *Re Rotstein* and *Re Steinhoff i*n which suspensions of 12 months were imposed, and the decision of the British Columbia Securities Commission (the "**B.C. Commission**") in another proceeding involving Steinhoff, in which the B.C. Commission set aside the penalty decision of the panel (*Re Steinhoff*, 2013 BCSECCOM 308).

[60] In the latter decision, the conduct in question was different from the conduct in this case. Ricci relies on the decision for the B.C. Commission's comment on the effect of a suspension on the respondent. The B.C. Commission set aside certain of the IIROC hearing panel's findings on liability and its penalty decision, and requested submissions on the appropriate suspension for the remaining counts. In its comments on suspension, the B.C. Commission noted that the panel's characterization of the respondent's conduct in its penalty decision was grossly unfair, and stated (at para. 90) that a one year suspension was tantamount to the termination of the registrant's career.

[61] In *Re Rotstein*, the panel also noted that the impact of a suspension on a respondent's career might be a factor to be considered in determining the appropriate suspension, but it should be considered along with all of the other factors and should not be given significant weight if it would detract from the objectives of the disciplinary process. As noted by the panel:

> We believe that the impact on a respondent's business of a lengthy period of suspension might in special circumstances be an appropriate consideration to take into account in considering the issue of whether a Hearing Panel should sanction a divided period of suspension.[1] It must, however, be viewed in light of all of the circumstances of a particular case and should not be afforded significant weight if the result of dividing the suspension would be to impair the objectives of the disciplinary process referred to above including in particular the principle of deterrence inherent in a period of suspension.
>
> (*Re Rotstein* at para. 27)

[62] I find that the 24 month suspension imposed by the Panel was not unfit and was not in excess of what the public interest requires. It is within the range of suspensions recommended in the Guidelines and that were imposed in the authorities referred to by Ricci and IIROC Staff. The determination of the appropriate sanction in each case depends on a consideration of all of the facts, and I am not persuaded that the shorter suspensions imposed in *Re Rotstein* or *Re Steinhoff* (prior to being overturned) suggest that the Panel erred in imposing a 24 month suspension on Ricci. Moreover, I note that the circumstances of Ricci's case include a large number or pattern of false endorsements from which he derived benefits, which, as discussed above, suggest that a longer period of suspension be imposed. Indeed, in *Re Eley*, the panel determined that a six month suspension was appropriate for Eley in light of the 24 month suspension imposed on Ricci, because of the severity of Ricci's conduct, some of which was abusive in the extreme (*Re Eley* at paras. 48-50, 72).

[63] I also find that the Panel did not misapprehend the evidence and its consideration of the appropriate suspension was not based on a misapprehension of the evidence regarding (i) the type of investment strategy Ricci's clients were placed in; (ii) the number of clients in respect of which Ricci made misrepresentations; and (iii) the fact that Ricci had only been licensed for two years at the time the misconduct took place.

[64] Ricci has not established that the type of investment strategy he was employing was considered a factor by the Panel or that it should have been. The Panel did note as a mitigating factor that there was no evidence of financial harm to Ricci's clients (para. 20). Further, the Panel's description of the investment strategy in the Decision (para. 5) mirrors the description in the Agreed Statement of Facts (para. 8).

[65] Ricci notes that the Decision states (at para. 7) that he inflated the net worth of 30% of his clients in order to avoid his firm's suitability requirements, when the Agreed Statement of Facts states that Ricci only inflated the net worth of 30% of his clients who were in the leveraged investment strategy. He further notes that, as stated at paragraph 12 of the Agreed Statement of Facts, his clients who were in the leveraged strategy only held 60% of his approximately $225 million assets under management. In other words, by omitting the words "in the leveraged investment strategy", which were included in the Agreed Statement of Facts, Ricci submits that the Panel misapprehended the severity of his conduct. He only made misrepresentations in respect of clients holding 18% (30% of 60%) of his assets under management and not 30% as stated in the Decision.

[66] I am not persuaded that the omission from the Decision of the references to the leveraged investment strategy and the percentage of Ricci's clients' assets that were invested on that basis establishes that the Panel misapprehended the severity of Ricci's conduct in determining the appropriate sanction. The Panel did not list the number of clients in respect of whom Ricci made misrepresentations as an aggravating factor. Instead, the Panel identified as aggravating factors that Ricci engaged in a pattern of deliberate conduct that was designed to circumvent his firm's policies and to go undetected, and that his conduct persisted for 16 months and only ceased when Ricci was confronted by his firm.

[67] Finally, Ricci's relative youth was noted by the Panel as part of its conclusion that a permanent ban was not appropriate (para. 24).

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1 The reference to a divided period of suspension is to a 12 month suspension that was to be served in two separate six month intervals.

V. CONCLUSION

[68] I conclude that the Panel did not overlook material evidence, proceed on an incorrect principle, err in law, or impose a suspension that was unfit and in excess of what the public interest requires. Accordingly, the Application is hereby dismissed.

Dated at Toronto this 6th day of March, 2015.

"Christopher Portner"

3.1.5 2196768 Ontario Ltd. 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
2196768 ONTARIO LTD. carrying on business as RARE INVESTMENTS,
RAMADHAR DOOKHIE, ADIL SUNDERJI and EVGUENI TODOROV

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Securities Act)

Hearing:	August 28, 2014 and November 4, 2014		
Decision:	March 6, 2015		
Panel:	Edward P. Kerwin	–	Commissioner and Chair of the Panel
Appearances:	Donna Campbell	–	For Staff of the Commission
	Robert Lepore	–	For Ramadhar Dookhie
	Evgueni Todorov	–	Self-represented
		–	No one appeared for 2196768 Ontario Ltd, carrying on business as RARE Investments

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REASONS AND DECISION ON SANCTIONS AND COSTS

I. OVERVIEW

A. History of the Proceeding

[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 2196768 Ontario Ltd, carrying on business as RARE Investments ("**RARE**"),

Ramadhar Dookhie ("**Dookhie**") and Evgueni Todorov ("**Todorov**") (together, the "**Respondents**"). I will refer to Dookhie and Todorov, collectively, as the "**Individual Respondents**".

[2] The hearing on the merits in this matter took place on May 22, 23, 24, 27 and September 5, 2013 (the "**Merits Hearing**"). All of the Respondents appeared and participated in the Merits Hearing. The Reasons and Decision on the merits was issued on June 27, 2014 (*Re 2196768 Ontario Ltd et al.* (2014), 37 O.S.C.B. 6281 (the "**Merits Decision**")). On that date, the Commission ordered that the hearing with respect to sanctions and costs be held on August 28, 2014 (the "**Sanctions and Costs Hearing**"), and the Order included 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" (*Re 2196768 Ontario Ltd et al.* (2014), 37 O.S.C.B. 6729). A further appearance with respect to sanctions and costs was held on November 4, 2014 for Todorov to make oral submissions (the "**November 4, 2014 Appearance**").

[3] Prior to the Merits Hearing, on March 15, 2013, the Commission approved a settlement agreement between Staff and Adil Sunderji ("**Sunderji**"), a named respondent in this matter (*Re 2196768 Ontario Ltd et al.* (2013), 36 O.S.C.B. 2934 (the "**Sunderji Settlement**"); *Re 2196768 Ontario Ltd et al.* (2013), O.S.C.B. 2909 (the "**Sunderji Settlement Order**")).

B. The Sanctions and Costs Hearing

[4] On July 18, 2014, Staff filed its written submissions dated July 17, 2014, a Brief of Authorities and a Bill of Costs, which includes an Affidavit of Julia Ho sworn July 17, 2014. On July 24, 2014, Staff filed the Affidavit of Laura Filice sworn July 23, 2014 evidencing service of Staff's written submissions, Brief of Authorities and Bill of Costs on the Respondents (the "**Filice Affidavit**"). At the Sanctions and Costs Hearing, the Filice Affidavit was entered as Exhibit 1.

[5] On June 30, 2014, Robert Lepore ("**Lepore**") filed a Notice of Change of Lawyer to inform the Commission that he had been appointed as the lawyer of record for Dookhie. On August 6, 2014, Lepore requested a brief adjournment for the Sanctions and Costs Hearing, scheduled to be held on August 28, 2014, to which Staff did not object. Following email correspondence with the parties, I suggested to the parties that the hearing be adjourned to August 29, 2014. However, before this date was confirmed by all the parties, on August 8, 2014, Lepore informed the Commission and the other parties that he was able to conduct the hearing as originally planned.

[6] On August 15, 2014, Lepore filed Dookhie's written submissions dated August 11, 2014 and, on August 20, 2014, Lepore filed the Affidavit of Ramadhar Dookhie sworn August 19, 2014 detailing the financial circumstances of Dookhie (the "**Dookhie Affidavit**"). At the Sanctions and Costs Hearing, the Dookhie Affidavit was entered as Exhibit 2.

[7] On August 28, 2014, the Commission held the Sanctions and Costs Hearing. Staff and Lepore appeared and made submissions. Dookhie also appeared in person, but neither Todorov nor RARE appeared.

[8] At the Sanctions and Costs Hearing, Staff made submissions on its efforts to serve all the Respondents with its written submissions, Brief of Authorities and Bill of Costs. I was satisfied, based on Staff's submissions and the Filice Affidavit, that RARE and Todorov received notice of the Sanctions and Costs Hearing and that I could proceed in the absence of these respondents, in accordance with section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and Rule 7.1 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the "***Rules of Procedure***"). I note that the Merits Decision and the orders in this matter have been posted and made available to the public on the Commission's website.

[9] On August 28, 2014, after the Sanctions and Costs Hearing had ended, Staff was contacted by Todorov who advised Staff that he understood that the hearing had been adjourned to August 29, 2014 and that he intended to attend the hearing and make submissions on his own behalf. On August 29, 2014, the Registrar sent an email to Todorov, copied to all the other parties, and informed the parties that I was aware of Todorov's misunderstanding as to the date of the Sanctions and Costs Hearing and would accord Todorov an opportunity to present his oral submissions, but not introduce new evidence nor provide written submissions. The Registrar canvassed various dates with the parties to hear oral submissions on sanctions and costs. However, due to conflicting schedules of the parties and the Panel, there was not a workable date to hold a further appearance until November 4, 2014. On September 17, 2014, the Registrar sent an email to all parties and informed them that a hearing would be held November 4, 2014 for the purpose of hearing oral submissions from Todorov. Counsel for Dookhie advised the parties and the Panel to proceed on this date in his absence, with the opportunity to file submissions in reply within two weeks of the transcript of the November 4, 2014 Appearance becoming available.

[10] On November 4, 2014, Staff and Todorov appeared. Staff relied on its oral submissions made August 28, 2014, and directed the Panel to its written submissions dated July 17, 2014 and filed July 18, 2014. Todorov made oral submissions and Staff made brief oral submissions. Counsel for Dookhie did not file any reply submissions following the November 4, 2014 Appearance.

II. THE MERITS DECISION

[11] Between January 1, 2009 and March 31, 2010 (the "**Material Time**"), the Respondents solicited funds from the public for the purpose of engaging in trading of foreign currencies ("**Forex**"). The evidence presented at the Merits Hearing demonstrated that, during the Material Time, the Respondents raised $1,226,832 (the "**RARE Investor Funds**") from 16 investors of RARE (the "**RARE Investors**").

[12] In return for their investment in RARE, RARE Investors received promissory notes that carried a monthly interest rate of 1% to 2%. In the Merits Decision, I found that the promissory notes were securities that were sold to the public and had not been previously issued (Merits Decision, *supra* at paras. 94 and 130). RARE Investors were led to believe that the Respondents had developed a leveraged Forex trading strategy that could produce an attractive potential return on investment, and that half of their investment would be secured in guaranteed investment certificates. These investors were not informed by the Individual Respondents of the extent of the trading losses suffered by RARE, or that their investments would be used to make payments and loans to third parties, who were not investors with RARE (Merits Decision, *supra* at para. 44).

[13] Dookhie was the only respondent that was registered with the Commission. He was registered as a Dealing Representative in the category of "Scholarship Plan Dealer" with a company called Children's Education Funds Inc. (Merits Decision, *supra* at paras. 46 and 104). Todorov and RARE were not registered in any capacity with the Commission (Merits Decision, *supra* at paras. 99 and 109).

[14] Prior to the incorporation of RARE, Dookhie and Todorov solicited individuals to invest in Forex trading ("**Pre-RARE Investors**"). The Pre-RARE Investors invested funds with Dookhie and his company, 6322239 Canada Limited ("**632 Company**"), operating as RANN Financial Services. 632 Company is not a respondent in this matter. All the funds raised from Pre-RARE Investors (the "**Pre-RARE Investor Funds**") were turned over by Dookhie to Todorov for the purpose of trading in the Forex market. Although Dookhie could not repay Pre-RARE Investors their principal investments, he chose to continue doing business with Todorov and formed RARE. Three of the six Pre-RARE Investors invested funds into RARE. However, all six Pre-RARE Investors received interest payments from the funds in the main bank account of RARE and a Pre-RARE Investor, who never deposited funds in RARE, received a payment from RARE's account of the $50,000 that he had invested with the 632 Company (Merits Decision, *supra* at paras. 52 and 156).

[15] Dookhie incorporated RARE on January 30, 2009. Dookhie was the directing mind, a director, a shareholder and the President of RARE. He was found to be the architect of the fraudulent scheme (Merits Decision, *supra* at paras. 202 and 203). Todorov was a shareholder and an actual and *de facto* director of RARE (Merits Decision, *supra* at para. 207). He was also the primary trader of RARE until May, 2009 (Merits Decision, *supra* at para. 62). As a result of an aggressive trade made by Todorov on April 22, 2009, ODL Securities Limited ("**ODL**") closed all of RARE's open positions in its Canadian-dollar Forex trading account on May 13, 2009 (Merits Decision, *supra* at para. 63). By March, 2010, RARE was out of money, all of its ODL trading accounts were closed and RARE consequently could not complete any trades in the Forex market and most RARE Investors were not repaid any of their principal investments (Merits Decision, *supra* at paras. 68 and 76).

[16] In the Merits Decision, I concluded that during the Material Time:

(a) RARE, Dookhie and Todorov breached subsection 25(1)(a) of the Act during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010;

(b) RARE, Dookhie and Todorov breached subsection 53(1) of the Act;

(c) there were no exemptions available to RARE, Dookhie or Todorov from the registration or prospectus requirements of the Act;

(d) RARE, Dookhie and Todorov breached subsection 126.1(b) of the Act;

(e) pursuant to section 129.2 of the Act, each of Dookhie, as a director and officer of RARE, and Todorov, as an actual and *de facto* director of RARE, is deemed to have not complied with Ontario securities law, having authorized, permitted or acquiesced in RARE's breaches of subsection 25(1)(a) during the time period from January 1, 2009 to September 27, 2009 and subsection 25(1) of the Act during the time period from September 28, 2009 to March 31, 2010, subsection 53(1) and subsection 126.1(b) of the Act; and

(f) RARE, Dookhie and Todorov acted contrary to the public interest.

(Merits Decision, *supra* at para. 210)

III. THE POSITION OF THE PARTIES

A. Staff's Submissions

[17] Staff requests the following sanctions for the Respondents and submits that these sanctions are appropriate in view of the gravity of their misconduct:

(a) an order pursuant to clause 2 of section 127(1) of the Act that trading in any securities by each of RARE, Dookhie and Todorov shall cease permanently;

(b) an order pursuant to clause 2.1 of section 127(1) of the Act that the acquisition of any securities by each of RARE, Dookhie and Todorov is prohibited permanently;

(c) an order pursuant to clause 3 of section 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to each of RARE, Dookhie or Todorov permanently;

(d) an order pursuant to clause 7 section 127(1) of the Act that each of Dookhie and Todorov resign all positions they hold as a director or officer of any issuer;

(e) pursuant to clause 8, 8.2 and 8.4 of section 127(1) of the Act that each of Dookhie and Todorov is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(f) pursuant to clause 8.5 of section 127(1) of the Act that each of Dookhie and Todorov is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(g) an order pursuant to clause 9 of section 127(1) of the Act requiring Dookhie to pay an administrative penalty of $350,000, and Todorov to pay an administrative penalty of $250,000, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(h) an order pursuant to clause 10 of subsection 127(1) of the Act that RARE and Dookhie shall jointly and severally disgorge to the Commission the sum of $645,507.88 to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(i) an order pursuant to clause 10 of subsection 127(1) of the Act that Todorov disgorge to the Commission the sum of $438,410.56 to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(j) an order pursuant to section 127.1 that RARE and Dookhie shall pay $160,434.30 for the costs of the hearing, for which they are jointly and severally liable; and

(k) an order pursuant to section 127.1 that Todorov shall pay $106,956.20 for the costs of the hearing.

B. The Respondents' Submissions

1. Dookhie's Submissions

[18] Dookhie submits that the following sanctions are appropriate:

(a) an order pursuant to paragraph 2 of section 127(1) of the Act that trading by the respondent shall cease for a period of 5 years;

(b) an order pursuant to paragraph 2.1 of section 127(1) of the Act that the acquisition of any securities is prohibited for a period of 5 years;

(c) an order pursuant to paragraph 3 of section 127(1) of the Act that any exemptions contained in Ontario securities law do not apply to the respondent for a period of 5 years;

(d) an order pursuant to paragraph 7 of section 127(1) of the Act that the respondent shall resign any position he holds as a director or officer of any issuer;

(e) pursuant to paragraph 8, 8.2 and 8.4 of section 127(1) of the Act that the respondent be prohibited for a period of 5 years from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(f) pursuant to paragraph 8.5 of section 127(1) of the Act that the respondent be prohibited for a period of 5 years from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(g) an order pursuant to paragraph 9 of section 127(1) of the Act requiring that the respondent pay an administrative penalty of an amount that the Commission may find reasonable, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act;

(h) an order pursuant to paragraph 10 of section 127(1) of the Act requiring that the respondent disgorge to the Commission an amount that the Commission may find reasonable, to be allocated to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(i) an order pursuant to section 127.1 that no costs of the hearing be payable by the Respondent.

[19] Dookhie agrees that the allegations, as proven, are serious and that his conduct merits sanctions (Dookhie's Submissions, para. 9). Dookhie submits that the sanctions sought by Staff are excessive go well beyond the preventative and protective jurisdiction of the Commission, pursuant to section 127 of the Act (Dookhie's Submissions, para. 12). He submits that the sanctions sought by Staff are so severe that they are punitive and retributive in nature (Dookhie's Submissions, para. 12).

[20] Dookhie submits that he has limited experience in the marketplace (Dookhie's Submissions, para. 10). He submits that the Respondents had no prior history of misconduct with the Commission, which was not disputed by Staff (Dookhie's Submissions, para. 14). Dookhie provided the Dookhie Affidavit to provide information regarding his financial circumstances to demonstrate that this proceeding has had a devastating effect on his employment, finances and savings (Dookhie's Affidavit, para. 2).

[21] Dookhie submits that the consequences of his conduct have led to personal embarrassment, family conflict and turmoil that will continue well after the imposition of any sanctions (Dookhie's Submissions, para. 23). He states that he is extremely sorry for his conduct and the consequences for those who had placed their trust in him. He submits that he wishes to apologize to all investors whom he has harmed, many of which were family and friends, and he hopes to one day make whole those whom he harmed (Dookhie's Submissions, para. 15). Dookhie further submits that it is very unlikely that he, even without further sanction, will ever find himself in contravention of the Act (Dookhie's Submissions, para. 7). He submits that he has no immediate or long-term intentions of returning to the capital markets, and he submits that barring him permanently is excessive and completely unnecessary (Dookhie's Submissions, para. 20).

[22] Dookhie submits that he was denied effective representation of counsel and this resulted in this matter proceeding to a hearing wherein little or no evidence was introduced that contested the allegations of Staff (Dookhie's Submissions, para. 2). He submits that, if he had the benefit of effective legal representation, this matter could have been dealt with by way of an agreed statement of fact or, at a minimum, evidence could have been adduced and arguments could have been advanced that may have afforded Dookhie answers to at least some of the allegations against him. As I stated at the Sanctions and Costs Hearing, the choice of counsel is the respondent's choice (Transcript, Sanctions and Costs Hearing, August 28, 2014, p. 65, lines 23-25).

2. Todorov's Submissions

[23] Todorov submits that his trading strategy was not failing, and that he did not present a fraudulent scheme (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 6, lines 4-10). Rather, Todorov submits that he was hired by, and agreed to work for, RARE upon checking with the company's corporate lawyer whom he trusted (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 6, lines 19-25). Throughout the November 4, 2014 Appearance, Todorov maintained that he did not deceive anyone, disputing the findings in the Merits Decision. Todorov submitted that he has made 150% profit over two years in over 35,000 transactions (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 8, lines 16-20). It is Todorov's position that there is no fraud at all since even Dookhie, as Todorov submits, did not gain any financial profit.

[24] Todorov submits that he has made arrangement to repay investors that he brought into the company, in full, by the end November, 2014. Dookhie submits that he will bring a copy for proof of payment once they are paid (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 10, lines 14-22). However, I reminded Todorov during the November 4, 2014 Appearance that he made similar statements for repayment of investors during closing submission on September 5, 2013. I noted that no investors have been repaid between September 5, 2013 and the release of the Merits Decision on June 27, 2014. There was also no payment made, or evidence thereof, between June 27, 2014 and the November 4, 2014 Appearance (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 15, lines 22-25; p. 16, lines 3-8).

[25] Todorov submits that he learned a lesson that he should not be trading unless he is registered with the Commission (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 19, lines 10-12). Todorov submits that is not remorseful because he is proud of inventing the trading strategy, and that he will make sure that investors are restored (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 27, lines 4-9). He also submits that he did not have a chance to have proper legal representation (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 24, lines 9-13). Nevertheless, Todorov also submits that he is capable of bringing in a lawyer but chose not to (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 26, lines 7-11).

[26] Todorov submits that none of the actions or events that happened were affected by his involvement, as he never signed any documents and that all transactions, banking and operations were done by the directors of RARE (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 24, lines 17-21). Todorov submits that he recognizes the events that occurred were not according to the laws in Ontario; however, he submits, they were done by the directors of RARE and not him (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 26, lines 19-25).

IV. ANALYSIS

A. The Applicable Law on Sanctions

[27] The Commission's mandate, set out in section 1.1 of the Act, is 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.

[28] In making an order in the public interest under section 127 of the Act, the Commission's jurisdiction should be exercised in a protective and preventative manner. As expressed in the oft-cited decision of *Re Mithras Management Ltd.*:

> … the role of this Commission is to protect the public interest be 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 ... 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.
>
> (*Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1610-1611)

[29] This view was endorsed by the Supreme Court of Canada in the following terms:

> … 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 [Commission] 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 Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 ("***Asbestos***") at para. 43)

[30] The Supreme Court of Canada has also recognized that general deterrence is an important factor in imposing sanctions by stating that "… it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative" (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60).

[31] In determining the nature and duration of sanctions, the Commission has considered the following factors:

(a) the seriousness of the allegations proved;

(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) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

(f) any mitigating factors;

(g) whether the violations are isolated or recurrent;

(h) the size of any profit (or loss) avoided from the illegal conduct;

(i) the size of any financial sanctions or voluntary payment when considering other factors;

(j) the effect any sanction might have on the livelihood of the respondent;

(k) the restraint any sanction may have on the ability of a respondent to participate without check in the capital markets;

(l) the reputation and prestige of the respondent;

(m) the shame, or financial pain, that any sanction would reasonably cause to the respondent; and

(n) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746-7747; *Erikson v. Ontario (Securities Commission)*, [2003] O.J. No. 593 (Div. Ct.) ("***Erikson***"); *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("***M.C.J.C. Holdings***") at 1136)

[32] In determining the appropriate sanctions to be ordered, the Commission will also consider the specific circumstances in each case and ensure that the sanctions are proportionate to those circumstances (*M.C.J.C. Holdings*, *supra* at 1134).

[33] The Commission has held that the overall financial sanctions imposed on each respondent is a relevant consideration in imposing administrative penalties and disgorgement (*Re Sabourin* (2010), 33 O.S.C.B. 5299 ("***Sabourin***") at para. 59). Further, the Commission held in Sabourin that in imposing financial sanctions, overall financial sanctions imposed on each respondent is a relevant consideration (*Ibid*).

B. Relevant Sanctioning Factors

[34] In considering the factors set out in paragraphs [31] to [33] above, I find the factors summarized in the following paragraphs to be relevant to the circumstances of the Respondents.

1. Seriousness of the Allegations Proved

[35] The findings in the Merits Decision involved egregious, fraudulent conduct and significant contraventions of the Act, which caused significant harm to the RARE Investors by way of financial loss of their entire investment and which undermined confidence in the capital markets. I have found that the Respondents breached subsection 126.1(b) of the Act during the Material Time. The Commission has previously held that fraud is "one of the most egregious securities regulatory violations" and is both an "affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficiency of the entire capital market system" (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 at para. 214, citing *Re Capital Alternatives Inc.* (2007), A.B.A.S.C. 79 at para. 308, citing D. Johnston & K. D. Rockwell, *Canadian Securities Regulation*, 4th ed., Markham: LexisNexis, 2007 at 420).

[36] There were also findings in the Merits Decision that the Individual Respondents, in their respective roles as a director or officer of RARE, were deemed to have not complied with Ontario securities law. I also found that all the Respondents engaged in unregistered trading and the illegal distribution of securities. The Commission has stated that "[s]ection 25 of the Act, requiring the registration of market intermediaries, is a key element of the scheme of the Act in protecting investors and the capital markets, and maintaining public confidence in those markets" (*Re Fortuna-St. John* (1998), 21 O.S.C.B. 3851 at 3867).

[37] The Respondents acted contrary to the public interest. Their conduct undermined public confidence in the capital markets and showed blatant disregard for the rule of law and Ontario's securities regime.

2. Experience and Level of Activity in the Marketplace

[38] Through their involvement with Pre-RARE Investors, both Todorov and Dookhie, the directing minds of RARE, had prior experience in the Forex market. They were not successful in their trading activity using Pre-RARE Investor Funds. Their purpose in forming RARE was actually to service and pay off debts that were incurred prior to the incorporation of RARE (Merits Decision, *supra* at paras. 52 and 156). Given their prior experience in the Forex market, Dookhie and Todorov ought to have known to disclose the risks in Forex trading to RARE Investors. I note that the Forex market was described by Staff's senior forensic accountant as "highly leveraged" and "really only for experienced investors" (Merits Decision, *supra* at para. 45).

[39] Dookhie is an accountant who had many years of experience in providing financial services to the public through Liberty Tax Services, which he owned from 1999 to 2012 (Merits Decision, paras. 101 and 167; Dookhie's Submissions, para. 18). During the Material Time, Dookhie was also registered with the Commission as a Dealing Representative with Children's Education Funds Inc. (Merits Decision, *supra* at para. 17). Although there was no evidence to show that Dookhie was registered to trade in the securities of RARE, as a registrant with the Commission, Dookhie had a higher level of awareness than non-registrants of securities law requirements and the importance of those requirements to the capital markets (Merits Decision, *supra* at para. 103).

[40] Todorov and RARE were not registered with the Commission in any capacity. I note that RARE Investors were misled to believe that Todorov was a specialist in Forex trading and a "mathematical whiz" (Merits Decision, *supra* at para. 167). The evidence showed that Todorov is an engineer by profession, had never worked in the securities industry in any formal capacity and had not obtained any formal training in Forex trading or other securities (Merits Decision, *supra* at paras. 19 and 194).

[41] In terms of the level of activity of the Respondents, the fraudulent scheme spanned a total of 15 months from January 1, 2009 until March 31, 2010 and involved the misconduct of all Respondents in this matter. A total of $1,226,832 was raised from 16 RARE Investors.

3. Size of Any Profit or Loss Avoided from Illegal Conduct

[42] Dookhie solicited 13 of the 16 RARE Investors, whose invested funds represented $851,800, or approximately 69%, of the total funds invested in RARE (Merits Decision, *supra* at para. 106). Todorov solicited three RARE Investors, whose invested funds represented $375,000, or approximately 31%, of the total funds invested in RARE (Merits Decision, *supra* at para. 109).

4. The Effect Any Sanction Might Have on the Livelihood of the Respondent

[43] Dookhie filed the Dookhie Affidavit to provide information regarding his financial circumstances. He submits that he is no longer the owner of Liberty Tax Services, given the financial difficulties he experienced during his involvement in this proceeding (Dookhie's Submissions, para. 18). He submits that his finances have been devastated and he has no savings, no registered retirement savings plans or tax-free savings accounts.

5. Mitigating Factors and Remorse

[44] I find that there are no mitigating factors in this case, and I have considered the remorse of the Individual Respondents in my assessment as to the appropriate sanctions to impose on each of the Respondents. I note that the Respondents do not have prior history of misconduct with the Commission.

[45] In his written submissions, Dookhie submitted that he is extremely sorry for his conduct and the consequences for those who had placed their trust in him (Dookhie's Submissions, para. 15). At the Merits Hearing, Dookhie stated that, "I would have done everything to prevent this from happening … this is a very expensive lesson for me" (Merits Decision, *supra* at para. 107; Transcript, Merits Hearing, May 27, 2013, Testimony of Dookhie, p. 34, lines 16-21). Dookhie also stated at the Merits Hearing that he takes responsibility for the consequences of his misconduct (Merits Decision, *supra* at para. 164). I note that Dookhie made submissions that he was "too trusting" by way of explaining his actions and their consequences (Dookhie's Submissions, para. 17). At the Merits Hearing, Dookhie made the same submissions that he relied on the directions and expertise of others, which I find not to be persuasive and I find to be an attempt to not take responsibility for his misdeeds and the consequences thereof to others (Merits Decision, *supra* at para. 202).

[46] At the Merits Hearing, Todorov tendered a summary statement and trading statements of an account he set up with GCI Financial. One of his express intentions in tendering these statements was to demonstrate that he would be able to repay his obligations to RARE Investors, particularly with respect to five RARE Investors to whom he submitted that he is responsible for returning funds (Merits Decision, *supra* at paras. 182, 183 and 186). I stated in the Merits Decision that Todorov's efforts may be of assistance in the consideration of any sanctions that may be imposed on him. Then, in the November 4, 2014 Appearance, Todorov again submitted that he will have made arrangements to repay investors that he brought into RARE, in full, by the end of November, 2014. I noted in the November 4, 2014 Appearance that these efforts from Todorov remain at best, a future possibility, as Todorov did not provide any evidence that he has made any payment to investors from September, 2013 to November, 2014.

[47] At the November 4, 2014 Appearance, Todorov said that he is not remorseful because he is proud of inventing the trading strategy, and that he will make sure that investors are restored (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 27, lines 4-9). Todorov also maintained, in the November 4, 2014 Appearance, that none of the actions or events that happened were affected by his involvement, as he never signed any documents and that all the transactions, banking and operations were done by the directors of RARE (Transcript, Sanctions and Costs Hearing, November 4, 2014, p. 24, lines 17-21). I find that Todorov's submission that he is not remorseful, his promise of repayment of investors in full coupled with a lack of evidence thereof as of November 4, 2014, and the fact that Todorov attributes what happened to actions taken by others not by

himself, show on balance that he has not recognized the seriousness of his improprieties or that he has any remorse for the consequences of his actions.

6. Specific and General Deterrence

[48] A message must be sent to the Respondents and like-minded individuals that fraudulent schemes similar to the one involved in this case will result in severe sanctions. I find that orders permanently removing the Respondents from the capital markets, imposing significant administrative penalties and requiring disgorgement of funds not returned to investors are proportionate to the Respondents' misconduct, and will send a message to like-minded individuals that involvement in this type of misconduct will result in severe sanctions.

7. Sanctions and Costs of the Sunderji Settlement

[49] The Sunderji Settlement dealt with the same misconduct and fraudulent scheme as was the subject of the Merits Hearing. In the Sunderji Settlement, Sunderji agreed to the following sanctions: 7-year trading, acquisition and exemption application bans; a reprimand; resignation orders for all positions he held as director or officer of any issuer, registrant or investment fund manager; 7-year bans on serving as a director or officer of any issuer, registrant or investment fund manager; a 7-year ban from becoming or acting as a registrant, as an investment fund manager or as a promoter; an administrative penalty of $5,000; a disgorgement order of $6,000; and a costs order of $5,000. Sunderji was also permitted a personal carve-out from his trading, acquisition and exemption bans once he has paid his administrative penalty, disgorgement order and costs order in full. However, the Sunderji Settlement Order provided that until the amounts of his administrative penalty, disgorgement order and costs order are paid in full, Sunderji's trading, acquisition and exemption application bans would "continue in force without any limitation as to time". He agreed to make a payment on account of his disgorgement order by certified cheque or bank draft within 30 days of the approval of the settlement agreement.

C. Appropriate Sanctions in this Matter

1. Prohibitions on Participation in the Capital Markets

[50] The conduct of the Respondents caused significant harm to the integrity of the capital markets and deprived RARE Investors of their funds. Given the seriousness of the misconduct of the Respondents, sanctions in this case should send a strong message to both the Respondents and the public at large. As the Divisional Court has stated, "[p]articipation in the capital markets is a privilege, not a right" (*Erikson*, *supra* at para. 55).

[51] Although Dookhie submits that has no immediate or long-term intentions of returning to the capital markets, I find that the Respondents should be subject to permanent market participation bans with no exception, given the manipulative and underhanded misconduct of the Respondents (Dookhie's Submissions, para. 20). The Commission has previously ordered permanent cease trade, acquisition and exemption application bans, without exception, in circumstances where respondents were found by the Panel to have engaged in fraud (*Re Rezwealth Financial Services Inc.* (2013), 37 O.S.C.B. 6731 ("***Rezwealth***"); *Re Empire Consulting Inc.* (2013), 36 O.S.C.B. 2327 ("***Empire Consulting***"); *Re Lyndz Pharmaceuticals Inc.* (2012), 35 O.S.C.B. 7357 ("***Lyndz Pharmaceuticals***"); *Re Richvale Resource Corp.* (2012), 35 O.S.C.B. 10699 ("***Richvale***")). In this matter, the Respondents engaged in fraudulent conduct, which included providing misleading documents to investors, not informing investors of the extent of the trading losses suffered by RARE, and intentionally engaging in unauthorized diversion of investor funds. The Respondents cannot be trusted to participate in the capital markets in the future and their conduct demonstrates a serious risk to the public.

[52] I therefore find that it is appropriate that the Respondents be subject to permanent trading, acquisition and exemption application bans, without exception, pursuant to paragraphs 2, 2.1 and 3 of subsection 127(1) of the Act. Todorov and Dookhie shall also be subject to the following orders: resignation orders for any positions they hold as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act; permanent director or officer bans for any position they hold as a director or officer of any issuer, registrant or investment fund manager, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act; and permanent bans from becoming or acting as a registrant, as an investment fund manager or as a promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act. These orders will remove the Respondents from Ontario's capital markets and protect the investing public.

[53] I also find it appropriate to reprimand the Respondents pursuant to paragraph 6 of subsection 127(1) of the Act, as sought in the Notice of Hearing issued November 22, 2011, in order to reaffirm that the Commission will not tolerate conduct such as occurred in this case.

2. Administrative Penalties

[54] The Commission's public interest jurisdiction allows it to impose sanctions under section 127 of the Act. Under paragraph 9 of subsection 127(1) of the Act, I am entitled to impose an administrative penalty of not more than $1 million in

connection with each failure of the Respondents to comply with Ontario securities law. In the Merits Decision, I found that the Respondents engaged in unregistered trading, illegal distribution of securities, fraud, and acted contrary to the public interest. Dookhie, as a director and officer of RARE, and Todorov, as an actual and *de facto* director of RARE, were also deemed to have not complied with Ontario securities law. In the Merits Decision, I found that the "investment scheme arranged by RARE was an underhanded design that placed a substantial amount of risk on the financial situation of its investors, most of whom suffered a complete loss of their principal investments" (Merits Decision, *supra* at para. 141).

[55] Staff seeks an administrative penalty in the amount of $350,000 against Dookhie and an administrative penalty in the amount of $250,000 against Todorov. Dookhie submits that he be ordered to pay an administrative penalty of an amount that the Commission may find reasonable.

[56] 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, taking all circumstances into account, considering administrative penalties imposed in similar cases and have regard to any aggravating and mitigating factors (*Lyndz Pharmaceuticals*, *supra* at para. 95). I have considered the Commission's prior case-law in determining administrative penalties that are proportionate to the circumstances in this matter. Staff relied on *Re Al-Tar Energy Corp.* (2011), 34 O.S.C.B. 447 ("***Al-Tar Sanctions***") in which the respondents raised over $650,000 from the sale of shares from a fraudulent scheme. The Commission ordered administrative penalties ranging from $200,000 to $750,000. However, the Respondents in *Al-Tar* breached various cease trade orders and were repeat offenders of Ontario securities law, which is not seen in the circumstances in this matter. Another case reference by Staff is *Lyndz Pharmaceuticals*, in which two administrative penalties of $500,000 and $600,000 were imposed on two respondents, but these respondents were involved in a scheme that raised more than $1.7 million from over 70 investors over a period of three years. Staff also relied on the following cases: *Empire Consulting*; *Rezwealth*; *Re Merax Resource Management Ltd.* (2012), 35 O.S.C.B. 11545; *Re Lehman Cohort Global Group Inc.* (2011), 34 O.S.C.B. 2999; *Re Global Partners Capital et al.* (2011), 34 O.S.C.B. 10023; and *Re Maple Leaf Investment Fund Corp*. (2012), 35 O.S.C.B. 3075. All of these cases involved respondents who were found to have committed a fraud and had administrative penalties imposed on them ranging from $100,000 to $500,000. I note that the respondents in these matters engaged in fraudulent schemes that raised more funds and/or involved more investors than the scheme perpetrated by the Respondents in this case.

[57] In this case, a total of $1,226,832 was raised from 16 RARE Investors as a result of the Respondents' non-compliance with the Act. Dookhie was a directing mind and the main orchestrator of the fraudulent scheme of RARE (Merits Decision, *supra* at para. 170). He incorporated RARE, established its banking and trading accounts, and he was responsible for all banking activity of the company. He had primary communication with investors and was solely responsible for the trading activity of RARE from March, 2010 onwards (Merits Decision, *supra* at para. 106). The promotional documents that he drafted and distributed were provided to investors to encourage them to invest in RARE (Merits Decision, *supra* at paras. 106 and 143). RARE Investors knew Dookhie well and invested in the company based on the strength of their relationships with him and their trust in him, and yet Dookhie exploited these relationships of trust and confidence to his benefit and placed investors' funds at risk by doing so (Merits Decision, *supra* at para. 166). In his written submissions, Dookhie admits that most RARE Investors were his clients, family and friends (Dookhie's Submissions, para. 23). Throughout the Material Time, Dookhie solicited 13 of the 16 RARE Investors, whose invested funds represented $851,800, or approximately 69%, of the total funds invested in RARE (Merits Decision, *supra* at para. 106).

[58] Todorov was the chief trading strategist of RARE and was the primary trader of RARE until May, 2009. He solicited three RARE Investors, whose invested funds represented $375,000, or approximately 31%, of the total funds invested in RARE (Merits Decision, *supra* at para. 109). In the Merits Decision, I found that Todorov actively made representations to RARE Investors, though on a lesser scale than that of Dookhie (Merits Decision, *supra* at para. 188).

[59] Dookhie and Todorov's actions caused significant harm to investors and the capital markets generally. Accordingly, I find that it is appropriate and proportionate to the circumstances of each respondent to make an order against Dookhie pursuant to paragraph 9 of subsection 127(1) of the Act, to pay an administrative penalty of $250,000 and a separate order against Todorov pursuant to paragraph 9 of subsection 127(1) of the Act, to pay an administrative penalty of $150,000. The amounts paid to the Commission in satisfaction of the administrative penalties are designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

3. Disgorgement

(a) The Law on Disgorgement

[60] Pursuant to paragraph 10 of subsection 127(1) of the Act, if a person or company has not complied with Ontario securities law, the Commission may order the person or company to disgorge to the Commission "any amounts obtained as a result of the non-compliance". The Commission has described the purpose of the disgorgement remedy as follows:

> [T]he objective of the disgorgement remedy is to deprive a wrongdoer of ill-gotten gains, reflecting the view that it would be inappropriate for those who contravene Ontario securities law to be able to retain any illegally obtained profits …
>
> …
>
> [T]he 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 …
>
> (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight***") at paras. 47 and 49)

[61] In *Limelight*, the Commission held that it should consider the following non-exhaustive list of factors when contemplating a disgorgement order, in addition to the general factors for sanctioning:

(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.

(*Limelight*, *supra* at para. 52)

[62] Staff has the onus of proving, on a balance of probabilities, the amounts obtained by a respondent as a result of its non-compliance with the Act.

(b) The Staff's Submissions on Disgorgement

[63] In its written submissions, Staff took the position that the Respondents should be ordered to disgorge $1,226,846.47 and submitted that this value represents the amounts obtained by the Respondents as a result of their non-compliance with Ontario securities law (Staff's Submissions, para. 40). Given their respective roles in the fraudulent scheme, Staff submitted that Dookhie and RARE be ordered to disgorge 60% of the total amounts obtained by the Respondents (being $645,507.88), and Todorov should be ordered to disgorge 40% of these amounts (being $438,410.56) (Staff's Submissions, para. 41).

[64] Dookhie submits that he be ordered to pay a disgorgement order of an amount that the Commission may find reasonable.

[65] First, I agree with Staff's submission that any amounts ordered against Dookhie and RARE should be imposed on a joint and several basis. Dookhie controlled RARE, he was the architect of the fraudulent scheme and he made all significant business decisions of the company, including the use of the RARE Investor Funds (Merits Decision, *supra* at paras. 162 and 203). It was through Dookhie's subjective knowledge of the fraud that RARE was found to have perpetrated a fraud on RARE Investors, contrary to subsection 126.1(b) of the Act (Merits Decision, *supra* at para. 162). In the Merits Decision, I found that Dookhie's dishonest acts allowed RARE to raise $1,226,832 from RARE Investors (Merits Decision, *supra* at para. 179). I therefore find that it is appropriate that any disgorgement amounts to be ordered against the Respondents shall be made jointly and severally against Dookhie and RARE.

[66] On the other hand, I do not agree with Staff's submissions regarding the calculation of its requested disgorgement orders against the Respondents. First, I find that the total amount obtained by the Respondents as a result of their non-compliance is $1,226,832, not $1,226,846.47. During the Material Time, the evidence showed that the source of funds of RARE came solely from the deposits of RARE Investors. RARE was unsuccessful in generating any profits from its trading activities (Merits Decision, *supra* at para. 149). Therefore, I am satisfied that, on a balance of probabilities, the $1,226,832 raised from RARE Investors was obtained by the Respondents as a result of their non-compliance with Ontario securities law. However, in its written submissions, Staff referenced the value of RARE's total source of funds ($1,226,846.47), which included the amounts raised from RARE Investors ($1,226,832) and income received from a mutual fund investment account at the Bank of Montreal ($14.47) (Merits Decision, *supra* at para. 73). At the Sanctions and Costs Hearing, I raised this issue and Staff acknowledged its submission on the amounts obtained from the Respondents should be reduced by $14.47 (Transcript, Sanctions and Costs

Hearing, August 28, 2014, p. 28, line 21 to p. 29, line 17). As such, Staff is in agreement that the total amount obtained by the Respondents is $1,226,832.

[67] Second, in calculating the appropriate disgorgement amount for the Respondents, I find that the total payments, rather than net payments, made by each Respondent to RARE should be deducted from the total amounts obtained. In its written submissions, Staff deducted the amounts each Respondent paid to RARE, but did so inconsistently: for Todorov, Staff deducted his net payment to RARE of $31,928.03 instead of his total payment of $59,150 to RARE; whereas, for Dookhie and 632 Company, Staff deducted their *total* payment of $60,000 to RARE and not the net payments of $172,200.30 made by RARE to Dookhie and to a Pre-RARE Investor. I raised this discrepancy with Staff at the Sanctions and Costs Hearing, and Staff agreed that the payments made to RARE by each respondent in this matter should be treated similarly (Transcript, Sanctions and Costs Hearing, August 28, 2014, p. 34, line 15 to p. 35, line 10).

[68] Third, I find that the appropriate percentages to be allocated to the Respondents are: 69% of the RARE Investor Funds to Dookhie and RARE; and 31% of such amounts to Todorov. These percentages are supported by my finding in the Merits Decision that Dookhie brought in 13 RARE Investors, whose invested funds represented 69% of the total funds invested in RARE, and that Todorov brought in 3 RARE Investors, whose invested funds represented 31% of the total funds invested in RARE (Merits Decision, *supra* at paras. 106 and 109). Staff submitted that these percentages be varied to attribute 60% of the funds to Dookhie and RARE, and 40% of the funds to Todorov, based on the differences in the roles played by the Respondents.

[69] I do not find that it is appropriate to alter the Respondents' percentage allocations of an amount to be ordered for disgorgement from the amounts obtained by Dookhie and Todorov from RARE Investors for RARE's activities to some other amounts based on a determination of a percentage allocation of their involvement in the overall scheme. By engaging in such an assessment, the amounts obtained by the Respondents would not be reasonably ascertainable (*Limelight*, *supra* at para. 52). Staff also did not present any evidence to show that the Respondents obtained amounts through their non-compliance that would reflect a 60-40 allocation. Instead, Staff relies on the same evidence and findings that were before me at the Merits Hearing. Therefore, relying on the evidence presented at the Merits Hearing and my findings in the Merits Decision, I find that any disgorgement orders made in this matter should allocate responsibility and liability for 69% of RARE Investor Funds to Dookhie and RARE, and 31% of RARE Investor Funds to Todorov.

(c) Appropriate Disgorgement Orders

[70] In this case, I find that investors were substantially harmed by the fraudulent scheme perpetrated by the Respondents. Aside from several interest payments, most RARE Investors have not been repaid any of their principal investments (Merits Decision, *supra* at para. 76). It does not appear likely that investors will be able to obtain any redress. I find that it is appropriate to impose disgorgement orders against the Respondents for the amounts they obtained through their serious misconduct.

[71] As discussed in paragraph 65 above, I find that the amounts raised from RARE Investors totaling $1,226,832 are the amounts obtained by the Respondents through their non-compliance with Ontario securities law. I find that Dookhie and RARE obtained 69% from these amounts.

[72] I find that the amounts obtained by Todorov are those that were directly received by him from RARE. Although Todorov was a director, directing mind and shareholder of RARE, Dookhie was the mastermind of the fraudulent scheme. Dookhie had primary contact with investors and he drafted and distributed the promotional documents of RARE (Merits Decision, *supra* at paras. 106). Dookhie was also responsible for all the banking activity of RARE and was therefore found to be "solely responsible for the unauthorized uses of the RARE Investor Funds" (Merits Decision, *supra* at para. 177). I also note that Todorov's role with RARE was acting as its chief trading strategist, but following his aggressive trade in May, 2009, Todorov no longer engaged in RARE's trading activity.

[73] The evidence showed that Setenterprice, a company that was jointly owned by Todorov and his wife, received a total of $16,000 directly, and funds were paid to a third party at Todorov's direction in the amount of $11,221.97. However, the evidence also showed that RARE received $59,150 from Todorov and Setenterprice throughout the Material Time. As a result, RARE actually received net payments from Todorov and Setenterprice of $31,928.03 (Merits Decision, *supra* at para. 74).

[74] Regarding the deductions that should be made to the total amounts of funds available for disgorgement orders in this matter, I have accounted for the following:

- Two of the 16 RARE Investors received partial payments of their principal investments amounting to $45,000;
- In terms of the payments made by the Respondents to RARE during the Material Time: Dookhie through 632 Company paid a total of $60,000 into RARE; Todorov and his company Setenterprice paid a total of $59,150 into RARE; and Sunderji paid a total of $10,000 into RARE (Merits Decision, *supra* at para. 74); and

- In the Sunderji Settlement, Sunderji agreed to disgorge $6,000.

[75] Please refer to the chart below for the appropriate calculation of disgorgement orders to be imposed on the Respondents pursuant to paragraph 10 of subsection 127(1) of the Act.

	Amounts	Totals
		$1,226,832
Less: Amounts Returned to RARE Investors		$45,000
Less: Amounts RARE Received from the Respondents and Sunderji During the Material Time		
Dookhie and 632 Company	$60,000	
Todorov and Setenterprice	$59,150	
Sunderji	$10,000	$129,150
Less: Sunderji Settlement Disgorgement Amount		$6,000
Net RARE Investor Funds		**$1,046,682**
Disgorgement Order – Dookhie and RARE (69%)		**$722,210.58**
Disgorgement Order – Todorov (31%)		**$324,471.42**

[76] I find that the net receipts from RARE Investors (i.e. the net RARE Investor Funds) were obtained as a result of the misconduct of RARE, Dookhie and Todorov. These receipts have been ascertained and a disgorgement order for these receipts would have a significant general and specific deterrent effect. For the amounts they obtained as a result of their non-compliance with Ontario securities law, I find that it is appropriate to impose the following orders pursuant to paragraph 10 of subsection 127(1) of the Act: an order against Dookhie and RARE to disgorge to the Commission $722,210.58 on a joint and several basis; and an order against Todorov to disgorge to the Commission $324,471.42. The amounts paid to the Commission in satisfaction of the disgorgement orders are designated for allocation or use by the Commission pursuant to subsection 3.4(2)(b) of the Act.

D. Costs

1. The Applicable Law

[77] Pursuant to section 127.1 of the Act, the Commission has authority to order a person or company to pay the costs of an investigation and hearing if the Commission is satisfied that the person or company has not complied with Ontario securities law or has acted contrary to the public interest. Factors to be considered by the Commission when awarding costs are set out in Rule 18.2 of the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the "***Rules of Procedure***").

[78] Staff seeks to recover costs from the Respondents totaling $267,390.50, which consists of fees and disbursements. Using the same percentage allocation requested for disgorgement orders, Staff requests that RARE and Dookhie be ordered to pay, jointly and severally, 60% of the total costs ($160,434.30), and Todorov be ordered to pay 40% of the total costs ($106,956.20). Staff did not seek costs for: the majority of the costs of the investigation conducted in this matter; any litigation costs in connection with pre-hearing conference attendances; time spent on settlement negotiations, conferences and hearings, and the drafting of materials related to the Sunderji Settlement; and time spent preparing for and attending the hearing on sanctions and costs. Staff seeks indemnity in respect of fees for 1,406.5 hours spent by litigation counsel, forensic accountant and investigator, whereas the total number of hours spent by all staff in this matter is 2,975 hours. Staff calculates their requested costs as follows:

Description	Total Hours	Rate	Total
Mike de Verteuil (Senior Forensic Accountant)	273.00	$185	$50,505.00
Laura Lavalley (Investigation Staff)	543.00	$185	$100,455.00
Donna Campbell (Senior Litigation Staff)	590.50	$205	$121,052.50
Total Fees	**1406.50**	**-**	**$272,012.50**
Less: Costs that Adil Sunderji agreed to pay in the Sunderji Settlement			$5,000.00
Plus: Disbursements			$378.00
Total Costs			**$267, 390.50**

[79] In support of this request, Staff provided a Bill of Costs, which includes the Affidavit of Julia Ho sworn July 17, 2014 (the "**Ho Affidavit**"). The Ho Affidavit appends detailed dockets of Staff, along with copies of receipts and invoices reflecting the costs of witness fees and service of documents.

[80] Dookhie submits that no costs of the hearing be payable by him.

2. Analysis

[81] In *Re Ochnik* (2006), 29 O.S.C.B. 5917 ("***Ochnik***"), the Panel identified criteria that were considered by the Commission in past decisions when awarding costs:

(a) failure by Staff to provide early notice of an intention to seek costs may result in a reduced costs award;

(b) the seriousness of the charges and the conduct of the parties;

(c) abuse of process by a respondent may be a factor in increasing the amount of costs;

(d) the greater investigative/hearing costs that the specific conduct of a respondent tends to require in the case; and

(e) the reasonableness of the costs requested by Staff.

(*Ochnik*, *supra* at para. 29)

[82] The purpose of sanction orders made under section 127 of the Act is to "restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets" and to protect the public interest (*Asbestos*, *supra* at para. 43). On the other hand, the purpose of orders made under section 127.1 of the Act is not to punish, but to "indemnify the Commission for expenses incurred and to exercise some control over the hearing process" (*Ochnik*, *supra* at para. 28, citing *Re Tindall* (2000), 23 O.S.C.B. 6889 at para. 68).

[83] Applying the factors from Ochnik and the factors listed in Rule 18.2 of the *Rules of Procedure*, I find the following factors to be relevant in imposing a costs order against RARE, Dookhie and Todorov:

(a) a Notice of Hearing was issued by the Commission on November 22, 2011 to notify the Respondents in this matter that Staff would be seeking investigation and hearing costs against them;

(b) Staff has proven serious allegations against the Respondents involving a substantial amount of investor funds and misconduct that led to multiple contraventions of Ontario securities law, including fraud, and conduct contrary to the public interest;

(c) on March 13, 2013, the Commission granted an adjournment request from Todorov to reschedule the Merits Hearing from March, 2013 to May, 2013;

(d) on May 22, 2013, given that counsel for Dookhie and RARE at the time was not present at the start of the hearing day, the Commission granted a brief two adjournments on that date to accommodate counsel;

(e) on August 12, 2013, the Commission granted the request from counsel of Dookhie and RARE at the time to provide an extension for the Respondents' written submissions;

(f) Dookhie and Todorov attended examinations before Enforcement Staff in April, May and August, 2010, but these examinations were compelled (Merits Decision, *supra* at para. 39).

[84] I have also considered that a greater amount of time was spent at the Merits Hearing proving allegations against RARE and its main architect, Dookhie, than the amount of time spent on proving allegations against Todorov. I therefore find that it is appropriate to attribute greater costs against RARE and Dookhie than to Todorov. However, I do not agree with Staff's percentage allocation regarding costs, which is based on the same allocation Staff requested for disgorgement orders. I find that the costs should be apportioned in the same percentages as the amounts ordered to be disgorged, that is 69% as to Dookhie and RARE and 31% as to Todorov. I also find that the total amount of costs sought by Staff to be not unreasonable in the circumstances of this matter.

[85] Having considered the foregoing, and in particular, the complexity of the matter and the conduct of both the Respondents and Staff during the Merits Hearing, I find that it is appropriate to award costs in the amount of $184,499.45 on a joint and several basis against RARE and Dookhie, and costs in the amount of $82,891.05 against Todorov.

V. CONCLUSION

[86] For the reasons set out above, I conclude that it is in the public interest to make the orders set out below. In my view, the sanctions imposed will deter the Respondents and other like-minded individuals from engaging in similar misconduct in the capital markets in the future and the sanctions are proportionate to the circumstances and conduct of each Respondent.

[87] I will issue a separate order giving effect to my decision on sanctions and costs as follows:

(a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by RARE, Dookhie and Todorov shall cease permanently;

(b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by RARE, Dookhie and Todorov shall be prohibited permanently;

(c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to RARE, Dookhie and Todorov permanently;

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

(e) pursuant to paragraph 7 of subsection 127(1) of the Act, Dookhie and Todorov shall resign any position that they hold as a director or officer of an issuer;

(f) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Dookhie and Todorov shall be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(g) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dookhie and Todorov shall be prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(h) pursuant to paragraph 9 of subsection 127(1) of the Act, Dookhie shall pay an administrative penalty of $250,000 for his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(i) pursuant to paragraph 9 of subsection 127(1) of the Act, Todorov shall pay an administrative penalty of $150,000 for his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(j) pursuant to paragraph 10 of subsection 127(1) of the Act, Dookhie and RARE shall jointly and severally disgorge to the Commission a total of $722,210.58 that was obtained as a result of their non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(k) pursuant to paragraph 10 of subsection 127(1) of the Act, Todorov shall disgorge to the Commission a total of $324,471.42 that was obtained as a result of his non-compliance with Ontario securities law, to be designated for allocation or use by the Commission, pursuant to subsection 3.4(2)(b) of the Act;

(l) pursuant to subsection 127.1 of the Act, Dookhie and RARE shall jointly and severally pay $184,499.45 for the costs incurred in this matter;

(m) pursuant to subsection 127.1 of the Act, Todorov shall pay $82,891.05 for the costs incurred in this matter.

DATED at Toronto this 6th day of March, 2015.

"Edward Kerwin"

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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
Southern Pacific Resource Corp.	26-Feb-15	09-Mar-15	09-Mar-15	

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
Northcore Resources Inc.	9-Mar-15	20-Mar-15			

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
Northcore Resources Inc.	09-Mar-15	20 Mar 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:
1832 AM Canadian Dividend Value LP
1832 AM Canadian Growth LP
1832 AM Tactical Asset Allocation LP
Type and Date:
Preliminary Simplified Prospectus dated March 2, 2015
Receipted on March 3, 2015
Offering Price and Description:
Series I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
1832 Asset Management L.P.
Project #2314743

Issuer Name:
BMO Global Equity Fund
BMO Growth Opportunities Fund
BMO International Value Fund
BMO Tactical Balanced ETF Fund
BMO Tactical Global Bond ETF Fund
BMO Tactical Global Equity ETF Fund
BMO U.S. Equity Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated February 27, 2015
NP 11-202 Receipt dated March 3, 2015
Offering Price and Description:
Offering Series A, D, F, I, L, NB and Advisor Series
Underwriter(s) or Distributor(s):
BMO INVESTMENTS INC.
BMO Investments Inc.
Guardian Group of Funds Ltd.
Promoter(s):
BMO INVESTMENTS INC.
Project #2315738

Issuer Name:
Canadian Apartment Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 9, 2015
NP 11-202 Receipt dated March 9, 2015
Offering Price and Description:
$140,642,500.00 - 5,050,000 Units
Price: $27.85 per Unit
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securiities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Raymond James Ltd.
Dundee Securities Ltd.
Desjardins Securiites Inc.
GMP Securiites L.P.
Promoter(s):
-
Project #2315945

Issuer Name:
Templeton Canadian Stock Fund
Templeton Canadian Balanced Fund
Franklin Templeton Corporate Class Ltd.
Templeton Canadian Stock Corporate Class
Franklin Bissett Canadian Equity Corporate Class (formerly Bissett Canadian Equity Corporate Class)
Principal Regulator - Ontario
Type and Date:
Amendment #6 dated March 3, 2015 to Final Simplified Prospectus dated May 29, 2014
NP 11-202 Receipt dated March 3, 2015
Offering Price and Description:
Series A, F, O and T units and Series A, F, I, M, O, R and T shares @ Net Asset Value
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Bissett Investment Management, a division of Franklin Templeton Investments Corp.
Franklin Templeton Investmetns Corp.
Promoter(s):
Franklin Templeton Investments Corp.
Project #2189252

Issuer Name:
Golden Queen Mining Co. Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated March 6, 2015
NP 11-202 Receipt dated March 9, 2015
Offering Price and Description:
US$70,000,000.00 - Commom Shares, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2317427

Issuer Name:
Pizza Pizza Royalty Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 9, 2015
NP 11-202 Receipt dated March 9, 2015
Offering Price and Description:
$42,000,000.00 - 2,800,000 Common Shares
Price: $15.00 per Offered Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #2316239

Issuer Name:
RBC Balanced Growth & Income Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 5, 2015
NP 11-202 Receipt dated March 5, 2015
Offering Price and Description:
Series A, Advisor Series, Advisor T5 Series, Series T5, Series H, Series F, Series FT5, Series I and Series O Mutual Fund Shares
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2316761

Issuer Name:
Silver Wheaton Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment and Restated Preliminary Short Form Prospectus dated March 3, 2015
NP 11-202 Receipt dated March 3, 2015
Offering Price and Description:
Offering: US$800,011,500.00 - 38,930,000 Common Shares
Price: US$20.55 per Common Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
MacQuarie Capital Markets Canada Ltd.
GMP Securities L.P.
Canaccord Genuity Corp.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
Morgan Stanley Canada Ltd.
UBS Securities Canada Inc.
Credit Suisse Securities (Canada), Inc.
Salman Partners Inc.
Promoter(s):
-
Project #2314951

Issuer Name:
Slate Retail REIT (formerly, Slate U.S. Opportunity (No. 1) Realty Trust)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 3, 2015
NP 11-202 Receipt dated March 4, 2015
Offering Price and Description:
Offering: C$50,050,000.00 or U.S. $40,309,500.00 - 3,850,000 Units
Price: C$13.00 Per Unit or U.S. $10.47 Per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Raymond James Ltd.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #2312176

Issuer Name:
Tidewater Midstream and Infrastructure Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated March 6, 2015
NP 11-202 Receipt dated March 6, 2015
Offering Price and Description:
Maximum: 3,000,000 Common Shares - $3,000,000.00
Minimum: 2,000,000 Common Shares - $2,000,000.00
Price: $1.00 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
CIBC World Markets Inc.
Canaccord Genuity Corp.
Promoter(s):
Joel A. MacLeod
Tobias (Toby) J. McKenna
Project #2317291

Issuer Name:
BMO Private Canadian Conservative Equity Portfolio (formerly, BMO Harris Canadian Conservative Equity Portfolio)
BMO Private Canadian Corporate Bond Portfolio (formerly, BMO Harris Canadian Corporate Bond Portfolio)
BMO Private Canadian Growth Equity Portfolio (formerly, BMO Harris Canadian Growth Equity Portfolio)
BMO Private Canadian Income Equity Portfolio (formerly, BMO Harris Canadian Income Equity Portfolio)
BMO Private Canadian Mid-Term Bond Portfolio (formerly, BMO Harris Canadian Mid-Term Bond Portfolio)
BMO Private Canadian Money Market Portfolio (formerly, BMO Harris Canadian Money Market Portfolio)
BMO Private Canadian Short-Term Bond Portfolio (formerly, BMO Harris Canadian Short-Term Bond Portfolio)
BMO Private Canadian Special Equity Portfolio (formerly, BMO Harris Canadian Special Equity Portfolio)
BMO Private Diversified Yield Portfolio (formerly, BMO Harris Diversified Yield Portfolio)
BMO Private Emerging Markets Equity Portfolio (formerly, BMO Harris Emerging Markets Equity Portfolio)
BMO Private International Equity Portfolio (formerly, BMO Harris International Equity Portfolio)
BMO Private U.S. Equity Portfolio (formerly, BMO Harris U.S. Equity Portfolio)
BMO Private U.S. Growth Equity Portfolio (formerly, BMO Harris U.S. Growth Equity Portfolio)
BMO Private U.S. Special Equity Portfolio (formerly, BMO Harris U.S. Special Equity Portfolio)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 19, 2015 to Simplified Prospectus and Annual Information Form dated May 7, 2014
NP 11-202 Receipt dated March 3, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Investments Inc.
BMO Investmens Inc.
BMO Invesments Inc.
Promoter(s):
BMO Harris Investment Management Inc.
Project #2190291

Issuer Name:
CT Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated March 5, 2015
NP 11-202 Receipt dated March 5, 2015
Offering Price and Description:
$1,500,000,000.00 - Units, Preferred Units, Debt Securities, Subscription Receipts, Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2313359

Issuer Name:
GC-Global Capital Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 2, 2015
NP 11-202 Receipt dated March 3, 2015
Offering Price and Description:
Minimum Offering: $4,000,000.00 (8,888,888 Subordinate Voting Shares)
Maximum Offering: $6,000,000.00 (13,333,333 Subordinate Voting Shares)
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #2300697

Issuer Name:
Healthcare Leaders Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 5, 2015
NP 11-202 Receipt dated March 6, 2015
Offering Price and Description:
$30,300,000.00 - 3,000,000 Units @ $10.10/Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Canccord Genuity Corp.
Global Securities Corporation
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Dundee Securities Ltd.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
Harvest Portfolios Group Inc.
Project #2311701

Issuer Name:
Pro FTSE NA Dividend Index Fund
Pro FTSE RAFI Canadian Index Fund
Pro FTSE RAFI Emerging Markets Index Fund
Pro FTSE RAFI Global Index Fund
Pro FTSE RAFI Hong Kong China Index Fund
Pro FTSE RAFI US Index Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated February 27, 2015
NP 11-202 Receipt dated March 5, 2015
Offering Price and Description:
Class B and F units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Pro-Financial Asset Management Inc.
Project #2259476

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Amalgamation	Placements IA Clarington Inc. / IA Clarington Investments Inc. and JovFinancial Solutions Inc. To form: Placements IA Clarington Inc. /IA Clarington Investments Inc.	Portfolio Manager and Investment Fund Manager	March 1, 2015
Voluntary Surrender	Van Arbor Asset Management Ltd.	Exempt Market Dealer Portfolio Manager	March 3, 2015
New Registration	Action Valeur Ajouttée Inc.	Portfolio Manager	March 3, 2015
Voluntary Surrender	Pinnacle Merchant Capital Ltd.	Exempt Market Dealer	March 6, 2015

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Toronto Stock Exchange – Notice of Housekeeping Rule Amendments – Housekeeping Amendments to the TSX Company Manual

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS

HOUSEKEEPING AMENDMENTS TO THE TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "Protocol"), TSX has adopted amendments (the "Amendments") to the TSX Company Manual (the "Manual"). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Reasons for the Amendments

A brief summary of the Amendments and the rationale for each of them is attached at Appendix A. Generally, the Amendments represent a collection of changes to facilitate completion, use and understanding of certain forms found in the Manual or TSX SecureFile®.

Timing and Transition

The Amendments become effective March 12, 2015. The new version of Form 5 will be available on TSX SecureFile on or about March 13, 2015. TSX will continue to accept Form 14A and Form 14B in previous form until April 1, 2015. After April 1, 2015, the new Form 14A and Form 14B will be required.

APPENDIX A

SUMMARY OF AMENDMENTS TO THE TSX COMPANY MANUAL

A. Amendments to Form 14 – Monthly Reporting Form for normal course issuer bids

Background

The TSX monthly reporting forms for normal course issuer bids ("NCIBs") for both investment fund issuers ("Form 14A") and non-investment fund issuers ("Form 14B" and together with Form 14A, the "Forms") are online on the TSX website under the following sections: "Listings – TSX & TSXV Issuer Resources – TSX Issuer Resources – TSX Company Manual – Forms" and are available in an Excel format.

Since the Forms were adopted in 2007 to conform to new NCIB rules, issuers have required assistance in completing them and in certain circumstances the information provided in the Forms has not provided sufficient content for TSX Staff to review NCIBs. Specifically, the Forms have not adequately addressed situations where listed issuers are interlisted on other markets, where purchases are made off exchange through private agreements and where purchases are made on TSX under the block purchase exception. In order to eliminate the confusion in completing the Forms and ensure that sufficient information is provided to TSX, we are amending the Forms.

Summary of the proposed NCIB Form Amendments

1. *Amendments to Forms for reporting consistency and ADTV calculation*

The Forms are being amended to provide TSX with the information required to correctly calculate average daily trading volume ("ADTV") and to ensure reporting consistency in areas that were not adequately detailed in the current version of the Forms. Specifically, in order to provide as much visibility in the monthly trading activity as possible and ensure the requisite trading details are being reported, TSX proposes to break out the reporting information into separate tables as follows:

a. The detail under the blue portion of the Forms contemplates purchases made only on TSX and, in connection with Form 14B for non-investment fund issuers, only under the TSX Daily Limit and purchases made under the block purchase exception. The current Form 14B combines the two concepts within one single table for reporting purposes and does not specify that TSX is only interested in transactions executed on TSX alone, apart from other exchanges. The concept of the TSX Daily Limit and block purchase exception does not apply to investment funds and, as a result, the blue reporting portion of Form 14A has been revised to specify reporting of Purchases made on TSX and not other markets.

   i. A footnote in the blue portion of the Forms also indicates that this is the appropriate table to report non-independent trustee purchases. In the past, issuers were uncertain whether to include this information in reporting and as a result, the reports were inconsistent, some containing this information and others not.

   ii. Another footnote to the Forms clarifies that the information reported is to be based on the weighted average purchase price for the whole month, as a subtotal alone. The current version of the Forms requires reporting of the average purchase price per day, a detail that TSX does not require.

   iii. With respect to Form 14B, in order to calculate ADTV, TSX requires the exact number of purchases made by the listed issuer through the facilities of TSX under the issuer's prior NCIB over the preceding 6 months, if applicable, to be subtracted from the total trading volume on TSX for that period. The blue portion of Form 14B includes a row for the sub-total of all trades on TSX for the month that also includes all purchases made on TSX under the block purchase exception. Pursuant to the definition of ADTV, this total over a six month period provides TSX with the value that is excluded from the total volume of trades by the issuer on TSX over those six months. As a final step to calculate ADTV, this total is divided by the actual trading days in the six month period.

b. The green portion of the Forms requires the reporting of purchases made on exchanges and marketplaces other than TSX and also includes a footnote to provide examples of other markets. The current version of the reporting form does not break out the reporting of purchases on other exchanges and as a result, they are often grouped with purchases on TSX, thereby distorting the ADTV calculation.

c. The blue portion of Form 14B that is for the reporting of purchases made on TSX under the block purchase exception is only applicable to non-investment fund issuers. This detail has been broken out as a separate column in the table so that TSX can accurately calculate the ADTV as described above under item a.iii. Additionally, to alleviate any

confusion, a footnote has been included referring the issuer to the subsection of the Manual that deals with block purchase exceptions.

d. The green portion of the Forms require the reporting of purchases made off exchange, such as by private agreement pursuant to relief granted by the relevant securities regulatory authorities. In the current form, there is no reference to reporting of private agreement purchases and issuers often either do not report the purchases or group these off exchange purchases with purchases made on TSX under the TSX Daily Limit, thereby distorting the ADTV calculation.

e. A row at the bottom of each Form has been added for the total securities purchased in the previous months and also for the grand total since the beginning of the NCIB. Essentially, the total purchased in the previous month(s) should be the same number as the grand total since the beginning of the NCIB as reported on the prior month's Form filed with TSX. This additional detail provides a simple mechanism to ensure that reports are being properly completed.

2. ***Amendments to Forms to make them user-friendly for issuers***

a. The Forms are amended to include 22 lines for reporting purposes in the tables that require detail for trading on a daily basis.

b. The Forms are colour coded to distinguish trades made on TSX from trades made off TSX and to distinguish the total columns.

c. The Forms include a Grand Total column that automatically tabulates the totals.

d. The Forms are amended to specify that the weighted average purchase price for the entire month is required in the subtotal row. The current Forms require the average purchase price per day and issuers were inconsistent in providing values on a daily basis, weighted averages or simple averages.

e. The Forms are amended to clarify that non-independent trustee purchases are to be included with purchases made under the TSX daily limit in the blue portion of the table. In the past, the Forms made no reference to reporting of non-independent trustee purchases and it was a common source of uncertainty for issuers.

Please refer to the new versions of the Forms available on the TSX website at www.tsx.com.

B. Amendments to Form 5 – Dividend / Distribution Declaration

Background

TSX is changing the notification requirement for the value of the distribution as a percentage of the value of the security from 10% to 25% in Form 5 – Dividend / Distribution Declaration (the "Form 5 Amendment").

The Form 5 Amendment will align the notification requirement with the general rule that TSX will use due bills when the value of the distribution per listed security represents 25% or more of the value of the listed security on the declaration date (see Section 429.1 of the Manual).

When the Form 5 notification requirements were originally implemented in 2012, TSX had taken a more conservative approach and had requested notification at the lower 10% threshold in order to enable TSX Staff to review any large distributions more closely.

This 10% threshold has ultimately proved confusing for issuers and is unnecessary for TSX, since the rule is generally applied on a bright line basis. The change to the 25% threshold will simplify Form 5 for issuers while allowing TSX to obtain the information it requires in order to review a Form 5 submission.

Summary of the Proposed Form 5 Amendment

The notification requirement will be changed from a 10% threshold to a 25% threshold so that the check box on Form 5 which currently reads:

> "Click here if Amount per Share **is or exceeds 10%** of the share value as at the Declaration Date (call Dividend Administrator (416-947-4663) to determine whether Due Bill trading will apply)."

will instead read:

"Click here if Amount per Share **is or exceeds 25%** of the share value as at the Declaration Date (call Dividend Administrator (416-947-4663) to determine whether Due Bill trading will apply)."

Please refer to the new version of Form 5 available on TSX SecureFile.

13.2.2 Omega Securities Inc. – Notice of Proposed Changes and Request for Comment

OMEGA SECURITIES INC.

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Omega Securities Inc. announced its plans to implement the changes described below in Q1 2015. Omega Securities Inc. is filing a programming change on behalf of Omega ATS in compliance with the Process for review protocol for Form 21-101F2, Appendix A. This cover letter will consist of a description of the change and responses to the questions provided in section 5(a)(i) of the protocol.

Comment on the proposed changes should be in writing and submitted by Monday, April 13, 2015 to:

Market Regulation Branch
Ontario Securities Commission
22nd Floor
20 Queen Street West
Toronto, ON M5H 3S8
Fax 416 595 8940
marketregulation@osc.gov.ca

and

Richard J Millar
Chief Compliance Officer
Omega Securities Inc.
133 Richmond St. West
Toronto, ON M5H 2L3
Richard.millar@omegaats.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, a notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

Omega has announced plans to implement the change described below in Q1 2015 unless otherwise noted.

If you have any questions concerning the information below please contact Richard J Millar CCO for Omega ATS, at 416-646-2764.

Omega intends to introduce the following change:

1. Change in Order Priority Broker Preferencing:

A. Description:

Omega ATS intends to change our order matching priority from strict price/time (excluding intentional crosses), to price/broker/time (Broker Preferenced Orders). Omega will match attributed visible liquidity orders originating from the same broker at the best bid or offer, superseding the time at which other broker's orders are entered. Omega will match attributed hidden orders originating from the same broker at the best bid or offer, superseding the time at which other broker's hidden orders are entered. All visible orders will retain priority to hidden orders at the best bid or offer.

As a result of this new feature, matching priority will be Price-Broker-Time for broker preferenced orders and remain Price-Time on non preferenced orders. Tag 76 (Broker number) and Tag 6761 (Anonymous) must be considered before matching opposite orders at the same price level. Priority will be given to those orders that have the same value under tag 76 at a given price and 6761 = 'N'. After an order gets filled according to Broker priority and no other attributed orders are available, time priority should be taken into account and the rest of the active order will match according to time priority of a passive book.

Example: Broker 76 enters an attributed sell order for 7 000 shares at 55.05 is submitted. Passive order book consists of attributed orders only and looks as follows:

Passive book

Price	Quantity	Broker number	Anonymous
55.05	2000 099	off	
55.05	5000 036	off	
55.05	1000 076	off	

Outcome:

Even though 099 order was placed earlier the priority will be given to 076 buy order for 1 000 shares since the order was submitted by the same broker. As a result the first trade will be for 1 000 shares. Since there are no more orders in the book under broker 076

Time priority should be taken into account and 2 000 shares of Broker 099 will be filled. The last trade will be for 4 000 shares with Broker 036 on the opposite side.

B. Expected Implementation Date:

This is a mandatory change requiring no programming on the part of the subscriber. Any attributed trade from a subscriber would be matched with another attributed trade from the same at best bid or offer. We expect a thirty-day comment period would be required, but we are looking for the shortest possible implementation following comment and approval as there will be no programing required by subscribers.

C. The rationale for the proposal, and analysis:

Broker preferencing has been a popular and common function in Canada for decades. A subscribers desire to execute eligible trades on behalf of two clients simultaneously cannot be doubted.

D. The expected Impact of the proposed Significant Change on Market structure for Subscribers, Investors and capital markets :

The change will have little effect on market structure.

E. The proposed Significant Change's effect on the systemic risk in the Canadian financial system:

None

F. Expected impact of the Fee Change on Omega Securities compliance with Ontario securities law and the requirements of fair access and the maintenance of a fair and orderly market:

None

G. Consultation Details:

We have discussed this model with participants and received positive responses.

H. Estimated time for Subscriber and Vendor system modifications for implementation of the proposed Significant Change:

System modification by the subscriber is not necessary. Testing will require no more than one week.

I. A discussion of any alternatives considered:

N/A

J. Whether the proposed Change would introduce a model that currently exists in other markets and other jurisdictions.

CX-2, TSX, Venture and other exchanges have broker preferencing. This function has been commonplace in Canada for decades and pre-dates the multiple market environment.

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